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Virginia Code Commission

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

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THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

Unless exempted by law, an agency wishing to adopt, amend, or repeal regulations must follow the procedures in the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Typically, this includes first publishing in the *Virginia Register* a notice of intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

Following publication of the proposed regulation in the *Virginia Register*, the promulgating agency receives public comments for a minimum of 60 days. The Governor reviews the proposed regulation to determine if it is necessary to protect the public health, safety, and welfare, and if it is clearly written and easily understandable. If the Governor chooses to comment on the proposed regulation, his comments must be transmitted to the agency and the Registrar of Regulations no later than 15 days following the completion of the 60-day public comment period. The Governor's comments, if any, will be published in the *Virginia Register*. Not less than 15 days following the completion of the 60-day public comment period, the agency may adopt the proposed regulation.

The Joint Commission on Administrative Rules or the appropriate standing committee of each house of the General Assembly may meet during the promulgation or final adoption process and file an objection with the Registrar and the promulgating agency. The objection will be published in the *Virginia Register*. Within 21 days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative body, and the Governor.

When final action is taken, the agency again publishes the text of the regulation as adopted, highlighting all changes made to the proposed regulation and explaining any substantial changes made since publication of the proposal. A 30-day final adoption period begins upon final publication in the *Virginia Register*.

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate legislative body and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*.

If the Governor finds that the final regulation contains changes made after publication of the proposed regulation that have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*. Pursuant to § 2.2-4007.06 of the Code of Virginia, any person may request that the agency solicit additional public comment on certain changes made after publication of the proposed regulation. The agency shall suspend the regulatory process for 30 days upon such request from 25 or more individuals, unless the agency determines that the changes have minor or inconsequential impact.

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in

which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

A regulatory action may be withdrawn by the promulgating agency at any time before the regulation becomes final.

FAST-TRACK RULEMAKING PROCESS

Section 2.2-4012.1 of the Code of Virginia provides an alternative to the standard process set forth in the Administrative Process Act for regulations deemed by the Governor to be noncontroversial. To use this process, the Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations become effective on the date noted in the regulatory action if fewer than 10 persons object to using the process in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

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

During the time the emergency regulation is in effect, the agency may proceed with the adoption of permanent regulations in accordance with the Administrative Process Act. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia be examined carefully.

CITATION TO THE VIRGINIA REGISTER

The *Virginia Register* is cited by volume, issue, page number, and date. **34:8 VA.R. 763-832 December 11, 2017**, refers to Volume 34, Issue 8, pages 763 through 832 of the *Virginia Register* issued on December 11, 2017.

The Virginia Register of Regulations is published pursuant to Article 6 (§ 2.2-4031 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia.

Members of the Virginia Code Commission: John S. Edwards, Chair; James A. Leftwich, Jr., Vice-Chair; Ward L. Armstrong; Nicole Cheuk; Richard E. Gardiner; Ryan T. McDougle; Christopher R. Nolen; Steven Popp; Charles S. Sharp; Malfourd W. Trumbo; Amigo R. Wade; Wren M. Williams.

Staff of the Virginia Register: Holly Trice, Registrar of Regulations; Anne Bloomsburg, Assistant Registrar; Nikki Clemons, Senior Regulations Analyst; Rhonda Dyer, Publications Assistant.

PUBLICATION SCHEDULE AND DEADLINES

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

October 2023 through November 2024

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
40:5	October 4, 2023	October 23, 2023
40:6	October 18, 2023	November 6, 2023
40:7	November 1, 2023	November 20, 2023
40:8	November 14, 2023	December 4, 2023
40:9	November 29, 2023	December 18, 2023
40:10	December 13, 2023	January 1, 2024
40:11	December 27, 2023	January 15, 2024
40:12	January 10, 2024	January 29, 2024
40:13	January 24, 2024	February 12, 2024
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40:23	June 12, 2024	July 1, 2024
40:24	June 26, 2024	July 15, 2024
40:25	July 10, 2024	July 29, 2024
40:26	July 24, 2024	August 12, 2024
41:1	August 7, 2024	August 26, 2024
41:2	August 21, 2024	September 9, 2024
41:3	September 4, 2024	September 23, 2024
41:4	September 18, 2024	October 7, 2024
41:5	October 2, 2024	October 21, 2024
41:6	October 16, 2024	November 4, 2024

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 1. ADMINISTRATION

STATE BOARD OF ELECTIONS

Agency Decision

Title of Regulation: **1VAC20-40. Voter Registration.**

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

Name of Petitioner: Ann Grigorian.

Nature of Petitioner's Request: The petitioner requests a process be established that allows jury commissioners to relay, from lists of registered voters obtained from the Department of Elections under § 24.2-405 of the Code of Virginia, the information obtained from those persons not qualified to serve as jurors as a result of (i) not being a citizen of the United States, (ii) no longer being a resident of the Commonwealth, (iii) being a resident of another county or city in the Commonwealth, (iv) having been convicted of a felony and not having had voting rights restored, or (v) having been adjudicated incapacitated and disqualified to vote and not having had voting rights restored. The rule provides a process whereby the sheriff, clerk of court, or other official responsible for maintaining such information provided by the commissioners may enter into an agreement with the general registrar for the locality to make that information available to that general registrar. The general registrar shall utilize the information received pursuant to this policy to identify registered voters who are no longer qualified to vote and to initiate list maintenance procedures pursuant to current law.

Agency Decision: Request denied.

Statement of Reason for Decision: The State Board of Elections met on September 14, 2023, and voted unanimously to take no action on the proposed petition for rulemaking pursuant to § 2.2-4007 of the Code of Virginia and 1VAC20-10-50, as the board does not have the statutory authority to regulate the requested practice. The analysis for the decision from the meeting can be found at <https://townhall.virginia.gov/L/ViewMeeting.cfm?MeetingID=37229>.

Agency Contact: Franchelle Tyson, Administrative Program Specialist, Department of Elections, 1100 Bank Street, First Floor, Richmond, VA 23219, telephone (804) 864-8919, or email franchelle.tyson@elections.virginia.gov.

VA.R. Doc. No. PFR23-33; Filed September 19, 2023, 12:24 p.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PSYCHOLOGY

Agency Decision

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

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

Name of Petitioner: David Baker.

Nature of Petitioner's Request: The petitioner requests that the Board of Psychology amend subdivision 6 e of 18VAC125-20-42 to allow evidence of documentation of a retired license to practice psychology in another jurisdiction as acceptable for an application for licensure by endorsement.

Agency Decision: Request granted.

Statement of Reason for Decision: The Board of Psychology voted to review and amend 18VAC125-20-42 to include evidence of a retired license to support licensure by endorsement and to reduce licensure by endorsement requirements in other parts of the regulation.

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. PFR23-34; Filed September 19, 2023, 4:05 p.m.

PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

BOARD OF JUVENILE JUSTICE

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: **6VAC35-11, Public Participation Guidelines**. The review of this regulation 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 9, 2023, and ends October 30, 2023.

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: Ken Davis, Regulatory Affairs Coordinator, Department of Juvenile Justice, 600 East Main Street, 20th Floor, Richmond, VA 23219, telephone (804) 807-0486, or email kenneth.davis@djj.virginia.gov.

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 9, 2023, and ends October 30, 2023.

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: Rachael Harrell, Board Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 801-2932, or email rachael.harrell@deq.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

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: **9VAC15-60, Small Renewable Energy Projects (Solar) Permit by Rule**.

The Notice of Intended Regulatory Action to amend 9VAC15-60, which is published in this issue of the Virginia Register, serves as the agency notice of announcement.

Contact Information: Susan Tripp, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 664-3470, or email susan.tripp@deq.virginia.gov.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

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: **9VAC5-10, General Definitions**. The review of this regulation 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

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Health conducted a periodic review and a small business impact review of **12VAC5-530, Regulations Governing the Virginia Medical Scholarship Program**, and determined that this regulation should be amended. The board is publishing its report of findings dated July 7, 2023, to support this decision.

Pursuant to § 2.2-4017 of the Code of Virginia, the Virginia Medical Scholarship Program regulation allows the State Board of Health to set the general terms and conditions necessary to administer a scholarship program that is a key tool

Periodic Reviews and Small Business Impact Reviews

for improving public health and welfare throughout the Commonwealth. The regulation is comprehensible, clear, and consistent.

The State Board of Health is proposing to amend the regulation to adhere to the style and form guidelines of the Virginia Register and Virginia Administrative Code.

The regulation for Virginia Medical Scholarship Program is required by the Code of Virginia, and there is continued need for the regulation. No comments were received during the public comment period. The regulation is neither complex nor does it overlap with or duplicate any state or federal regulations. Technical amendments became effective in 2016. There has been no change in technology or other conditions since the 2016 regulatory action that would necessitate a substantive change to the Virginia Medical Scholarship Program or the regulation. The program administered by the regulation promotes physician recruitment and retention, which is intended to address the primary care physician shortages throughout the Commonwealth. Facilities that provide primary care services and that qualify as a small business benefit from the implementation of the regulation, and the regulation has no adverse economic impact on small business.

Contact Information: Olivette Buroughs, Statewide Health Workforce Manager, Virginia Department of Health, James Madison Building, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7190, or email olivette.buroughs@vdh.virginia.gov.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

DEPARTMENT OF HEALTH PROFESSIONS

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: **18VAC76-10, Regulations Governing the Health Practitioners' Monitoring Program for the Department of Health Professions**. The review of this regulation 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 9, 2023, and ends October 30, 2023.

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: Erin Barrett, Director of Legislative and Regulatory Affairs, 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.

BOARD OF NURSING

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: **18VAC90-11, Public Participation Guidelines**. The review of this regulation 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 9, 2023, and ends October 30, 2023.

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: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4520, or email jay.douglas@dhp.virginia.gov.

Periodic Reviews and Small Business Impact Reviews

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

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: **18VAC120-11, Public Participation Guidelines**. The review of this regulation 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 9, 2023, and ends October 30, 2023.

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: Joseph C. Haughwout, Jr., Regulatory Affairs Manager, Department of Professional and Occupational Regulation, Perimeter Center, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8566, or email joseph.haughwout@dpor.virginia.gov.

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: **18VAC120-40, Virginia Professional Boxing and Wrestling Events Regulations**. The review of this regulation 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 9, 2023, and ends October 30, 2023.

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: Kathleen R. Nosbisch, Executive Director, Boxing, Martial Arts, and Professional Wrestling Advisory Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, or email boxing@dpor.virginia.gov.

BOARD OF PSYCHOLOGY

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: **18VAC125-11, Public Participation Guidelines**. The review of this regulation 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 9, 2023, and ends October 30, 2023.

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: 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.



TITLE 19. PUBLIC SAFETY

DEPARTMENT OF STATE POLICE

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of State Police conducted a periodic

Periodic Reviews and Small Business Impact Reviews

review and a small business impact review of **19VAC30-11, Public Participation Guidelines**, and determined that this regulation should be retained as is. The department is publishing its report of findings dated September 20, 2023, to support this decision.

The purpose of this regulation is to promote public involvement in the development, amendment, or repeal of the regulations of the Department of State Police. The regulation is necessary to define and guide the members of the public who are interested an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. The regulation follows the model guidelines developed by the Department of Planning and Budget, is written clearly, and is easily understandable. The regulation outlines the purpose, definitions, and how notifications are guided. The regulation defines procedures on public comment, rulemaking, appointment of regulatory advisory panel and negotiated rulemaking panel, how meetings are conducted, public hearings on regulations, and periodic reviews of regulations.

After reviewing the regulation, the agency decided to retain the regulation as is without amendment or repeal.

There is continued need for the regulation, as the regulation is necessary to promote public involvement in the development, amendment, or repeal of the regulations of the Department of State Police. The department did not receive any comments or complaints during the 30-day public comment period. The regulation is not complex and does not overlap, duplicate, or conflict with any other federal or state laws or regulations. The regulation is evaluated annually and does not rely on technology, economic conditions, or any other factors due to the nature of public participation.

This regulation outlines the Virginia Regulatory Town Hall as the mechanism for notification, registration, and meeting procedures for public participation determined there was no effect to the economic impact of small businesses.

Contact Information: Keenon Hook, Law Enforcement Manager III, Department of State Police, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 674-4606, or email keenon.hook@vsp.virginia.gov.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Education intends to consider repealing **8VAC20-131, Regulations Establishing Standards for Accrediting Public Schools in Virginia**, and promulgating **8VAC20-132, Virginia Standards of Accreditation**. The purpose of the proposed action is to fully revise the Standards of Accreditation. The accreditation regulations should ensure that an effective educational program is established and maintained in Virginia public schools by (i) providing an essential foundation of educational programs of high quality for all schools for all students; (ii) encouraging and promoting school quality and acknowledging achievement and continuous improvements by schools and school divisions in multiple areas; (iii) fostering public confidence that graduating students have mastered multiple areas of learning to include academic subjects, workplace skills, career exploration and planning, and civic and community responsibility; (iv) ensuring recognition of Virginia public schools by other institutions of learning; and (v) establishing the means of determining the effectiveness of schools as prescribed in the Standards of Quality at § 22.1-253.13:3 of the Code of Virginia, including student learning and progress and student outcomes for multiple areas affecting school quality. The true state of the Virginia school system does not appear to be adequately captured by the current accreditation system. The board will revise the accreditation system in order to increase transparency, improve student success for all students, aid in the allocation of Commonwealth resources into Virginia schools, and provide a clear picture of the relationship between school performance and student performance.

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

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

Public Comment Deadline: November 8, 2023.

Agency Contact: Jim Chapman, Director of Board Relations, 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.

VA.R. Doc. No. R24-7679; Filed September 19, 2023, 7:38 p.m.

◆

TITLE 9. ENVIRONMENT

DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Environmental Quality intends to consider amending **9VAC15-60, Small Solar Renewable Energy Projects Permit Regulation**. The purpose of the proposed action is to conform the regulation to Chapter 688 of the 2022 Acts of Assembly to require a mitigation plan detailing reasonable actions to avoid, minimize, or otherwise mitigate impacts to prime agricultural soils and forest lands. If a potential solar project would disturb more than 10 acres of prime agricultural soils or 50 acres of contiguous forest lands, or if it would disturb forest lands enrolled in a forestry preservation program, it is deemed to have a significant adverse impact, requiring the submission of a mitigation plan. If a draft mitigation plan was not provided by the applicant as part of the initial application, the applicant must develop a mitigation plan and conduct a 45-day public comment period. Any application for a small renewable energy project received for which an interconnection request is applied for and received by December 31, 2024, is not subject to these new provisions.

In addition, pursuant to § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, 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; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

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

Statutory Authority: § 10.1-1197.6 of the Code of Virginia.

Public Comment Deadline: November 8, 2023.

Agency Contact: Susan Tripp, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 664-3470, or email susan.tripp@deq.virginia.gov.

VA.R. Doc. No. R24-7691; Filed September 20, 2023, 10:46 a.m.

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Notices of Intended Regulatory Action

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR HEARING AID SPECIALISTS AND OPTICIANS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board for Hearing Aid Specialists and Opticians intends to consider amending **18VAC80-20, Hearing Aid Specialists Regulations**. The purpose of the proposed action is to undertake a general review of the regulation in accordance with the regulatory reduction goal of Executive Directive Number One (2022). The review will consider whether requirements ensure the regulation compliments current Virginia law and meets applicable federal requirements; is organized, clear, and understandable; provides minimal burdens on regulants while still protecting the public; and reflects current Department of Professional and Occupational Regulation procedures and policies. The board will consider any other changes determined to be necessary and appropriate.

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

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

Public Comment Deadline: November 8, 2023.

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

VA.R. Doc. No. R24-7493; Filed September 20, 2023, 11:18 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board for Hearing Aid Specialists and Opticians intends to consider amending **18VAC80-30, Opticians Regulations**. The purpose of the proposed action is to undertake a general review of the regulation in accordance with the regulatory reduction goal of Executive Directive Number One (2022). The review will consider whether requirements ensure the regulation compliments current Virginia law and meets applicable federal requirements; is organized, clear, and understandable; provides minimal burdens on regulants while still protecting the public; and reflects current Department of Professional and Occupational Regulation procedures and policies. The board will consider any other changes determined to be necessary and appropriate.

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

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

Public Comment Deadline: November 8, 2023.

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

VA.R. Doc. No. R24-7491; Filed September 20, 2023, 11:17 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board for Hearing Aid Specialists and Opticians intends to consider amending **18VAC80-30, Opticians Regulations**. The purpose of the proposed action is to amend the regulation to adjust its licensing fee structure. Pursuant to § 54.1-113 of the Code of Virginia, the board must establish fees adequate to support the costs of the board operations and a proportionate share of Department for Professional and Occupational Regulation operations. At the close of the 2022-2024 biennium, the board will be operating at a loss. By the close of the next biennium (2024-2026), fees will not provide adequate revenue for those costs, therefore a fee adjustment is necessary.

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

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

Public Comment Deadline: November 8, 2023.

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

VA.R. Doc. No. R24-7598; Filed September 20, 2023, 11:15 a.m.

REGULATIONS

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

Symbol Key

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

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

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: 4VAC20-270. Pertaining to Blue Crab Fishery (amending 4VAC20-270-40, 4VAC20-270-51).

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

Effective Date: October 1, 2023.

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 amendments (i) adjust the season for the remainder of the 2023 commercial crab pot fishery and (ii) remove discretionary time of year restrictions on fish pots.

4VAC20-270-40. Season limits.

A. In 2023, the lawful season for the commercial harvest of crabs by hard crab pot shall be March 17 through ~~November 30~~ December 16. In 2024, the lawful season for the commercial harvest of crabs by hard crab pot shall be March 17 through November 30. For all other lawful commercial gear used to harvest crabs, as described in 4VAC20-1040, the lawful seasons for the harvest of crabs shall be April 15 through October 15.

B. It shall be unlawful for any person to harvest crabs or to possess crabs on board a vessel, except during the lawful season as described in subsection A of this section.

C. It shall be unlawful for any person knowingly to place, set, fish, or leave any hard crab pot in any tidal waters of Virginia from December ~~1~~ 17, 2023, through March 16, 2024. It shall be unlawful for any person to knowingly place, set, fish, or leave any lawful commercial gear used to harvest crabs, except any hard crab pot or any gear as described in 4VAC20-460-25, in any tidal waters of Virginia from October 16, 2023, through April 14, 2024.

~~D. It shall be unlawful for any person knowingly to place, set, fish, or leave any fish pot in any tidal waters from March 12 through March 16, except as provided in subdivisions 1 and 2 of this subsection.~~

~~1. It shall be lawful for any person to place, set, or fish any fish pot in those Virginia waters located upriver of the following boundary lines:~~

~~a. In the James River the boundary shall be a line connecting Hog Point and the downstream point at the mouth of College Creek.~~

~~b. In the York River the boundary lines shall be the Route 33 bridges at West Point.~~

~~c. In the Rappahannock River the boundary line shall be the Route 360 bridge at Tappahannock.~~

~~d. In the Potomac River the boundary line shall be the Route 301 bridge that extends from Newberg, Maryland to Dahlgren, Virginia.~~

~~2. This subsection shall not apply to legally licensed eel pots as described in 4VAC20-500-50.~~

~~E. D.~~ It shall be unlawful for any person to place, set, or fish any number of fish pots in excess of 10% of the amount allowed by the gear license limit, up to a maximum of 30 fish pots per vessel, when any person on that vessel has set any crab pots.

~~1. This subsection shall not apply to fish pots set in the areas described in subdivision D 1 of this section. Those Virginia waters located upriver of the following boundary lines:~~

~~a. In the James River the boundary shall be a line connecting Hog Point and the downstream point at the mouth of College Creek.~~

~~b. In the York River the boundary lines shall be the Route 33 bridges at West Point.~~

~~c. In the Rappahannock River the boundary line shall be the Route 360 bridge at Tappahannock.~~

~~2. This subsection shall not apply to legally licensed eel pots as described in 4VAC20-500.~~

~~3. This subsection shall not apply to fish pots constructed of a mesh less than one-inch square or hexagonal mesh.~~

4VAC20-270-51. Daily commercial harvester, vessel, and harvest and possession limits.

A. Any barrel used by a harvester to contain or possess any amount of crabs will be equivalent in volume to no more than three bushels of crabs.

B. From July 5, 2023, through ~~September 30~~ October 31, 2023, and May 16, 2024, through July 4, 2024, any commercial fisherman registration licensee legally licensed for any hard crab pot license, as described in 4VAC20-270-50 B, shall be limited to the following maximum daily harvest and possession limits for any of the following hard crab pot license categories:

1. 10 bushels, or three barrels and one bushel, of crabs if licensed for up to 85 crab pots.
2. 14 bushels, or four barrels and two bushels, of crabs if licensed for up to 127 crab pots.
3. 18 bushels, or six barrels, of crabs if licensed for up to 170 crab pots.
4. 29 bushels, or nine barrels and two bushels, of crabs if licensed for up to 255 crab pots.
5. 47 bushels, or 15 barrels and two bushels, of crabs if licensed for up to 425 crab pots.

C. From ~~October~~ November 1, 2023, through ~~November 30~~ December 16, 2023, and March 17, 2024, through May 15, 2024, any commercial fisherman registration licensee legally licensed for any hard crab pot license, as described in 4VAC20-270-50 B, shall be limited to the following maximum daily harvest and possession limits for any of the following crab pot license categories:

1. Eight bushels, or two barrels and two bushels, of crabs if licensed for up to 85 crab pots.
2. 11 bushels, or three barrels and two bushels, of crabs if licensed for up to 127 crab pots.
3. 14 bushels, or four barrels and two bushels, of crabs if licensed for up to 170 crab pots.
4. 22 bushels, or seven barrels and one bushel, of crabs if licensed for up to 255 crab pots.
5. 36 bushels, or 12 barrels, of crabs if licensed for up to 425 crab pots.

D. When a single harvester or multiple harvesters are on board any vessel, that vessel's daily harvest and possession limit shall be equal to only one daily harvest and possession limit, as described in subsections B and C of this section, and that daily limit shall correspond to the highest harvest and possession limit of only one licensee on board that vessel.

E. When transporting or selling one or more legal crab pot licensee's crab harvest in bushels or barrels, any agent shall possess either the crab pot license of that one or more crab pot licensees or a bill of lading indicating each crab pot licensee's name, address, commercial fisherman registration license number, date, and amount of bushels or barrels of crabs to be sold.

F. If any police officer finds crabs in excess of any lawful daily bushel, barrel, or vessel limit, as described in this section,

that excess quantity of crabs shall be returned immediately to the water by the licensee who possess that excess over lawful daily harvest or possession limit. The refusal to return crabs, in excess of any lawful daily harvest or possession limit, to the water shall constitute a separate violation of this chapter.

G. When any person on board any boat or vessel possesses a crab pot license, it shall be unlawful for that person or any other person aboard that boat or vessel to possess a seafood ~~buyers~~ buyer's boat license and buy any crabs on any day.

VA.R. Doc. No. R24-7677; Filed September 27, 2023, 10:32 a.m.



TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Final Regulation

REGISTRAR'S NOTICE: Pursuant to 1VAC7-10-60, the Registrar of Regulations is updating certain regulations of the Virginia Waste Management Board to remove an obsolete fax number in the Virginia Administrative Code.

Title of Regulation: **9VAC20-15. Regulation for Dispute Resolution (amending 9VAC20-15-90).**

Effective Date: October 9, 2023.

Agency Contact: Jill Hrynciw, Policy Analyst, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 929-6559, or email jill.hrynciw@deq.virginia.gov.

Summary:

Pursuant to 1VAC7-10-60, the fax number for the Department of Environmental Quality is removed from regulation text as it has been eliminated by the department.

VA.R. Doc. No. R24-7643; Filed September 14, 2023, 11:33 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Virginia Waste Management Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors. Additionally, the board is also claiming an exemption from Article 2 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: **9VAC20-81. Solid Waste Management Regulations (amending 9VAC20-81-10, 9VAC20-81-90, 9VAC20-81-140, 9VAC20-81-450, 9VAC20-81-460).**

Regulations

Statutory Authority: § 10.1-1402 of the Code of Virginia; 42 USC § 6941 et seq.; 40 CFR Parts 257 and 258.

Effective Date: November 8, 2023.

Agency Contact: Kathryn J. Perszyk, Director, Land Protection and Revitalization, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 698-4047, or email kathryn.perszyk@deq.virginia.gov.

Summary:

Pursuant to Chapter 503 of the 2023 Acts of Assembly, the amendments (i) add a definition of Planning District 8 and (ii) require new coal combustion residuals (CCR) landfills within Planning District 8 to provide a map identifying existing residential area and properties located within one mile of the facility boundary that are not served by municipal water supply. The amendments also update a citation to Regulated Medical Waste Management Regulations (9VAC20-121) and make technical amendments.

9VAC20-81-10. Definitions.

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

"Active life" means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities required by this chapter.

"Active portion" means that part of a facility or unit that has received or is receiving wastes and that has not been closed in accordance with this chapter.

"Agricultural waste" means all solid waste produced from farming operations.

"Airport" means, for the purpose of this chapter, a military airfield or a public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

"Aquifer" means a geologic formation, group of formations, or a portion of a formation capable of yielding significant quantities of groundwater to wells or springs.

"Ash" means the fly ash or bottom ash residual waste material produced from incineration or burning of solid waste or from any fuel combustion.

"Base flood" see "Hundred-year flood."

"Bedrock" means the rock that underlies soil or other unconsolidated, superficial material at a site.

"Benchmark" means a permanent monument constructed of concrete and set in the ground surface below the frostline with identifying information clearly affixed to it. Identifying information will include the designation of the benchmark as well as the elevation and coordinates on the local or Virginia state grid system.

"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 environment.

"Beneficial use of CCR" means the CCR meet all of the following conditions:

1. The CCR must provide a functional benefit;
2. The CCR must substitute for the use of a virgin material, conserving natural resources that would otherwise need to be obtained through practices, such as extraction;
3. The use of the CCR must meet relevant product specifications, regulatory standards, or design standards when available, and when such standards are not available, the CCR is not used in excess quantities; and
4. When unencapsulated use of CCR involving placement on the land of 12,400 tons or more in nonroadway applications, the user must demonstrate and keep records, and provide such documentation upon request, that environmental releases to groundwater, surface water, soil, and air are comparable to or lower than those from analogous products made without CCR, or that environmental releases to groundwater, surface water, soil, and air will be at or below relevant regulatory and health-based benchmarks for human and ecological receptors during use.

"Bioremediation" means remediation of contaminated media by the manipulation of biological organisms to enhance the degradation of contaminants.

"Bird hazard" means an increase in the likelihood of bird/aircraft collisions that may cause damage to the aircraft or injury to its occupants.

"Board" means the Virginia Waste Management Board.

"Bottom ash" means ash or slag that has been discharged from the bottom of the combustion unit after combustion.

"Capacity" means the maximum permitted volume of solid waste, inclusive of daily and intermediate cover, that can be disposed in a landfill. This volume is measured in cubic yards.

"Captive industrial landfill" means an industrial landfill that is located on property owned or controlled by the generator of the waste disposed of in that landfill.

"CCR landfill" means an area of land or an excavation that receives CCR and that is not a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground or surface coal mine, or a cave. For purposes of this chapter, a CCR landfill also includes sand and gravel pits and quarries that receive CCR, CCR piles, and any practice that does not meet the definition of a beneficial use of CCR.

"CCR surface impoundment" means a natural topographic depression, man-made excavation, or diked area that is

designed to hold an accumulation of CCR and liquids, and the unit treats, stores, or disposes of CCR.

"Clean wood" means solid waste consisting of untreated wood pieces and particles that do not contain paint, laminate, bonding agents, or chemical preservatives or are otherwise unadulterated.

"Closed facility" means a solid waste management facility that has been properly secured in accordance with the requirements of this chapter.

"Closure" means that point in time when a permitted landfill has been capped, certified as properly closed by a professional engineer, inspected by the department, and closure notification is performed by the department in accordance with 9VAC20-81-160 D.

"Coal combustion byproducts" or "CCB" means residuals, including fly ash, bottom ash, boiler slag, and flue gas emission control waste produced by burning coal. CCB includes both CCR and other non-CCR wastes identified in this definition.

"Coal combustion residuals" or "CCR" means fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers. CCR is a specific type of CCB.

"Combustion unit" means an incinerator, waste heat recovery unit, or boiler.

"Commercial waste" means all solid waste generated by establishments engaged in business operations other than manufacturing or construction. This category includes, ~~but is not limited to~~, solid waste resulting from the operation of stores, markets, office buildings, restaurants, and shopping centers.

"Compliance schedule" means a time schedule for measures to be employed on a solid waste management facility that will ultimately upgrade it to conform to this chapter.

"Compost" means a stabilized organic product produced by a controlled aerobic decomposition process in such a manner that the product can be handled, stored, or applied to the land without adversely affecting public health or the environment.

"Composting" means the manipulation of the natural process of decomposition of organic materials to increase the rate of decomposition.

"Construction" means the initiation of permanent physical change at a property with the intent of establishing a solid waste management unit. This does not include land-clearing activities, excavation for borrow purposes, activities intended for infrastructure purposes, or activities necessary to obtain Part A siting approval (i.e., advancing of exploratory borings, digging of test pits, groundwater monitoring well installation, etc.).

"Construction/demolition/debris landfill" or "CDD landfill" means a land burial facility engineered, constructed and operated to contain and isolate construction waste, demolition waste, debris waste, split tires, and white goods or combinations of the above solid wastes.

"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, pipes, 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.

"Contaminated soil" means, for the purposes of this chapter, a soil that, as a result of a release or human usage, has absorbed or adsorbed physical, chemical, or radiological substances at concentrations above those consistent with nearby undisturbed soil or natural earth materials.

"Container" means any portable device in which a material is stored, transported, treated, or otherwise handled and includes transport vehicles that are containers themselves (e.g., tank trucks) and containers placed on or in a transport vehicle.

"Containment structure" means a closed vessel such as a tank or cylinder.

"Convenience center" means a collection point for the temporary storage of solid waste provided for individual solid waste generators who choose to transport solid waste generated on their own premises to an established centralized point, rather than directly to a disposal facility. To be classified as a convenience center, the collection point may not receive waste from collection vehicles that have collected waste from more than one real property owner. A convenience center shall be on a system of regularly scheduled collections.

"Cover material" means compactable soil or other approved material that is used to blanket solid waste in a landfill.

"Daily disposal limit" means the amount of solid waste that is permitted to be disposed at the facility and shall be computed on the amount of waste disposed during any operating day.

"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.

"Decomposed vegetative waste" means a stabilized organic product produced from vegetative waste by a controlled natural decay process in such a manner that the product can be handled, stored, or applied to the land without adversely affecting public health or the environment.

Regulations

"Demolition waste" means that solid waste that is produced by the destruction of structures and their foundations and includes the same materials as construction wastes.

"Department" means the Virginia Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality. For purposes of submissions to the director as specified in the Waste Management Act, submissions may be made to the department.

"Discard" means to abandon, dispose of, burn, incinerate, accumulate, store, or treat before or instead of being abandoned, disposed of, burned, or incinerated.

"Discarded material" means a material that is:

1. Abandoned by being:
 - a. Disposed of;
 - b. Burned or incinerated; or
 - c. Accumulated, stored, or treated (but not used, reused, or reclaimed) before or in lieu of being abandoned by being disposed of, burned, or incinerated; or
2. Recycled used, reused, or reclaimed material as defined in this part.

"Disclosure statement" means a sworn statement or affirmation as required by § 10.1-1400 of the Code of Virginia (see DEQ Form DISC-01 and 02 (Disclosure Statement)).

"Displacement" means the relative movement of any two sides of a fault measured in any direction.

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that such solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters.

"Disposal unit boundary" or "DUB" means the vertical plane located at the edge of the waste disposal unit. This vertical plane extends down into the uppermost aquifer. The DUB must be positioned within or coincident to the waste management boundary.

"EPA" means the U.S. Environmental Protection Agency.

"Exempt management facility" means a site used for activities that are conditionally exempt from management as a solid waste under this chapter. The facility remains exempt from solid waste management requirements provided it complies with the applicable conditions set forth in Parts II (9VAC20-81-20 et seq.) and IV (9VAC20-81-300 et seq.) of this chapter.

"Existing CCR landfill" means a CCR landfill that receives CCR both before and after October 19, 2015, or for which construction commenced prior to October 19, 2015, and receives CCR on or after October 19, 2015. A CCR landfill has commenced construction if the owner or operator has obtained

the federal, state, and local approvals or permits necessary to begin physical construction and a continuous onsite, physical construction program had begun prior to October 19, 2015.

"Existing CCR surface impoundment" means a CCR surface impoundment that receives CCR both before and after October 19, 2015, or for which construction commenced prior to October 19, 2015, and receives CCR on or after October 19, 2015. A CCR surface impoundment has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous onsite, physical construction program had begun prior to October 19, 2015.

"Expansion" means a horizontal expansion of the waste management boundary as identified in the Part A application. If a facility's permit was issued prior to the establishment of the Part A process, an expansion is a horizontal expansion of the disposal unit boundary.

"Facility" means solid waste management facility unless the context clearly indicates otherwise.

"Facility boundary" means the boundary of the solid waste management facility. For landfills, this boundary encompasses the waste management boundary and all ancillary activities including, ~~but not limited to~~ scales, groundwater monitoring wells, gas monitoring probes, and maintenance facilities as identified in the facility's permit application. For facilities with a permit-by-rule (PBR) the facility boundary is the boundary of the property where the permit-by-rule activity occurs. For unpermitted solid waste management facilities, the facility boundary is the boundary of the property line where the solid waste is located.

"Facility structure" means any building, shed, or utility or drainage line on the facility.

"Fault" means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

"Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters, including low-lying areas of offshore islands where flooding occurs.

"Fly ash" means ash particulate collected from air pollution attenuation devices on combustion units.

"Food-chain crops" means crops grown for human consumption, tobacco, and crops grown for pasture and forage or feed for animals whose products are consumed by humans.

"Fossil fuel combustion products" means coal combustion byproducts as defined in this regulation, coal combustion byproducts generated at facilities with fluidized bed combustion technology, petroleum coke combustion byproducts, byproducts from the combustion of oil, byproducts from the combustion of natural gas, and byproducts from the combustion of mixtures of coal and "other fuels" (i.e., co-

burning of coal with "other fuels" where coal is at least 50% of the total fuel). For purposes of this definition, "other fuels" means waste-derived fuel product, auto shredder fluff, wood wastes, coal mill rejects, peat, tall oil, tire-derived fuel, deionizer resins, and used oil.

"Free liquids" means liquids that readily separate from the solid portion of a waste under ambient temperature and pressure as determined by the Paint Filter Liquids Test, Method 9095, U.S. Environmental Protection Agency, Publication SW-846.

"Garbage" means readily putrescible discarded materials composed of animal, vegetable or other organic matter.

"Gas condensate" means the liquid generated as a result of gas control or recovery processes at the solid waste management facility.

"Governmental unit" means any department, institution, or commission of the Commonwealth and any public corporate instrumentality thereof, and any district, and shall include local governments.

"Ground rubber" means material processed from waste tires that is no larger than 1/4 inch in any dimension. This includes crumb rubber that is measured in mesh sizes.

"Groundwater" means water below the land surface in a zone of saturation.

"Hazardous constituent" means a constituent of solid waste found listed in Appendix VIII of 9VAC20-60-261.

"Hazardous waste" means a "hazardous waste" as described by the Virginia Hazardous Waste Management Regulations (9VAC20-60).

"Holocene" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present.

"Home use" means the use of compost for growing plants that is produced and used on a privately owned residential site.

"Host agreement" means any lease, contract, agreement, or land use permit entered into or issued by the locality in which the landfill is situated that includes terms or conditions governing the operation of the landfill.

"Household hazardous waste" means any waste material derived from households (including single and multiple residences, hotels, motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas) which, except for the fact that it is derived from a household, would otherwise be classified as a hazardous waste in accordance with 9VAC20-60.

"Household waste" means any waste material, including garbage, trash, and refuse, derived from households. Households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters,

campgrounds, picnic grounds, and day-use recreation areas. Household wastes do not include sanitary waste in septic tanks (septage) that is regulated by other state agencies.

"Hundred-year flood" means a flood that has a 1.0% or greater chance of recurring in any given year or a flood of magnitude equaled or exceeded on the average only once in a hundred years on the average over a significantly long period.

"Inactive CCR surface impoundment" means a CCR surface impoundment that no longer receives CCR on or after October 19, 2015, and still contains both CCR and liquids on or after October 19, 2015.

"Incineration" means the controlled combustion of solid waste for disposal.

"Incinerator" means a facility or device designed for the treatment of solid waste by combustion.

"Industrial waste" means any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

"Industrial waste landfill" means a solid waste landfill used primarily for the disposal of a specific industrial waste or a waste that is a byproduct of a production process.

"Injection well" means, for the purposes of this chapter, a well or bore hole into which fluids are injected into selected geological horizons.

"Institutional waste" means all solid waste emanating from institutions such as, but not limited to, hospitals, nursing homes, orphanages, and public or private schools. It can include regulated medical waste from health care facilities and research facilities that must be managed as a regulated medical waste.

"Interim cover systems" means temporary cover systems applied to a landfill area when landfilling operations will be temporarily suspended for an extended period (typically, longer than one year). At the conclusion of the interim period, the interim cover system may be removed and landfilling operations resume or final cover is installed.

"Karst topography" means areas where karst terrane, with its characteristic surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in

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karst terranes include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

"Key personnel" means the applicant itself and any person employed by the applicant in a managerial capacity, or empowered to make discretionary decisions, with respect to the solid waste or hazardous waste operations of the applicant in Virginia, but shall not include employees exclusively engaged in the physical or mechanical collection, transportation, treatment, storage, or disposal of solid or hazardous waste and such other employees as the director may designate by regulation. If the applicant has not previously conducted solid waste or hazardous waste operations in Virginia, the term also includes any officer, director, partner of the applicant, or any holder of 5.0% or more of the equity or debt of the applicant. If any holder of 5.0% or more of the equity or debt of the applicant or of any key personnel is not a natural person, the term includes all key personnel of that entity, provided that where such entity is a chartered lending institution or a reporting company under the Federal Security and Exchange Act of 1934, the term does not include key personnel of such entity. Provided further that the term means the chief executive officer of any agency of the United States or of any agency or political subdivision of the Commonwealth, and all key personnel of any person, other than a natural person, that operates a landfill or other facility for the disposal, treatment, or storage of nonhazardous solid waste under contract with or for one of those governmental entities.

"Lagoon" means a body of water or surface impoundment designed to manage or treat waste water.

"Land-clearing activities" means the removal of flora from a parcel of land.

"Land-clearing debris" means vegetative waste resulting from land-clearing activities.

"Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill.

"Landfill gas" means gas generated as a byproduct of the decomposition of organic materials in a landfill. Landfill gas consists primarily of methane and carbon dioxide.

"Landfill mining" means the process of excavating solid waste from an existing landfill.

"Leachate" means a liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials from such waste. Leachate and any material with which it is mixed is solid waste; except that leachate that is pumped from a collection tank for transportation to disposal in an offsite facility is regulated as septage, leachate discharged into a waste water collection system is regulated as industrial waste water and leachate that has contaminated groundwater is regulated as contaminated groundwater.

"Lead acid battery" means, for the purposes of this chapter, any wet cell battery.

"Lift" means the daily landfill layer of compacted solid waste plus the cover material.

"Liquid waste" means any waste material that is determined to contain "free liquids" as defined by this chapter.

"Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock, that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth's surface.

"Litter" means, for purposes of this chapter, any solid waste that is discarded or scattered about a solid waste management facility outside the immediate working area.

"Lower explosive limit" means the lowest concentration by volume of a mixture of explosive gases in air that will propagate a flame at 25°C and at atmospheric pressure.

"Materials recovery facility" means a solid waste management facility for the collection, processing, and recovery of material such as metals from solid waste or for the production of a fuel from solid waste. This does not include the production of a waste-derived fuel product.

"Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90% or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

"Monitoring" means all methods, procedures, and techniques used to systematically analyze, inspect, and collect data on operational parameters of the facility or on the quality of air, groundwater, surface water, and soils.

"Monitoring well" means a well point below the ground surface for the purpose of obtaining periodic water samples from groundwater for quantitative and qualitative analysis.

"Mulch" means woody waste consisting of stumps, trees, limbs, branches, bark, leaves and other clean wood waste that has undergone size reduction by grinding, shredding, or chipping, and is distributed to the general public for landscaping purposes or other horticultural uses except composting as defined and regulated under this chapter.

"Municipal solid waste" means that waste that is normally composed of residential, commercial, and institutional solid waste and residues derived from combustion of these wastes.

"New CCR landfill" means a CCR landfill or lateral expansion of a CCR landfill that first receives CCR or commences construction after October 19, 2015. A new CCR landfill has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous

onsite, physical construction program had begun after October 19, 2015. Overfills are also considered new CCR landfills.

"New CCR surface impoundment" means a CCR surface impoundment or lateral expansion of an existing or new CCR surface impoundment that first receives CCR or commences construction after October 19, 2015. A new CCR surface impoundment has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous onsite, physical construction program had begun after October 19, 2015.

"New solid waste management facility" means a facility or a portion of a facility that was not included in a previous determination of site suitability (Part A approval).

"Nuisance" means an activity that unreasonably interferes with an individual's or the public's comfort, convenience or enjoyment such that it interferes with the rights of others by causing damage, annoyance, or inconvenience.

"Offsite" means any site that does not meet the definition of onsite as defined in this part.

"Onsite" means the same or geographically contiguous property, which may be divided by public or private right-of-way, provided the entrance and exit to the facility are controlled by the owner or the operator of the facility. Noncontiguous properties owned by the same person, but connected by a right-of-way that he controls and to which the public does not have access, are also considered onsite property.

"Open burning" means the combustion of solid waste without:

1. Control of combustion air to maintain adequate temperature for efficient combustion;
2. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and
3. Control of the combustion products' emission.

"Open dump" means a site on which any solid waste is placed, discharged, deposited, injected, dumped, or spilled so as to present a threat of a release of harmful substances into the environment or present a hazard to human health. Such a site is subject to the Open Dump Criteria in 9VAC20-81-45.

"Operating record" means records required to be maintained in accordance with the facility permit or this part (see 9VAC20-81-530).

"Operation" means all waste management activities at a solid waste management facility beginning with the initial receipt of solid waste for treatment, storage, disposal, or transfer and ceasing with the initiation of final closure activities at the solid

waste management facility subsequent to the final receipt of waste.

"Operator" means the person responsible for the overall operation and site management of a solid waste management facility.

"Owner" means the person who owns a solid waste management facility or part of a solid waste management facility.

"PCB" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances that contain such substance (see 40 CFR 761.3, as amended).

"Perennial stream" means a well-defined channel that contains water year round during a year of normal rainfall. Generally, the water table is located above the streambed for most of the year and groundwater is the primary source for stream flow. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

"Permit" means the written permission of the director to own, operate, or construct a solid waste management facility.

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

"Planning District 8" means the contiguous area within the boundaries of Region 8 established by the Department of Housing and Community Development pursuant to the Regional Cooperation Act (§ 15.2-4200 et seq. of the Code of Virginia).

"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, vessel, or other floating craft, from which pollutants are or may be discharged. Return flows from irrigated agriculture are not included.

"Pollutant" means any substance that causes or contributes to, or may cause or contribute to, environmental degradation when discharged into the environment.

"Poor foundation conditions" means those areas where features exist that indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of a solid waste management facility.

"Postclosure" means the requirements placed upon solid waste disposal facilities after closure to ensure environmental and public health safety for a specified number of years after closure.

"Process rate" means the maximum rate of waste acceptance that a solid waste management facility can process for

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treatment and storage. This rate is limited by the capabilities of equipment, personnel, and infrastructure.

"Processing" means preparation, treatment, or conversion of waste by a series of actions, changes, or functions that bring about a desired end result.

"Professional engineer" means an engineer licensed to practice engineering in the Commonwealth as defined by the rules and regulations set forth by the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects (18VAC10-20).

"Professional geologist" means a geologist licensed to practice geology in the Commonwealth as defined by the rules and regulations set forth by the Board for Professional Soil Scientists, Wetland Professionals, and Geologists (18VAC145-40).

"Progressive cover" means cover material placed over the working face of a solid waste disposal facility advancing over the deposited waste as new wastes are added keeping the exposed area to a minimum.

"Putrescible waste" means solid waste that contains organic material capable of being decomposed by micro-organisms and cause odors.

"Qualified groundwater scientist" means a scientist or engineer who has received a baccalaureate or postgraduate degree in the natural sciences or engineering and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by professional certifications or completion of accredited university programs that enable that individual to make sound professional judgments regarding groundwater monitoring, contaminant fate and transport, and corrective action.

"RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 USC § 6901 et seq.), the Hazardous and Solid Waste Amendments of 1984, and any other applicable amendments to these laws.

"Reclaimed material" means a material that is processed or reprocessed to recover a usable product or is regenerated to a usable form.

"Refuse" means all solid waste products having the character of solids rather than liquids and that are composed wholly or partially of materials such as garbage, trash, rubbish, litter, residues from clean up of spills or contamination, or other discarded materials.

"Refuse-derived fuel (RDF)" means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. This includes all classes of refuse-derived fuel including low-density fluff refuse-derived fuel through densified refuse-derived fuel and pelletized refuse-derived fuel.

"Regulated hazardous waste" means a solid waste that is a hazardous waste, as defined in the Virginia Hazardous Waste Management Regulations (9VAC20-60), that is not excluded from those regulations as a hazardous waste.

"Regulated medical waste" means solid wastes so defined by the Regulated Medical Waste Management Regulations (~~9VAC20-120~~) (9VAC20-121) as promulgated by the Virginia Waste Management Board.

"Release" means, for the purpose of this chapter, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, dumping, or disposing into the environment solid wastes or hazardous constituents of solid wastes (including the abandonment or discarding of barrels, containers, and other closed receptacles containing solid waste). This definition does not include any release that results in exposure to persons solely within a workplace; release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954 (68 Stat. 923); and the normal application of fertilizer. For the purpose of this chapter, release also means substantial threat of release.

"Remediation waste" means all solid waste, including all media (groundwater, surface water, soils, and sediments) and debris, that are managed for the purpose of remediating a site in accordance with 9VAC20-81-45 or Part III (9VAC20-81-100 et seq.) of this chapter or under the Voluntary Remediation Regulations (9VAC20-160) or other regulated remediation program under DEQ oversight. For a given facility, remediation wastes may originate only from within the boundary of that facility, and may include wastes managed as a result of remediation beyond the boundary of the facility. Hazardous wastes as defined in 9VAC20-60, as well as "new" or "as generated" wastes, are excluded from this definition.

"Remediation waste management unit" or "RWMU" means an area within a facility that is designated by the director for the purpose of implementing remedial activities required under this chapter or otherwise approved by the director. An RWMU shall only be used for the management of remediation wastes pursuant to implementing such remedial activities at the facility.

"Responsible official" means one of the following:

1. For a business entity, such as a corporation, association, limited liability company, or cooperative: a duly authorized representative of such business entity if the representative is responsible for the overall operation of one or more operating facilities applying for or subject to a permit. The authority to sign documents must be assigned or delegated to such representative in accordance with procedures of the business entity;
2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively; or

3. For a municipality, state, federal, or other public agency: a duly authorized representative of the locality if the representative is responsible for the overall operation of one or more operating facilities applying for or subject to a permit. The authority to sign documents must be assigned or delegated to such representative in accordance with procedures of the locality.

"Rubbish" means combustible or slowly putrescible discarded materials that include ~~but are not limited to~~ trees, wood, leaves, trimmings from shrubs or trees, printed matter, plastic and paper products, grass, rags and other combustible or slowly putrescible materials not included under the term "garbage."

"Runoff" means any rainwater, leachate, or other liquid that drains over land from any part of a solid waste management facility.

"Run-on" means any rainwater, wastewater, leachate, or other liquid that drains over land onto any part of the solid waste management facility.

"Salvage" means the authorized, controlled removal of waste materials from a solid waste management facility.

"Sanitary landfill" means an engineered land burial facility for the disposal of household waste that is so located, designed, constructed, and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, hazardous waste from very small quantity generators, construction demolition debris, and nonhazardous industrial solid waste.

"Saturated zone" means that part of the earth's crust in which all voids are filled with water.

"Scavenging" means the unauthorized or uncontrolled removal of waste materials from a solid waste management facility.

"Scrap metal" means metal parts such as bars, rods, wire, empty containers, or metal pieces that are discarded material and can be used, reused, or reclaimed.

"Secondary containment" means an enclosure into which a container or tank is placed for the purpose of preventing discharge of wastes to the environment.

"Seismic impact zone" means an area with a 10% or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in 250 years.

"Semiannual" means an interval corresponding to approximately 180 days. For the purposes of scheduling monitoring activities, sampling within 30 days of the 180-day interval will be considered semiannual.

"Site" means all land and structures, other appurtenances, and improvements on them used for treating, storing, and disposing of solid waste. This term includes adjacent land within the facility boundary used for the utility systems such as repair, storage, shipping or processing areas, or other areas incident to the management of solid waste.

"Sludge" means any solid, semi-solid or liquid waste generated from a municipal, commercial or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of treated effluent from a wastewater treatment plant.

"Small landfill" means a landfill that disposed of 100 tons/day or less of solid waste during a representative period prior to October 9, 1993, and did not dispose of more than an average of 100 tons/day of solid waste each month between October 9, 1993, and April 9, 1994.

"Solid waste" means any of those materials defined as "solid waste" in 9VAC20-81-95.

"Solid waste disposal facility" means a solid waste management facility at which solid waste will remain after closure.

"Solid waste management facility" or "SWMF" means a site used for planned treating, storing, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal units.

"Special wastes" means solid wastes that are difficult to handle, require special precautions because of hazardous properties, or the nature of the waste creates waste management problems in normal operations. (See Part VI (9VAC20-81-610 et seq.) of this chapter.)

"Speculatively accumulated material" means any material that is accumulated before being used, reused, or reclaimed or in anticipation of potential use, reuse, or reclamation. Materials are not being accumulated speculatively when they can be used, reused, or reclaimed, have a feasible means of use, reuse, or reclamation available and 75% of the materials accumulated are being removed from the facility annually.

"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" means the holding of waste, at the end of which the waste is treated, disposed, or stored elsewhere.

"Structural fill" means an engineered fill with a projected beneficial end use, constructed using soil or fossil fuel combustion products, when done in accordance with this chapter, spread and compacted with proper equipment, and covered with a vegetated soil cap.

"Sudden event" means a one-time, single event such as a sudden collapse or a sudden, quick release of contaminants to the environment. An example would be the sudden loss of

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leachate from an impoundment into a surface stream caused by failure of a containment structure.

"Surface impoundment" or "impoundment" means a facility or part of a facility that 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 designed to hold an accumulation of liquid wastes or wastes containing free liquids and that is not an injection well.

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

"SW-846" means Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, EPA Publication SW-846, Second Edition, 1982 as amended by Update I (April, 1984), and Update II (April, 1985) and the third edition, November, 1986, as amended.

"Tank" means a stationary device, designed to contain an accumulation of liquid or semi-liquid components of solid waste that is constructed primarily of nonearthen materials that provide structural support.

"TEF" or "Toxicity Equivalency Factor" means a factor developed to account for different toxicities of structural isomers of polychlorinated dibenzodioxins and dibenzofurans and to relate them to the toxicity of 2,3,7,8-tetrachloro dibenzo-p-dioxin.

"Terminal" means the location of transportation facilities such as classification yards, docks, airports, management offices, storage sheds, and freight or passenger stations, where solid waste that is being transported may be loaded, unloaded, transferred, or temporarily stored.

"Thermal treatment" means the treatment of solid waste in a device that uses elevated temperature as the primary means to change the chemical, physical, or biological character, or composition of the solid waste.

"Tire chip" means a material processed from waste tires that is a nominal two square inches in size, and ranges from 1/4 inch to four inches in any dimension. Tire chips contain no wire protruding more than 1/4 inch.

"Tire shred" means a material processed from waste tires that is a nominal 40 square inches in size, and ranges from four inches to 10 inches in any dimension.

"Transfer station" means any solid waste storage or collection facility at which solid waste is transferred from collection vehicles to haulage vehicles for transportation to a central solid waste management facility for disposal, incineration, or resource recovery.

"Trash" means combustible and noncombustible discarded materials and is used interchangeably with the term rubbish.

"Treatment" means, for the purpose of this chapter, any method, technique, or process, including ~~but not limited to~~ incineration, designed to change the physical, chemical, or biological character or composition of any waste to render it more stable, safer for transport, or more amenable to use, reuse, reclamation, recovery, or disposal.

"Underground source of drinking water" means an aquifer or its portion:

1. Which contains water suitable for human consumption; or
2. In which the groundwater contains less than 10,000 mg/liter total dissolved solids.

"Unit" means a discrete area of land used for the disposal of solid waste.

"Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terranes.

"Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as, lower aquifers that are hydraulically interconnected with this aquifer within the facility boundary.

"Used or reused material" means a material that is either:

1. Employed as an ingredient (including use as an intermediate) in a process to make a product, excepting those materials possessing distinct components that are recovered as separate end products; or
2. Employed in a particular function or application as an effective substitute for a commercial product or natural resources.

"Vector" means a living animal, insect, or other arthropod that transmits an infectious disease from one organism to another.

"Vegetative waste" means decomposable materials generated by yard and lawn care or land-clearing activities and includes; ~~but is not limited to~~, leaves, grass trimmings, woody wastes such as shrub and tree prunings, bark, limbs, roots, and stumps.

"Vermicomposting" means the controlled and managed process by which live worms convert organic residues into fertile excrement.

"Vertical design capacity" means the maximum design elevation specified in the facility's permit or if none is specified in the permit, the maximum elevation based on a 3:1 slope from the waste disposal unit boundary.

"Very small quantity generator" means a generator of hazardous waste as defined in 40 CFR 260.10 as incorporated by reference in 9VAC20-60-260 that generates less than or equal to the following amounts in a calendar month: (i) 100

kilograms of nonacute hazardous waste; (ii) one kilogram of acute hazardous waste; and (iii) 100 kilograms of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill into or on any land or water of acute hazardous waste.

"VPDES" (Virginia Pollutant Discharge Elimination System) means the Virginia system for the issuance of permits pursuant to the Permit Regulation (9VAC25-31), the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), and § 402 of the Clean Water Act (33 USC § 1251 et seq.).

"Washout" means carrying away of solid waste by waters of the base flood.

"Waste-derived fuel product" means a solid waste or combination of solid wastes that have been treated (altered physically, chemically, or biologically) to produce a fuel product with a minimum heating value of 5,000 BTU/lb. Solid wastes used to produce a waste-derived fuel product must have a heating value, or act as binders, and may not be added to the fuel for the purpose of disposal. Waste ingredients may not be listed or characteristic hazardous wastes. The fuel product must be stable at ambient temperature, and not degraded by exposure to the elements. This material may not be "refuse derived fuel (RDF)" as defined in 9VAC5-40-890.

"Waste management boundary" means the vertical plane located at the boundary line of the area approved in the Part A application for the disposal of solid waste and storage of leachate. This vertical plane extends down into the uppermost aquifer and is within the facility boundary.

"Waste pile" means any noncontainerized accumulation of nonflowing, solid waste that is used for treatment or storage.

"Waste tire" means a tire that has been discarded because it is no longer suitable for its original intended purpose because of wear, damage or defect. (See 9VAC20-150 for other definitions dealing with the waste tire program.)

"Wastewaters" means, for the purpose of this chapter, wastes that contain less than 1.0% by weight total organic carbon (TOC) and less than 1.0% by weight total suspended solids (TSS).

"Water pollution" means such alteration of the physical, chemical, or biological properties of any state water as will or is likely to create a nuisance or render such waters:

1. Harmful or detrimental or injurious to the public health, safety, or welfare, or to the health of animals, fish, or aquatic life or plants;
2. Unsuitable, with reasonable treatment, for use as present or possible future sources of public water supply; or
3. Unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that:
 - a. An alteration of the physical, chemical, or biological properties of state waters or a discharge or deposit of

sewage, industrial wastes, or other wastes to state waters by any owner that by itself is not sufficient to cause pollution but which in combination with such alteration or discharge or deposit to state waters by other persons is sufficient to cause pollution;

b. The discharge of untreated sewage by any person into state waters; and

c. The contribution to the degradation of water quality standards duly established by the State Water Control Board, are "pollution" for the terms and purposes of this chapter.

"Water table" means the upper surface of the zone of saturation in groundwaters in which the hydrostatic pressure is equal to the atmospheric pressure.

"Waters of the United States" or "waters of the U.S." means:

1. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate "wetlands";
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mud flats, sand flats, "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:
 - a. Any such waters that are or could be used by interstate or foreign travelers for recreational or other purposes;
 - b. Any such waters from which fish or shellfish are or could be taken and sold in interstate or foreign commerce;
 - c. Any such waters that are used or could be used for industrial purposes by industries in interstate commerce;
 - d. All impoundments of waters otherwise defined as waters of the United States under this definition;
 - e. Tributaries of waters identified in subdivisions 3 a through d of this definition;
 - f. The territorial sea; and
 - g. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 3 a through f of this definition.

"Wetlands" means those areas that are defined by the federal regulations under 33 CFR Part 328, as amended.

"White goods" means any stoves, washers, hot water heaters, and other large appliances.

"Working face" means that area within a landfill that is actively receiving solid waste for compaction and cover.

"Yard waste" means a subset of vegetative waste and means decomposable waste materials generated by yard and lawn care

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and includes leaves, grass trimmings, brush, wood chips, and shrub and tree trimmings. Yard waste shall not include roots or stumps that exceed 12 inches in diameter.

9VAC20-81-90. Relationship with other regulations promulgated by the Virginia Waste Management Board.

A. Virginia Hazardous Waste Management Regulations (9VAC20-60).

1. Solid wastes that have been declared hazardous or a universal waste by the generator in accordance with 40 CFR 262.11, as amended, or that are regulated as hazardous wastes by the Commonwealth or another state, and will be treated, stored, or disposed of in Virginia shall be managed in accordance with the requirements of 9VAC20-60 and not 9VAC20-81.

2. Any material from a state other than Virginia that is classified as a hazardous waste in that state shall be managed in accordance with 9VAC20-60.

3. Wastes generated by generators who are conditionally exempt pursuant to 40 CFR 261.5 may be managed in solid waste management facilities provided that:

a. (i) A specific approval is obtained from the director for acceptance of the material at a facility with an approved liner and leachate collection system; or (ii) it is included in the facility permit; and

b. Records are kept of the actual amount, type, and source of these wastes.

B. Regulated Medical Waste Management Regulations (~~9VAC20-120~~) (9VAC20-121). Solid wastes that are defined as regulated medical wastes by the Regulated Medical Waste Management Regulations shall be managed in accordance with those regulations. Regulated medical wastes that are excluded or exempt by ~~9VAC20-120~~ 9VAC20-121 shall be regulated by this chapter.

C. Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities (9VAC20-70). 9VAC20-70 specifies the requirements for financial assurance and allowable financial assurance mechanisms. Solid waste management facilities shall provide financial assurance in accordance with 9VAC20-70.

D. Solid Waste Management Facility Permit Action Fees and Annual Fees (9VAC20-90). All applicants for solid waste management facility permits are required to pay a fee in accordance with the schedule shown in 9VAC20-90. All solid waste management facilities shall pay annual fees in accordance with 9VAC20-90, as applicable.

E. Solid Waste Planning and Recycling Regulations (9VAC20-130). 9VAC20-130 establishes a framework for local governments to plan for solid waste management needs and a mechanism for tracking recycling rates and solid waste management plan contents.

F. Transportation of Solid and Medical Wastes on State Waters (9VAC20-170). 9VAC20-170 establishes the standards and procedures pertaining to the commercial transport, loading and offloading of solid wastes or regulated medical wastes upon the navigable waters of the Commonwealth.

G. Voluntary Remediation Regulations (9VAC20-160). 9VAC20-160 establishes standards and procedures for the Virginia Voluntary Remediation Program.

H. Coal Combustion Byproduct Regulations (9VAC20-85). 9VAC20-85 establishes standards for the use of fossil fuel combustion products, which are not subject to requirements of this chapter, and establishes standards for siting, design, construction, operation, and administrative procedures pertaining to their use, reuse, or reclamation other than in a manner addressed by this chapter.

9VAC20-81-140. Operation requirements.

A. The operation of all sanitary, CDD, and industrial landfills shall be governed by the standards set forth in this section. Landfill operations will be detailed in an operations manual that shall be maintained in the operating record in accordance with 9VAC20-81-485. This operations manual will include an operations plan, an inspection plan, a health and safety plan, an unauthorized waste control plan, an emergency contingency plan, and a landscaping plan meeting the requirements of this section and 9VAC20-81-485. This manual shall be made available to the department when requested. If the applicable standards of this chapter and the landfill's Operations Manual conflict, this chapter shall take precedence.

~~A.~~ B. Landfill operational performance standards.

1. Safety hazards to operating personnel shall be controlled through an active safety program consistent with the requirements of 29 CFR Part 1910, as amended.

2. A groundwater monitoring program meeting the requirements of 9VAC20-81-250 shall be implemented, as applicable.

3. A corrective action program meeting the requirements of 9VAC20-81-260 is required whenever the groundwater protection standard is exceeded at statistically significant levels.

4. Open burning at active landfills.

a. Owners or operators shall ensure that the units do not violate any applicable requirements developed by the State Air Pollution Control Board or promulgated by the EPA administrator pursuant to § 110 of the Clean Air Act, as amended (42 USC §§ 7401 to 7671q).

b. Open burning of solid waste, except for infrequent burning of agricultural wastes, silvicultural wastes, land-clearing debris, diseased trees, or debris from emergency cleanup operations is prohibited. There shall be no open

burning permitted on areas where solid waste has been disposed of or is being used for active disposal.

c. The owner or operator shall be responsible for extinguishing any fires that may occur at the facility. A fire control plan will be developed that outlines the response of facility personnel to fires. The fire control plan will be provided as an attachment to the emergency contingency plan required under the provisions of 9VAC20-81-485. The fire control plan will be available for review upon request by the public. There shall be no open burning permitted on areas where solid waste has been disposed of or is being used for active disposal.

5. Except as provided in 9VAC20-81-130 K, owners or operators shall implement a gas management plan in accordance with 9VAC20-81-200 to control landfill gas such that:

a. The concentration of methane gas generated by the landfill does not exceed 25% of the lower explosive limit for methane in landfill structures (excluding gas control or recovery system components); and

b. The concentration of methane gas does not exceed the lower explosive limit for methane at the facility boundary.

6. Landfills shall not:

a. Allow leachate from the landfill to drain or discharge into surface waters except when treated onsite and discharged into surface water as authorized under a VPDES Permit (9VAC25-31).

b. Cause a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the Clean Water Act (33 USC § 1251 et seq.), including, but not limited to, the VPDES requirements and Virginia Water Quality Standards (9VAC25-260).

c. Cause the discharge of a nonpoint source of pollution to waters of the United States, including wetlands, that violates any requirement of an areawide or statewide water quality management plan that has been approved under § 208 or 319 of the Clean Water Act (33 USC § 1251 et seq.), as amended or violates any requirement of the Virginia Water Quality Standards (9VAC25-260).

d. Allow solid waste to be deposited in or to enter any surface waters or groundwaters.

7. Owners or operators shall maintain the run-on/runoff control systems designed and constructed in accordance with 9VAC20-81-130 H.

8. Access to sanitary, CDD, or noncaptive industrial landfills shall be permitted only when an attendant is on duty and only during daylight hours, unless otherwise specified in the landfill permit.

9. Fencing or other suitable control means shall be used to control litter migration. All litter blown from the landfill operations shall be collected on a weekly basis.

10. Odors and vectors shall be effectively controlled so they do not constitute nuisances or hazards. Odor hazard or nuisances shall be controlled in accordance with 9VAC20-81-200 D. Disease vectors shall be controlled using techniques for the protection of human health and the environment.

11. If salvaging is allowed by a landfill, it shall not interfere with operation of the landfill and shall not create hazards or nuisances.

12. Fugitive dust and mud deposits on main offsite roads and access roads shall be minimized at all times to limit nuisances. Dust shall be controlled to meet the requirements of Article 1 (9VAC5-40-60 et seq.) of Part II of 9VAC5-40.

13. Internal roads in the landfill shall be maintained to be passable in all weather by ordinary vehicles. All operation areas and units shall be accessible.

14. All landfill appurtenances listed in 9VAC20-81-130 shall be properly maintained and operated as designed and approved in the facility's permit.

15. Adequate numbers and types of properly maintained equipment shall be available to a landfill for operation. Provision shall be made for substitute equipment to be available or alternate means implemented to achieve compliance with subdivision ~~B-1~~, C 1, ~~or D 1~~, or E 1 of this section, as applicable, within 24 hours should the former become inoperable or unavailable. Operators with training appropriate to the tasks they are expected to perform and in sufficient numbers for the complexity of the site shall be on the site whenever it is in operation.

16. Self-Inspection. Each landfill shall implement an inspection routine including a schedule for inspecting all applicable major aspects of facility operations necessary to ensure compliance with the requirements of this chapter. Records of these inspections must be maintained in the operating record and available for review. At a minimum, the following aspects of the facility shall be inspected on a monthly basis: erosion and sediment controls, storm water conveyance system, leachate collection system, safety and emergency equipment, internal roads, and operating equipment. The groundwater monitoring system and gas management system shall be inspected at a rate consistent with the system's monitoring frequency.

17. Records to include, at a minimum, date of receipt, quantity by weight or volume, and origin shall be maintained on solid waste received and processed to fulfill the applicable requirements of the Solid Waste Information and Assessment Program under 9VAC20-81-80 and the Control Program for Unauthorized Waste under 9VAC20-81-100 E. Such records shall be made available to the department for examination or use when requested.

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~~B~~. C. In addition to the standards in subsection ~~A~~ B of this section, sanitary landfills shall also comply with the following:

1. Compaction and cover requirements.

a. Unless provided otherwise in the permit, solid waste shall be spread into two-foot layers or less and compacted at the working face, which shall be confined to the smallest area practicable.

b. Lift heights shall be sized in accordance with daily waste volumes. Lift height is not recommended to exceed 10 feet.

c. Daily cover consisting of at least six inches of compacted soil or other approved material shall be placed upon and maintained on all exposed solid waste prior to the end of each operating day, or at more frequent intervals if necessary, to control disease vectors, fires, odors, blowing litter, and scavenging. Alternate materials of an alternate thickness may be approved by the department if it has been demonstrated that the alternate material and thickness control disease vectors, fires, odors, blowing litter, and scavenging without presenting a threat to human health and the environment. At least three days of acceptable cover soil or approved material at the average usage rate shall be maintained at the landfill or readily available at all times.

d. Intermediate cover of at least six inches of additional compacted soil shall be applied and maintained whenever an additional lift of refuse is not to be applied within 30 days. Further, all areas with intermediate cover exposed shall be inspected as needed, but not less than weekly. Additional cover material shall be placed on all cracked, eroded, and uneven areas as required to maintain the integrity of the intermediate cover system.

e. Final cover construction will be initiated and maintained in accordance with the requirements of 9VAC20-81-160 D 2 when the following pertain:

(1) An additional lift of solid waste is not to be applied within one year, or a longer period as required by the facility's phased development.

(2) Any area of a landfill attains final elevation and within 90 days after such elevation is reached or longer if specified in the landfill's approved closure plan.

(3) An entire landfill's permit is terminated for any reason, and within 90 days of such denial or termination.

f. Vegetation shall be established and maintained on all exposed final cover material within four months after placement, or as specified by the department when seasonal conditions do not permit. Mowing will be conducted a minimum of once a year or at a frequency suitable for the vegetation and climate.

g. Areas where waste has been disposed that have not received waste within 30 days will not have slopes

exceeding the final cover slopes specified in the permit or 33% unless steeper slopes are approved in the permit.

2. The active working face of a sanitary landfill shall be kept as small as practicable, determined by the tipping demand for unloading.

3. A sanitary landfill that is located within 10,000 feet of any airport runway used for turbojet aircraft or 5,000 feet of any airport runway used by only piston type aircraft, shall operate in such a manner that the landfill does not increase or pose additional bird hazards to aircraft.

4. Sanitary landfills shall not dispose of the following wastes, except as specifically authorized by the landfill permit or by the department:

a. Free liquids.

(1) Bulk or noncontainerized liquid waste, unless:

(a) The waste is household waste; or

(b) The waste is gas condensate derived from that landfill;

(c) The waste is leachate derived from that landfill and the landfill is designed with a composite liner and leachate collection system as described in 9VAC20-81-130 J 1 a and 9VAC20-81-130 L; or

(2) Containers holding liquid waste, unless:

(a) The container is a small container similar in size to that normally found in household waste;

(b) The container is designed to hold liquids for use other than storage; or

(c) The waste is household waste.

b. Regulated hazardous wastes as defined by the Virginia Hazardous Waste Management Regulations (9VAC20-60).

c. Solid wastes, residues, or soils containing more than 1.0 ppb (parts per billion) TEF (dioxins).

d. Solid wastes, residues, or soils containing 50.0 ppm (parts per million) or more of PCB's except as allowed under the provisions of 9VAC20-81-630.

e. Sludges that have not been dewatered.

f. Contaminated soil unless approved by the department in accordance with the requirements of 9VAC20-81-610 or 9VAC20-81-660.

g. Regulated medical waste as specified in the Regulated Medical Waste Management Regulations (~~9VAC20-120~~) (9VAC20-121).

5. Chloroflourocarbons, hydrochloroflourocarbons, and PCBs must be removed from white goods prior to placement on the working face.

~~C~~. D. In addition to the standards in subsection ~~A~~ B of this section, Construction/demolition/debris landfills shall also comply with the following:

1. Compaction and cover requirements.

- a. Waste materials shall be compacted in shallow layers during the placement of disposal lifts to minimize differential settlement.
- b. Compacted soil cover shall be applied as needed for safety and aesthetic purposes. A minimum one-foot thick progressive cover shall be maintained weekly such that the top of the lift is fully covered at the end of the work week. If the landfill accepts Category I or II nonfriable asbestos-containing material for disposal, daily soil cover shall be placed upon all exposed Category I or II nonfriable asbestos-containing material prior to the end of each operating day. The open working face of a landfill shall be kept as small as practicable, determined by the tipping demand for unloading.
- c. When waste deposits have reached final elevations, or disposal activities are interrupted for 15 days or more, waste deposits shall receive a one-foot thick intermediate cover unless soil has already been applied in accordance with subdivision 1 b of this subsection and be graded to prevent ponding and to accelerate surface run-off.
- d. Final cover construction will be initiated and maintained in accordance with the requirements of 9VAC20-81-160 D 2 when the following pertain:
 - (1) An additional lift of solid waste is not to be applied within one year, or a longer period as required by the facility's phased development.
 - (2) Any area of a landfill attains final elevation and within 90 days after such elevation is reached or longer if specified in the landfill's approved closure plan.
 - (3) An entire landfill's permit is terminated for any reason, and within 90 days of such denial or termination.
- e. Vegetation shall be established and maintained on all exposed final cover material within four months after placement, or as specified by the department when seasonal conditions do not permit. Mowing will be conducted a minimum of once a year or at a frequency suitable for the vegetation and climate.
- f. Areas where waste has been disposed that have not received waste within 30 days will not have slopes exceeding the final cover slopes specified in the permit or 33%.

2. Chloroflourocarbons, hydrochlorofluorocarbons, and PCBs must be removed from white goods prior to placement on the working face.

~~D.~~ E. In addition to the standards in subsection ~~A~~ B of this section, Industrial Landfills shall also comply with the following:

1. Compaction and cover requirements.

- a. Unless provided otherwise in the permit, solid waste shall be spread and compacted at the working face, which shall be confined to the smallest area practicable.
- b. Lift heights shall be sized according to the volume of waste received daily and the nature of the industrial waste. A lift height is not required for materials such as fly ash that are not compactable.
- c. Where it is necessary for the specific waste, such as Category I or II nonfriable asbestos-containing material, daily soil cover, or other suitable material shall be placed upon all exposed solid waste prior to the end of each operating day. For wastes such as fly ash and bottom ash from burning of fossil fuels, periodic cover to minimize exposure to precipitation and control dust or dust control measures such as surface wetting or crusting agents shall be applied. At least three days of acceptable cover soil or approved material at the average usage rate shall be maintained at the fill at all times at facilities where daily cover is required unless an offsite supply is readily available on a daily basis.
- d. Intermediate cover of at least one foot of compacted soil shall be applied whenever an additional lift of refuse is not to be applied within 30 days unless the owner or operator demonstrates to the satisfaction of the director that an alternate cover material or an alternate schedule will be protective of public health and the environment. In the case of facilities where fossil fuel combustion products are removed for beneficial use, intermediate cover must be applied in any area where ash has not been placed or removed for 30 days or more. Further, all areas with intermediate cover exposed shall be inspected as needed but not less than weekly and additional cover material shall be placed on all cracked, eroded, and uneven areas as required to maintain the integrity of the intermediate cover system.
- e. Final cover construction will be initiated in accordance with the requirements of 9VAC20-81-160 D 2 when the following pertain:
 - (1) When an additional lift of solid waste is not to be applied within two years or a longer period as required by the facility's phased development.
 - (2) When any area of a landfill attains final elevation and within 90 days after such elevation is reached or longer if specified in the landfill's approved closure plan.
 - (3) When a landfill's permit is terminated within 90 days of such denial or termination.
- f. Vegetation shall be established and maintained on all exposed final cover material within four months after placement, or as otherwise specified by the department when seasonal conditions do not otherwise permit. Mowing will be conducted a minimum of once a year or at a frequency suitable for the vegetation and climate.

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2. Incinerator and air pollution control residues containing no free liquids shall be incorporated into the working face and covered at such intervals as necessary to minimize them from becoming airborne.

9VAC20-81-450. Permit application procedures.

A. Any person who proposes to establish a new solid waste management facility (SWMF) or modify an existing SWMF shall submit a permit application to the department, using the procedures set forth in this section and other pertinent sections of this part.

B. Notice of intent.

1. To initiate the permit application process, any person who proposes to establish a new solid waste management facility (SWMF) or modify an existing SWMF or to modify an existing permit shall file a notice of intent with the director stating the desired permit or permit modification, the precise location of the proposed facility, and the intended use of the facility. The notice shall be in letter form and be accompanied by an area map and a site location map.

2. No application for a new solid waste management facility permit or application for a modification for a noncaptive industrial landfill to expand or increase capacity shall be deemed complete unless it is accompanied by DEQ Form DISC-01 and 02 (Disclosure Statement) for all key personnel.

3. No application for a new solid waste management facility permit or application for a modification for a noncaptive industrial landfill to expand or increase capacity shall be considered complete unless the notice of intent is accompanied by a certification from the governing body of the county, city, or town in which the facility is to be located stating that the location and operation of the facility are consistent with all applicable local ordinances, as well as with the local or regional solid waste management plan (SWMP) approved by the department or has initiated the process of amending the SWMP to include the new or expanded facility or an increase in capacity. No certification shall be required for the application for a modification of an existing permit (not including increase in capacity or expansion) other than for a noncaptive industrial landfill in this subdivision. DEQ Form SW-11-1 (Request for Local Government Certification) is provided for the use of the regulated community. Permit and permit-by-rule applicants shall comply with the statutory requirements for consistency with solid waste management plans as recorded in § 10.1-1408.1 of the Code of Virginia.

4. If the applicant proposes to operate a new sanitary landfill or transfer station, the notice of intent shall include a statement describing the steps taken by the applicant to seek the comments of the residents of the area where the sanitary landfill or transfer station is proposed to be located regarding the siting and operation of the proposed sanitary landfill or

transfer station. The public comment steps shall be taken prior to filing with the department the notice of intent.

a. The public comment steps shall include publication of a public notice once a week for two consecutive weeks in a newspaper of general circulation serving the locality where the sanitary landfill or transfer station is proposed to be located and holding at least one public meeting within the locality at a time convenient to the public to identify issues of concern, to facilitate communication, and to establish a dialogue between the applicant and persons who may be affected by the issuance of a permit for the sanitary landfill or transfer station.

b. At a minimum, the public notice shall include:

(1) A statement of the applicant's intent to apply for a permit to operate the proposed sanitary landfill or transfer station;

(2) The proposed sanitary landfill or transfer station site location;

(3) The date, time, and location of the public meeting the applicant will hold; and

(4) The name, address, and telephone number of a person employed by an applicant who can be contacted by interested persons to answer questions or receive comments on siting and operation of the proposed sanitary landfill or transfer station.

c. The first publication of the public notice shall be at least 14 days prior to the public meeting date.

d. In addition, the applicant shall adhere to the applicable requirements of § 10.1-1408.1 B of the Code of Virginia.

5. Disposal capacity guarantee. If the applicant proposes to construct a new sanitary landfill or expand an existing sanitary landfill, a signed statement must be submitted by the applicant guaranteeing that sufficient disposal capacity will be available in the facility to enable localities within the Commonwealth to comply with their solid waste management plans developed pursuant to 9VAC20-130 and certifying that such localities will be allowed to contract for and reserve disposal capacity in the facility. This provision does not apply to permit applications from one or more political subdivisions for new or expanded landfills that will only accept municipal solid waste generated within those jurisdictions or from other jurisdictions under an interjurisdictional agreement.

6. Host agreement. If a host agreement is required, as noted in § 10.1-1408.1 B 7 of the Code of Virginia, it shall contain all the requirements specified in that section of the law.

7. If the application is for a locality owned and operated sanitary landfill, or the expansion of such a landfill, the applicant shall provide information on:

a. The daily travel routes and traffic volumes that correlate with the daily disposal limit;

- b. The daily disposal limit; and
- c. The service area of the facility.

8. If the application is for a new solid waste management facility or a modification allowing a facility expansion or an increase in capacity, the director shall evaluate whether there is a need for the additional capacity in accordance with § 10.1-1408.1 D 1 of the Code of Virginia. The information in either subdivision 8 a or b of this subsection must be provided with the notice of intent to assist the director with the required investigation and analysis. Based on the information submitted, the owner or operator will demonstrate how the additional capacity will be utilized over the life of the facility.

a. For any solid waste management facility including a sanitary landfill, information demonstrating that there is a need for the additional capacity. Such information shall include the following. If a certain item is not applicable for a facility, it may be indicated so with reasonable justifications.

- (1) The anticipated area to be served by the facility;
- (2) Similar or related solid waste management facilities that are in the same service area and could impact the proposed facility, and the capacity and service life of those facilities;
- (3) The present quantity of waste generated within the proposed service area;
- (4) The waste disposal needs specified in the local solid waste plan;
- (5) The projected future waste generation rates for the anticipated area to be served during the proposed life of the facility;
- (6) The recycling, composting, or other waste management activities within the proposed service area;
- (7) The additional solid waste disposal capacity and anticipated site life that the facility would provide to the proposed area of service;
- (8) Information demonstrating that the capacity is needed to enable localities to comply with solid waste plans developed pursuant to § 10.1-1411 of the Code of Virginia; and
- (9) Any additional factors that provide justification for the additional capacity provided by the facility.

b. As an alternative, for sanitary landfills, based on current or projected disposal rates, information demonstrating there is less than 10 years of capacity remaining in the facility and information demonstrating either of the following:

- (1) The available permitted disposal capacity for the state is less than 20 years based on the most current reports submitted pursuant to the Waste Information and Assessment Program in 9VAC20-81-80; or

(2) The available permitted disposal capacity is less than 20 years in either:

- (a) The planning region, or regions, immediately contiguous to the planning region of the host community; or
- (b) The facilities within a 75-mile radius of the proposed facility.

9. If the location and operation of the facility is stated by the local governing body to be consistent with all its ordinances, without qualifications, conditions, or reservations, and the notice intent is complete, the applicant will be notified that he may submit his application for a SWMF permit. This application shall be submitted in two parts, identified as Part A and Part B.

10. The applicant shall submit certification from the State Corporation Commission that the business entity pursuing the solid waste management permit is a valid entity, authorized to transact its business in Virginia. This requirement does not apply to those facilities owned solely by governmental units.

11. If the application is for an existing CCR landfill or existing CCR surface impoundment, a complete permit application must be submitted no later than October 17, 2017, to continue operation.

C. Part A application. Part A application provides the information essential for assessment of the site suitability for the proposed facility. It contains information on the proposed facility to be able to determine site suitability for intended uses. It provides information on all siting criteria applicable to the proposed facility.

1. The applicant shall complete, sign, and submit three copies of the Part A application containing required information and attachments as specified in 9VAC20-81-460 to the department and shall submit to the department the applicable permit fee under the provisions of 9VAC20-90.

2. The Part A application will be reviewed for completeness. The applicant will be notified within 30 days whether the application is administratively complete or incomplete. If complete information is not provided within 60 days after the applicant is notified, or an alternate timeframe approved by the department, the application will be returned to the applicant without further review. Subsequent resubmittals of the application, submitted after 18 months from the date of the department's response letter, shall be considered as a new application, unless an alternate timeline has been approved by the department.

3. Upon receipt of a complete Part A application, the department shall conduct a technical review of the submittal. Additional information may be required or the site may be visited before the review is completed. The director shall notify the applicant in writing of approval or disapproval of

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the Part A application or provide conditions to be made a part of the approval.

4. For sanitary landfills, the director's notification must indicate that the site on which the landfill will be located is suitable for the construction and operation of a landfill. In making this determination, the director will consider the information presented in the site hydrogeologic and geotechnical report (9VAC20-81-460 F G), the landfill impact statement (9VAC20-81-460 H I 1) and the adequacy of transportation facilities (9VAC20-81-460 G H). The director may also consider other factors at his discretion.

5. In case of the approval or conditional approval, the applicant may submit the Part B application provided the required conditions are addressed in the submission.

D. Part B application. The Part B application involves the submission of the detailed engineering design and operating plans for the proposed facility.

1. The applicant, after receiving Part A approval, may submit to the department a Part B application to include the required documentation for the specific solid waste management facility as provided for in 9VAC20-81-470 or 9VAC20-81-480. The Part B application and supporting documentation shall be submitted in three copies and must include the applicable permit fee under the provisions of 9VAC20-90 and the financial assurance documentation as required by 9VAC20-70.

2. The Part B application shall be reviewed for administrative completeness before technical evaluation is initiated. The applicant shall be advised in writing within 30 days whether the application is complete or what additional documentation is required. Subsequent resubmittals of the application, submitted after 18 months from the date of the department's response letter, shall be considered a new application, unless an alternate timeline has been approved by the department. The Part B application will not be evaluated until an administratively complete application is received.

3. The administratively complete application will be coordinated with other state agencies according to the nature of the facility. The comments received shall be considered in the permit review by the department. The application will be evaluated for technical adequacy and regulatory compliance. In the course of this evaluation, the department may require the applicant to provide additional information. At the end of the evaluation, the department will notify the applicant that the application is technically adequate and in regulatory compliance, or that the department intends to deny the application.

4. The procedures addressing the denial are contained in 9VAC20-81-550.

E. Permit issuance.

1. If the application is found to be technically adequate and in full compliance with this chapter, a draft permit shall be developed by the department.

2. Copies of the draft permit will be available for viewing at the applicant's place of business or at the regional office of the department, or both, upon request. A notice announcing the beginning of the public comment period and the availability of the draft permit shall be made in a newspaper with general circulation in the area of the facility. A copy of the notice of availability will be provided to the chief administrative officer of all cities and counties that are contiguous to the host community.

3. If the application is for a new landfill or an increase in landfill capacity (includes expansion), then the department shall hold a public hearing and the notice in subdivision 2 of this subsection will include such information.

4. For any application (other than subdivision 3 of this subsection), the notice shall notify the public of the 30-day public comment period and include the opportunity to request a public hearing. The department shall hold a public hearing on the draft permit whenever the department finds, on the basis of requests, that:

- a. There is a significant public interest in the issuance, denial, modification, or revocation of the permit in question;
- b. There are substantial, disputed issues relevant to the issuance, denial, modification, or revocation of the permit in question; and
- c. The action requested is not, on its face, inconsistent with, or in violation of, these regulations, the Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia), or federal law or regulations.

5. The department also may hold a public hearing when it is believed that such a hearing might clarify one or more issues involved in a permit decision.

6. If a public hearing is to be held, the department shall convene it 30 days or more after the notice is published in the local newspaper. The public hearing shall be conducted within the local government jurisdiction of the facility. A comment period shall extend for a 15-day period after the conclusion of the public hearing.

7. A decision to permit, to deny a permit, or to modify the draft permit shall be rendered by the director within 90 days of the close of the hearing comment period.

8. The permit applicant and the persons who commented during the public participation period shall be notified in writing of the decision on the draft permit. That decision may include denial of the permit (see also 9VAC20-81-550), issuance of the permit as drafted, or modification of the draft permit and issuance.

9. No permit for a new solid waste management facility nor any modification to a permit allowing a facility expansion or an increase in capacity shall be issued until the director has made a written determination, after an investigation and analysis of the potential human health, environmental, transportation infrastructure, and transportation safety impacts and needs and an evaluation of comments by the host local government, other local governments and interested persons, that (i) the proposed facility, expansion, or increase protects present and future human health and safety and the environment; (ii) there is a need for the additional capacity; (iii) sufficient infrastructure will exist to safely handle the waste flow; (iv) the increase is consistent with locality imposed or state-imposed daily disposal limits; (v) the public interest will be served by the proposed facility's operation or the expansion or increase in capacity of a facility; and (vi) the proposed solid waste management facility, facility expansion, or additional capacity is consistent with regional and local solid waste management plans developed pursuant to § 10.1-1411 of the Code of Virginia.

10. For nonhazardous industrial solid waste management facilities owned or operated by the generator of the waste managed at the facility, and that accept only waste generated by the facility owner or operator the following determination shall apply in lieu of subdivision 9 of this subsection. No new permit for a nonhazardous industrial solid waste management facility that is owned or operated by the generator of the waste managed at the facility, and that accepts only waste generated by the facility owner or operator, shall be issued until the director has determined, after investigation and evaluation of comments by the local government, that the proposed facility poses no substantial present or potential danger to human health or the environment. The department shall hold a public hearing within the county, city, or town where the facility is to be located prior to the issuance of any such permit for the management of nonhazardous industrial solid waste.

11. Where either subdivision 9 or 10 of this subsection applies, the director may request updated information during the review of the permit application if the information on which the director's determination is based is no longer current. If, based on the analysis of the materials presented in the permit application, the determination required in § 10.1-1408.1 of the Code of Virginia cannot be made, the application will be denied in accordance with 9VAC20-81-550 A 6.

12. Any permit for a new sanitary landfill and any permit modification authorizing expansion of an existing sanitary landfill shall incorporate the conditions required for a disposal capacity guarantee in § 10.1-1408.1 of the Code of Virginia. This provision does not apply to permit applications from one or more political subdivisions that will only accept waste from within those political subdivisions'

jurisdiction or municipal solid waste generated within other political subdivisions pursuant to an interjurisdictional agreement.

9VAC20-81-460. Part A permit application.

A. The following information shall be included in the Part A permit application for all solid waste management facilities unless otherwise specified in this section. All plans and drawings of the Part A application shall be certified by a professional engineer or professional geologist.

~~A. B.~~ The Part A permit application consists of a letter stating the type of the facility for which the permit application is made and the certification required in subsection ~~†~~ J of this section. The applicant shall submit the completed DEQ Form SW PTA (Part A Permit Application Form) and all required information and attachments as detailed in this section.

~~B. C.~~ A key map of the Part A permit application, delineating the general location of the proposed facility, shall be prepared and attached as part of the application. The key map shall be plotted on a seven and one-half minute U.S. Geological Survey topographical quadrangle. The quadrangle shall be the most recent revision available, shall include the name of the quadrangle and shall delineate a minimum of one mile from the perimeter of the proposed facility boundaries. One or more maps may be utilized where necessary to insure clarity of the information submitted.

~~C. D.~~ A vicinity map shall be prepared and attached as part of the application. This vicinity map shall have a minimum scale of one inch equals 200 feet (1" = 200') and shall delineate an area of 500 feet from the perimeter of the property line of the proposed facility. A vicinity map may be prepared with a reduced scale if it does not fit in a sheet with the required minimum scale and multiple sheets may be used to meet the requirement of minimum scale. The vicinity maps may be an enlargement of a U.S. Geological Survey topographical quadrangle or a recent aerial photograph. Notes may be provided in the map if one or more of the following are not present within the delineated area. The vicinity map shall depict the following:

1. All homes, buildings, or structures including the layout of the buildings that will compose the proposed facility;
2. The surveyed boundaries for the property boundary, facility boundary, and waste management boundary, and the acreages within these boundaries;
3. The limits of the actual disposal operations within the boundaries of the proposed facility;
4. Lots and blocks taken from the tax map for the site of the proposed facility and all contiguous properties;
5. The base floodplain, where it passes through the map area; or, otherwise, a note indicating the expected flood occurrence period for the area;

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- 6. Existing land uses and zoning classification;
- 7. All water supply wells, springs or intakes, both public and private;
- 8. All utility lines, pipelines or land-based facilities (including mines and wells); and
- 9. All parks, recreation areas, surface water bodies, dams, historic areas, wetlands areas, monument areas, cemeteries, wildlife refuges, unique natural areas, or similar features.

~~D. E.~~ Any applicant must demonstrate legal control over the site for the permit life.

~~E. F.~~ For solid waste disposal facilities regulated under Part III (9VAC20-81-100 et seq.), site hydrogeologic and geotechnical reports by professional geologist or professional engineer.

1. The site investigation for a proposed landfill facility shall provide information regarding the geotechnical and hydrogeologic conditions at the site to allow a reasonable determination of the usefulness of the site for development as a landfill. The geotechnical exploration efforts shall be designed to provide information regarding the availability and suitability of onsite soils for use in the various construction phases of the landfill including liner, cover, drainage material, and cap. The hydrogeologic information shall be sufficient to determine the characteristics of the uppermost aquifer underlying the facility. Subsurface investigation programs conducted shall meet the minimum specifications here.

a. Borings shall be located to identify the uppermost aquifer within the proposed facility boundary, determine the ability to perform groundwater monitoring at the site, and provide data for the evaluation of the physical properties of soils and soil availability. Borings completed for the proposed facility shall be sufficient in number and depth to identify the thickness of the uppermost aquifer and the presence of any significant underlying impermeable zone in the waste management boundary. Impermeable zone shall not be fully penetrated within the anticipated fill areas, whenever possible. The number of borings shall be at a minimum in accordance with Table 5.1 as follows:

Waste Management Boundary Acreage	Total Number of Borings
Less than 10	4
10 - 49	8
50 - 99	14
100 - 200	20
More than 200	24 + 1 boring for each additional 10 acres

b. The department reserves the right to require additional borings in areas in which the number of borings required by Table 5.1 is not sufficient to describe the geologic formations and groundwater flow patterns below the proposed solid waste disposal facility.

c. In highly uniform geological formations, the number of borings may be reduced, as approved by the department.

d. The borings shall employ a grid pattern, wherever possible, such that there is, at a minimum, one boring in each major geomorphic feature. The borings pattern shall enable the development of detailed cross sections through the proposed landfill site.

e. Subsurface data obtained by borings shall be collected by standard soil sampling techniques. Diamond bit coring, air rotary drilling, or other appropriate methods, or a combination of methods shall be used as appropriate to characterize competent bedrock. The borings shall be logged from the surface to the lowest elevation (base grade) or to bedrock, whichever is shallower, according to standard practices and procedures. In addition, the borings required by Table 5.1 shall be performed on a continuous basis for the first 20 feet below the lowest elevation of the solid waste disposal facility or to the bed rock. Additional samples as determined by the professional geologist or professional engineer shall be collected at five-foot intervals thereafter.

f. Excavations, test pits, and geophysical methods may be employed to supplement the soil boring investigation.

g. At a minimum, four of the borings shall be converted to water level observations wells, well nests, piezometers, or piezometer nests to allow determination of the rate and direction of groundwater flow across the site. All groundwater monitoring points or water level measurement points shall be designed to allow proper abandonment by backfilling with an impermeable material. The total number of wells or well nests shall be based on the complexity of the geology of the site.

h. Field analyses shall be performed in representative borings to determine the in situ hydraulic conductivity of the uppermost aquifer.

i. All borings not to be utilized as permanent monitoring wells, and wells within the active solid waste disposal area, shall be sealed and excavations and test pits shall be backfilled and properly compacted to prevent possible paths of leachate migration. Boring sealing procedures shall be documented in the hydrogeologic report.

2. The geotechnical and hydrogeologic reports shall at least include the following principal sections:

a. Field procedures. Boring records and analyses from properly spaced borings in the facility portion of the site. Final boring logs shall be submitted for each boring, recording soils or rock conditions encountered. Each log shall include the type of drilling and sampling equipment,

date the boring was started, date the boring was finished, a soil or rock description in accordance with the United Soil Classification System or the Rock Quality Designation, the method of sampling, the depth of sample collection, the water levels encountered, and the Standard Penetration Test blow counts, if applicable. Boring locations and elevations shall be surveyed with a precision of 0.01 foot. At least one surveyed point shall be indelibly marked by the surveyor on each well. All depths of soil and rock as described within the boring log shall be corrected to National Geodetic Vertical Datum, if available.

b. Geotechnical interpretations and report including complete engineering description of the soil units underlying the site.

(1) Soil unit descriptions shall include estimates of soil unit thickness, continuity across the site, and genesis. Laboratory determination of the soil unit's physical properties shall be discussed.

(2) Soil units that are proposed for use as a drainage layer, impermeable cap, or impermeable liner material shall be supported by laboratory determinations of the remolded permeability. Remolded hydraulic conductivity tests require a Proctor compaction test (ASTM D698) soil classification liquid limit, plastic limit, particle size distribution, specific gravity, percent compaction of the test sample, remolded density and remolded moisture content, and the percent saturation of the test sample. Proctor compaction test data and hydraulic conductivity test sample data shall be plotted on standard moisture-density test graphs.

(3) The geotechnical report shall provide an estimate of the available volume of materials suitable for use as liner, cap, and drainage layer. It shall also discuss the anticipated uses of the onsite materials, if known.

c. Hydrogeologic report.

(1) The report shall include water table elevations, direction, and calculated rate of groundwater flow and similar information on the hydrogeology of the site. All raw data shall be submitted with calculations.

(2) The report shall contain a discussion of field test procedures and results, laboratory determinations made on undisturbed samples, recharge areas, discharge areas, adjacent or areal usage, and typical radii of influence of pumping wells.

(3) The report shall also contain a discussion of the regional geologic setting, the site geology, and a cataloging and description of the uppermost aquifer from the site investigation and from referenced literature. The geologic description shall include a discussion of the prevalence and orientation of fractures, faults, and other structural discontinuities, and presence of any other significant geologic features. The aquifer description shall

address homogeneity, horizontal and vertical extent, isotropy, the potential for groundwater remediation, if required, and the factors influencing the proper placement of a groundwater monitoring network.

(4) The report shall include a geologic map of the site prepared from one of the following sources as available, in order of preference:

(a) Site specific mapping prepared from data collected during the site investigation;

(b) Published geologic mapping at a scale of 1:24,000 or larger;

(c) Published regional geologic mapping at a scale of 1:250,000 or larger; or

(d) Other published mapping.

(5) At least two generally orthogonal, detailed site specific cross sections, which shall describe the geologic formations identified by the geologic maps prepared in accordance with subdivision 2 c (4) of this subsection at a scale that clearly illustrates the geologic formations, shall be included in the hydrogeologic report. Cross sections shall show the geologic units, approximate construction of existing landfill cells base grades, water table, surficial features, and bedrock along the line of the cross section. Cross section locations shall be shown on an overall facility map.

(6) Potentiometric surface maps for the uppermost aquifer that define the groundwater conditions encountered below the proposed solid waste disposal facility area based upon stabilized groundwater elevations. Potentiometric surface maps shall be prepared for each set of groundwater elevation data available. The applicant shall include a discussion of the effects of site modifications, seasonal variations in precipitation, and existing and future land uses of the site on the potentiometric surface.

(7) If a geological map or report from either the Department of Mines, Minerals, and Energy or the U.S. Geological Survey is published, it shall be included.

~~F. G.~~ For solid waste management facilities regulated under Part IV (9VAC20-81-300 et seq.) of this chapter:

1. A cataloging and description of aquifers, geological features or any similar characteristic of the site that might affect the operation of the facility or be affected by that operation.

2. If a geological map or report from either the Department of Mines, Minerals, and Energy or the U.S. Geological Survey is published, it shall be included.

~~G. H.~~ For a new sanitary landfill or for an increase in daily disposal limit, an adequacy report prepared by the Virginia Department of Transportation or other responsible agency. As required under § 10.1-1408.4 A 1 of the Code of Virginia, the report will address the adequacy of transportation facilities that

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will be available to serve the landfill, including daily travel routes and traffic volumes that correlate with the daily disposal limit, road congestion, and highway safety. The department may determine an adequacy report is not required for small increases in the daily disposal limit.

~~H. I.~~ For a new sanitary landfill or an expansion of an existing sanitary landfill or an increase in capacity by expanding an existing facility vertically upward, a Landfill Impact Statement (LIS).

1. A report must be provided to the department that addresses the potential impact of the landfill on parks, recreational areas, wildlife management areas, critical habitat areas of endangered species as designated by applicable local, state, or federal agencies, public water supplies, marine resources, wetlands, historic sites, fish and wildlife, water quality, and tourism. This report shall comply with the statutory requirements for siting landfills in the vicinity of public water supplies or wetlands as set forth in §§ 10.1-1408.4 and 10.1-1408.5 of the Code of Virginia.

2. The report will include a discussion of the landfill configuration and how the facility design addresses any impacts identified in the report required under subdivision 1 of this subsection.

3. The report will identify all of the areas identified under subdivision 1 of this subsection that are within five miles of the facility.

~~I. J.~~ For a new facility or an expansion of an existing facility, or an increase in capacity by expanding an existing facility vertically upward, a signed statement by the applicant that he has sent written notice to all adjacent property owners or occupants that he intends to develop a SWMF or expand laterally or vertically upward of an existing facility on the site, a copy of the notice and the names and addresses of those to whom the notices were sent.

~~J. K.~~ The total capacity of the solid waste management facility.

~~K. L.~~ One or more of the following indicating that the public interest would be served by a new facility or a facility expansion, which includes:

1. Cost effective waste management for the public within the service area comparing the costs of a new facility or facility expansion to waste transfer, or other disposal options;
2. The facility provides protection of human health and safety and the environment;
3. The facility provides alternatives to disposal including reuse or reclamation;
4. The facility allows for the increased recycling opportunities for solid waste;

5. The facility provides for energy recovery or the subsequent use of solid waste, or both, thereby reducing the quantity of solid waste disposed;

6. The facility will support the waste management needs expressed by the host community; or

7. Any additional factors that indicate that the public interest would be served by the facility.

~~L. M.~~ For CCR surface impoundments regulated under Part VIII (9VAC20-81-800 et seq.) of this chapter, site hydrogeologic and geotechnical reports by a professional geologist or professional engineer that meet the requirements of 9VAC20-81-800.

N. For new CCR landfills to be located in Planning District 8, a map identifying existing residential area and properties located within one mile of the facility boundary that are not served by municipal water supply and copies of documentation to satisfy the conditions of § 10.1-1402.05 of the Code of Virginia.

VA.R. Doc. No. R24-7627; Filed September 18, 2023, 1:51 p.m.

STATE WATER CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: Pursuant to 1VAC7-10-60, the Registrar of Regulations is updating certain regulations of the State Water Control Board to remove an obsolete fax number in the Virginia Administrative Code.

Titles of Regulations: 9VAC25-15. Regulation for Dispute Resolution (amending 9VAC25-15-90).

9VAC25-110. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons per Day (amending 9VAC25-110-80).

9VAC25-115. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Seafood Processing Facilities (amending 9VAC25-115-50).

9VAC25-120. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges from Groundwater Remediation of Contaminated Sites, Dewatering Activities of Contaminated Sites, and Hydrostatic Tests (amending 9VAC25-120-80).

9VAC25-151. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity (amending 9VAC25-151-70).

9VAC25-190. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nonmetallic Mineral Mining (amending 9VAC25-190-70).

9VAC25-192. Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding

Operations and Animal Waste Management (amending 9VAC25-192-70).

9VAC25-193. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Concrete Products Facilities (amending 9VAC25-193-70).

9VAC25-194. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Vehicle Wash Facilities and Laundry Facilities (amending 9VAC25-194-70).

9VAC25-196. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Noncontact Cooling Water Discharges of 50,000 Gallons per Day or Less (amending 9VAC25-196-70).

9VAC25-820. General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia (amending 9VAC25-820-70).

9VAC25-860. Virginia Pollutant Discharge Elimination System General Permit Regulation for Potable Water Treatment Plants (amending 9VAC25-860-70).

9VAC25-880. General VPDES Permit for Discharges of Stormwater from Construction Activities (amending 9VAC25-880-70).

9VAC25-890. General VPDES Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (amending 9VAC25-890-40).

Effective Date: October 9, 2023.

Agency Contact: Melissa Porterfield, Regulatory Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 698-4238, or email melissa.porterfield@deq.virginia.gov.

Summary:

Pursuant to 1VAC7-10-60, the fax number for the Department of Environmental Quality is removed from regulation text as it has been eliminated by the department.

VA.R. Doc. No. R24-7573; Filed September 7, 2023, 9:37 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: **9VAC25-31. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (adding 9VAC25-31-805).**

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

Effective Date: November 8, 2023.

Agency Contact: Rebecca W. Rochet, Deputy Director, Division of Water Permitting, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 801-2950, or email rebecca.rochet@deq.virginia.gov.

Summary:

Pursuant to Chapter 276 of the 2023 Acts of Assembly, the amendments (i) define perfluorinated and polyfluorinated substances (PFAS) and (ii) require pretreatment standards for any industrial user of a publicly owned treatment works (POTW) that receives and cleans, repairs, refurbishes, or processes any equipment, parts, or media used to treat any water or wastewater from any off-site manufacturing process that the industrial user knows or reasonably should know uses PFAS chemicals to test its wastestream for PFAS chemicals prior to and after cleaning, repairing, refurbishing, or processing such items.

9VAC25-31-805. Pretreatment requirements for testing for PFAS chemicals.

A. As used in this section, "PFAS chemical" means (i) perfluorooctanoic acid (PFOA), (ii) perfluorooctane sulfonate (PFOS), (iii) hexafluoropropylene oxide dimer acid (HFPO-DA), (iv) perfluorobutane sulfonate (PFBS), or (v) any substance in a class of fluorinated organic chemicals containing at least two adjacent fluorinated carbon atoms, where one carbon atom is fully fluorinated and the other atom is at least partially fluorinated, excluding gases and volatile liquids, also referred to as perfluoroalkyl and polyfluoroalkyl substances (PFAS), identified by a publicly owned treatment works in its pretreatment program for which there is a U.S. Environmental Protection Agency approved testing method.

B. Any publicly owned treatment works receiving a wastestream from an industrial user that receives and cleans, repairs, refurbishes, or processes any equipment, parts, or media used to treat any water or wastewater from any off-site manufacturing process that the industrial user knows or reasonably should know uses PFAS chemicals shall require such industrial user to test its wastestream for PFAS chemicals prior to and after cleaning, repairing, refurbishing, or processing such items. The results of such tests shall be transmitted to the receiving POTW within three days of receipt of the test results by the industrial user of the POTW.

VA.R. Doc. No. R24-7567; Filed September 20, 2023, 7:45 a.m.

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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: 9VAC25-210. Virginia Water Protection Permit Program Regulation (amending 9VAC25-210-40, 9VAC25-210-116).

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

Effective Date: November 8, 2023.

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

Summary:

The amendments conform the regulation to the following legislation adopted during the 2023 Session of the General Assembly: (i) Chapter 245, which expands, under certain circumstances, the location of the source of credits for tidal wetland impacts to a tidal wetland mitigation bank located in an adjacent river watershed; and (ii) Chapters 258 and 259, which provide that a permit from the Virginia Marine Resources Commission is not required for activity in nontidal waters if the person performing the activity obtains and complies with a Virginia Water Protection Permit.

9VAC25-210-40. 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. In determining whether to grant a permit pursuant to this chapter for an activity conducted in nontidal waters, where a permit from the Virginia Marine Resources Commission will not be issued, the department shall be guided by the factors set forth in § 28.2-1205 A of the Code of Virginia.

9VAC25-210-116. Compensation.

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

B. Practicable and ecologically and environmentally preferable compensation alternatives.

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

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

C. Compensatory mitigation proposals shall be evaluated as follows:

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

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

- a. Mitigation bank credits;
- b. In-lieu fee program credits;
- c. Permittee-responsible mitigation under a watershed approach;
- d. Permittee-responsible mitigation through on-site and in-kind mitigation;
- e. Permittee-responsible mitigation through off-site or out-of-kind mitigation;
- f. Restoration, enhancement, or preservation of upland buffers adjacent to wetlands when utilized in conjunction with subdivision 2 a, 2 b, 2 c, 2 d, or 2 e of this subsection and when consistent with subsection A of this section; and
- g. Preservation of wetlands when utilized in conjunction with subdivision 2 a, 2 b, 2 c, 2 d, or 2 e of this subsection and when consistent with subsection A of this section.

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

- a. Mitigation bank stream credits;
- b. In-lieu fee program credits;

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

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

D. In-lieu fee program approval.

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

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

3. An approved program must meet the following criteria:

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

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wetland acreage and functions or stream functions and water quality benefits lost in the impacted watershed; and e. Such terms and conditions as the department deems necessary to ensure a no net loss of wetland acreage and functions or stream functions and water quality benefits from permitted projects providing compensatory mitigation.

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

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

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

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

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

2. For streams, the final compensation plan for review and approval by DEQ shall also include a site access plan; an erosion and sedimentation control plan, if appropriate; an abatement and control plan for undesirable plant species; a monitoring plan, including a monitoring and reporting

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

G. Notwithstanding any provision of this section restricting the location of the source of credits, the department may, for tidal wetland impacts, authorize the use of, including without the application of § 62.1-44.15:23 C of the Code of Virginia, a tidal wetland mitigation bank located in an adjacent river watershed when such bank contains the same plant community type and salinity regime as the impacted wetlands, which shall be the preferred form of compensation. This subsection shall apply only (i) to tidal wetland mitigation banks with a polyhaline salinity regime located in subbasins 02080102, 02080107, 02080108, and 02080208 and (ii) when a tidal wetland mitigation bank with the same plant community type and salinity regime as the impacted wetlands is not available in the same river watershed as the impacted wetland.

V.A.R. Doc. No. R24-7570; Filed September 20, 2023, 7:53 a.m.

Final Regulation

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

Titles of Regulations: 9VAC25-840. Erosion and Sediment Control Regulations (amending 9VAC25-840-10).

9VAC25-870. Virginia Stormwater Management Program (VSMP) Regulation (amending 9VAC25-870-10, 9VAC25-870-59).

9VAC25-880. General VPDES Permit for Discharges of Stormwater from Construction Activities (amending 9VAC25-880-50).

Statutory Authority:

§ 62.1-44.15:52 of the Code of Virginia (9VAC25-840-10).

§§ 62.1-44.15:25 and 62.1-44.15:28 of the Code of Virginia (9VAC25-870-10, 9VAC25-870-59, 9VAC25-880-50).

Effective Date: November 8, 2023.

Agency Contact: Rebeccah W. Rochet, Deputy Director, Division of Water Permitting, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 801-2950, or email rebeccah.rochet@deq.virginia.gov.

Summary:

Pursuant to Chapters 48 and 49 of the 2023 Acts of Assembly, the amendments (i) provide that an agreement in lieu of a plan may be used for certain farm buildings and structures and (ii) conform regulation to federal law regarding the types of projects that must file a registration statement.

9VAC25-840-10. Definitions.

The following words and terms when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. In addition, some terms not defined herein are defined in § 62.1-44.15:51 of the Erosion and Sediment Control Law.

"Act" means the Erosion and Sediment Control Law, Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Adequate channel" means a watercourse that will convey the designated frequency storm event without overtopping its banks or causing erosive damage to the bed, banks, and overbank sections of the same.

"Agreement in lieu of a plan" means a contract between the VESCP authority and the owner that specifies conservation measures that must be implemented in the construction of a (i) single-family residence or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than 5.0%; this contract may be executed by the VESCP authority in lieu of an erosion and sediment control plan.

"Applicant" means any person submitting an erosion and sediment control plan or an agreement in lieu of a plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

"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.

"Causeway" means a temporary structural span constructed across a flowing watercourse or wetland to allow construction traffic to access the area without causing erosion damage.

"Channel" means a natural stream or manmade waterway.

"Cofferdam" means a watertight temporary structure in a river, lake, etc., for keeping the water from an enclosed area

that has been pumped dry so that bridge foundations, dams, etc., may be constructed.

"Dam" means a barrier to confine or raise water for storage or diversion, to create a hydraulic head, to prevent gully erosion, or to retain soil, rock or other debris.

"Denuded" means a term applied to land that has been physically disturbed and no longer supports vegetative cover.

"Department" means the Department of Environmental Quality.

"Development" means a tract or parcel of land developed or to be developed as a single unit under single ownership or unified control ~~which~~ that is to be used for any business or industrial purpose or is to contain three or more residential dwelling units.

"Dike" means an earthen embankment constructed to confine or control water, especially one built along the banks of a river to prevent overflow of lowlands; levee.

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

"District" or "soil and water conservation district" means a political subdivision of the Commonwealth organized in accordance with the provisions of Article 3 (§ 10.1- 506 et seq.) of Chapter 5 of Title 10.1 of the Code of Virginia.

"Diversion" means a channel with a supporting ridge on the lower side constructed across or at the bottom of a slope for the purpose of intercepting surface runoff.

"Dormant" means denuded land that is not actively being brought to a desired grade or condition.

"Energy dissipator" means a nonerodible structure that reduces the velocity of concentrated flow to reduce its erosive effects.

"Erosion and Sediment Control Plan" or "plan" means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions and all information deemed necessary by the plan-approving authority to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

"Farm building or structure" means the same as that term is defined in § 36-97 of the Code of Virginia and also includes any building or structure used for agritourism activity, as defined in § 3.2-6400 of the Code of Virginia, and any related impervious surfaces, including roads, driveways, and parking areas.

Regulations

"Flume" means a constructed device lined with erosion-resistant materials intended to convey water on steep grades.

"Live watercourse" means a definite channel with bed and banks within which concentrated water flows continuously.

"Locality" means a county, city, or town.

"Natural stream" means nontidal waterways that are part of the natural topography. They usually maintain a continuous or seasonal flow during the year and are characterized as being irregular in cross-section with a meandering course. Constructed channels such as drainage ditches or swales shall not be considered natural streams.

"Nonerodible" means a material, e.g., riprap, concrete, plastic, etc., that will not experience surface wear due to natural forces.

"Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the Commonwealth, governmental body, including a federal or state entity as applicable, any interstate body, or any other legal entity.

"Post-development" means conditions that may be reasonably expected or anticipated to exist after completion of the land development activity on a specific site or tract of land.

"Program administrator" means the person or persons responsible for administering and enforcing the erosion and sediment control program of a VESCP authority.

"Pre-development" means conditions at the time the erosion and sediment control plan is submitted to the VESCP authority. Where phased development or plan approval occurs (preliminary grading, roads, and utilities, etc.), the existing conditions at the time the erosion and sediment control plan for the initial phase is submitted for approval shall establish pre-development conditions.

"Sediment basin" means a temporary impoundment built to retain sediment and debris with a controlled stormwater release structure.

"Sediment trap" means a temporary impoundment built to retain sediment and debris that is formed by constructing an earthen embankment with a stone outlet.

"Sheet flow" (also called overland flow) means shallow, unconcentrated, and irregular flow down a slope. The length of strip for overland flow usually does not exceed 200 feet under natural conditions.

"Shore erosion control project" means an erosion control project approved by local wetlands boards, the Virginia Marine Resources Commission, the department, or the United States Army Corps of Engineers and located on tidal waters and

within nonvegetated or vegetated wetlands as defined in Title 28.2 of the Code of Virginia.

"Slope drain" means tubing or conduit made of nonerosive material extending from the top to the bottom of a cut or fill slope with an energy dissipator at the outlet end.

"Stabilized" means land that has been treated to withstand normal exposure to natural forces without incurring erosion damage.

"Storm sewer inlet" means a structure through which stormwater is introduced into an underground conveyance system.

"Stormwater detention" means the process of temporarily impounding runoff and discharging it through a hydraulic outlet structure to a downstream conveyance system.

"Temporary vehicular stream crossing" means a temporary nonerodible structural span installed across a flowing watercourse for use by construction traffic. Structures may include bridges, round pipes, or pipe arches constructed on or through nonerodible material.

"Ten-year storm" means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in 10 years. It may also be expressed as an exceedance probability with a 10% chance of being equaled or exceeded in any given year.

"Two-year storm" means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in two years. It may also be expressed as an exceedance probability with a 50% chance of being equaled or exceeded in any given year.

"Twenty-five-year storm" means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in 25 years. It may also be expressed as exceedance probability with a 4.0% chance of being equaled or exceeded in any given year.

"Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by the department that has been established by a VESCP authority for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement where authorized in this article, and evaluation consistent with the requirements of the Act and this chapter.

"Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means an authority approved by the department to operate a Virginia Erosion and Sediment Control

Program. An authority may include a state entity, including the department; a federal entity; a district, county, city, or town; or for linear projects subject to annual standards and specifications, electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of Virginia.

9VAC25-870-10. Definitions.

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

"Act" means the Virginia Stormwater Management Act, Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Administrator" means the Administrator of the United States Environmental Protection Agency or an authorized representative.

"Agreement in lieu of a stormwater management plan" means a contract between the VSMP authority and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of a VSMP for the construction of a (i) single-family residence or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than 5.0%; such contract may be executed by the VSMP authority in lieu of a stormwater management plan.

"Applicable standards and limitations" means all state, interstate, and federal standards and limitations to which a discharge or a related activity is subject under the Clean Water Act (CWA) (33 USC § 1251 et seq.) and the Act, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, and standards for sewage sludge use or disposal under §§ 301, 302, 303, 304, 306, 307, 308, 403, and 405 of CWA.

"Approval authority" means the State Water Control Board or its designee.

"Approved program" or "approved state" means a state or interstate program that has been approved or authorized by EPA under 40 CFR Part 123.

"Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

"Average weekly discharge limitation" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during

a calendar week divided by the number of daily discharges measured during that week.

"Best management practice" or "BMP" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices, including both structural and nonstructural practices, to prevent or reduce the pollution of surface waters and groundwater systems. This includes:

1. "Nonproprietary best management practice" means both structural and nonstructural practices to prevent or reduce the pollution of surface waters and groundwater systems that are in the public domain and are not protected by trademark or patent or copyright.

2. "Proprietary best management practice" means both structural and nonstructural practices to prevent or reduce the pollution of surface waters and groundwater systems that are privately owned and controlled and may be protected by trademark or patent or copyright.

"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.

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

"Channel" means a natural or manmade waterway.

"Chesapeake Bay Preservation Act" means Article 2.5 (§ 62.1-44.15:67 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Chesapeake Bay Preservation Act land-disturbing activity" means a land-disturbing activity including clearing, grading, or excavation that results in a land disturbance equal to or greater than 2,500 square feet and less than one acre in all areas of jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830) adopted pursuant to the Chesapeake Bay Preservation Act.

"Chesapeake Bay Preservation Area" means any land designated by a local government pursuant to Part III (9VAC25-830-70 et seq.) of the Chesapeake Bay Preservation Area Designation and Management Regulations and § 62.1-44.15:74 of the Chesapeake Bay Preservation Act. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area as defined in the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830).

"Chesapeake Bay watershed" means all land areas draining to the following Virginia river basins: Potomac River Basin, James River Basin, Rappahannock River Basin, Chesapeake Bay and its small coastal basins, and York River Basin.

Regulations

"Common plan of development or sale" means a contiguous area where separate and distinct construction activities may be taking place at different times on different schedules.

"Comprehensive stormwater management plan" means a plan, which may be integrated with other land use plans or regulations, that specifies how the water quality components, quantity components, or both of stormwater are to be managed on the basis of an entire watershed or a portion thereof. The plan may also provide for the remediation of erosion, flooding, and water quality and quantity problems caused by prior development.

"Construction activity" means any clearing, grading, or excavation associated with large construction activity or associated with small construction activity.

"Contiguous zone" means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (37 FR 11906 June 15, 1972).

"Continuous discharge" means a discharge ~~which that~~ occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

"Control measure" means any BMP, stormwater facility, or other method used to minimize the discharge of pollutants to state waters.

"Controversial permit" means a water permitting action for which a public hearing has been granted pursuant to 9VAC25-870-550 and 9VAC25-870-555.

"Co-operator" means an operator of a state permit that is only responsible for state permit conditions relating to the discharge for which it is the operator.

"Clean Water Act" or "CWA" means the federal 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.

"CWA and regulations" means the Clean Water Act (CWA) and applicable regulations published in the Code of Federal Regulations promulgated thereunder. For the purposes of this chapter, it includes state program requirements.

"Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily

discharge is calculated as the average measurement of the pollutant over the day.

"Department" means the Department of Environmental Quality.

"Development" means land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures or the clearing of land for nonagricultural or nonsilvicultural purposes. The regulation of discharges from development, for purposes of this chapter, does not include the exemptions found in 9VAC25-870-300.

"Direct discharge" means the discharge of a pollutant.

"Director" means the Director of the Department of Environmental Quality or his designee.

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

"Discharge of a pollutant" means:

1. Any addition of any pollutant or combination of pollutants to state waters from any point source; or
2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into surface waters from: surface runoff that is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person that do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

"Discharge Monitoring Report" or "DMR" means the form supplied by the department, or an equivalent form developed by the operator and approved by the department, for the reporting of self-monitoring results by operators.

"Draft state permit" means a document indicating the department's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a state individual or general permit. A notice of intent to deny a state individual or general permit is a type of draft state permit. A denial of a request for modification, revocation and reissuance, or termination is not a draft state permit.

"Drainage area" means a land area, water area, or both from which runoff flows to a common point.

"Effluent limitation" means any restriction imposed by the board on quantities, discharge rates, and concentrations of pollutants ~~which that~~ are discharged from point sources into surface waters, the waters of the contiguous zone, or the ocean.

"Effluent limitations guidelines" means a regulation published by the administrator under § 304(b) of the CWA to adopt or revise effluent limitations.

"Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.

"Erosion and Sediment Control Law" means Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"ESC" means erosion and sediment control.

"Existing state permit" means for the purposes of this chapter a state permit issued by the department and currently held by a state permit applicant.

"Existing source" means any source that is not a new source or a new discharger.

"Facilities or equipment" means buildings, structures, process or production equipment or machinery that form a permanent part of a new source and that will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the new source or water pollution treatment for the new source.

"Facility or activity" means any 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 VSMP.

"Farm building or structure" means the same as that term is defined in § 36-97 of the Code of Virginia and also includes any building or structure used for agritourism activity, as defined in § 3.2-6400 of the Code of Virginia, and any related impervious surfaces, including roads, driveways, and parking areas.

"Flood fringe" means the portion of the floodplain outside the floodway that is usually covered with water from the 100-year flood or storm event. This includes the flood or floodway fringe designated by the Federal Emergency Management Agency.

"Flooding" means a volume of water that is too great to be confined within the banks or walls of the stream, water body, or conveyance system and that overflows onto adjacent lands, thereby causing or threatening damage.

"Floodplain" means the area adjacent to a channel, river, stream, or other water body that is susceptible to being inundated by water normally associated with the 100-year flood or storm event. This includes the floodplain designated by the Federal Emergency Management Agency.

"Flood-prone area" means the component of a natural or restored stormwater conveyance system that is outside the main channel. Flood-prone areas may include the floodplain,

the floodway, the flood fringe, wetlands, riparian buffers, or other areas adjacent to the main channel.

"Floodway" means the channel of a river or other watercourse and the adjacent land areas, usually associated with flowing water, that must be reserved in order to discharge the 100-year flood or storm event without cumulatively increasing the water surface elevation more than one foot. This includes the floodway designated by the Federal Emergency Management Agency.

"General permit" means a state permit authorizing a category of discharges under the CWA and the Act within a geographical area.

"Hazardous substance" means any substance designated under the Code of Virginia or 40 CFR Part 116 pursuant to § 311 of the CWA.

"Hydrologic Unit Code" or "HUC" means a watershed unit established in the most recent version of Virginia's 6th Order National Watershed Boundary Dataset unless specifically identified as another order.

"Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of stormwater, except discharges pursuant to a separate VPDES or state permit (other than the state permit for discharges from firefighting activities, and discharges identified by and in compliance with 9VAC25-870-400 D 2 c (3).

"Impervious cover" means a surface composed of material that significantly impedes or prevents natural infiltration of water into soil.

"Incorporated place" means a city, town, township, or village that is incorporated under the Code of Virginia.

"Indian country" means (i) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (ii) all dependent Indian communities with the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and (iii) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

"Indirect discharger" means a nondomestic discharger introducing "pollutants" to a "publicly owned treatment works (POTW)."

"Inspection" means an on-site review of the project's compliance with the permit or the state permit, the VSMP, and any applicable design criteria, or an on-site review to obtain information or conduct surveys or investigations necessary in the implementation or enforcement of the Act and this chapter.

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"Interstate agency" means an agency of two or more states established by or under an agreement or compact approved by Congress, or any other agency of two or more states having substantial powers or duties pertaining to the control of pollution as determined and approved by the administrator under the CWA and regulations.

"Karst area" means any land area predominantly underlain at the surface or shallow subsurface by limestone, dolomite, or other soluble bedrock regardless of any obvious surface karst features.

"Karst features" means sinkholes, sinking and losing streams, caves, large flow springs, and other such landscape features found in karst areas.

"Land disturbance" or "land-disturbing activity" means a manmade change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term shall not include those exemptions specified in § 62.1-44.15:34 of the Code of Virginia.

"Large construction activity" means construction activity including clearing, grading, and excavation, except operations that result in the disturbance of less than five acres of total land area. Large construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more. Large construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

"Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 250,000 or more as determined by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix F);
2. Located in the counties listed in 40 CFR Part 122 Appendix H, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties;
3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the department as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the department may consider the following factors:
 - a. Physical interconnections between the municipal separate storm sewers;
 - b. The location of discharges from the designated municipal separate storm sewer relative to discharges

from municipal separate storm sewers described in subdivision 1 of this definition;

- c. The quantity and nature of pollutants discharged to surface waters;
- d. The nature of the receiving surface waters; and
- e. Other relevant factors;

4. The department may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in this definition.

"Layout" means a conceptual drawing sufficient to provide for the specified stormwater management facilities required at the time of approval.

"Linear development project" means a land-disturbing activity that is linear in nature such as, but not limited to, (i) the construction of electric and telephone utility lines, and natural gas pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities, and other related structures of a railroad company; (iii) highway construction projects; (iv) construction of stormwater channels and stream restoration activities; and (v) water and sewer lines. Private subdivision roads or streets shall not be considered linear development projects.

"Locality" means a county, city, or town.

"Localized flooding" means smaller scale flooding that may occur outside of a stormwater conveyance system. This may include high water, ponding, or standing water from stormwater runoff, which is likely to cause property damage or unsafe conditions.

"Main channel" means the portion of the stormwater conveyance system that contains the base flow and small frequent storm events.

"Major facility" means any facility or activity classified as such by the regional administrator in conjunction with the department.

"Major modification" means, for the purposes of this chapter, the modification or amendment of an existing state permit before its expiration that is not a minor modification as defined in this regulation.

"Major municipal separate storm sewer outfall" or "major outfall" means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive stormwater from lands zoned for industrial activity (based on comprehensive zoning plans or the

equivalent), with an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of two acres or more).

"Manmade" means constructed by man.

"Maximum daily discharge limitation" means the highest allowable daily discharge.

"Maximum extent practicable" or "MEP" means the technology-based discharge standard for municipal separate storm sewer systems established by CWA § 402(p). MEP is achieved, in part, by selecting and implementing effective structural and nonstructural best management practices (BMPs) and rejecting ineffective BMPs and replacing them with effective best management practices (BMPs). MEP is an iterative standard, which evolves over time as urban runoff management knowledge increases. As such, the operator's MS4 program must continually be assessed and modified to incorporate improved programs, control measures, BMPs, etc., to attain compliance with water quality standards.

"Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 100,000 or more but less than 250,000 as determined by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix G);
2. Located in the counties listed in 40 CFR Part 122 Appendix I, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties;
3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the department as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the department may consider the following factors:
 - a. Physical interconnections between the municipal separate storm sewers;
 - b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;
 - c. The quantity and nature of pollutants discharged to surface waters;
 - d. The nature of the receiving surface waters; or
 - e. Other relevant factors;
4. The department may, upon petition, designate as a medium municipal separate storm sewer system, municipal

separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in subdivisions 1, 2, and 3 of this definition.

"Minimize" means to reduce or eliminate the discharge of pollutants to the extent achievable using stormwater controls that are technologically available and economically practicable.

"Minor modification" means, for the purposes of this chapter, minor modification or amendment of an existing state permit before its expiration for the reasons listed at 40 CFR 122.63 and as specified in 9VAC25-870-640. Minor modification for the purposes of this chapter also means other modifications and amendments not requiring extensive review and evaluation including 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 state permit modification or amendment does not substantially alter state 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.

"Municipal separate storm sewer" means a conveyance or system of conveyances otherwise known as a municipal separate storm sewer system, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains:

1. Owned or operated by a federal, state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction or delegated authority for erosion and sediment control and stormwater management, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters;
2. Designed or used for collecting or conveying stormwater;
3. That is not a combined sewer; and
4. That is not part of a publicly owned treatment works.

"Municipal separate storm sewer system" or "MS4" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems or designated under 9VAC25-870-380 A 1.

"Municipal Separate Storm Sewer System Management Program" or "MS4 Program" means a management program covering the duration of a state permit for a municipal separate storm sewer system that includes a comprehensive planning process that involves public participation and intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality

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requirements of the CWA and regulations and the Act and attendant regulations, using management practices, control techniques, and system, design and engineering methods, and such other provisions that are appropriate.

"Municipality" means a city, town, county, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the CWA.

"National Pollutant Discharge Elimination System" or "NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing state permits, and imposing and enforcing pretreatment requirements under §§ 307, 402, 318, and 405 of the CWA. The term includes an approved program.

"Natural channel design concepts" means the utilization of engineering analysis based on fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its floodplain.

"Natural stream" means a tidal or nontidal watercourse that is part of the natural topography. It usually maintains a continuous or seasonal flow during the year and is characterized as being irregular in cross-section with a meandering course. Constructed channels such as drainage ditches or swales shall not be considered natural streams; however, channels designed utilizing natural channel design concepts may be considered natural streams.

"New discharger" means any building, structure, facility, or installation:

1. From which there is or may be a discharge of pollutants;
2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;
3. ~~Which That~~ is not a new source; and
4. ~~Which That~~ has never received a finally effective separate VPDES or state permit for discharges at that site.

This definition includes an indirect discharger that commences discharging into surface waters after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a site for which it does not have a separate VPDES or state permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979.

"New permit" means, for the purposes of this chapter, a state permit issued by the department to a state permit applicant that does not currently hold and has never held a state permit of that type, for that activity, at that location. An application for a new permit issued pursuant to this chapter, 9VAC25-880, or 9VAC25-890 shall not be subject to §§ 62.1-44.15:3 A and 62.1-44.15:4 D of the Code of Virginia.

"New source," means 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 CWA that are applicable to such source; or
2. After proposal of standards of performance in accordance with § 306 of the CWA that are applicable to such source, but only if the standards are promulgated in accordance with § 306 of the CWA within 120 days of their proposal.

"Nonpoint source pollution" means pollution such as sediment, nitrogen, phosphorous, hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are washed from the land surface in a diffuse manner by stormwater runoff.

"Oil and gas exploration, production, processing, or treatment operations or transmission facilities" means all field activities or operations associated with exploration, production, or treatment operations, or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activity. (33 USC § 1362(24))

"Operator" means the owner or operator of any facility or activity subject to the Act and this chapter. In the context of stormwater associated with a large or small construction activity, operator means any person associated with a construction project that meets either of the following two criteria: (i) the person has direct operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or (ii) the person has day-to-day operational control of those activities at a project that are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other state permit or VSMP authority permit conditions (i.e., they are authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or comply with other permit conditions). In the context of stormwater discharges from Municipal Separate Storm Sewer Systems (MS4s), operator means the operator of the regulated MS4 system.

"Outfall" means, when used in reference to municipal separate storm sewers, a point source at the point where a municipal separate storm sewer discharges to surface waters and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other

conveyances which connect segments of the same stream or other surface waters and are used to convey surface waters.

"Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not disturbed by mining operations.

"Owner" means the Commonwealth or any of its political subdivisions including 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 or pollutants 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 Code of Virginia, the Act, and this chapter.

"Peak flow rate" means the maximum instantaneous flow from a prescribed design storm at a particular location.

"Percent impervious" means the impervious area within the site divided by the area of the site multiplied by 100.

"Permit" or "VSMP authority permit" means an approval to conduct a land-disturbing activity issued by the VSMP authority for the initiation of a land-disturbing activity after evidence of general permit coverage has been provided where applicable.

"Permittee" means the person to whom the state permit or VSMP authority permit is issued, including any owner or operator whose construction site is covered under a state construction general permit.

"Person" means any individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body, including a federal, state, or local entity as applicable, any interstate body, or any other legal entity.

"Point of discharge" means a location at which concentrated stormwater runoff is released.

"Point source" means any discernible, confined, and discrete conveyance including 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 stormwater 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 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 is used either to facilitate production or for disposal purposes and is approved by the department and if the department determines that the injection or disposal will not result in the degradation of groundwater or surface water resources.

"Pollutant discharge" means the average amount of a particular pollutant measured in pounds per year or other standard reportable unit as appropriate, delivered by stormwater runoff.

"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 (a) harmful or detrimental or injurious to the public health, safety, or welfare, or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) 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 that~~ by itself is not sufficient to cause pollution, but ~~which that~~, 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 State Water Control Board, are "pollution" for the terms and purposes of this chapter.

"Postdevelopment" refers to conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site.

"Predevelopment" refers to the conditions that exist at the time that plans for the land development of a tract of land are submitted to the VSMP authority. Where phased development or plan approval occurs (preliminary grading, demolition of existing structures, roads, and utilities, etc.), the existing conditions at the time prior to the first item being submitted shall establish predevelopment conditions.

"Prior developed lands" means land that has been previously utilized for residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures, and that will have the impervious areas associated with those uses altered during a land-disturbing activity.

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"Privately owned treatment works" or "PVOTW" means any device or system that is (i) used to treat wastes from any facility whose operator is not the operator of the treatment works and (ii) not a POTW.

"Publicly owned treatment works" or "POTW" means a treatment works as defined by § 212 of the CWA that 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, and 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, that has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

"Qualified personnel" means a person knowledgeable in the principles and practices of erosion and sediment and stormwater management controls who possesses the skills to assess conditions at the construction site for the operator that could impact stormwater quality and quantity and to assess the effectiveness of any sediment and erosion control measures or stormwater management facilities selected to control the quality and quantity of stormwater discharges from the construction activity. For VSMP authorities this requires the use of a person who holds a certificate of competency from the department in the area of project inspection for ESC and project inspection for SWM or combined administrator for ESC and combined administrator for SWM as defined in 9VAC25-850-10 or a combination of ESC and SWM qualifications from these two areas.

"Recommencing discharger" means a source that recommences discharge after terminating operations.

"Regional administrator" means the Regional Administrator of Region III of the Environmental Protection Agency or the authorized representative of the regional administrator.

"Revoked state permit" means, for the purposes of this chapter, an existing state permit that is terminated by the department before its expiration.

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

"Runoff" or "stormwater runoff" means that portion of precipitation that is discharged across the land surface or through conveyances to one or more waterways.

"Runoff characteristics" includes maximum velocity, peak flow rate, volume, and flow duration.

"Runoff volume" means the volume of water that runs off the site from a prescribed design storm.

"Rural Tidewater locality" means any locality that is (i) subject to the provisions of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq. of the Code of Virginia) and (ii)

eligible to join the Rural Coastal Virginia Community Enhancement Authority established by Chapter 76 (§ 15.2-7600 et seq.) of Title 15.2 of the Code of Virginia.

"Schedule of compliance" means a schedule of remedial measures included in a state permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the Act, the CWA, and regulations.

"Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

"Severe property damage" means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that 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.

"Significant materials" means, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under § 101(14) of CERCLA (42 USC § 9601(14)); any chemical the facility is required to report pursuant to § 313 of Title III of SARA (42 USC § 11023); fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with stormwater discharges.

"Single jurisdiction" means, for the purposes of this chapter, a single county or city. The term county includes incorporated towns ~~which~~ that are part of the county.

"Site" means the land or water area where any facility or land-disturbing activity is physically located or conducted, including adjacent land used or preserved in connection with the facility or land-disturbing activity. Areas channelward of mean low water in tidal Virginia shall not be considered part of a site.

"Site hydrology" means the movement of water on, across, through, and off the site as determined by parameters including soil types, soil permeability, vegetative cover, seasonal water tables, slopes, land cover, and impervious cover.

"Small construction activity" means:

1. Construction activities including clearing, grading, and excavating that results in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original

purpose of the facility. The department may waive the otherwise applicable requirements in a general permit for a stormwater discharge from construction activities that disturb less than five acres where stormwater controls are not needed based on an approved "total maximum daily load" (TMDL) that addresses the pollutants of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutants of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this subdivision, the pollutants of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity, or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the department that the construction activity will take place, and stormwater discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis. As of the start date in Table 1 of 9VAC25-31-1020, all certifications submitted in support of the waiver shall be submitted electronically by the owner or operator to the department in compliance with this subdivision and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31, permittees may be required to report electronically if specified by a particular permit.

2. Any other construction activity designated by either the department or the EPA regional administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to surface waters.

"Small municipal separate storm sewer system" or "small MS4" means all separate storm sewers that are (i) owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters and (ii) not defined as "large" or "medium" municipal separate storm sewer systems or designated under 9VAC25-870-380 A 1. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at

military bases, large hospital or prison complexes, and highway and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

"Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

"State" means the Commonwealth of Virginia.

"State application" or "application" means the standard form or forms, including any additions, revisions, or modifications to the forms, approved by the administrator and the department for applying for a state permit.

"State/EPA agreement" means an agreement between the EPA regional administrator and the state that coordinates EPA and state activities, responsibilities, and programs including those under the CWA and the Act.

"State permit" means an approval to conduct a land-disturbing activity issued by the department in the form of a state stormwater individual permit or coverage issued under a state general permit or an approval issued by the department for stormwater discharges from an MS4. Under these state permits, the Commonwealth imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, the Act, and this chapter. As the mechanism that imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, a state permit for stormwater discharges from an MS4 and, after June 30, 2014, a state permit for conducting a land-disturbing activity issued pursuant to the Act, are also types of Virginia Pollutant Discharge Elimination System (VPDES) Permits. State permit does not include any state permit that has not yet been the subject of final department action, such as a draft state permit. Approvals issued pursuant to this chapter, 9VAC25-880, and 9VAC25-890 are not issuances of a permit under § 62.1-44.15.01 of the Code of Virginia.

"State project" means any land development project that is undertaken by any state agency, board, commission, authority, or any branch of state government, including state-supported institutions of higher learning.

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

"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.

"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.

"Stormwater conveyance system" means a combination of drainage components that are used to convey stormwater

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discharge, either within or downstream of the land-disturbing activity. This includes:

1. "Manmade stormwater conveyance system" means a pipe, ditch, vegetated swale, or other stormwater conveyance system constructed by man except for restored stormwater conveyance systems;
2. "Natural stormwater conveyance system" means the main channel of a natural stream and the flood-prone area adjacent to the main channel; or
3. "Restored stormwater conveyance system" means a stormwater conveyance system that has been designed and constructed using natural channel design concepts. Restored stormwater conveyance systems include the main channel and the flood-prone area adjacent to the main channel.

"Stormwater discharge associated with construction activity" means a discharge of stormwater runoff from areas where land-disturbing activities (e.g., clearing, grading, or excavation); construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck washout, fueling); or other industrial stormwater directly related to the construction process (e.g., concrete or asphalt batch plants) are located.

"Stormwater discharge associated with large construction activity" means the discharge of stormwater from large construction activities.

"Stormwater discharge associated with small construction activity" means the discharge of stormwater from small construction activities.

"Stormwater management facility" means a control measure that controls stormwater runoff and changes the characteristics of that runoff including the quantity and quality, the period of release or the velocity of flow.

"Stormwater management plan" means a document containing material for describing methods for complying with the requirements of the VSMP or this chapter. An agreement in lieu of a stormwater management plan as defined in this chapter shall be considered to meet the requirements of a stormwater management plan.

"Stormwater Pollution Prevention Plan" or "SWPPP" means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under a VSMP for construction activities shall identify and require the implementation of control measures and shall include or incorporate by reference an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.

"Subdivision" means the same as defined in § 15.2-2201 of the Code of Virginia.

"Surface waters" means:

1. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate wetlands;
3. All other waters such as 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. That 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. That are used or could be used for industrial purposes by industries in interstate commerce;
4. All impoundments of waters otherwise defined as surface waters 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.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA and the law, are not surface waters. Surface waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other agency, for the purposes of the CWA, the final authority regarding the CWA jurisdiction remains with the EPA.

"SWM" means stormwater management.

"Total dissolved solids" means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136.

"Total maximum daily load" or "TMDL" means the sum of the individual wasteload allocations for point sources, load allocations (LAs) for nonpoint sources, natural background loading, and a margin of safety. 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.

"TMDL Action Plan" means the scheduled steps of activities that the MS4 operator will take to address the assumptions and requirements of the TMDL wasteload allocation. TMDL action

plans may be implemented in multiple phases over more than one state permit cycle.

"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.

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

"Variance" means any mechanism or provision under § 301 or § 316 of the CWA or under 40 CFR Part 125, or in the applicable federal effluent limitations guidelines that allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the CWA. This includes provisions that allow the establishment of alternative limitations based on fundamentally different factors or on § 301(c), § 301(g), § 301(h), § 301(i), or § 316(a) of the CWA.

"Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by the department that has been established by a VESCP authority for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement where authorized in the Erosion and Sediment Control Act and its attendant regulations, and evaluation consistent with the requirements of the Erosion and Sediment Control Act and its attendant regulations.

"Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means an authority approved by the department to operate a Virginia Erosion and Sediment Control Program. An authority may include a state entity, including the department; a federal entity; a district, county, city, or town; or for linear projects subject to annual standards and specifications, electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of Virginia.

"Virginia Pollutant Discharge Elimination System (VPDES) permit" or "VPDES permit" means a document issued by the department pursuant to the State Water Control Law authorizing, under prescribed conditions, the potential or

actual discharge of pollutants from a point source to surface waters.

"Virginia Stormwater Management Act" means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Virginia Stormwater BMP Clearinghouse Website" means a website that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the Virginia Stormwater Management Act and associated regulations.

"Virginia Stormwater Management Handbook" means a collection of pertinent information that provides general guidance for compliance with the Act and associated regulations and is developed by the department with advice from a stakeholder advisory committee.

"Virginia Stormwater Management Program" or "VSMP" means a program approved by the department after September 13, 2011, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in the Act and associated regulations, and evaluation consistent with the requirements of the SWM Act and associated regulations.

"VSMP authority" means an authority approved by the department after September 13, 2011, to operate a Virginia Stormwater Management Program or the department. An authority may include a locality as set forth in § 62.1-44.15:27 of the Code of Virginia; state entity, including the department; federal entity; or, for linear projects subject to annual standards and specifications in accordance with subsection B of § 62.1-44.15:31 of the Code of Virginia, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of Virginia. Prior to approval, the department must find that the ordinances adopted by the locality's VSMP authority are consistent with the Act and this chapter including the General Permit for Discharges of Stormwater from Construction Activities (9VAC25-880).

"Wasteload allocation" or "wasteload" or "WLA" means the portion of a receiving surface 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 standards" or "WQS" means provisions of state or federal law that consist of a designated use or uses for the waters of the Commonwealth and water quality criteria for such waters based on such uses. Water quality standards are to protect the public health or welfare, enhance the quality of

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water, and serve the purposes of the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), the Act (§ 62.1-44.15:24 et seq. of the Code of Virginia), and the CWA (33 USC § 1251 et seq.).

"Water quantity technical criteria" means standards that establish minimum design criteria for measures to control localized flooding and stream channel erosion.

"Watershed" means a defined land area drained by a river or stream, karst system, or system of connecting rivers or streams such that all surface water within the area flows through a single outlet. In karst areas, the karst feature to which the water drains may be considered the single outlet for the watershed.

"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.

"Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

9VAC25-870-59. Applying for state permit coverage.

The operator must submit a complete and accurate registration statement; if such statement is required, on the official department form to the VSMP authority in order to apply for state permit coverage. The registration statement must be signed by the operator in accordance with 9VAC25-870-370. In accordance with § 62.1-44.15:28 of the Code of Virginia, no registration statement is required for ~~the construction of~~ coverage under the General Permit for Discharges of Stormwater from Construction Activities for a small construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale.

9VAC25-880-50. Registration statement.

A. Deadlines for submitting registration statement. Any operator seeking coverage under this general permit, and that is required to submit a registration statement, shall submit a complete and accurate general VPDES permit registration statement in accordance with this section, which shall serve as a notice of intent for coverage under the general VPDES permit for discharges of stormwater from construction activities.

1. New construction activities.

- a. Any operator proposing a new stormwater discharge from construction activities shall submit a complete and accurate registration statement to the VSMP authority prior to the commencement of land disturbance.
- b. Any operator proposing a new stormwater discharge from construction activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human

health or the environment is authorized to discharge under this general permit, provided that:

- (1) The operator submits a complete and accurate registration statement to the VSMP authority no later than 30 days after commencing land disturbance; and
- (2) Documentation to substantiate the occurrence of the public emergency is provided with the registration statement.

c. Any operator proposing a new stormwater discharge associated with a small construction activity involving the construction of a single-family detached residential structure, within or outside a common plan of development or sale, is authorized to discharge under this general permit and is not required to submit a registration statement ~~or~~. Any operator proposing a new stormwater discharge associated with the construction of a single-family detached residential structure, within or outside a common plan of development or sale, is not required to submit the department portion of the permit fee.

2. Existing construction activities.

a. Any operator who was authorized to discharge under the expiring or expired general permit and who intends to continue coverage under this general permit shall:

- (1) Submit a complete and accurate registration statement to the VSMP authority at least 60 days prior to the expiration date of the existing permit or a later submittal date established by the board; and
- (2) Update its stormwater pollution prevention plan to comply with the requirements of this general permit no later than 60 days after the date of coverage under this general permit.

b. Any operator with an existing stormwater discharge associated with a small construction activity involving the construction of a single-family detached residential structure, within or outside a common plan of development or sale, that intends to continue coverage under this general permit, is authorized to discharge under this general permit and is not required to submit a registration statement ~~or the department portion of the permit fee~~, provided that the operator updates its stormwater pollution prevention plan to comply with the requirements of this general permit no later than 60 days after the date of coverage under this general permit. Any operator with an existing stormwater discharge associated with the construction of a single-family detached residential structure, within or outside a common plan of development or sale, that intends to continue coverage under this general permit is not required to submit the department portion of the permit fee.

3. For stormwater discharges from construction activities where the operator changes, the new operator shall submit a complete and accurate registration statement or transfer agreement form and any other documents deemed necessary

by the VSMP authority to the VSMP authority to demonstrate transfer of ownership and long-term maintenance responsibilities for stormwater management facilities, as required, has occurred prior to assuming operational control over site specifications or commencing work on-site.

4. Late notifications. Operators are not prohibited from submitting registration statements after commencing land disturbance. When a late registration statement is submitted, authorization for discharges shall not occur until coverage under the general permit is issued. The VSMP authority, department, board, and the EPA reserve the right to take enforcement action for any unpermitted discharges that occur between the commencement of land disturbance and discharge authorization.

5. Late registration statements. Registration statements for existing facilities covered under subdivision A 2 a of this section will be accepted after the expiration date of this permit, but authorization to discharge will not be retroactive. The VSMP authority, department, board, and the EPA reserve the right to take enforcement action for any unpermitted discharges that occur after existing permit coverage expires and prior to coverage under this permit is approved.

B. Registration statement. The operator shall submit a registration statement to the VSMP authority that contains the following information:

1. Name, contact, mailing address, telephone number, and email address if available of the construction activity operator. No more than one operator may receive coverage under each registration statement;

NOTE: General permit coverage will be issued to this operator, and the certification in subdivision 17 of this subsection shall be signed by the appropriate person associated with this operator as described in Part III K of 9VAC25-880-70.

2. Name and physical location address of the construction activity, when available, to be covered under this general permit, including city or county, and latitude and longitude in decimal degrees (six digits - ten-thousandths place);

3. A site map (in an 8.5 inch by 11 inch format) showing the location of the existing or proposed land-disturbing activities for which the operator is seeking permit coverage, the limits of land disturbance, construction entrances, on-site support activities, and all water bodies receiving stormwater discharges from the site;

4. If off-site support activities will be used, the name and physical location address, when available, of all off-site support activities, including city or county; latitude and longitude in decimal degrees (six digits - ten-thousandths place); and whether or not the off-site support activity will

be covered under this general permit or a separate VPDES permit;

5. If excavated material (i.e., fill) will be transported off site for disposal, the name and physical location address, when available, of all off-site excavated material disposal areas, including city or county; latitude and longitude in decimal degrees (six digits – ten-thousandths place); and the contents of the excavated material;

6. Status of the construction activity: federal, state, public, or private;

7. Nature of the construction activity (e.g., commercial, industrial, residential, agricultural, oil and gas, etc.);

8. If stormwater management plans for the construction activity have been approved by an entity with department approved annual standards and specifications, the name of the entity with the department approved annual standards and specifications. A copy of the annual standard and specification entity form shall be submitted with the registration statement;

9. If the construction activity was previously authorized to discharge under the general permit effective July 1, 2014, the date of erosion and sediment control plan approval for the estimated area to be disturbed by the construction activity during this permit term;

10. If the construction activity was previously authorized to discharge under the general permit effective July 1, 2014, whether land disturbance has commenced;

11. Name of the receiving waters and sixth order Hydrologic Unit Code (HUC);

12. If the discharge is through a municipal separate storm sewer system (MS4), the name of the MS4 operator;

13. Estimated project start date and completion date;

14. Total land area of development and estimated area to be disturbed by the construction activity during this permit term (to the nearest one-hundredth of an acre);

15. Whether the area to be disturbed by the construction activity is part of a larger common plan of development or sale;

16. If nutrient credits are to be used to demonstrate compliance with the water quality technical criteria as allowed in 9VAC25-870-65 F, a letter of availability from an appropriate nutrient bank that nonpoint source nutrient credits are available;

17. A stormwater pollution prevention plan (SWPPP) shall be prepared in accordance with the requirements of the General VPDES Permit for Stormwater Discharges from Construction Activities prior to submitting the registration statement. By signing the registration statement, the operator certifies that the SWPPP has been prepared; and

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18. The following certification: "I certify under penalty of law that I have read and understand this registration statement and that this document and all attachments were prepared in accordance with a system designed to assure 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 fine and imprisonment for knowing violations."

C. The registration statement shall be signed in accordance with 9VAC25-880-70, Part III K.

V.A.R. Doc. No. R24-7572; Filed September 20, 2023, 7:56 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: 9VAC25-900. Certification of Nonpoint Source Nutrient Credits (amending 9VAC25-900-110).

Statutory Authority: § 62.1-44.19:20 of the Code of Virginia.

Effective Date: November 8, 2023.

Agency Contact: Rebecca W. Rochet, Deputy Director, Division of Water Permitting, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 801-2950, or email rebecca.rochet@deq.virginia.gov.

Summary:

Pursuant to Chapter 723 of the 2023 Acts of Assembly, the amendments allow in the certification and recertification of credits that the Department of Environmental Quality may substitute a delivery factor (i.e., the estimated percentage of a total nitrogen or total phosphorus load delivered to tidal waters as determined by the specific geographic location of the nutrient source) that is deemed by the Director of the Department of Environmental Quality to be based on the best available scientific and technical information appropriate for the tributaries located outside of the Chesapeake Bay Watershed as an alternative to any delivery factor derived from the application of the Chesapeake Bay Program watershed model.

9VAC25-900-110. Credit calculation procedures.

A. Pursuant to this section, the applicant shall calculate the potential nutrient credits generated by the practices implemented at the nutrient credit-generating projects. The applicable delivery factors, dependent upon the tributary in which the nutrient credit-generating project is located, shall be applied when calculating the potential credits generated.

B. For agricultural practices, except land use conversion, the potential nutrient credits shall be calculated using removal efficiencies for practices approved by the department. In the Chesapeake Bay Watershed, these practices shall be approved by the department based on the efficiencies assigned by the Chesapeake Bay Program. In the Southern Rivers watersheds, these practices shall be approved by the department based on submitted calculations and demonstrations. The standards and specifications for implementation of the practices will be established by the department and shall be in accordance with the VACS BMP Manual or the FOTG, as applicable.

C. For urban practices, the potential nutrient credits shall be calculated using the applicable removal efficiencies pursuant to 9VAC25-870-65 or using the best available scientific and technical information available at the time of nutrient credit certification as approved by the department. Limitations on potential nutrient credits from certain BMPs are:

1. In the Chesapeake Bay Watershed, nutrient load reductions from practices in place prior to July 1, 2005, may not be used to generate credits. Removal efficiencies shall be based upon those efficiencies approved by the Chesapeake Bay Program partnership where applicable. These efficiencies shall be reviewed at the time of certification renewal and adjusted as necessary based upon changes made by the Chesapeake Bay Program Partnership.
2. In the Southern Rivers watersheds, nutrient load reductions from practices in place prior to July 1, 2009, may not be used to generate credits.

D. For land use conversions, conversion of land to a more intensive land use activity will not generate nutrient credits. The number of potential nutrient credits shall be determined by calculating the nutrient credits per acre and multiplying that number by the total acreage that will undergo land use conversion. The nutrient credits per acre is equal to the amount calculated by subtracting the load per acre of nutrient nonpoint source pollution for the proposed land use after conversion from the load per acre for the preconversion land use. The values used for the loadings per acre in this calculation shall be based on the applicable loading levels provided in the WIP or the approved TMDL, where applicable. The preconversion land use shall be based on the land use as of the date specified in 9VAC25-900-100 E. The load per acre for the preconversion land use shall reflect the implementation of any applicable baseline practices necessary to comply with 9VAC25-900-100 B, C, and D. No credits shall be generated from the conversion

of land within 35 feet of a water body with perennial water flow as measured from the top of the channel bank.

E. For wetland or stream restoration, an existing conditions assessment survey will be completed prior to restoration activities to use as a pre-restoration condition (baseline pursuant to of 9VAC25-900-100 F) and will be used for comparison to post-restoration conditions. The potential number of credits shall be determined by applying protocols or guidance on a case-by-case basis using the best available scientific and technical information, as approved by the department.

F. For a practice not previously approved by the department, the department will perform a case-by-case review in order to calculate the number of potential nutrient credits generated. The owner shall submit the removal efficiency calculation information for the practice and the calculation of the potential number of credits generated using that efficiency. The department may also request that the submittal include requirements for demonstration projects, the collection of sufficient data to evaluate the results, and any other information the department deems necessary to determine the validity of the credits. In the Chesapeake Bay Watershed, for a practice not approved by the Chesapeake Bay Program Partnership, the department will perform a case-by-case review in order to calculate the number of potential nutrient credits generated on a term basis.

G. In the certification and recertification of credits, the department may substitute a delivery factor that is deemed by the director to be based on the best available scientific and technical information appropriate for the tributaries located outside of the Chesapeake Bay Watershed as an alternative to any delivery factor derived from the application of the Chesapeake Bay Program watershed model.

VA.R. Doc. No. R24-7568; Filed September 20, 2023, 8:00 a.m.



TITLE 12. HEALTH

STATE BOARD OF HEALTH

Proposed Regulation

Titles of Regulations: 12VAC5-635. Rainwater Harvesting System Regulation (adding 12VAC5-635-10 through 12VAC5-635-370).

Statutory Authority: §§ 32.1-12 and 32.248.2 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: December 8, 2023.

Agency Contact: Julie Henderson, Director, Environmental Health Services, Virginia Department of Health, 109 Governor

Street, Richmond, VA 23235, telephone (804) 864-7455, FAX (804) 864-7475, TDD (800) 828-1120, or email julie.henderson@vdh.virginia.gov.

Basis: Section 32.1-12 of the Code of Virginia permits the State Board of Health to make, adopt, promulgate, and provide for reasonable variances and exemptions therefrom as may be necessary to carry out the provisions of Title 32.1 of the Code of Virginia. Section 32.1-248.2 of the Code of Virginia requires the board to adopt regulations regarding the use of rainwater and rainwater harvesting systems, including the conditions under which rainwater may be appropriately used and for what purpose.

Purpose: Rainwater has been harvested and used for centuries in the Commonwealth in the absence of guidance or regulation addressing the protection of human health. Over the past decade, rainwater harvesting systems have become more common across North America. Officials responsible for inspecting these systems have voiced their need for more detailed design parameters to ensure safe implementation of these systems to protect public health. New information and research has improved understanding of risk to public health associated with rainwater harvesting, which is addressed in the proposed regulation. Examples of recent advancements in considerations for public health impacts include the development of standards for use of harvested rainwater developed by the American Rainwater Catchment Systems Association and the International Code Council.

Water used for human consumption in Virginia is currently provided from permitted waterworks and from private wells; both programs are regulated by the Virginia Department of Health (VDH). However, a demand for another source of water supply exists where public source and groundwater availability is limited. For example, groundwater limitations may occur as (i) a result of natural scarcity or contamination, or (ii) in coastal areas under threat of inundation or salt water intrusion. In addition, rainwater harvesting is an emerging technology with early adopters having interest in natural resource protection. The Uniform Statewide Building Code (§ 36-97 et seq. of the Code of Virginia) relies upon VDH to provide water quality standards, including treatment standards for nonpotable applications. The proposed regulation will allow VDH to provide certification to building officials that rainwater harvesting systems applicable to both potable and nonpotable use are protective of public health. The goal of this proposed regulation is to provide a mechanism for VDH to approve rainwater harvesting systems as protective of public health.

Substance: The following substantive provisions are being considered for inclusion in the Rainwater Harvesting System Regulation (12VAC5-635):

- Definitions as necessary for consistency with the Code of Virginia, other regulations, and code documents related to rainwater harvesting and water reuse, stormwater, the Uniform Statewide Building Code (USBC), and current industry standards;

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- Reference to administrative processes to reflect current law and to provide consistency with other VDH regulations;
- Identification of reasonable exemptions from the regulation (e.g., rain barrels, waterworks);
- Criteria to acknowledge nationally recognized standards and certifications for approval of rainwater harvesting components and certification of persons involved in the design, installation, inspection, repair, and maintenance of rainwater harvesting systems;
- Standards for rainwater harvesting performance objectives;
- Requirement that rainwater system components meet national lead-free standards;
- Standards for rainwater harvesting collection parameters;
- Standards for drought response;
- Standards for rainwater harvesting conveyance system requirements;
- Standards for rainwater prefiltration;
- Standards for harvested rainwater storage;
- Pump and filtration parameters;
- Disinfection and other treatment parameters;
- Water quality parameters for systems used for human consumption;
- Inspection, operation, and maintenance requirements for rainwater harvesting systems;
- Cross connection prevention and backflow prevention standards;
- System permit requirements; and
- Alternate compliance pathways for rainwater to be used both for human consumption and not for human consumption applications.

Issues: Primary advantages to the public include provision of an additional source of water supply for beneficial use to all persons in the Commonwealth. The regulation will also provide clarity to designers and builders regarding water quality standards applicable to rainwater harvesting systems as described in the USBC. It is possible that some members of the public may consider the need to obtain a permit for a rainwater harvesting system intended for potable use to be a disadvantage. VDH had not identified other disadvantage to the public.

Primary advantages to the agency or Commonwealth are that the regulation will assist the Commonwealth by enhancing protection of public health and the environment and provide an additional avenue to address current disparities throughout the Commonwealth by providing an additional source of water to persons with limited access. Disadvantages are that neither the regulation nor the Code of Virginia provide VDH with

authority to recover any cost for implementation of this new regulatory 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 and Executive Order 19. The analysis presented represents DPB's best estimate of these economic impacts.¹

Summary of the Proposed Amendments to Regulation. The State Board of Health (board) proposes to adopt new regulations regarding the use of rainwater.

Background. Chapter 817 of the 2018 Acts of Assembly amended § 32.1-248.2 of the Code of Virginia to require the board to adopt regulations regarding the use of rainwater and gray water. The legislation mandates that the regulations regarding use of rainwater (i) describe the conditions under which rainwater may appropriately be used and for what purposes, and (ii) provide standards for the use of rainwater harvesting systems, including systems that collect rainwater for use by commercial enterprises but do not provide water for human consumption, as defined in § 32.1-167 of the Code of Virginia. The Virginia Department of Health (VDH) states that gray water will be regulated separately, via a pending revision of the Sewage Handling and Disposal Regulations (12VAC5-610). Chapter 817 further instructs VDH to promote the use of rainwater as means to reduce freshwater consumption, ease demands on public treatment works and water supply systems, and promote conservation and to consider recognizing rainwater as an independent source of fresh water available for use by the residents of the Commonwealth.

Specifically, the proposed regulation would have the following sections: 12VAC5-635-10 Definitions, 12VAC5-635-20 Applicability of Regulations, 12VAC5-635-30 Relationship to Virginia Sewage Handling and Disposal Regulations, 12VAC5-635-40 Relationship to the State Water Control Board, 12VAC5-635-50 Relationship to the Uniform Statewide Building Code, 12VAC5-635-60 Right of Entry and Inspections, 12VAC5-635-70 End Use Tiers for Rainwater Harvesting Systems, 12VAC5-635-80 Reserved, 12VAC5-635-90 Permits for rainwater harvesting systems; general, 12VAC5-635-100 Application Procedures for a Construction Permit for a Rainwater Harvesting System for Tier 4 End Use, 12VAC5-635-110 Issuance of a Construction Permit, 12VAC5-635-120 Denial of a Construction Permit, 12VAC5-635-130 Revision of Approved Plans, 12VAC5-635-140 Installation inspection and Correction, 12VAC5-635-150 Requirement for an Easement, 12VAC5-635-160 Land Records, 12VAC5-635-170 Issuance of Operation Permit, 12VAC5-635-180 Variances, 12VAC5-635-190 Enforcements, Notices, Informal Conferences, Appeals, 12VAC5-635-200 Cross Connection Abatement, 12VAC5-635-210 Backflow Prevention, 12VAC5-635-220 Water Storage Unit Location, 12VAC5-635-230 Materials and

Equipment, 12VAC5-635-240 Design and Installation, 12VAC5-635-250 Filtration, 12VAC5-635-260 Disinfection, 12VAC5-635-270 General Certification, 12VAC5-635-280 Temporary Removal from Service, 12VAC5-635-290 Performance Requirements; General, 12VAC5-635-300 Continuity of Water Supply, 12VAC5-635-310 Water Quality Standards, 12VAC5-635-320 Operator Requirements; Frequency of Inspection, 12VAC5-635-330 Operation and Maintenance; Operator's Responsibility, 12VAC5-635-340 Operation and Maintenance; Owner's Responsibilities, 12VAC5-635-350 Operation and Maintenance Manual, 12VAC5-635-360 Inspection Requirements, 12VAC5-635-370 Inspection Reports, and 12VAC5-635-9998 FORMS.

The proposed regulation defines "rainwater harvesting system" as "a water system for collecting, storing, potentially treating, and distributing rainwater for an end use." Rainwater harvesting systems are divided into four tiers, based upon the intended end use of the rainwater collected. Tier 4 is for water intended for human consumption (potable).

Tier 4: Potable Water

A construction permit, issued by VDH, would be required for a rainwater harvesting system for Tier 4 end use. VDH would issue the construction permit if it determines that (i) the rainwater harvesting system is adequate to produce potable water, (ii) the system complies with all requirements of the regulation and (iii) the installation and operation of the system would not create an actual or potential health hazard or nuisance. There is no proposed fee for the permit.

Upon completion of the installation, alteration, or rehabilitation of a rainwater harvesting system intended for Tier 4 end use:

1. The owner or agent shall submit to the local health department a statement signed by the installer certifying that the rainwater harvesting system was installed, altered or rehabilitated in accordance with the construction permit and that the rainwater harvesting system complies with applicable state and local regulations, ordinances and laws;
2. The designer shall thoroughly inspect the system installation to determine whether the installation was completed substantially in accordance with the approved evaluation and design, including any revisions made; and
3. The designer shall submit to the local health department a signed inspection report stating that the installation was completed substantially in accordance with the approved evaluation and design revised only in accordance with [delineated] provisions.

There are further requirements if the designer observes deficiencies during the inspection.

Further, the proposed regulation states that no rainwater harvesting system intended for Tier 4 end use may be operated, except for the purposes of testing the system, until VDH has issued an operation permit to the owner. For an operation permit to be issued, all of the requirements mentioned in the

above paragraph must have been completed, and the owner must:

1. Record an instrument describing applicable annual water quality testing and maintenance requirements for each component of the rainwater harvesting system in the land records of the circuit court having jurisdiction over the site of the rainwater harvesting system; and
2. Submit to the local health department legal documentation indicating that the instrument has been duly recorded in the land records.

The instrument recorded pursuant to this section shall be transferred with the title to the property upon the sale or other transfer of the property in which the rainwater harvesting system is located. There is no proposed fee for the operation permit.

Tiers 1, 2, and 3: Nonpotable Water

An owner may install and operate a rainwater harvesting system without a permit where the water is not intended for human consumption (i.e., Tier 1, 2, or 3).

- Tier 1 is low exposure nonpotable water end use where humans will rarely come into contact with the treated rainwater due to the nature of the installation that limits direct or indirect contact under normal operation. Examples include trap primers, restricted access spray irrigation, surface and subsurface irrigation, and ice rinks. In this context, restricted access spray irrigation means spray irrigation in fenced or remote locations where human visitation is controlled or prevented.

- Tier 2 is medium exposure nonpotable water end use where human contact with treated rainwater is indirect or limited. Examples include toilet and urinal flushing, clothes washing, HVAC evaporative cooling, and rooftop thermal cooling.

- Tier 3 is high exposure nonpotable water end use where human contact with treated rainwater is direct. Examples include hose bibs, pressure washing, firefighting or protection and fire suppression, decorative fountains, vehicle washing, and nonrestricted spray irrigation.

The owner of a Tier 1, 2, or 3 end use rainwater harvesting system shall file a registration form with the department within 30 days of the following: (i) installing a rainwater harvesting system, (ii) change of ownership of a rainwater harvesting system, or (iii) permanently closing a rainwater harvesting system. There is no proposed fee for the registration.

Other Requirements.² According to VDH, water quality treatment is inconsistent from locality to locality because of the current absence of statewide water quality standards. The proposed regulation includes specific minimum water quality standards that differ by tier level. Tiers 2, 3, and 4 all have standards of removal of bacteria and protozoa (higher the tier, higher the standard), while Tier 1 does not. Tier 4 has a required pH range, while the other tiers do not. The proposed regulation also states that "It is unlikely that human infectious viruses are present in harvested rainwater. However, if

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underground water storage tanks are used where there is a potential for sewage contamination or surface water infiltration, a [specified] reduction for viruses shall be required."

The owner of a rainwater harvesting system would be required to ensure that the rainwater harvesting system is inspected and tested for water quality by an operator at the times described in the following table below. An operator is defined as a person employed or contracted by an owner to operate and maintain a rainwater harvesting system and holding certification as a designer, installer, or inspector. Owners may be certified to become operators.

<u>End Use Tier</u>	<u>Initial Inspection</u>	<u>Regular Inspection Schedule</u>
1	Prior to the system entering service	As needed
2, 3	Prior to the system entering service	Every 12 months while structure is occupied. If system only provides water for outdoor use, then as needed
4 (single service connection)	Condition of issuance of operation permit	Every 180 days while structure is occupied. *
4 (multiple service connections)	Condition of issuance of operation permit	Every 90 days while any connection serves an occupied structure. *
* If a structure is vacant longer than the regular inspection cycle in Table 5, an operator shall inspect the rainwater harvesting system prior to the structure becoming reoccupied.		

During an inspection, the operator must review and evaluate the operation of the rainwater harvesting system, perform routine maintenance, make adjustments, and replace worn or dysfunctional components with functionally equivalent parts such that the system can reasonably be expected to return to normal operation. If a rainwater harvesting system permitted for Tier 4 end use is not functioning as designed or in accordance with the performance requirements of this chapter and, in the operator's professional judgment, cannot be reasonably expected to return to normal operation through routine operation and maintenance, the operator must report immediately to the owner the remediation efforts necessary to return the rainwater harvesting system to normal operation, including recommendation for temporary or emergency alternate water supply if the system does not provide water acceptable for human consumption.

The operator would also be required to maintain a written log for each rainwater harvesting system for which the operator is responsible that contains, at minimum, the following items: (i) results of testing and sampling, (ii) information regarding reportable incidents, including the corrective action required and taken, (iii) maintenance, corrective actions, and repair activities that are performed for purposes other than a reportable incident, and (iv) recommendations for repair and replacement of system components. Additionally, the owner and operator must maintain and operate the rainwater harvesting system in accordance with an approved operation and maintenance manual.

The proposed regulation states that a person providing design, installation, or inspection of rainwater harvesting systems shall be certified by the American Society of Sanitary Engineering (ASSE) as follows:

1. Rainwater Harvesting System Designers shall maintain ASSE 21120 Rainwater Catchment Systems Designer certification.
2. Rainwater Harvesting System Installers shall maintain ASSE 21110 Rainwater Catchment Systems Installer certification.
3. Rainwater Harvesting System Inspectors shall maintain ASSE 21130 Rainwater and Stormwater Catchment Systems Inspector certification.

Other proposed requirements for the regulation are consistent with the Virginia Uniform Statewide Building Code, which applies to rainwater harvesting systems³ and would not have impact.

The Virginia Plumbing Code⁴ requires that VDH approve individual water supplies as potable prior to connection to the plumbing system.⁵ Currently, there is no mechanism for VDH to approve rainwater harvesting systems for potable uses. The proposed regulation would provide such a mechanism. Rainwater harvesting systems for nonpotable end use have no such requirement and are currently operating in the Commonwealth.⁶

Estimated Benefits and Costs.

Benefits. Since there is currently no mechanism for VDH to approve rainwater harvesting systems for potable uses, local building officials cannot grant building permits for new construction with rainwater harvesting systems to be used for potable water.⁷ By providing such a mechanism, the proposed regulation would enable the construction of buildings that use rainwater harvesting systems for potable uses. To the extent that this new option is utilized, it may ease demands on public treatment works and water supply systems. It can also be beneficial for people who do not have access to a public water supply, where the water table is such that a well is not practical, or the local water is contaminated and not easily treated. According to the agency, there are currently an estimated several hundred homeowners relying on cisterns throughout Virginia who regularly pay for hauled water to maintain their

water supply (costs range from \$110 to \$150 per 1,000 gallons). The proposed regulation may allow these individuals to reduce or discontinue reliance on that service. To the extent that the proposed new mechanism for VDH to approve rainwater harvesting systems for potable uses is utilized, firms that supply such systems and firms that supply design, installation, or inspection services for these systems would benefit from additional business.

Contaminated drinking water can transmit diseases such as diarrhea, cholera, dysentery, hepatitis A, typhoid, and polio.⁸ Thus, ensuring that the rainwater harvesting systems that are to be used for drinking water truly produce potable water is highly beneficial. Additionally, the various requirements that may help reduce the level of contamination in water from systems that produce water not intended for consumption, but where people are expected to have contact with treated rainwater, may also potentially reduce disease transmission.

The proposed requirement that all individuals who provide design, installation, or inspection of rainwater harvesting systems be certified by ASSE may help ensure that the design, installation, and inspection of the systems is done competently. This may reduce the likelihood of failures of the systems.

Costs. Persons providing design, installation, or inspection of rainwater harvesting systems are not currently required to be certified. To the extent that persons providing these services do not already have such certification, the proposed requirement for ASSE certification would produce new costs for these individuals and/or the firms that employ them. There are several ASSE-approved training providers, and the cost for training and certification would cost approximately \$400 to \$600 for online training. The training is expected to take one to two days. Participants must also pass an examination to earn certification.⁹

The proposed requirements that operators and owners produce and keep logs and manuals would require additional time be spent to the extent that these items are not already being produced. To the extent that the proposed water quality standards and inspection schedules are more stringent than what localities are already requiring, there may be associated additional costs to meet these requirements as well.

VDH does not believe that the legislation provided the authority to charge fees for costs associated with the rainwater harvesting system program. The agency estimates general fund dollars would be required for the following costs:

1. An estimated one-time cost of \$68,000 for VDH's database vendor to modify the internal Environmental Health Database to incorporate a permitting program for Rainwater Harvesting Systems for Potable Use to track program permits, operation, and maintenance. There would also be an annual ongoing cost of \$54,000 to VDH's database vendor to maintain this system.
2. A one-time cost of \$34,000 to VDH's database vendor to develop an online tool for registering rainwater harvesting systems with VDH. There would also be an ongoing annual cost of \$24,000 to VDH's database vendor to maintain this tool.

3. An estimated staff resource cost of \$134,000 to provide development, support, and review of the operation and maintenance of both systems described in 1 and 2. VDH anticipates that the development costs would decrease over time as the operation and maintenance effort increases.

4. Personnel costs for developing training and outreach programs and materials to familiarize VDH staff and the regulated community with the regulations. There would be an ongoing cost associated with the engineering review of permit applications, and there will be an ongoing cost for enforcement of the regulation. VDH estimates an annual staff resource cost of \$200,000 to provide the training, outreach, engineering review, and enforcement processes. VDH anticipates that the training and outreach costs would decrease over time as the engineering review and enforcement costs increase.

5. A staff resource cost at local health departments to process applications for potable rainwater harvesting system permits. VDH anticipates the cost to process each application would vary based on the size and complexity of the systems with a range of \$300 to \$1500 in staff resources per application.

Businesses and Other Entities Affected. The proposed regulation would particularly affect owners of homes and other buildings or property where potable water is hard to obtain, builders and property developers, firms that supply rainwater harvesting systems, and firms that supply design, installation, or inspection services for these systems.¹⁰

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.¹¹ 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. Since new costs are introduced for rainwater harvesting systems for nonpotable uses, an adverse impact is indicated.

Small Businesses¹² Affected.¹³

Types and Estimated Number of Small Businesses Affected. The proposed regulation would particularly affect small firms that that supply rainwater harvesting systems, that supply design, installation, or inspection services for these systems, or have difficulty obtaining potable water.¹⁴

Costs and Other Effects. To the extent that small firms that that supply design, installation, or inspection services for rainwater harvesting systems do not already ensure that their applicable employees are ASSE certified, the proposed certification requirement would increase costs.

Alternative Method that Minimizes Adverse Impact. There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

Localities¹⁵ Affected.¹⁶ The proposed regulation may particularly affect those localities that have higher percentages of their land where the water table is such that a well is not practical or the local water is contaminated and not easily treated. The proposal does not introduce costs for local governments.

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Projected Impact on Employment. The proposed creation of the new mechanism for VDH to approve rainwater harvesting systems for potable uses may increase businesses for firms that supply such systems and firms that supply design, installation, or inspection services for these systems. With increases demand, these firms may hire additional employees.

Effects on the Use and Value of Private Property. The proposed creation of the new mechanism for VDH to approve rainwater harvesting systems for potable uses may increase businesses for firms that supply such systems and firms that supply design, installation, or inspection services for these systems. Associated increased revenues could increase the value of such firms. To the extent that firms that supply design, installation, or inspection services for rainwater harvesting systems do not already ensure that their applicable employees are ASSE certified, the proposed certification requirement may moderately affect these firms' value in the opposite direction.

The proposed creation of the new mechanism for VDH to approve rainwater harvesting systems for potable uses may also reduce real estate development costs in areas where there is no public water supply, the water table is such that a well is not practical, and/or the local water is contaminated and not easily treated.

¹²Pursuant 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."

¹³If 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.

¹⁴VDH does not have estimates for the numbers of these small firms.

¹⁵"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.

¹⁶Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

Pursuant to Chapter 817 of the 2018 Acts of Assembly, the proposed action establishes the Rainwater Harvesting System Regulation (12VAC5-635), a new regulation to provide standards for the use of rainwater harvesting systems, including systems that collect rainwater for human consumption. The proposed regulation establishes the relationship with the statutes and regulations applicable to other agencies to avoid duplication of regulatory oversight for both nonpotable and potable uses of harvested rainwater for users below the threshold qualifying as a waterworks. The regulation also establishes administrative processes for permitting, inspecting, and issuing construction and operation permits for intended potable rainwater harvesting systems, along with appropriate exemptions from the regulation (e.g., rain barrels are exempt). Rainwater harvesting systems are divided into four tiers of end use. The highest tier includes potable water and requires the greatest level of treatment and oversight. The specified end-use determines the minimum design, construction, and ongoing operation and maintenance standards for each system. The proposed regulation requires permits to construct and operate a rainwater harvesting system for potable use. Nonpotable systems will be documented in a registry but will not be subject to permitting.

The following substantive provisions are being proposed for inclusion in the Rainwater Harvesting System Regulation (12VAC5-635): (i) definitions as necessary for consistency with the Code of Virginia and other regulations related to rainwater harvesting and water

¹Section 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: (i) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (ii) the identity of any localities and types of businesses or other entities particularly affected, (iii) the projected number of persons and employment positions to be affected, (iv) the projected costs to affected businesses or entities to implement or comply with the regulation, and (v) the impact on the use and value of private property.

²Not all requirements are specifically discussed in this report.

³Source: VDH

⁴The Virginia Uniform Statewide Building (13VAC5-63) incorporates the "International Plumbing Code - 2018 Edition" by reference. See <https://law.lis.virginia.gov/admincode/title13/agency5/chapter63/section9999/>

⁵Section 602.3.3 of the 2018 edition of the Plumbing Code states that "Water from an individual water supply shall be approved as potable by the authority having jurisdiction [VDH] prior to connection to the plumbing system." See <https://codes.iccsafe.org/content/VPC2018P1/chapter-6-water-supply-and-distribution>

⁶Source: VDH

⁷Ibid

⁸Source: World Health Organization. See <https://www.who.int/news-room/fact-sheets/detail/drinking-water>

⁹Source: VDH

¹⁰VDH does not have estimates for the numbers of these affected entities.

¹¹Pursuant 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.

reuse, stormwater, the Uniform Statewide Building Code (USBC), and current industry standards; (ii) criteria to acknowledge nationally recognized standards and certifications for approval of rainwater harvesting components and certification of persons involved in the design, installation, inspection, repair, and maintenance of rainwater harvesting systems; (iii) standards for rainwater harvesting performance objectives; (iv) a requirement that rainwater system components meet national lead-free standards; (v) standards for rainwater harvesting collection parameters, drought response, rainwater harvesting conveyance systems, rainwater prefiltration, harvested rainwater storage, and cross connection and backflow prevention; (vi) pump and filtration and disinfection and other treatment parameters; (vii) water quality parameters for systems used for human consumption; (viii) inspection, operation, and maintenance requirements for rainwater harvesting systems; (ix) system permit requirements; and (x) alternate compliance pathways for rainwater to be used both for human consumption and not for human consumption applications.

Chapter 635
Rainwater Harvesting System Regulation

Part I
General Framework

12VAC5-635-10. Definitions.

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

"Agent" means a legally authorized representative of the owner.

"ANSI" means the American National Standards Institute.

"ASSE" means the American Society of Sanitary Engineering.

"Cistern" means a water storage tank connected to a plumbing system or irrigation system.

"Commissioner" means the State Health Commissioner or the commissioner's designee.

"Contaminant" means an objectionable or hazardous physical, chemical, biological, or radiological substance or matter in water.

"Conveyance system" or "roof drainage system" means the portion of a rainwater harvesting system that directs collected rainwater to the point of untreated rainwater storage, including gutters, downspouts, roof drains, and connectors.

"Debris excluder" means a screen or other device installed in the gutter or downspout system to prevent the accumulation of leaves, needles, or other debris in the rainwater harvesting system.

"Department" means the Virginia Department of Health.

"Designer" means a person who is employed or contracted by an owner to design a rainwater harvesting system and holds certification as a designer pursuant to 12VAC5-635-270 C. Owners may be certified to become designers.

"Disinfection" means a process that inactivates or destroys pathogenic organisms in water by use of a disinfectant. A disinfectant is any chemical and physical agent, including chlorine, chlorine dioxide, chloramines, ozone, and ultraviolet light, added to water in any part of the treatment or distribution process for the purpose of killing or inactivating pathogenic organisms.

"Distribution system" means piping and other components carrying water from a rainwater harvesting system to the point of use.

"End use" means the use of water from a rainwater harvesting system.

"End use tier" means a categorization applied to a rainwater harvesting system based on potable or nonpotable water quality; end use; and potential for human contact, including ingestion, inhalation, and skin contact.

"Filtration" means a process for removing particulate matter from water by passage through porous media.

"First flush" means a method for the removal of sediment and debris from the collection surface by diverting initial rainfall from entry into the storage unit.

"Harvested rainwater" means water from precipitation, including snowmelt, that falls on an elevated roof not subject to pedestrian access and is directed through gutters and downspouts to a storage tank prior to contact with the ground.

"Human consumption" means drinking, food preparation, dishwashing, bathing, showering, hand washing, teeth brushing, and maintaining oral hygiene.

"Installer" means the service provider responsible for installation of a rainwater harvesting system in accordance with the construction permit.

"Local health department" means the department established in each city and county in accordance with § 32.1-30 of the Code of Virginia.

"Log reduction" means the removal of organisms expressed on a logarithmic scale. For example, a 99.9% is a 3-log removal; whereas a 99.99% is a 4-log removal.

"Log reduction target" means a level of log removal assigned to an end use tier.

"Maintenance" means performing adjustments to equipment and controls and in-kind replacement of normal wear and tear parts such as light bulbs, fuses, filters, pumps, motors, conveyance subsystem components, or other like components.

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Maintenance includes pumping the tanks or cleaning the system components, including tanks, on a periodic basis. Maintenance shall not include replacement of water storage units or work requiring a construction permit and an installer.

"Nonpotable water" means water not classified as pure water.

"NSF" means NSF International, formerly known as the National Sanitation Foundation. NSF collaborates with ANSI and Canadian authorities on drinking water standards development. "NSF/ANSI/CAN" is the abbreviation for that collaboration.

"Operation and maintenance manual" means the set of materials and documentation maintained by an owner containing the instructions and information required by 12VAC5-635-350.

"Operator" means a person employed or contracted by an owner to operate and maintain a rainwater harvesting system and holding certification as a designer, installer, or inspector as described in 12VAC5-635-270 C. Owners may be certified to become operators.

"Owner" means any person, individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, or instrumentality thereof, who owns, leases, or proposes to own or lease a rainwater harvesting system.

"Point of use" means a point in a domestic water system nearest to a water-consuming plumbing fixture where water is used.

"Potable water" or "pure water" means water fit for human consumption that (i) is sanitary and normally free of minerals, organic substances, and toxic agents in excess of reasonable amounts; (ii) is adequate in quantity and quality for the minimum health requirements of the persons served; and (iii) conforms to potable water standards defined in the Virginia Uniform Statewide Building Code.

"Precipitation" means water that has precipitated from the atmosphere, including rain, snow, sleet, hail, mist, fog, and dew.

"Rainwater harvesting system" means a water system for collecting, storing, potentially treating, and distributing rainwater for an end use.

"Screen" means a filtration device constructed of corrosion-resistant wire or other approved mesh, having openings in determined sizes.

"Secondary water supply" means an alternate source of water that serves a rainwater harvesting system for the purpose of continuity of water supply.

"Service connection" means the point of delivery of water from a rainwater harvesting system to the distribution system of a user. In the case of a building having multiple independent tenants, each independent tenant is considered a service connection for the purpose of this chapter, regardless of distribution system configuration. In general, a service connection is a single residential unit or commercial space.

"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.

"Treatment" means the use of physical, biological, or chemical means to make water suitable for the intended use.

"Treatment system" or "water treatment system" means the equipment and components used to achieve treatment of rainwater, most commonly filtration and disinfection.

"USBC" means the Virginia Uniform Statewide Building Code (§ 36-97 et seq. of the Code of Virginia).

"Water storage unit" means a cistern or tank used as the central storage component of the rainwater harvesting system prior to treatment.

"Waterworks" means a system that serves piped water for human consumption to at least 15 service connections or 25 or more individuals for at least 60 days out of the year.

"Written operational record" means the official record of the maintenance and operations of a rainwater harvesting system that contains the items required pursuant to 12VAC5-330 C.

12VAC5-635-20. Applicability of regulation.

A. This chapter does not apply to rainwater harvesting systems installed, altered, or rehabilitated prior to (insert the effective date of this chapter) unless the rainwater harvesting system is altered or rehabilitated after (insert the effective date of this chapter).

B. The following are excluded from the requirements of this chapter.

1. Rain barrels (individual containers of up to 100 gallon capacity used to collect and temporarily store rainwater solely for Tier 1 end use);
2. Rainwater harvesting systems that serve as a source for a waterworks as regulated by 12VAC5-590;
3. Rainwater harvesting systems for Tier 1, 2, or 3 end use conducted for an agricultural operation as defined by § 3.2-300 of the Code of Virginia; and
4. Stormwater reclamation and reuse systems authorized by the Department of Environmental Quality in accordance with regulations adopted pursuant to § 62.1-44.15:28 of the Code of Virginia, including stormwater reclamation and

reuse systems that may reclaim combined stormwater and harvested rainwater.

12VAC5-635-30. Relationship to Virginia Sewage Handling and Disposal Regulations.

This chapter supersedes 12VAC5-610-1170 of the Virginia Sewage Handling and Disposal Regulations, which addresses cisterns, in cases where a cistern is used solely as a component of a rainwater harvesting system subject to the requirements of this chapter.

12VAC5-635-40. Relationship to the State Water Control Board.

This chapter addresses the standards for the collection and use of that portion of stormwater not regulated in accordance with 9VAC25-31, 9VAC25-32, 9VAC25-151, 9VAC25-840, 9VAC25-870, 9VAC25-880, and 9VAC25-890.

12VAC5-635-50. Relationship to the Uniform Statewide Building Code.

A. This chapter is independent of and in addition to the requirements of the USBC in accordance with § 36-98 of the Code of Virginia.

B. All persons required to obtain a rainwater harvesting system installation permit for a system for Tier 4 end use shall furnish a copy of the installation permit to the local building official when making application for a building permit.

C. The applicant for a rainwater harvesting system for Tier 4 end use shall furnish the local building official with a copy of the operating permit demonstrating the potable water supply has been inspected, sampled, and approved by the local health department.

12VAC5-635-60. Right of entry and inspections.

In accordance with § 32.1-25 of the Code of Virginia, the commissioner or a designee shall have the right to enter any property to ensure compliance with this chapter.

**Part II
Procedural Requirements**

12VAC5-635-70. End use tiers for rainwater harvesting systems.

The end use tier categorization of harvested rainwater is based on water quality, intended end uses, and associated potential for human contact through ingestion, inhalation, and skin contact. The examples of common-use applications are not intended to represent all possible applications. Where end use applications are not listed, or are subject to interpretation, the application shall be categorized based on the highest numbered applicable end use tier description. The end use tiers are as follows:

1. Tier 1. Low exposure end use: Nonpotable water use where humans will rarely come into contact with the treated

rainwater due to the nature of the installation that limits direct or indirect contact under normal operation. Examples include trap primers, restricted access spray irrigation, surface and subsurface irrigation, and ice rinks. In this context, restricted access spray irrigation means spray irrigation in fenced or remote locations where human visitation is controlled or prevented.

2. Tier 2. Medium exposure end use: Nonpotable water use where human contact with treated rainwater is indirect or limited. Examples include toilet and urinal flushing, clothes washing, HVAC evaporative cooling, and rooftop thermal cooling.

3. Tier 3. High exposure end use: Nonpotable water use where human contact with treated rainwater is direct. Examples include hose bibs, pressure washing, firefighting or protection and fire suppression, decorative fountains, vehicle washing, and nonrestricted spray irrigation.

4. Tier 4. Potable water end use: Intended for human consumption.

12VAC5-635-80. Reserved.

12VAC5-635-90. Permits for rainwater harvesting systems; general.

A. No person may install, alter, or rehabilitate or allow the installation, alteration, or rehabilitation of a rainwater harvesting system intended for Tier 4 end use without a written construction permit from the commissioner.

B. The commissioner may impose conditions on the issuance of a permit and no rainwater harvesting system intended for Tier 4 end use may be installed or modified in violation of those conditions.

C. Unless suspended or revoked pursuant to 12VAC5-635-190, construction permits for a rainwater harvesting system intended for Tier 4 end use shall be valid for a period of 36 months from the date of issuance.

D. An owner may install and operate a rainwater harvesting systems intended for Tier 1, 2, or 3 end use without a permit. The owner of a Tier 1, 2, or 3 end use rainwater harvesting system shall file a registration form with the department within 30 days of the following:

1. Installing a rainwater harvesting system;
2. Change of ownership of a rainwater harvesting system; or
3. Permanently closing a rainwater harvesting system.

12VAC5-635-100. Application procedures for a construction permit for a rainwater harvesting system for Tier 4 end use.

A. The owner of a proposed rainwater harvesting system shall sign and submit a written permit application to the local health department for the locality where the proposed rainwater

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harvesting system would be located, on an application form provided by the local health department, that contains the following information:

1. The property owner's name, address, and telephone number;
2. The applicant's name, address, and telephone number (if different from the property owner's);
3. A statement signed by the property owner or agent granting the department access to the site to conduct a sanitary survey if underground water storage is proposed and to inspect the rainwater harvesting system after it is installed; and
4. Plans for the proposed rainwater harvesting system, including specifications, design criteria, manufacturer's literature, a proposed schematic, a general layout of any underground water storage, formal plans for multiple service connection systems, the operation and maintenance manual required pursuant to 12VAC5-635-350, and other supporting information or data the local health department or commissioner may request.

C. If underground storage of harvested rainwater is proposed, a general layout shall be provided and shall include topography, elevations, contour lines, existing or proposed streets and all potential sources of contamination, bodies of water, ditches, buildings, springs, cisterns, and wells within 100 feet horizontally of the proposed storage units.

D. If the proposed rainwater harvesting system will provide Tier-4 end use water to multiple service connections, the applicant shall include a formal plan as follows:

1. The plan shall have a cover sheet with suitable title showing the name of the owner, date the plan was prepared, and the name of the licensed individual by or under whom the plans were prepared. The cover sheet and each subsequent page shall bear the same general title and each shall be numbered. Appropriate subtitles shall be included on individual sheets.
2. The plan shall be clear and legible and prepared to a scale that will permit necessary information to be plainly shown.
3. The plan shall consist of plan views, elevations, sections, and supplementary views that together with the specifications and general layouts provide the working information for the contract and construction of the proposed rainwater harvesting system, including dimensions and relative elevations of structures, the location and outline form of equipment, the location and size of piping, water levels, ground elevations, and erosion control abatement facilities.
4. The plan shall include the technical specifications for the construction of the rainwater harvesting system and all appurtenances. The specifications shall include all

construction information not shown on the drawings, which is necessary to inform the builder in detail of the design requirements as to the quality of material workmanship and fabrication of the project; the type, size, strength, operating characteristics, and rating of equipment and materials used in the construction and operation of the rainwater harvesting system; allowable infiltration, machinery, valves, piping, and jointing of pipe, electrical apparatus, wiring, and meters; operating tools and construction materials; miscellaneous appurtenances; chemicals when used; and instructions for testing materials and equipment as necessary to meet design standards and operating test for the complete works and component units.

E. An application shall be deemed complete upon receipt by the local health department of a signed and dated application on the approved application form.

12VAC5-635-110. Issuance of a construction permit.

The commissioner shall issue construction permit to the owner no later than 60 days after receipt of a complete application if:

1. According to the information on the application form, the proposed rainwater harvesting system is compliant with this chapter and other applicable laws, ordinances, and regulations; and
2. The owner has obtained the easements pursuant to this chapter and attached the documentation of the easement to the application.

12VAC5-635-120. Denial of a construction permit.

If the commissioner determines that the proposed rainwater harvesting system is inadequate, does not comply with this chapter, or that the installation and operation of the system would create an actual or potential health hazard or nuisance, the commissioner shall deny the construction permit application and notify the owner in writing no later than 60 days after receipt of the complete application with the basis for the denial. The notification shall also state that the owner has the right to appeal the denial in accordance with 12VAC5-635-190.

12VAC5-635-130. Revision of approved plans.

A. The rainwater harvesting system designer with the consent of the owner may make certain design changes to a proposed rainwater harvesting system for which a valid construction permit has been issued without prior approval from the department if:

1. The design change does not change the design flow, the proposed filtration means and standard, the proposed disinfection means and standard, or the log reduction targets;
2. The changed design for the rainwater harvesting system complies with applicable statutes, codes, and regulations;

3. The designer provides the department with complete documentation, including a list of changes and revised specifications, calculations, and drawings as part of a revised design package; and

4. The designer and owner ensure that design changes are communicated to the installer of the rainwater harvesting system.

B. The commissioner may suspend or revoke a construction permit if a design change made to the proposed rainwater harvesting system does not comply with this chapter. If the commissioner revokes the construction permit, the owner must submit a new application before continuing with the installation of the rainwater harvesting system.

C. The commissioner shall review changes made to the rainwater harvesting system before issuing an operation permit pursuant to 12VAC5-635-170.

12VAC5-635-140. Installation inspection and correction.

A. Upon completion of the installation, alteration, or rehabilitation of a rainwater harvesting system intended for Tier 4 end use:

1. The owner or agent shall submit to the local health department a statement signed by the installer certifying that the rainwater harvesting system was installed, altered, or rehabilitated in accordance with the construction permit and that the rainwater harvesting system complies with applicable state and local regulations, ordinances, and laws;

2. The designer shall thoroughly inspect the system installation to determine whether the installation was completed substantially in accordance with the approved evaluation and design, including any revisions made pursuant to 12VAC5-635-130; and

3. The designer shall submit to the local health department a signed inspection report stating that the installation was completed substantially in accordance with the approved evaluation and design revised only in accordance with the provisions of 12VAC5-635-130.

B. If the designer observes deficiencies during the inspection, the designer shall note the deficiencies in the designer's inspection report and include with the report a plan of correction that includes the specific corrective actions that will be taken to bring the rainwater harvesting system into compliance with this chapter, the date on which the corrective actions are to be completed, and the date on which the designer will perform a follow-up inspection of the corrected rainwater harvesting system.

C. After the follow-up inspection, the designer shall submit a signed inspection report to the local health department stating whether the corrective actions have been taken and whether the rainwater harvesting system is at that time installed in compliance with the approved evaluation and design.

D. If the owner does not ensure completion of the corrective actions or the rainwater harvesting system is otherwise not able to operate in compliance with this chapter, the commissioner shall not issue an operation permit and may suspend or revoke the construction permit pursuant to 12VAC5-635-190.

12VAC5-635-150. Requirement for an easement.

A. If a rainwater harvesting system or a portion of the rainwater harvesting system is proposed to be installed on property other than the owner's, the owner must obtain an easement in perpetuity of sufficient area to permit access to install, maintain, and operate the rainwater harvesting system components from the appropriate property owner and record the easement with the clerk of the circuit court before issuance of a construction permit.

B. The owner shall submit legal documentation of recordation of the easement or a signed statement that the easement will be recorded within 45 days to the appropriate local health department with the application for a construction permit.

C. If the owner does not obtain, properly record, and submit documentation of the easement, the owner may not install or operate the rainwater harvesting system on the property for which the easement was denied.

12VAC5-635-160. Land records.

A. Before the commissioner may issue an operation permit for a rainwater harvesting system for Tier 4 end use, the owner must:

1. Record an instrument describing applicable annual water quality testing and maintenance requirements for each component of the rainwater harvesting system in the land records of the circuit court having jurisdiction over the site of the rainwater harvesting system; and

2. Submit to the local health department legal documentation indicating that the instrument has been duly recorded in the land records.

B. The instrument recorded pursuant to this section shall be transferred with the title to the property upon the sale or other transfer of the property in which the rainwater harvesting system is located.

12VAC5-635-170. Issuance of operation permit.

A. No rainwater harvesting system intended for Tier 4 end use may be operated, except for the purposes of testing the system, until the commissioner has issued an operation permit to the owner.

B. If the owner has complied with the requirements of 12VAC5-635-140, 12VAC5-635-160, and this section, the commissioner shall issue to the owner a permit to operate the rainwater harvesting system intended for Tier 4 end use.

C. The issuance of an operation permit does not denote or imply a warranty or guarantee by the department that the

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rainwater harvesting system will function for any specified period of time. The owner shall maintain, repair, or replace a rainwater harvesting system that ceases to operate as defined in the operation permit and operation and maintenance manual.

12VAC5-635-180. Variances.

A. In accordance with § 32.1-12 of the Code of Virginia and this chapter, the commissioner may grant a variance to a requirement of this chapter. A variance is a conditional waiver of a specific requirement that is granted to a specific owner relating to a specific situation or facility and may be for a specified time period.

B. The commissioner may grant a variance if an investigation reveals that, in the opinion of the commissioner, a hardship imposed by a requirement within this chapter, including economic, outweighs the benefits that may be received by the public and that granting the a variance does not subject the public to unreasonable health risks or environmental pollution.

C. The owner shall submit a signed, written application for a variance to the appropriate local health department. The application shall include:

1. A citation to the section to which a variance is requested;
2. The nature and duration of the variance requested;
3. Any relevant analytical results including results of relevant tests conducted pursuant to the requirements of this chapter;
4. The specific hardship created by the requirement to which a variance is requested;
5. Statements or evidence that establishes that the public health or welfare and the environment would not be adversely affected if the variance were granted;
6. Suggested conditions that might be imposed on the granting of a variance that would limit the detrimental impact on the public health and welfare;
7. Other information believed pertinent by the applicant; and
8. Other information the local health department or commissioner may require.

D. In the evaluation of a variance application, the commissioner shall consider:

1. The effect that the variance would have on the construction, location, or operation of the rainwater harvesting system;
2. The cost and other economic considerations imposed by the requirement to which the variance is sought;
3. The effect that such a variance would have on protection of the public health or welfare and the environment;

4. Relevant analytical results including results of relevant tests conducted pursuant to the requirements of this chapter; and

5. Information or materials on the application for a variance submitted per this section.

E. The commissioner shall not recognize as a hardship the cost to correct an error created by a design change initiated by the owner or designer for which approval by the department was required pursuant to 12VAC5-635-130 but was not obtained.

F. If the commissioner proposes to deny a variance request submitted pursuant to this section, the commissioner shall notify the owner of the proposed denial within 60 calendar days of receipt of the variance request and provide an opportunity for an informal fact-finding conference as provided in § 2.2-4019 of the Code of Virginia. Following this opportunity for an informal fact-finding conference the commissioner may deny an application for a variance by sending a written denial notice to the owner that states the reasons for the denial.

G. If the commissioner proposes to grant a variance request submitted pursuant to this section, the commissioner shall notify the owner in writing of the decision within 60 calendar days of receipt of the variance request. The notice shall identify the requirement to which the variance is granted, the rainwater harvesting system covered, the period of time for which the variance will be effective, and the conditions imposed pursuant to issuing the variance.

H. The owner shall attach a physical copy of the variance to the permit.

I. Unless otherwise stated in the terms or conditions of the variance, the variance shall be transferred with the permit if the owner of a rainwater harvesting system sells or otherwise transfers ownership of the rainwater harvesting system to a new owner.

J. If a permit is revoked or suspended, variances attached to it shall also be revoked or suspended.

12VAC5-635-190. Enforcements, notices, informal conferences, appeals.

A. Rainwater harvesting systems shall be installed, operated, and maintained in compliance with the requirements as set forth in this chapter. The commissioner may enforce this chapter through the means lawfully available pursuant to Title 32.1 of the Code of Virginia, and nothing in this chapter shall be construed as preventing the commissioner from making efforts to obtain compliance through warning, conference, or other appropriate enforcement means.

B. The commissioner may deny a permit application or suspend or revoke a permit issued pursuant to this chapter if:

1. The permit holder fails to comply with this chapter, applicable law, or a condition imposed on the permit; or

2. The commissioner is made aware that:

a. The facts upon which the approval of a construction permit was based were knowingly and willfully misrepresented; or

b. The installation or operation of the proposed rainwater harvesting system could create a substantial or imminent public health or environmental hazard.

C. The commissioner shall notify the owner of a notice of suspension in writing via certified mail or via hand delivery. Immediately upon receipt of a notice of suspension, the owner shall cease operation of the rainwater harvesting system.

D. The owner of a permitted rainwater harvesting system shall ensure the continuity of water supply to persons who use the rainwater harvesting system's treated water for human consumption. If the owner demonstrates to the satisfaction of the commissioner that ceasing the operation of a permitted rainwater harvesting system would endanger the health of the persons who use the rainwater harvesting system's finished water, the commissioner may issue a variance to the requirement to cease operation pursuant to 12VAC5-635-180.

E. Within 10 days of receipt of a notice of denial of an application or suspension of a permit, the owner may request an informal conference in accordance with § 2.2-4019 of the Code of Virginia. The owner must file the request for an informal conference in writing with the local health department within the locality that the rainwater harvesting system is located. If a request for an informal conference is not filed within 10 working days, the denial or suspension is sustained.

F. Within 10 days of receipt of a notice of denial, suspension, or intent to revoke, the owner shall submit to the appropriate local health department a plan of correction that includes:

1. The specific corrective actions that will be taken to address the reasons for denial, suspension, or revocation and bring the rainwater harvesting system into compliance with this chapter and other applicable requirements;

2. The date on which the corrective actions are expected to be completed; and

3. If the rainwater harvesting system is in operation, an application for a construction permit for alteration, repair, or rehabilitation of the rainwater harvesting system pursuant to 12VAC5-635-100.

G. Within 10 days of the receipt of the plan of correction, the department shall:

1. Notify the owner in writing if any item is determined to be unacceptable; and

2. Act on an application for a construction permit to perform repairs pursuant to this section.

H. If the owner does not submit a plan of correction or request an informal conference within 10 working days, the department shall notify the owner in writing that the application for a permit is denied or that the permit is deemed suspended or revoked.

I. The department shall arrange for an informal conference to be held within seven working days of receipt of a request for an informal conference pursuant to this section.

J. The commissioner may end a suspension and reinstate a permit at any time if the conditions under which the permit was suspended have changed or no longer exist.

K. The owner must reapply for a permit in order to continue installing or operating a rainwater harvesting system for which the permit has been revoked.

L. A plan of correction implemented pursuant to this section shall be attached to the operation permit for the rainwater harvesting system.

Part III

Design and Installation

12VAC5-635-200. Cross connection abatement.

A. "Cross connection" means a physical connection or arrangement between two otherwise separate piping systems whereby there exists the possibility for flow from one system to the other, with the direction of flow depending on the pressure differential between the two systems.

B. No rainwater harvesting system may be installed, operated, or allowed on any premises where cross connection to a waterworks or a private well exists, unless the cross connections are abated or controlled by means including cross connection control and backflow prevention in accordance with the USBC. Where cross connection to a waterworks exists, the cross connection shall be abated or controlled to the satisfaction of the waterworks.

12VAC5-635-210. Backflow prevention.

A. "Backflow" means (i) the flow of water, other liquids, mixtures, or substances into the distribution system of a pure water system from one or more sources other than its intended source; or (ii) the reversal of the normal direction of flow.

B. A rainwater harvesting system shall be designed, installed, and maintained to prevent contamination of secondary water supplies by backflow. Backflow prevention shall be achieved by one or more of the following:

1. Backflow elimination methods, including air gap separation or physical disconnection;

2. Backflow prevention assemblies, including the reduced pressure principle, double check valve, and pressure vacuum breaker assemblies; or

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3. If backflow prevention is not generally required to withstand continuous pressure over 12 hours or to control high hazards, a backflow prevention device, including atmospheric type vacuum breakers and dual check valve devices.

C. Backflow prevention assemblies and backflow prevention devices shall be suitable to the application and shall conform to the USBC.

12VAC5-635-220. Water storage unit location.

A. An underground water storage unit for a rainwater harvesting system shall be sited with appropriate consideration given to distance from potential contamination sources, vulnerability to known or suspected natural risks (e.g., flooding and sink holes), potential for interference with utilities, and safety.

B. If the rainwater harvesting system will include an underground installation of a water storage unit, the designer shall conduct a sanitary survey, including investigation of obvious sources of toxic or dangerous substances within 200 feet of the water storage unit. Sources of contamination may include items listed in Table 1. The minimum separation distance between an underground water storage unit and sources of contamination shall comply with the minimum distances shown in Table 1.

<u>Potential Source of Contamination</u>	<u>Separation Distance (feet)</u>
<u>Active or permitted septic tank, holding tank, pump tank, aerobic unit, house sewer line, sewer line, sewer main, sewerage system</u>	<u>50</u>
<u>Active or permitted drainfield, including reserve drainfield</u>	<u>50</u>
<u>Permanently abandoned onsite sewage disposal system</u>	<u>35</u>
<u>Petroleum storage tank, drum, tote, or other container (underground)</u>	<u>100</u>
<u>Petroleum storage tank, drum, tote, or other container (aboveground)</u>	<u>50</u>

C. An aboveground water storage unit shall be installed on a sturdy and level foundation or platform with adequate drainage capable of bearing the weight of the unit at capacity. If multiple storage units are connected, compliant fittings must be used and installed in a manner that provides adequate flexibility to allow for unit settlement or movement.

D. A water storage unit and associated pipes and pipe fittings and appurtenances to be installed in locations subject to direct sunlight shall be constructed of materials stable under ultraviolet light exposure anticipated over the life of the system.

E. A water storage unit shall be supported and restrained to prevent lateral movement. Support and restraint devices may not be placed in a manner that will obstruct access for cleaning and maintenance.

F. A water storage unit subject to a shallow water table shall be ballasted or otherwise secured to prevent floatation or lateral movement. The unit shall be designed to withstand structural stresses of hydrostatic pressure and buoyancy. If partially buried, design shall include provision to withstand the weight of backfill.

G. A water storage unit subject to vehicular traffic shall be installed in accordance with manufacturer's installation instructions and the USBC.

H. A water storage unit shall have at least one access opening to allow inspection and cleaning of the unit interior. The access opening shall be located to facilitate pumping and servicing of inlets and outlets. The access opening shall be locked or otherwise secured to prevent unauthorized access and shall be located at a finished grade such that surface water ponding does not occur under annual precipitation extreme conditions.

I. A water storage unit shall be fitted with an overflow discharge system with the following requirements:

1. Overflow is not less than the capacity of the inlets;
2. Unit overflow pipes are protected from insects and vermin;
3. Piping associated with unit overflow discharge water away from the unit and in accordance with the USBC;
4. Discharge of unit overflow is directed to prevent hazardous conditions;
5. No shutoff valves are incorporated into discharge piping;
6. Cleanouts are provided on overflow piping in accordance with the USBC;
7. If connected to storm drainage systems, the storm drainage systems have a means to prevent backflow; and
8. Overflows are not directed to onsite sewage systems or sanitary sewers.

J. A water storage unit shall be fitted with a vent pipe having a minimum 38.1 mm diameter protected with 1.5 mm mesh to prevent the entry of vermin and particulates.

12VAC5-635-230. Materials and equipment.

A. Materials and equipment used in rainwater harvesting systems shall be labeled to demonstrate compliance with applicable NSF 61 and NSF P151 standards, as appropriate.

B. Collection surfaces shall comply with the following requirements:

1. Collection roofing are composed of non-toxic materials;
2. Paint used on surfaces used for collection of rainwater for potable purposes is labeled to be certified to NSF/ANSI/CAN Standard 61-2020 or P151 and applied per the manufacturer's installation instructions;
3. Lead-based, chromium-based, or zinc-based paints are not used;
4. Galvanized metal is not used;
5. Flat roof products are labeled as meeting NSF Protocol P151;
6. Equipment and appliances mounted on collection surfaces have a means of preventing the introduction of contaminants into the rainwater harvesting system;
7. Equipment and appliances containing toxic fluids or other potentially harmful substances are not installed on collection surfaces or in locations where a release of contained substances will flow by gravity to collection surfaces; and
8. Materials used for collection surfaces conform to end use tier criteria pursuant to Table 2.

<u>TABLE 2.</u> <u>Collection Surface Materials</u>	
<u>Roofing Material (including flashing)</u>	<u>Acceptable for End Use Tier</u>
<u>Asbestos cement</u>	<u>Not acceptable for any end use</u>
<u>Asphalt</u>	<u>1, 2, 3, 4</u>
<u>Asphalt felt and bituminous and tar membranes</u>	<u>1, 2, 3</u>
<u>Ceramic</u>	<u>1, 2, 3, 4</u>
<u>Clay</u>	<u>1, 2, 3, 4</u>
<u>Concrete</u>	<u>1, 2, 3, 4</u>
<u>Copper</u>	<u>1, 2, 3</u>
<u>Fiberglass</u>	<u>1, 2, 3, 4</u>

<u>Glass</u>	<u>1, 2, 3, 4</u>
<u>Polyethylene membrane</u>	<u>1, 2, 3, 4</u>
<u>Polymer and acrylic</u>	<u>1, 2, 3</u>
<u>Rubber/Butyl/EPDM membrane</u>	<u>1, 2, 3</u>
<u>Steel, coated</u>	<u>1, 2, 3, 4</u>
<u>Steel, stainless</u>	<u>1, 2, 3, 4</u>
<u>Tin</u>	<u>1, 2, 3, 4</u>
<u>Wood, untreated</u>	<u>1, 2, 3</u>
<u>Wood, treated</u>	<u>1, 2, 3</u>
<u>PVC</u>	<u>1, 2, 3, 4</u>
<u>TPO</u>	<u>1, 2, 3</u>
<u>Public pedestrian accessible roofs</u>	<u>1, 2, 3</u>
<u>Vegetated roofs</u>	<u>1, 2, 3</u>
<u>Pedestrian and parking surfaces (rooftop)</u>	<u>1, 2, 3</u>

C. The conveyance system shall be protected to prevent the entrance of vermin. Inlets, debris excluders, filters, first-flush diverters, cleanouts, and conveyance system components requiring service shall be accessible. To convey captured rainwater, rainwater harvesting systems shall use drainage piping suitable for use with plumbing drainage or pressure systems. Conveyance system materials shall be labeled to demonstrate compliance with NSF/ANSI/CAN Standard 61-2020.

D. A cistern or water storage unit, liners, coatings, pipes, pipe fittings, and appurtenances shall be labeled to demonstrate compliance with the applicable requirements of NSF 61/ANSI/CAN Standard 61-2020 and NSF 372. The water storage unit shall be manufactured from previously unused materials, and no cistern or storage unit previously used to store anything other than water may be incorporated into a rainwater harvesting system. The water storage unit may be installed either above or below grade and provided a means for emptying and cleaning. If gravity drainage is not possible, a provision for pumping water from the unit shall be provided.

E. Water contained in an aboveground water storage unit shall be protected from direct sunlight through the use of opaque, ultraviolet-resistant materials or a sun barrier.

F. An underground water storage unit shall be installed in compliance with U.S. Occupational Safety and Health

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Administration Standard 1926 Subpart P and shall be provided with manhole risers a minimum of six inches above surrounding grade.

G. Pump and pump components shall be capable of delivering a minimum of 15 pounds per square inch in gauge residual pressure at the highest and most remote outlet served. Maximum pressure should not exceed 80 pounds per square inch in gauge.

H. Water piping, fittings, and related system components shall be appropriate for use in accordance with the USBC. Where plastic piping is exposed to sunlight, it shall be protected by a factory applied protective coating or painted with compatible latex paint.

12VAC5-635-240. Design and installation.

A. The rainwater harvesting system shall be designed, installed, operated, and maintained to prevent contamination of water supplies and distribution piping.

B. Rainwater harvesting system components shall be protected from external contamination and entry by insects and vermin.

C. The rainwater harvesting system shall be sited and designed to produce and store water under local site conditions that include:

1. Excessive heat;
2. Freezing;
3. Flooding; and
4. Sunlight exposure.

D. The owner shall control access to rainwater harvesting system components to minimize unauthorized access.

E. Gutters, downspouts, and conveyance systems leading to the water storage unit shall be fitted with a screen or debris excluder to prevent the accumulation of leaves, needles, or other debris into the water storage tank or cistern.

F. Vegetation above roofs and gutters shall be removed to reduce organic matter falling on and decomposing in rainwater collection surfaces and conveyances, and to reduce or remove locations for animals to introduce contaminants.

G Rainwater shall pass through a prefiltration system prior to entering the water storage unit or cistern. Appropriate prefiltration devices include a gutter screen, inline filters, and vortex filters to reduce organic matter, debris, and particulates from entering and accumulating in the bottom of the unit or cistern. Prefiltration devices without a self-cleaning design shall incorporate a corrosion resistant debris screen having openings no larger than 0.15 cm.

H. A first flush device shall be used to remove accumulated debris from the collection surface before rainwater is introduced to the water storage unit. First flush diverters shall:

1. Be placed after prefiltration;
2. Operate automatically and not rely on mechanically operated valves or devices;
3. Discharge diverted rainwater in a manner consistent with local stormwater runoff requirements so as not to cause damage to a property or erosion; and
4. Be readily accessible for maintenance.

I. Inlets and outlets on the water storage unit shall be installed and supported in accordance with the manufacturer's instructions. Water storage units, including units used in series, shall each be fitted as follows:

1. Rainwater inlets to a water storage unit shall be arranged to minimize turbulent flow by means of a calming device such as a return bend elbow pointed upward at least 10 cm above the bottom of the tank.
2. Outlets shall be positioned, and floating collared offtakes shall be used below the top water level in the unit to draw water from the cleanest strata of the unit.
3. Overflow outlets or flap valves shall be protected with a screen having openings no greater than 1.5 mm to prevent entrance of insects or vermin into the unit.
4. The vent shall be minimum 38.1 mm diameter and be protected with mesh having openings no greater than 1.5 mm to prevent entrance of vermin and particulates.
5. Rainwater outlets and pump suction shall be located at least 100 mm above the bottom of the unit. If a floating pump is used, it shall draw water from below the water surface.
6. Pipe penetrations through unit walls shall be watertight and shall comply with the USBC. Pipe penetrations shall not prevent access to the unit for inspection or cleaning.

J. A rainwater harvesting system shall be equipped with filtration systems conforming to the standards specified in 12VAC5-635-250 and 12VAC5-635-340 and shall:

1. Be installed in accordance with the USBC;
2. Be accessible for inspection and maintenance;
3. Provide indication when servicing or replacement is due; and
4. Incorporate shutoff valves immediately upstream and downstream to allow for isolation during maintenance.

K. A rainwater harvesting system shall be equipped with disinfection systems that:

1. Conform with the standards specified in 12VAC5-635-260 and 12VAC5-635-340; and
2. Are designed and installed in accordance with the manufacturer's instructions and the USBC.

L. A rainwater harvesting system for Tier 3 and Tier 4 end use shall be equipped with a fail-safe system for disinfection systems, with alerts and alarms as follows:

1. Alerts shall be provided for critical control points identified in the operation and maintenance manual to indicate when the rainwater harvesting system is operating outside design parameters but not causing a hazard to health or safety or damage to system components.

2. Alerts shall have a visible output and may have an audible output.

3. Alarms shall be provided for critical control points identified in the operation and maintenance manual to indicate when the rainwater harvesting system is operating outside the design parameters and potentially causing a hazard to health or safety or damage to system components.

4. Alarms shall have visible and audible outputs.

5. A remote alarm of an alert system using electronic communication shall be used to notify the operator that the system has failed or that failure is imminent.

M. Separation shall be maintained between potable and nonpotable distribution systems by means of color coded and labeled piping and cross connection control in accordance with the USBC.

N. Controls for rainwater harvesting systems supplying water for fire sprinkler systems or standpipes shall comply with the Virginia Statewide Fire Prevention Code Act (§ 27-94 et seq. of the Code of Virginia).

O. If a rainwater harvesting system is applied to any building, facility, or residence, it shall be so indicated as follows:

1. Fixtures not specifically treated for potable water use shall be labeled for nonpotable use in accordance with the USBC.

2. Fixtures not subject to the USBC and not specifically treated for potable water use shall be prominently labeled "CAUTION: NONPOTABLE WATER – DO NOT DRINK" and "ATENCIÓN: AGUA NO-POTABLE – NO BEBER." Labels shall be indelibly printed on a tag or sign constructed of a corrosion resistant, waterproof material permanently mounted in a visible location. The letters of the labels and markings shall be at least 0.5 inches in height and shall be of a color that contrasts with the background on which they are printed. In addition to the required words, a pictograph consistent with the following shall appear in the tag or sign:



12VAC5-635-250. Filtration.

A. The owner shall ensure that harvested rainwater for Tier 2, Tier 3, and Tier 4 end uses is filtered.

B. Filtration is not required for Tier 2 end use water used outdoors.

C. If ultraviolet disinfection is used, particulate filtration systems shall be located downstream of the water storage tank and upstream of the ultraviolet system.

D. If ozone or chemical based disinfection is used, particulate filtration systems shall be installed downstream of the disinfection equipment. Filtration shall be installed as required for the disinfection system and in accordance with manufacturer's installation requirements.

E. Filters shall be sized to extend service time and shall be labeled to demonstrate compliance with NSF 42 for the reduction of taste or odor or shall be labeled to demonstrate compliance with NSF 53 for organic and cyst removal based on the end use tier.

12VAC5-635-260. Disinfection.

A. The owner shall ensure that harvested rainwater intended for Tier 2, 3, or 4 end use is disinfected and that water meeting the quality standards in 12VAC5-635-310 is delivered to the point of use.

B. The owner shall ensure that disinfection systems are designed and installed in accordance with the manufacturer's instructions and the USBC.

C. If a rainwater harvesting system requires a disinfection system pursuant to this section, the owner shall use one of the following acceptable methods:

1. An ultraviolet (UV) disinfection system that (i) treats water for distribution downstream of the water storage unit and upstream of the point of use; (ii) is sized based on the required dose, taking into consideration the design flow and minimum UV transmittance required to achieve the end use tier standard; and (iii) for Tier 4 end use, is labeled to be certified to Class A of NSF 55;

2. An ozone disinfection system that maintains adequate contact time based on end use tier and off-gasses to a safe environment; or

3. A chemical system that:

a. Has means to measure and control the disinfection and oxidation levels to achieve the performance requirements in 12VAC5-635-310;

b. Uses chemical feed pumps that are controlled to prevent operation unless there is flow through the system;

c. Is labeled to be certified to provide the required log reductions for protozoa and bacteria pursuant to NSF 53 or is labeled to be certified to provide the required log

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reductions for protozoa and bacteria pursuant NSF/ANSI 419-2018;

d. Uses chemicals that are labeled to demonstrate compliance with NSF/ANSI/CAN Standard 60-2020 if water is provided for Tier 4 end use; and

e. Maintains a chlorine residual of at least 0.5 mg/L and control disinfection byproducts if untreated harvested rainwater is stored at temperatures higher than 77°F and chlorine disinfection is used.

D. A rainwater harvesting system for end use in a single-family home shall only use ultraviolet or ozone disinfection methods.

E. The department may approve other disinfection methods on a case-by-case basis.

12VAC5-635-270. General certification.

A. Premanufactured treatment systems and equipment and materials used to assemble treatment systems that are not premanufactured shall be labeled to demonstrate that the systems, equipment, and materials comply with NSF standards, as follows:

1. NSF/ANSI 53-2020 for point-of-entry or point-of-use filtration systems;
2. NSF/ANSI 55-2020 for ultraviolet disinfection systems;
3. NSF/ANSI/CAN 60-2020 for water treatment chemicals;
4. NSF/ANSI/CAN 61-2020 for protective barrier materials, joining and sealing materials, mechanical devices, plumbing devices, pipes, hoses, pipe fittings, process media, and nonmetallic potable water materials; and
5. NSF/ANSI 350-2020 and NSF/ANSI/CAN 350.1-2017 for material, design, construction, and performance requirements for reuse water.

B. Harvested rainwater is not reuse water. However, NSF/ANSI 350-2020 and NSF/ANSI/CAN 350.1-2017 establish baseline standards suitable for equipment and materials used in the design, installation, and operation of rainwater harvesting systems.

C. A person providing design, installation, or inspection of rainwater harvesting systems shall be certified by the American Society of Sanitary Engineering (ASSE) as follows:

1. Rainwater Harvesting System Designers shall maintain ASSE 21120 Rainwater Catchment Systems Designer certification.
2. Rainwater Harvesting System Installers shall maintain ASSE 21110 Rainwater Catchment Systems Installer certification.
3. Rainwater Harvesting System Inspectors shall maintain ASSE 21130 Rainwater and Stormwater Catchment Systems Inspector certification.

12VAC5-635-280. Temporary removal from service.

If a rainwater harvesting system is seasonally or temporarily removed from service, the owner or operator shall:

1. Lock out or disable piping connected to a waterworks;
2. Secure water storage units from unauthorized access;
3. Divert inlet piping as necessary; and
4. Disconnect electrical power.

Part VI

Performance Requirements

12VAC5-635-290. Performance requirements; general.

A. The owner shall ensure that a rainwater harvesting system operates in compliance with the following performance requirements:

1. For a rainwater harvesting system designed to supply water for Tier 2, 3, or 4 end use, the owner or operator shall conduct treatment using a combination of filtration and disinfection technologies to the minimum standards described in 12VAC5-635-310.

2. If a rainwater harvesting system provides water for multiple end uses and treatment is not separated by end use, the highest treatment standard shall apply for all uses.

3. If a rainwater harvesting system provides water for multiple end uses and treatment is separated by end use, connection to distribution for each end use shall comply with the USBC.

4. The designer of water treatment systems shall consider the anticipated harvested rainwater characteristics and flow, including consideration of extremes of precipitation patterns. Excess precipitation not captured for storage shall be discharged as runoff. Insufficient precipitation that does not allow a rainwater harvesting system permitted for Tier 2, 3, or 4 end use to maintain sufficient storage shall be managed as described in 12VAC5-635-300.

5. The designer of a rainwater harvesting system shall allow for the prevention of potentially harmful precipitation, such as that which could incorporate particulates from fires, from being captured and contained in the system.

6. The designer of a rainwater harvesting system shall incorporate components of sufficient structural integrity to minimize the potential of physical harm to humans and animals.

B. The designer shall size the system in recognition of both the available collection area and number of users of the harvested rainwater. A rainwater harvesting system designed to supply water for Tier 4 end use for a residence shall be capable of providing 150 gallons per bedroom per day. If Tier 4 end use will not include residential use, the designer shall provide calculations supporting the anticipated demand.

12VAC5-635-300. Continuity of water supply.

A. "Continuity of water supply" means that a continuous supply of water can be provided to a distribution system supplied by a rainwater harvesting system in the event of insufficient precipitation or other circumstances affecting the supply of harvested rainwater.

B. If a rainwater harvesting system serves as a secondary supply for a distribution system and the primary supply is a waterworks, the rainwater harvesting system shall be an auxiliary water system pursuant to the requirements of the USBC and 12VAC5-590.

C. If a rainwater harvesting system serves as a primary supply for a distribution system for a Tier 2, 3, or 4 end use, the owner shall provide a secondary water supply by a waterworks, a Class III private well, or commercially hauled water meeting pure water standards.

D. The owner shall supply a secondary water supply from a waterworks or private well by a means to refill the water storage unit or a bypass that provides water directly to the distribution system.

E. The owner may only use commercially hauled water to refill a water storage unit prior to filtration and treatment.

F. When water from a secondary water supply is added to a water storage unit, the owner shall ensure that the water is introduced through a reverse pressure principle backflow device or an air gap pursuant to the USBC.

12VAC5-635-310. Water quality standards.

A. The owner shall perform initial water quality testing before the use of water from the rainwater harvesting system and subsequent water quality sampling and testing consistent with the schedule in 12VAC5-635-320 and in accordance with the operation and maintenance manual requirements of this chapter.

B. The owner shall:

1. Flush the system at least once with treated harvested rainwater before water quality testing and discharge the flush water as wastewater;
2. Collect samples for water quality testing from a point-of-use outlet intended for regular use, such as a kitchen sink;
3. Collect first draw samples of one liter for lead testing;
4. Ensure that water quality samples are analyzed by a laboratory certified by the Division of Consolidated Laboratory Services for drinking water samples; and
5. Ensure that the water is tested in accordance with the minimum performance criteria in Tables 3 and 4 and, at minimum, for total coliform or E. coli present, total nitrate and nitrite content, protozoan cysts, cryptosporidium, pH, and lead content.

Application				Log Reduction Target			
End Use Tier	Category	Potential for Human Contact	Example Use	Viruses	Bacteria	Protozoa	pH
1	Nonpotable	Low	Trap primers Spray irrigation (restricted access) Surface and subsurface irrigation Ice rinks	0*	0	0	na
2	Nonpotable	Medium	Toilet and urinal flushing Clothes washing HVAC evaporative cooling Rooftop thermal cooling	0*	2 log	2 log	na

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<u>3</u>	<u>Nonpotable</u>	<u>High</u>	<u>Hose bibs</u> <u>Pressure washing</u> <u>Decorative fountains</u> <u>Vehicle washing</u> <u>Spray irrigation (nonrestricted access)</u> <u>Firefighting or protection and fire suppression</u>	<u>0*</u>	<u>3 log</u>	<u>3 log</u>	<u>na</u>
<u>4</u>	<u>Potable</u>	<u>High</u>	<u>Human consumption</u>	<u>0*</u>	<u>6 log</u>	<u>6 log</u>	<u>7-10.5</u>

* It is unlikely that human infectious viruses are present in harvested rainwater. However, if underground water storage tanks are used where there is a potential for sewage contamination or surface water infiltration, a 4-log reduction for viruses shall be required.

<u>TABLE 4</u> <u>Requirements for Tier 4 Potable Water</u>	
<u>Design Standards</u>	
<u>Filtration</u>	<u>5 µm</u>
<u>Disinfection</u>	<u>40 mi/cm² and labeled certified to Class A of NSF/ANSI 55</u>
<u>Water Quality Parameters</u>	
<u>Turbidity</u>	<u><0.3 NTU</u>
<u>Lead</u>	<u><15 µg/L</u>
<u>Nitrates</u>	<u><10 µg/L</u>

C. Before the commissioner issues an operation permit for a rainwater harvesting system intended for Tier 4 use, the owner must document that the treated harvested rainwater has been tested and meets primary and secondary U.S. Environmental Protection Agency drinking water standards. If a primary drinking water standard is exceeded, the owner may provide additional treatment to address the exceedance and shall resample the treated harvest rainwater to ensure compliance with the primary drinking water standard.

D. The owner shall conduct water quality sampling and monitoring in accordance with the procedures approved under 40 CFR Part 136 or alternative methods approved by the department, unless other procedures have been specified in this chapter.

E. The designer shall identify the rainwater harvesting system's water quality sampling points, which shall be downstream of the treatment steps and upstream of the point of use. If total residual chlorine is used to measure compliance in a system using chlorine disinfection, the sampling point must

be downstream of the chlorine contact tank. If ultraviolet (UV) disinfection is used, the owner may not use water samples collected upstream of UV disinfection units for dosage adjustment for the purposes of water quality testing pursuant to this section.

Part V Operation and Maintenance Requirements

12VAC5-635-320. Operator requirements; frequency of inspection.

A. The owner of a rainwater harvesting system shall ensure that the rainwater harvesting system is inspected by an operator in accordance with Table 5.

<u>TABLE 5</u> <u>Minimum operator visit frequency for rainwater harvesting systems</u>		
<u>End Use Tier</u>	<u>Initial Inspection</u>	<u>Regular Inspection Schedule</u>
<u>1</u>	<u>Prior to the system entering service</u>	<u>As needed</u>
<u>2, 3</u>	<u>Prior to the system entering service</u>	<u>Every 12 months while structure is occupied. If system only provides water for outdoor use, then as needed</u>

4 (single service connection)	<u>Condition of issuance of operation permit</u>	<u>Every 180 days while structure is occupied*</u>
4 (multiple service connections)	<u>Condition of issuance of operation permit</u>	<u>Every 90 days while any connection serves an occupied structure*</u>
*If a structure is vacant longer than the regular inspection cycle in Table 5, an operator shall inspect the rainwater harvesting system prior to the structure becoming reoccupied.		

B. The operator shall collect water quality samples from a rainwater harvesting system pursuant to 12VAC5-635-300 during the initial and regular inspections by the operator.

12VAC5-635-330. Operation and maintenance; operator's responsibility.

A. The operator of the rainwater harvesting system shall be certified as a designer, installer, or inspector pursuant to 12VAC5-635-270 C. Nothing in this chapter shall preclude the owner from being an operator if they are appropriately certified.

B. When the operator performs an inspection of the rainwater harvesting system, the operator shall perform the assessments required by this chapter through visual or other observations and through laboratory or other tests as required and may use additional observation methods or tests that the operator deems appropriate.

C. The operator shall maintain a written operational record for each rainwater harvesting system for which the operator is responsible that contains, at minimum, the following items:

1. Results of testing and sampling;
2. Information regarding reportable incidents, including the corrective action required and taken;
3. Maintenance, corrective actions, and repair activities that are performed for purposes other than a reportable incident; and
4. Recommendations for repair and replacement of system components.

D. If the owner of a rainwater harvesting system is not the operator, the operator shall provide an updated copy of the written operational record to the owner each time it is updated and shall document the dates the copies are given to the owner in the written operational record. The operator shall also make an accurate, up-to-date copy of the written operational record available to the department upon request.

E. When performing activities pursuant to an inspection required by this chapter, the operator is responsible for the entire rainwater harvesting system, including treatment components, collection area components, and associated piping.

F. The operator shall follow the procedures and instructions provided in the approved operation and maintenance manual for the rainwater harvesting system.

12VAC5-635-340. Operation and maintenance; owner's responsibilities.

The owner shall:

1. Ensure the rainwater harvesting system is operated and maintained by a qualified operator;
2. Ensure that the operator performs the required duties;
3. Maintain a copy of the written operational record provided by the operator on the property where the rainwater harvesting system is located, make the written operational record available to the department upon request, and make a reasonable effort to transfer the written operational record to the subsequent owner;
4. Follow the approved operation and maintenance manual and keep a copy of the operation and maintenance manual for the rainwater harvesting system on the property where the system is located, make the operation and maintenance manual available to the department upon request, and make a reasonable effort to transfer the operation and maintenance manual to the subsequent owner;
5. Comply with applicable rainwater harvesting system requirements contained in this chapter; and
6. If applicable, inform users of the system of reportable incidents.

12VAC5-635-350. Operation and maintenance manual.

A. The owner and operator shall maintain and operate a rainwater harvesting system in accordance with the approved operation and maintenance manual.

B. The manual shall be easily understandable to the owner and operator and include, at minimum, the following items:

1. Basic identifying information for the rainwater harvesting system, including the location and intended end use;
2. Basic information regarding the rainwater harvesting system design, including treatment unit capacity, a list of components in the system, a schematic of the system, sampling locations, and contact information for replacement parts for each unit;
3. A list of control functions and how to use them;
4. Operation, maintenance, sampling, inspection, and reporting schedules for the rainwater harvesting system;

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5. The design limits of the rainwater harvesting system design and how to operate the system within those design limits;
6. Technical information, including:
- a. Catchment area dimensions;
 - b. Roofing materials and sealants;
 - c. Vertical conveyance materials;
 - d. Water storage unit information including volume, size dimensions, whether the unit is covered or uncovered, whether the unit is above or below ground, construction materials, and location;
 - e. Prefiltration information, including type of prefiltration used, quantity, filtration particle size, and location;
 - f. Pump system information including the brand, make, model, capacity and heads, and horsepower;
 - g. Disinfection system information, including the brand, make, model, parts numbers, date of manufacture, and date of installation for each component;
 - h. Additional manufacturer's instructions, such as schematics and diagrams provided with components of the rainwater harvesting system; and
 - i. Water quality verification procedures, frequency, parameters, sampling locations, records policies and procedures, and a sample written operational record entry form;
7. Inspection and maintenance procedures, to include (i) the procedures for inspecting and cleaning water storage tanks and piping and (ii) periodic cross connection inspection; and
8. Other information deemed necessary or appropriate by the designer.
- C. The operation and maintenance manual for a rainwater harvesting system intended for Tier 4 end use shall also contain the following:
- 1. A list of water quality monitoring requirements, including sample locations, tests to be performed, testing methods, and the applicable water quality standard;
 - 2. Provisions for the determination of temporary or emergency alternate water supply, the conditions under which an alternate water supply is required, the procedures for ensuring continuity of water supply, when bottled water should be used, and the conditions that require boil water practices for cooking and drinking;
 - 3. Criteria for ensuring the continuity of water supply, to include (i) a low capacity alarm for water storage; (ii) bypass protocol, including backflow and cross connection prevention; and (iii) applicable reporting criteria;
 - 4. Provisions for documenting the easement and land records requirements of this chapter; and

5. Identification of what incidents qualify as a reportable incident and the appropriate response, including:
- a. An alarm event lasting more than 24 hours;
 - b. An alarm event that reoccurs following corrective action;
 - c. Failure to achieve one or more performance requirements;
 - d. Failure to achieve one or more quality standards;
 - e. Replacement of a major component of the system, including electric and electronic components; and
 - f. Actual or suspected contamination.
- D. If the operation and maintenance manual includes requirements for operation, maintenance, sampling, or inspection schedules that exceed the minimum requirements of this chapter, the designer shall determine the additional requirements based on the proposed end use of the harvested rainwater, design flow and unit treatment processes of the rainwater harvesting system, and other factors.
- E. The operation and maintenance manual shall include regional, local, and site-specific water concerns.

12VAC5-635-360. Inspection requirements.

A. During an inspection, the operator shall review and evaluate the operation of the rainwater harvesting system, perform routine maintenance, make adjustments, and replace worn or dysfunctional components with functionally equivalent parts such that the system can reasonably be expected to return to normal operation.

B. If a rainwater harvesting system permitted for Tier 4 end use is not functioning as designed or in accordance with the performance requirements of this chapter and, in the operator's professional judgment, cannot be reasonably expected to return to normal operation through routine operation and maintenance, the operator shall report immediately to the owner the remediation efforts necessary to return the rainwater harvesting system to normal operation, including recommendation for temporary or emergency alternate water supply, if the system does not provide water acceptable for human consumption.

12VAC5-635-370. Inspection reports.

A. For an inspection conducted for a rainwater harvesting system intended for Tier 2 or 3 end use, the operator shall document the observations and findings of the inspection and provide documentation to the department if requested by the department.

B. For an inspection conducted for a rainwater harvesting system permitted for Tier 4 end use, the operator shall file an inspection report, on a form approved by the department, with the local health department in the locality where the rainwater harvesting system is located. The report shall be filed no later than 45 calendar days following the date on which the

inspection occurred and shall include the following minimum elements:

1. The name and certification number of the operator;
2. The date and time of the inspection;
3. The purpose of the inspection, such as required inspection, follow-up, or reportable incident;
4. A summary stating:
 - a. Whether the rainwater harvesting system is functioning as designed and in accordance with the performance requirements of this chapter;
 - b. Whether the operator believes the rainwater harvesting system will return to normal operation after providing maintenance; or
 - c. If the rainwater harvesting system is not functioning as designed or in accordance with the performance requirements of this chapter, (i) the actions required to return the rainwater harvesting system to normal operation, including provisions for a temporary alternate water supply, if applicable; and (ii) that the owner has been advised that failure to take action to return the system to normal operation represents a risk to public health and may subject the owner to enforcement action from the department;
5. Maintenance performed or adjustments made, including parts replaced;
6. The results of field measurements, water quality sampling, and observations;
7. The name of the laboratory that analyzed samples; and
8. A statement certifying the date the operator provided a written copy of the report to the owner.

C. If actions are required by the owner to return the rainwater harvesting system to normal operation or provide a temporary alternate water supply or the operator has identified that failure to repair the rainwater harvesting system may result in a hazard to public health or the environment, the operator shall file the report summary with the local health department within 24 hours of the inspection.

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, 201 North Ninth Street, 4th Floor, Richmond, Virginia 23219.

FORMS (12VAC5-635)

[Commonwealth of Virginia Application for Tier 4 End Use Rainwater Harvesting System \(eff. 4/2022\)](#)

[Commonwealth of Virginia Inspection Report: Tier 4 End Use Rainwater Harvesting System \(eff. 4/2022\)](#)

[Registration for Rainwater Harvesting System: Tier 1, 2, or 3 End Use \(eff. 4/2022\)](#)

VA.R. Doc. No. R21-6687; Filed September 19, 2023, 12:33 p.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR CONTRACTORS

Proposed Regulation

Title of Regulation: 18VAC50-30. Individual License and Certification Regulations (amending 18VAC50-30-10, 18VAC50-30-120, 18VAC50-30-130, 18VAC50-30-210, 18VAC50-30-220, 18VAC50-30-230, 18VAC50-30-250, 18VAC50-30-260; adding 18VAC50-30-270; repealing 18VAC50-30-73, 18VAC50-30-75, 18VAC50-30-240).

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

Public Hearing Information:

October 30, 2023 - 9:30 a.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, 2nd Floor Conference Center, Training Room 2, Richmond, Virginia 23233

Public Comment Deadline: December 8, 2023.

Agency Contact: Marjorie King, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, or email contractor@dpor.virginia.gov.

Basis: Section 54.1-201 of the Code of Virginia requires the Board for Contractors to establish the qualifications of applicants for certification or licensure and promulgate regulations. Section 54.1-1102 of the Code of Virginia enumerates the legal authority for the board to administer the licensure and certification programs for tradesmen, gas fitters, liquefied petroleum gas fitters, natural gas fitter providers, water well systems providers, elevator mechanics, residential building energy analysts, backflow prevention device workers, and automatic fire sprinkler inspectors.

Purpose: The General Assembly has charged the board with the responsibility for regulating those who (i) engage, or offer to engage, in work as a tradesman (electrician, plumber, and HVAC technician), gas fitter, liquefied petroleum gas fitter, or natural gas fitter provider; (ii) engage in the drilling, installation, maintenance, or repair of a water well or water well system; (iii) engage in, or offer to engage in, work as an elevator mechanic or accessibility mechanic; (iv) engage in, or offer to engage in, work as a residential building energy analyst; (v) present themselves as a certified backflow prevention device worker; and (vi) perform or offer to perform

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inspections of automatic fire sprinkler systems, by requiring that such individuals obtain the appropriate licensure or certification.

The performing of trade-related work by those who lack sufficient expertise poses a risk to the public health, safety, and welfare. These risks include the potential for significant damage to property, personal injury, and death. In addition, the improper performing of trade-related work can pose a substantial risk of financial harm to property owner who will be responsible for assuming costs to correct or complete work that is defective. The board protects the public health, safety, and welfare by establishing through regulation the minimum qualifications for entry into the profession, as well as the minimum standards of conduct.

Substance: The proposed amendments (i) remove the definition for "inactive tradesman" as it is no longer necessary; (ii) repeal requirements pertaining to the activation and inactivation of tradesmen licenses are repealed as no longer necessary. Since the period of licensure for a tradesman license is currently three years, these provisions are no longer applicable, as an individual license may only be on inactive status for a maximum of three years; (iii) add a new provision that allows an individual who failed to reinstate a license to be deemed eligible to re-take the license examination in the same category and specialty as the expired license; (iv) remove the provision requiring a training provider to receive board approval of the training course subject prior to offering the course; (v) remove the requirement that student records and course completion information sent to the board contain a student's social security number to comport with federal requirements regarding use of social security numbers; (vi) repeals the requirement for posting of continuing education (CE) provider and CE course certificates of approval at the location where a course is taught; and (vii) add a new section stating that the board may conduct an audit of any board-approved education course to ensure compliance with the regulation.

Issues: The primary advantages to the public and the regulated community are that the amendments to the regulation (i) update and clarify the regulation, (ii) ensure the regulation complements current Virginia law and is clearly written and understandable, and (iii) remove requirements in the regulation pertaining to renewal and reinstatement of licenses and certificates, and continuing education that are not necessary to protect the public welfare. There are no identifiable disadvantages to the public. The primary advantage of the regulatory change to the Commonwealth is that it will permit the agency to administer more ably the licensure program. There are no identifiable disadvantages to the Commonwealth.

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 and Executive Order 19. The analysis presented represents DPB's

best estimate of the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation. The Board of Contractors (board) proposes to (i) eliminate "inactive" licensure status, (ii) allow continuing education providers to start teaching material prior to full board approval, and (iii) make several clarifying changes to the regulatory language.

Background. As a result of Executive Order 19,² the board started this regulatory action with the intent of repealing any continuing education requirements that are not required by statute for all professions regulated by the board, which include tradesman licensed to perform electrical, plumbing, heating, ventilation, and cooling, gas fitting, liquefied petroleum gas fitting, and natural gas fitting work. However, after receiving public comments in opposition, the board has decided to not take any action on the continuing education requirements.

Of the remaining changes in this action, two would represent a change from current practices. These include (i) removal of language pertaining to activation and inactivation of tradesman licenses; and (ii) removal of the provision which requires a training provider to receive board approval of the training course subject prior to offering the course.

All of the other remaining changes in this action are clarifications of existing requirements reflecting current practices, including (i) clarification that individuals who failed to reinstate a license are deemed eligible to re-take the license examination in the same category and specialty as the expired license; (ii) repeal of the posting requirement for continuing education providers that course certificates of approval be available at the location a course is taught as the board determined that the requirements of this section are unnecessary and burdensome; and (iii) addition of a new section providing that the board may conduct an audit of any board-approved education course to ensure compliance with the regulation. According to the board, it has the inherent authority to audit approved training courses.

Another clarifying change involves removal of the requirement that continuing education student records and course completion information that is sent to the board contain a student's social security number. The board reports that a public comment was received from an individual who was concerned about the transmission of full social security numbers from education providers to the board. Following the comment, board staff determined as of August 2021, that education providers no longer need to submit social security numbers, but instead should provide either (i) the student's board issued license number; (ii) a driver's license number; or (iii) Department of Motor Vehicles control number to identify the student. In essence, this proposed change conforms the regulation to current agency practice.

Estimated Benefits and Costs. One of the proposed changes would repeal language pertaining to activation and inactivation of tradesman licenses, which would eliminate the currently

available "inactive" license status. Under the current language, the Department of Occupational Professional Regulation (DPOR) reports that an individual license may be on inactive status for a maximum of three years. The main benefits of the inactive status are that the tradesman does not have to pay certain costs: (i) the renewal fee, which is \$135 for tradesman and \$90 for all other occupations (e.g. fitters, mechanics, etc.), and (ii) the cost of continuing education, which is estimated to cost approximately \$90 per renewal cycle.

According to DPOR, Chapter 750 of the 2018 Acts of Assembly³ changed the license renewal cycle from two-years to three-years. DPOR states that this legislative change reduced the benefit of being on inactive status by reducing the number of renewal cycles a tradesman could be on inactive status. For example, with the previous two-year renewal cycle, a tradesman benefited from inactive status by avoiding these costs for three years, which was 1.5 renewal cycles. But with the new three-year renewal cycle, a tradesman could avoid these costs for only one renewal cycle.

This change would remove the option to place a license on inactive status and would likely force some tradesman to renew their licenses and pay the renewal fee plus the cost of continuing education. DPOR reports that since August 1, 2020, there have only been ten transactions where a license was placed on inactive status and there are currently seven tradesman licenses that are in a "current" but "inactive" status. In addition to the additional revenue DPOR would receive from renewal fees, and the revenue continuing education providers would receive from those who would have been on inactive status; this change would likely provide some administrative savings to the agency because the process for inactive license status would be eliminated.

The second change that would depart from current practice is the removal of the provision that requires a training provider to receive board approval of the training course subject prior to offering the course. Under the current regulation, an education provider is not permitted to provide instruction until the course is approved by the board. The proposed change would permit an education provider to begin providing instruction pending board approval.

The approval process starts with staff review followed by presentation of the application to the board subcommittee that reviews education applications. Once the subcommittee is ready to recommend the application to the full board, final consideration takes place. According to DPOR, the proposed change would allow education providers to start teaching a new class about two to three months prior to the full board approval. However, in exchange for the additional flexibility to start teaching a class earlier than otherwise would be, the education provider and students would be taking a risk in the event the board does not follow the subcommittee recommendation. However, the board staff states that would be very unlikely and the board has never denied an application for approval. Moreover, the proposed amendment allows but does not

require the education providers to start teaching material prior to the board approval.

All of the remaining changes appear to be clarifications of current requirements and existing practices and are not expected to create any significant economic impact other than improving the clarity of the regulatory language.

Businesses and Other Entities Affected. This regulation applies to 30,188 licensed individuals and 287 education providers based on data as of May 1, 2023. The education providers include community colleges and private providers that offer continuing education. None of the entities appear to be disproportionately affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁴ 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, one of the proposed changes would remove the option to place a license on inactive status and may force a small number of licensees (approximately seven out of 30,188 licensees) to pay the \$90 or \$135 license renewal fee plus the \$90 continuing education costs every three years. Thus, an adverse impact is indicated.

Small Businesses⁵ Affected.⁶ According to board staff, licenses and certifications issued under this regulation are issued to individuals and not to business entities. However, many licensees and certificate holders are likely owners or employees of business entities that meet the definition of "small business" in § 2.2-4007.1 of the Code of Virginia. In addition, continuing education providers are likely business entities that meet the definition of "small business" in § 2.2-4007.1 of the Code of Virginia. The actual number cannot be determined, and DPOR does not have any information on whether their regulants meet the definition of a small business.

The same as for non-small businesses, one of the proposed changes would remove the option to place a license on inactive status and may force a small number of licensees (approximately seven out of 30,188 licensees) to pay the \$90 or \$135 license renewal fee plus the \$90 continuing education costs every three years. Thus, to the extent one or more of those seven licensees may be a small business, an adverse impact on them would be indicated.

Types and Estimated Number of Small Businesses Affected. DPOR does not have any data on whether any of the seven licenses on inactive status are small businesses.

Costs and Other Effects. One of the proposed amendments would remove the option to place a license on inactive status, which would force the licensee to renew the license at a cost of \$90 or \$135 and absorb \$90 in continuing education costs every three years.

Alternative Method that Minimizes Adverse Impact. There does not appear to be a clear alternative method that both reduces adverse impact and meets the intended policy goal.

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Localities⁷ Affected.⁸ The proposed amendments neither introduce costs for local governments nor impose a disproportional impact.

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

Effects on the Use and Value of Private Property. No effect on the use and value of private property nor on the real estate development costs is expected.

¹Section 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://townhall.virginia.gov/EO-19-Development-and-Review-of-State-Agency-Regulations.pdf>.

³<https://lis.virginia.gov/cgi-bin/legp604.exe?181+ful+CHAP0750&181+ful+CHAP0750>

⁴Pursuant 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.

⁵Pursuant 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."

⁶If 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.

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.

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

Agency's Response to Economic Impact Analysis: The Board for Contractors concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The proposed amendments (i) remove the definition for "inactive tradesman" as it is no longer necessary; (ii) repeal requirements pertaining to the activation and inactivation of tradesmen licenses; (iii) add a new

provision that allows an individual who failed to reinstate a license to be deemed eligible to re-take the license examination in the same category and specialty as the expired license; (iv) remove the provision requiring a training provider to receive board approval of the training course subject prior to offering the course; (v) remove the requirement that student records and course completion information sent to the board contain a student's social security number to comport with federal requirements regarding use of social security numbers; (vi) repeal the requirement for posting of continuing education (CE) provider and CE course certificates of approval at the location where a course is taught; and (vii) add a new section stating that the board may conduct an audit of any board-approved education course to ensure compliance with the regulation.

18VAC50-30-10. Definitions.

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

"Apprentice" means a person who assists tradesmen while gaining knowledge of the trade through on-the-job training and related instruction in accordance with the Virginia Voluntary Apprenticeship Act (§ 40.1-117 et seq. of the Code of Virginia).

"Backflow prevention device work" means work performed by a backflow prevention device worker as defined in § 54.1-1128 of the Code of Virginia (~~13VAC5-63~~).

"Building official/inspector" is an employee of the state, a local building department, or other political subdivision who enforces the Virginia Uniform Statewide Building Code (~~13VAC5-63~~).

"Certified accessibility mechanic" means an individual who is certified by the board who is engaged in erecting, constructing, installing, altering, servicing, repairing, testing, or maintaining wheelchair lifts, incline chairlifts, dumbwaiters with a capacity limit of 300 pounds, and private residence elevators.

"Certified automatic fire sprinkler inspector" means an individual who is certified by this chapter and whose work includes the inspection of sprinkler systems as defined in Section 3.6.4 of NFPA 25 (2014 edition), including subsections 3.6.4.1 through 3.6.4.6.

"Certified elevator mechanic" means an individual who is certified by the board who is engaged in erecting, constructing, installing, altering, servicing, repairing, testing, or maintaining elevators, escalators, or related conveyances in accordance with the Virginia Uniform Statewide Building Code.

"Department" means the Department of Professional and Occupational Regulation.

"Division" means a limited subcategory within any of the trades, as approved by the department.

"Electrical work" consists of, but is not limited to, the following: (i) planning and layout of details for installation or modifications of electrical apparatus and controls including preparation of sketches showing location of wiring and equipment; (ii) measuring, cutting, bending, threading, assembling, and installing electrical conduits; (iii) performing maintenance on electrical systems and apparatus; (iv) observation of installed systems or apparatus to detect hazards and need for adjustments, relocation, or replacement; and (v) repairing faulty systems or apparatus.

"Electrician" means a tradesman who does electrical work including the construction, repair, maintenance, alteration, or removal of electrical systems in accordance with the National Electrical Code and the Virginia Uniform Statewide Building Code.

"Formal vocational training" means courses in the trade administered at an accredited educational facility; or formal training, approved by the board, conducted by trade associations, businesses, the military, correspondence schools, or other similar training organizations.

"Gas fitter" means an individual who does gas fitting-related work usually as a division within the HVAC or plumbing trades in accordance with the Virginia Uniform Statewide Building Code. This work includes the installation, repair, improvement, or removal of liquefied petroleum or natural gas piping, tanks, and appliances annexed to real property.

"Helper" or "laborer" means a person who assists a licensed tradesman and who is not an apprentice as defined in this chapter.

"HVAC tradesman" means an individual whose work includes the installation, alteration, repair, or maintenance of heating systems, ventilating systems, cooling systems, steam and hot water heating systems, boilers, process piping, backflow prevention devices, and mechanical refrigeration systems, including tanks incidental to the system.

~~"Inactive tradesman" means an individual who meets the requirements of 18VAC50-30-73 and is licensed under that section.~~

"Incidental" means work that is necessary for that particular repair or installation and is outside the scope of practice allowed to the regulant by this chapter.

"Journeyman" means a person who possesses the necessary ability, proficiency, and qualifications to install, repair, and maintain specific types of materials and equipment utilizing a working knowledge sufficient to comply with the pertinent provisions of the Virginia Uniform Statewide Building Code and according to plans and specifications.

"Limited use/limited application endorsement" means an addition to the certification record of a certified accessibility mechanic authorizing the certificate holder to erect, construct, install, alter, service, repair, test, or maintain limited use/limited application elevators as defined by the Virginia Uniform Statewide Building Code.

"Liquefied petroleum gas fitter" means any individual who engages in or offers to engage in work for the general public for compensation in work that includes the installation, repair, improvement, alterations, or removal of piping, liquefied petroleum gas tanks, and appliances (excluding hot water heaters, boilers, and central heating systems that require a heating, ventilation and air conditioning, or plumbing certification) annexed to real property.

"Maintenance" means the reconstruction or renewal of any part of a backflow device for the purpose of maintaining its proper operation. This does not include the actions of removing, replacing, or installing, except for winterization.

"Master" means a person who possesses the necessary ability, proficiency, and qualifications to plan and lay out the details for installation and supervise the work of installing, repairing, and maintaining specific types of materials and equipment utilizing a working knowledge sufficient to comply with the pertinent provisions of the Virginia Uniform Statewide Building Code.

"Natural gas fitter provider" means any individual who engages in, or offers to engage in, work for the general public for compensation in the incidental repair, testing, or removal of natural gas piping or fitting annexed to real property, excluding new installation of gas piping for hot water heaters, boilers, central heating systems, or other natural gas equipment that requires heating, ventilation, and air conditioning or plumbing certification.

"Periodic inspection" means to examine a cross connection control device in accordance with the requirements of the locality to be sure that the device is in place and functioning in accordance with the standards of the Virginia Uniform Statewide Building Code.

"Plumber" means an individual who does plumbing work in accordance with the Virginia Uniform Statewide Building Code.

"Plumbing work" means work that includes the installation, maintenance, extension, or alteration or removal of piping, fixtures, appliances, and appurtenances in connection with any of the following:

1. Backflow prevention devices;
2. Boilers;
3. Domestic sprinklers;
4. Hot water baseboard heating systems;

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5. Hydronic heating systems;
6. Process piping;
7. Public or private water supply systems within or adjacent to any building, structure, or conveyance;
8. Sanitary or storm drainage facilities;
9. Steam heating systems;
10. Storage tanks incidental to the installation of related systems;
11. Venting systems; or
12. Water heaters.

These plumbing tradesmen may also install, maintain, extend, or alter the following:

1. Liquid waste systems;
2. Sewerage systems;
3. Storm water systems; and
4. Water supply systems.

"Regulant" means an individual (i) licensed as a tradesman, liquefied petroleum gas fitter, or natural gas fitter provider or (ii) certified as a backflow prevention device worker, elevator mechanic, water well systems provider, or fire sprinkler inspector.

"Reinstatement" means having a license or certification card restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license or certification card for another period of time.

"Repair" means the reconstruction or renewal of any part of a backflow prevention device for the purpose of returning to service a currently installed device. This does not include the removal or replacement of a defective device by the installation of a rebuilt or new device.

"Supervisor" means the licensed master or journeyman tradesman who has the responsibility to ensure that the installation is in accordance with the applicable provisions of the Virginia Uniform Statewide Building Code, one of whom must be on the job site at all times during installation.

"Testing organization" means an independent testing organization whose main function is to develop and administer examinations.

"Trade" means any of the following: electrical, gas fitting, HVAC (heating, ventilation, and air conditioning), liquefied petroleum gas fitting, natural gas fitting, plumbing, and divisions within them.

"Water distribution systems" includes fire sprinkler systems, highway/heavy, HVAC, lawn irrigation systems, plumbing, or water purveyor work.

18VAC50-30-73. Licensing of inactive tradesmen. (Repealed.)

~~Any individual who is not currently employed as a licensed tradesman and who is not performing any of the activities defined in § 54.1-1128 of the Code of Virginia may be licensed as an inactive tradesman by completing a form provided by the board.~~

18VAC50-30-75. Activation of license. (Repealed.)

~~Any inactive tradesman may activate a license to practice as a tradesman by completing a form provided by the board and completing the continuing education requirements for the current licensing cycle. Any tradesman that has not had an active license for a period of greater than three years will be required to meet the current preclicensing eligibility criteria.~~

18VAC50-30-120. Renewal.

A. Licenses issued under this chapter to electricians, gas fitters, HVAC tradesmen, or plumbers ~~shall~~ will expire three years from the last day of the month in which they were issued as indicated on the license.

B. All other licenses and certification cards issued under this chapter ~~shall~~ will expire two years from the last day of the month in which they were issued as indicated on the license or certification card.

C. ~~Effective with all licenses issued or renewed after December 31, 2007, as~~ As a condition of renewal or reinstatement and pursuant to § 54.1-1133 of the Code of Virginia, all individuals holding tradesman licenses with the trade designations of plumbing, electrical, and heating ventilation and cooling ~~shall be required to~~ must satisfactorily complete three hours of continuing education for each designation, and individuals holding ~~licenses~~ a license as a liquefied petroleum gas ~~fitters and fitter,~~ fitter, a natural gas fitter ~~providers~~ provider, or a gas fitter, one hour of continuing education, relating to the applicable building code changes, from a provider approved by the board ~~in accordance with the provisions of this chapter. An inactive tradesman is not required to meet the continuing education requirements as a condition of renewal.~~

D. Certified elevator mechanics and certified accessibility mechanics, as a condition of renewal ~~or reinstatement~~ and pursuant to § 54.1-1143 of the Code of Virginia, ~~shall be required to~~ must satisfactorily complete eight hours of continuing education relating to the provisions of the Virginia Uniform Statewide Building Code (13VAC5-63) pertaining to elevators, escalators, and related conveyances. This continuing education ~~will~~ must be from a provider approved by the board ~~in accordance with the provisions of this chapter.~~

E. Certified water well systems providers, as a condition of renewal or reinstatement and pursuant to § 54.1-1129.1 B of the Code of Virginia, ~~shall be required to~~ must satisfactorily complete eight hours of continuing education in the specialty

of technical aspects of water well construction, applicable statutory and regulatory provisions, and business practices related to water well construction from a provider approved by the board ~~in accordance with the provisions of this chapter.~~

F. Certified automatic fire sprinkler inspectors, as a condition of renewal and pursuant to § 54.1-1148 of the Code of Virginia, ~~shall be required to~~ must satisfactorily complete eight hours of continuing education relating to changes and knowledge of the Virginia Statewide Fire Prevention Code (13VAC5-51). No renewal will be permitted once 30 days from the expiration date have passed. After that date, the applicant must apply for a new certification and meet the current entry requirements.

G. Renewal fees are as follows:

Tradesman license	\$135
Liquefied petroleum gas fitter license	\$90
Natural gas fitter provider license	\$90
Backflow prevention device worker certification	\$90
Elevator mechanic certification	\$90
Certified accessibility mechanic	\$90
Certified automatic fire sprinkler inspector	\$90
Water well systems provider certification	\$90
Residential building energy analyst license	\$90

All fees are nonrefundable and ~~shall~~ will not be prorated.

Tradesman license renewal fees received on or before August 31, 2025, shall be \$100. For all other renewal fees received on or before August 31, 2025, the fee shall be \$70.

H. The board will mail a renewal notice to the regulant outlining procedures for renewal. Failure to receive this notice, however, ~~shall~~ will not relieve the regulant of the obligation to renew. If the regulant fails to receive the renewal notice, a ~~photocopy copy~~ of the ~~tradesman license or backflow prevention device worker certification card~~ may be submitted with the required fee as an application for renewal within 30 days of the expiration date.

I. The date on which the renewal fee is received by the department or its agent will determine whether the regulant is eligible for renewal or required to apply for reinstatement.

J. The board may deny renewal of a ~~tradesman license or a backflow prevention device worker certification card~~ for the same reasons as it may refuse initial issuance or discipline a regulant. The regulant has a right to ~~appeal~~ request review of any such action by the board under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

K. Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order

or final order shall result in delaying or withholding services provided by the department ~~such as, but not limited to, including~~ renewal, reinstatement, or processing of a new application, ~~or exam administration.~~

L. Residential building energy analysts, as a condition of renewal or reinstatement, ~~shall~~ must provide documentation of continued membership, in good standing, of a certifying organization approved by the board and proof of insurance as required in 18VAC50-30-40 I 4.

18VAC50-30-130. Reinstatement.

A. ~~Should the Department of Professional and Occupational Regulation fail to receive the renewal application or fees~~ Except as provided in 18VAC50-30-120 F, if all of the applicable requirements for renewal of the license or certification as specified in 18VAC50-30-120 are not ~~completed~~ within 30 days of the license or certification expiration date, ~~the regulant will be required to apply for reinstatement of the license or certification card~~ a reinstatement fee shall be required as established in subsection B of this section.

B. Reinstatement fees are as follows:

Tradesman license	\$185*
Liquefied petroleum gas fitter license	\$140*
Natural gas fitter provider license	\$140*
Backflow prevention device worker certification	\$140*
Elevator mechanic certification	\$140*
Certified accessibility mechanic	\$140*
Water well systems provider certification	\$140*
Residential building energy analyst license	\$140*
*Includes renewal fee listed in 18VAC50-30-120.	

All fees required by the board are nonrefundable and ~~shall~~ will not be prorated.

Tradesman license reinstatement fees received on or before August 31, 2025, shall be \$150. For all other reinstatement fees received on or before August 31, 2025, the fee shall be \$120. This fee includes the renewal fee listed in 18VAC50-30-120.

~~C. Applicants for reinstatement shall meet the requirements of 18VAC50-30-30.~~

~~D. C.~~ The date on which the reinstatement fee is received by the department or its agent will determine whether the license or certification card is reinstated or a new application is required.

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~~E. In order to ensure that license or certification card holders are qualified to practice as tradesmen, gas fitters, liquefied petroleum gas fitters, natural gas fitter providers, backflow prevention device workers, elevator mechanics, water well systems providers, or residential building energy analysts, no reinstatement will be permitted once D. A license or certification may be reinstated for up to two years from following the expiration date has passed. After that date the applicant of the license. An individual who fails to reinstate the license or certification within 24 months after the expiration date must apply for a new license or certification card and meet the then-current entry requirements in effect at the time of the submittal of the new application. Such individual will be deemed to be eligible to sit for the examination for the same category and specialty of license as the expired license.~~

~~F. E. Any tradesman, liquefied petroleum gas fitter, or natural gas fitter provider regulated activity conducted subsequent to the expiration of the license may constitute unlicensed activity and may be subject to prosecution under Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia. Further, any person who holds himself out as a certified backflow prevention device worker, as defined in § 54.1-1128 of the Code of Virginia, or as a certified elevator mechanic or certified accessibility mechanic, as defined in § 54.1-1140 of the Code of Virginia, or as a water well systems provider as defined in § 54.1-1129.1 of the Code of Virginia, without the appropriate certification, may be subject to prosecution under Title 54.1 of the Code of Virginia. Any activity related to the operating integrity of an elevator, escalator, or related conveyance, conducted subsequent to the expiration of an elevator mechanic certification may constitute illegal activity and may be subject to prosecution under Title 54.1 of the Code of Virginia. Any individual who completes a residential building energy analysis, as defined in § 54.1-1144 of the Code of Virginia, subsequent to the expiration of a residential building energy analyst license may have engaged in illegal activity and may be subject to prosecution under Title 54.1 of the Code of Virginia.~~

~~G. F. The board may deny reinstatement of a license or certification card for the same reasons as it may refuse initial issuance license or certification or to discipline a regulant. The regulant has a right to appeal request further review of any such action by the board under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).~~

~~H. G. Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall will result in delaying or withholding services provided by the department, such as, but not limited to, including renewal, reinstatement, or processing of a new application, or exam administration.~~

18VAC50-30-210. Continuing education providers.

~~A. Application requirements for continuing education providers. Each provider of a building code-related continuing~~

~~education course shall must submit an application for approval on a form provided by the board. The application shall must include but is not limited to:~~

- ~~1. The name of the provider;~~
- ~~2. Provider contact person, address and telephone number;~~
- ~~3. Course contact hours;~~
- ~~4. Schedule of courses, if established, including dates, time, and locations;~~
- ~~5. Name(s) Name of instructor(s) the instructor.~~

~~B. Continuing education providers shall must have their subject(s) subjects approved by the board prior to initially offering the course. Correspondence and other distance learning courses must include appropriate testing procedures to verify completion of the course.~~

~~C. All providers must establish and maintain a record for each student. The record shall must include the student's name and address, social security number or current individual license number, the course name and clock hours attended, the course syllabus or outline, the name or names of the instructor, the date of successful completion, and the board's course code. Records shall must be available for inspection during normal business hours by authorized representatives of the board. Providers must maintain class records for a minimum of five years.~~

18VAC50-30-220. Continuing education courses.

~~A. All courses offered by continuing education providers must be approved by the board and shall must cover articles of the current edition of the building code, including any changes, for the applicable license specialty or certification. For electrical tradesmen with the electrical specialty, the National Electrical Code; for plumbing tradesmen with the plumbing specialty, the International Plumbing Code; for HVAC tradesmen with HVAC specialty, the International Mechanical Code; for gas fitters fitter, liquefied petroleum gas fitters fitter, and natural gas fitters fitter provider tradesman, the International Fuel Gas Code. Courses offered by continuing education providers for elevator mechanics shall must cover articles of the current edition of the building code and other applicable laws governing elevators, escalators, or related conveyances. Courses offered by continuing education providers for accessibility mechanics shall must cover articles of the current edition of the building code and other applicable laws governing wheelchair lifts, incline chairlifts, dumbwaiters, and private residence elevators. Courses offered by continuing education providers for water well systems providers shall must cover the specialty of technical aspects of water well construction, applicable statutory and regulatory provisions, and business practices related to water well construction.~~

B. Approved continuing education providers ~~shall~~ must submit an application for course approval on a form provided by the board. The application ~~shall~~ must include ~~but is not limited to:~~

1. The name of the provider and the approved provider number;
2. The name of the course;
3. The ~~date(s)~~ date, ~~time(s)~~ time, and ~~location(s)~~ location of the course;
4. Instructor information, including name, license ~~number(s)~~ number, if applicable, and a list of other appropriate trade designations;
5. Course and material fees;
6. Course syllabus.

C. ~~Courses may be approved retroactively; however, no~~ No regulant will receive credit toward the continuing education requirements of renewal until such approval is received from the board.

18VAC50-30-230. Reporting of course completion.

All continuing education providers ~~shall~~ must electronically transmit course completion data to the board in an approved format within seven days of the completion of each individual course. The transmittal ~~will~~ must include each student's name, ~~social security number or~~ current individual license number; the date of successful completion of the course; and the board's course code.

18VAC50-30-240. Posting continuing education provider and course certificates of approval. (Repealed.)

~~Copies of continuing education provider and course certificates of approval must be available at the location a course is taught.~~

18VAC50-30-250. Reporting of changes.

Any change in the information provided in 18VAC50-30-210 A must be reported to the board within 30 days of the change with the exception of changes in the schedule of courses, which must be reported within 10 days of the change. ~~Failure to report the changes as required may result in the withdrawal of approval of a continuing education provider by the board.~~

18VAC50-30-260. Withdrawal of approval.

The board may withdraw approval of any continuing education provider for the following reasons:

1. The courses being offered no longer meet the standards established by the board.
2. The provider, through an agent or otherwise, advertises its services in a fraudulent or deceptive way.

3. The provider, instructor, or designee of the provider falsifies any information relating to the application for approval, course information, or student records or fails to produce records required by 18VAC50-30-210 C.

4. Failure to comply with 18VAC50-30-250.

18VAC50-30-270. Board authority to audit approved education courses.

The board may conduct an audit of any board-approved education course to ensure continued compliance with this chapter.

VA.R. Doc. No. R23-7419; Filed September 19, 2023, 10:29 a.m.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Final Regulation

REGISTRAR'S NOTICE: The Board of Funeral Directors and Embalmers 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: **18VAC65-20. Regulations Governing the Practice of Funeral Services (amending 18VAC65-20-15).**

Statutory Authority: §§ 54.1-2400 and 54.1-2803 of the Code of Virginia.

Effective Date: November 8, 2023.

Agency Contact: Corie Tillman Wolf, Executive Director, Board of Funeral Directors and Embalmers, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4479, FAX (804) 527-4471, or email fanbd@dhp.virginia.gov.

Summary:

Pursuant to Chapter 191 of the 2023 Acts of Assembly, the amendments remove a limitation that agency subordinates be used only for disciplinary matters and allow boards that use agency subordinates to employ those agency subordinates to hear credentials or applications cases as well as disciplinary cases.

18VAC65-20-15. Criteria for delegation of informal fact-finding proceedings to an agency subordinate.

A. Decision to delegate. In accordance with subdivision 10 of § 54.1-2400 ~~(40)~~ of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate ~~upon determination that probable cause exists that a practitioner may be subject to a disciplinary action.~~

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B. Criteria for delegation. Cases that may not be delegated to an agency subordinate, except with the concurrence of a committee of the board, are those that involve:

1. Intentional or negligent conduct that causes or is likely to cause injury;
2. Conducting the practice of funeral services in such a manner as to constitute a danger to the health, safety, and well-being of the staff or the public;
3. Impairment with an inability to practice with skill and safety;
4. Inappropriate handling of dead human bodies;
5. Sexual misconduct;
6. Misappropriation of funds;
7. Aiding or abetting unauthorized practice; or
8. Felony conviction by an applicant.

C. Criteria for an agency subordinate.

1. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include board members deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.
2. The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.
3. The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.

VA.R. Doc. No. R24-7540; Filed September 6, 2023, 4:16 p.m.

BOARD OF MEDICINE

Final Regulation

REGISTRAR'S NOTICE: The Board of Medicine 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: 18VAC85-160. Regulations Governing the Licensure of Surgical Assistants and Certification of Surgical Technologists (amending 18VAC85-160-51).

Statutory Authority: §§ 54.1-2400 and 54.1-2956.12 of the Code Virginia.

Effective Date: November 8, 2023.

Agency Contact: Erin Barrett, Director of Legislative and Regulatory Affairs, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 915-0382, or email erin.barrett@dhp.virginia.gov.

Summary:

Pursuant to Chapter 792 of the 2023 Acts of Assembly, the amendment extends the grandfathering certification for surgical technologists deadline to December 31, 2023.

18VAC85-160-51. Requirements for certification as a surgical technologist.

A. An applicant for certification as a surgical technologist shall submit a completed application and a fee as prescribed in 18VAC85-160-40 on forms provided by the board.

B. An applicant for certification as a surgical technologist shall provide satisfactory evidence of:

1. Successful completion of an accredited surgical technologist training program and a current credential as a certified surgical technologist from the National Board of Surgical Technology and Surgical Assisting or its successor; or
2. Successful completion of a training program for surgical technology during the applicant's service as a member of any branch of the armed forces of the United States.

C. The board will certify a surgical technologist who registers with the board by December 31, ~~2022~~ 2023, if that surgical technologist provides satisfactory evidence of:

1. Practice as a surgical technologist prior to October 1, 2022; or
2. Attendance of a surgical technologist training program prior to October 1, 2022.

VA.R. Doc. No. R24-7578; Filed September 7, 2023, 8:31 a.m.

BOARD OF NURSING

Final Regulation

REGISTRAR'S NOTICE: The Board of Nursing 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: 18VAC90-15. Regulations Governing Delegation to an Agency Subordinate (amending 18VAC90-15-10).

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

Effective Date: November 8, 2023.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4520, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Summary:

Pursuant to Chapter 191 of the 2023 Acts of Assembly, the amendments remove a limitation that agency subordinates be used only for disciplinary matters and allow boards that use agency subordinates to employ those agency subordinates to hear credentials or applications cases as well as disciplinary cases.

18VAC90-15-10. Decision to delegate.

In accordance with subdivision 10 of § 54.1-2400 ~~(40)~~ of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate ~~upon determination that probable cause exists that a practitioner may be subject to a disciplinary action.~~

VA.R. Doc. No. R24-7559; Filed September 6, 2023, 4:11 p.m.

Final Regulation

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

Titles of Regulations: **18VAC90-30. Regulations Governing the Licensure of Nurse Practitioners (amending 18VAC90-30-10, 18VAC90-30-30, 18VAC90-30-50, 18VAC90-30-70 through 18VAC90-30-86, 18VAC90-30-100 through 18VAC90-30-240).**

18VAC90-40. Regulations for Prescriptive Authority for Nurse Practitioners (amending 18VAC90-40-10 through 18VAC90-40-55, 18VAC90-40-90 through 18VAC90-40-121, 18VAC90-40-130, 18VAC90-40-140, 18VAC90-40-250).

Statutory Authority: §§ 54.1-2400 and 54.1-2957 of the Code of Virginia.

Effective Date: November 8, 2023.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4520, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Summary:

Pursuant to Chapter 183 of the 2023 Acts of Assembly, the amendments change the title "nurse practitioner" to "advanced practice registered nurse."

Chapter 30

Regulations Governing the Licensure of ~~Nurse Practitioners~~
Advanced Practice Registered Nurses

18VAC90-30-10. Definitions.

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

"Approved program" means ~~a nurse practitioner~~ an advanced practice registered nurse education program that is accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs/Schools, American College of Nurse Midwives, Commission on Collegiate Nursing Education, or the National League for Nursing Accrediting Commission or is offered by a school of nursing or jointly offered by a school of medicine and a school of nursing that grant a graduate degree in nursing and that hold a national accreditation acceptable to the boards.

"Autonomous practice" means practice in a category in which ~~a nurse practitioner~~ an advanced practice registered nurse is certified and licensed without a written or electronic practice agreement with a patient care team physician in accordance with 18VAC90-30-86.

"Boards" means the Virginia Board of Nursing and the Virginia Board of Medicine.

"Certified nurse midwife" means an advanced practice registered nurse who is certified in the specialty of nurse midwifery and who is jointly licensed by the Boards of Medicine and Nursing as ~~a nurse practitioner~~ an advanced practice registered nurse pursuant to § 54.1-2957 of the Code of Virginia.

"Certified registered nurse anesthetist" means an advanced practice registered nurse who is certified in the specialty of nurse anesthesia, who is jointly licensed by the Boards of Medicine and Nursing as ~~a nurse practitioner~~ an advanced practice registered nurse pursuant to § 54.1-2957 of the Code of Virginia, and who practices under the supervision of a doctor of medicine, osteopathy, podiatry, or dentistry but is not subject to the practice agreement requirement described in § 54.1-2957 of the Code of Virginia.

"Clinical nurse specialist" means an advanced practice registered nurse who is certified in the specialty of clinical nurse specialist and who is jointly licensed by the Boards of Medicine and Nursing as ~~a nurse practitioner~~ an advanced practice registered nurse pursuant to § 54.1-2957 of the Code of Virginia.

"Collaboration" means the communication and decision-making process among members of a patient care team related to the treatment and care of a patient and includes (i) communication of data and information about the treatment and care of a patient, including exchange of clinical observations and assessments, and (ii) development of an

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appropriate plan of care, including decisions regarding the health care provided, accessing and assessment of appropriate additional resources or expertise, and arrangement of appropriate referrals, testing, or studies.

"Committee" means the Committee of the Joint Boards of Nursing and Medicine.

"Consultation" means the communicating of data and information, exchanging of clinical observations and assessments, accessing and assessing of additional resources and expertise, problem solving, and arranging for referrals, testing, or studies.

"Conversion therapy" means any practice or treatment as defined in § 54.1-2409.5 A of the Code of Virginia.

"Licensed nurse practitioner" means an advanced practice registered nurse who has met the requirements for licensure as stated in Part II (18VAC90-30-60 et seq.) of this chapter.

"National certifying body" means a national organization that is accredited by an accrediting agency recognized by the U.S. Department of Education or deemed acceptable by the National Council of State Boards of Nursing and has as one of its purposes the certification of nurse anesthetists, nurse midwives, or ~~nurse practitioners~~ advanced practice registered nurses, referred to in this chapter as professional certification, and whose certification of such persons by examination is accepted by the committee.

"Patient care team physician" means a person who holds an active, unrestricted license issued by the Virginia Board of Medicine to practice medicine or osteopathic medicine.

"Practice agreement" means a written or electronic statement, jointly developed by the collaborating patient care team physician and the licensed ~~nurse practitioner~~ advanced practice registered nurse that describes the procedures to be followed and the acts appropriate to the specialty practice area to be performed by the licensed ~~nurse practitioner~~ advanced practice registered nurse in the care and management of patients. The practice agreement also describes the prescriptive authority of the ~~nurse practitioner~~ advanced practice registered nurse, if applicable. For a ~~nurse practitioner~~ an advanced practice registered nurse licensed in the category of certified nurse midwife, the practice agreement is a statement jointly developed with the consulting physician or a certified nurse midwife with at least two years of clinical experience. For a ~~nurse practitioner~~ an advanced practice registered nurse licensed in the category of clinical nurse specialist, the practice agreement shall be between the ~~nurse practitioner~~ advanced practice registered nurse and a consulting physician.

18VAC90-30-30. Committee of the Joint Boards of Nursing and Medicine.

A. The presidents of the Boards of Nursing and Medicine respectively shall each appoint three members from their boards to the Committee of the Joint Boards of Nursing and

Medicine; at least one of the appointees from the Board of Nursing shall be a licensed ~~nurse practitioner~~ advanced practice registered nurse. The purpose of this committee shall be to administer ~~the Regulations Governing the Licensure of Nurse Practitioners, 18VAC90-30-10 et seq~~ this chapter.

B. The committee, in its discretion, may appoint an advisory committee. Such an advisory committee shall be comprised of four licensed physicians and four licensed ~~nurse practitioners~~ advanced practice registered nurses, of whom one shall be a certified nurse midwife, one shall be a certified registered nurse anesthetist and two shall be ~~nurse practitioners~~ advanced practice registered nurses from other categories. Appointment to the advisory committee shall be for four years; members may be appointed for one additional four-year period.

18VAC90-30-50. Fees.

A. Fees required in connection with the licensure of ~~nurse practitioners~~ advanced practice registered nurses are:

1. Application	\$125
2. Biennial licensure renewal	\$80
3. Late renewal	\$25
4. Reinstatement of licensure	\$150
5. Verification of licensure to another jurisdiction	\$35
6. Duplicate license	\$15
7. Duplicate wall certificate	\$25
8. Handling fee for returned check or dishonored credit card or debit card	\$50
9. Reinstatement of suspended or revoked license	\$200
10. Autonomous practice attestation	\$100

B. For renewal of licensure from July 1, 2017, through June 30, 2019, the following fee shall be in effect:

Biennial renewal	\$60
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18VAC90-30-70. Categories of licensed ~~nurse practitioners~~ advanced practice registered nurses.

A. The boards shall license ~~nurse practitioners~~ advanced practice registered nurses consistent with their specialty education and certification in the following categories (a two-digit suffix appears on licenses to designate category):

1. Adult/geriatric acute care nurse practitioner (01);
2. Family nurse practitioner (02);
3. Pediatric/primary care nurse practitioner (03);
4. Adult/geriatric primary care nurse practitioner (07);
5. Certified registered nurse anesthetist (08);

6. Certified nurse midwife (09);
7. Neonatal nurse practitioner (13);
8. Women's health nurse practitioner (14);
9. Psychiatric nurse/mental health practitioner (17);
10. Pediatric/acute care nurse practitioner (18); and
11. Clinical nurse specialist (19).

B. Other categories of licensed ~~nurse practitioners~~ advanced practice registered nurses shall be licensed if the Committee of the Joint Boards of Nursing and Medicine determines that the category meets the requirements of this chapter.

C. ~~Nurse practitioners~~ Advanced practice registered nurses licensed prior to January 15, 2016, may:

1. Retain the specialty category in which they were initially licensed; or
2. If the specialty category has been subsequently deleted and if qualified by certification, be issued a license in a specialty category listed in subsection A of this section that is consistent with such certification.

18VAC90-30-80. Qualifications for initial licensure.

A. An applicant for initial licensure as a ~~nurse practitioner~~ an advanced practice registered nurse shall:

1. Hold a current, active license as a registered nurse in Virginia or hold a current multistate licensure privilege as a registered nurse;
2. Submit evidence of a graduate degree in nursing or in the appropriate ~~nurse practitioner~~ advanced practice registered nurse specialty from an educational program designed to prepare advanced practice registered nurses that is an approved program as defined in 18VAC90-30-10. Evidence shall include a transcript that shows that the applicant has successfully completed core coursework that prepares the applicant for licensure in the appropriate specialty;
3. Submit evidence of professional certification that is consistent with the specialty area of the applicant's educational preparation issued by an agency accepted by the boards as identified in 18VAC90-30-90;
4. File the required application; and
5. Pay the application fee prescribed in 18VAC90-30-50.

B. Provisional licensure may be granted to an applicant who satisfies all requirements of this section with the exception of subdivision A 3 of this section, provided the board has received evidence of the applicant's eligibility to sit for the certifying examination directly from the national certifying body. An applicant may practice with a provisional license for either six months from the date of issuance or until issuance of a permanent license or until ~~he~~ the applicant receives notice that

~~he~~ the applicant has failed the certifying examination, whichever occurs first.

18VAC90-30-85. Qualifications for licensure by endorsement.

A. An applicant for licensure by endorsement as a ~~nurse practitioner~~ an advanced practice registered nurse shall:

1. Provide verification of licensure as a nurse practitioner or advanced practice registered nurse in another United States jurisdiction with a license in good standing, or, if lapsed, eligible for reinstatement;
2. Submit evidence of professional certification that is consistent with the specialty area of the applicant's educational preparation issued by an agency accepted by the boards as identified in 18VAC90-30-90; and
3. Submit the required application and fee as prescribed in 18VAC90-30-50.

B. An applicant shall provide evidence that includes a transcript that shows successful completion of core coursework that prepares the applicant for licensure in the appropriate specialty.

C. An applicant for licensure by endorsement who is also seeking authorization for autonomous practice shall comply with subsection F of 18VAC90-30-86.

18VAC90-30-86. Autonomous practice for ~~nurse practitioners~~ advanced practice registered nurses other than nurse midwives, certified registered nurse anesthetists, or clinical nurse specialists.

A. ~~A nurse practitioner~~ An advanced practice registered nurse with a current, unrestricted license, other than someone licensed in the category of certified nurse midwife, certified registered nurse anesthetist, or clinical nurse specialist, may qualify for autonomous practice by completion of the equivalent of two years of full-time clinical experience as a ~~nurse practitioner~~ an advanced practice registered nurse until July 1, 2022. Thereafter, the requirement shall be the equivalent of five years of full-time clinical experience to qualify for autonomous practice.

1. Full-time clinical experience shall be defined as 1,800 hours per year.
2. Clinical experience shall be defined as the postgraduate delivery of health care directly to patients pursuant to a practice agreement with a patient care team physician.

B. Qualification for authorization for autonomous practice shall be determined upon submission of a fee as specified in 18VAC90-30-50 and an attestation acceptable to the boards. The attestation shall be signed by the ~~nurse practitioner~~ advanced practice registered nurse and the ~~nurse practitioner's~~ advanced practice registered nurse's patient care team physician stating that:

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1. The patient care team physician served as a patient care team physician on a patient care team with the ~~nurse practitioner~~ advanced practice registered nurse pursuant to a practice agreement meeting the requirements of this chapter and §§ 54.1-2957 and 54.1-2957.01 of the Code of Virginia;

2. While a party to such practice agreement, the patient care team physician routinely practiced with a patient population and in a practice area included within the category, as specified in 18VAC90-30-70, for which the ~~nurse practitioner~~ advanced practice registered nurse was certified and licensed; and

3. The period of time and hours of practice during which the patient care team physician practiced with the ~~nurse practitioner~~ advanced practice registered nurse under such a practice agreement.

C. The ~~nurse practitioner~~ advanced practice registered nurse may submit attestations from more than one patient care team physician with whom the ~~nurse practitioner~~ advanced practice registered nurse practiced during the equivalent of five years of practice, but all attestations shall be submitted to the boards at the same time.

D. If a ~~nurse practitioner~~ an advanced practice registered nurse is licensed and certified in more than one category as specified in 18VAC90-30-70, a separate fee and attestation that meets the requirements of subsection B of this section shall be submitted for each category. If the hours of practice are applicable to the patient population and in practice areas included within each of the categories of licensure and certification, those hours may be counted toward a second attestation.

E. In the event a patient care team physician has died, become disabled, retired, or relocated to another state, or in the event of any other circumstance that inhibits the ability of the ~~nurse practitioner~~ advanced practice registered nurse from obtaining an attestation as specified in subsection B of this section, the ~~nurse practitioner~~ advanced practice registered nurse may submit other evidence of meeting the qualifications for autonomous practice along with an attestation signed by the ~~nurse practitioner~~ advanced practice registered nurse. Other evidence may include employment records, military service, Medicare or Medicaid reimbursement records, or other similar records that verify full-time clinical practice in the role of a ~~nurse practitioner~~ an advanced practice registered nurse in the category for which the ~~nurse practitioner~~ advanced practice registered nurse is licensed and certified. The burden shall be on the ~~nurse practitioner~~ advanced practice registered nurse to provide sufficient evidence to support the ~~nurse practitioner's~~ advanced practice registered nurse's inability to obtain an attestation from a patient care team physician.

F. A ~~nurse practitioner~~ An advanced practice registered nurse to whom a license is issued by endorsement may engage in autonomous practice if such application includes an attestation

acceptable to the boards that the ~~nurse practitioner~~ advanced practice registered nurse has completed the equivalent of five years of full-time clinical experience as specified in subsection A of this section and in accordance with the laws of the state in which the ~~nurse practitioner~~ advanced practice registered nurse was previously licensed.

G. A ~~nurse practitioner~~ An advanced practice registered nurse authorized to practice autonomously shall:

1. Only practice within the scope of the ~~nurse practitioner's~~ advanced practice registered nurse's clinical and professional training and limits of the ~~nurse practitioner's~~ advanced practice registered nurse's knowledge and experience and consistent with the applicable standards of care;

2. Consult and collaborate with other health care providers based on the clinical conditions of the patient to whom health care is provided; and

3. Establish a plan for referral of complex medical cases and emergencies to physicians or other appropriate health care providers.

18VAC90-30-100. Renewal of licensure.

A. Licensure of a ~~nurse practitioner~~ an advanced practice registered nurse shall be renewed:

1. Biennially at the same time the license to practice as a registered nurse in Virginia is renewed; or

2. If licensed as a ~~nurse practitioner~~ an advanced practice registered nurse with a multistate licensure privilege to practice in Virginia as a registered nurse, a licensee born in even-numbered years shall renew his license by the last day of the birth month in even-numbered years and a licensee born in odd-numbered years shall renew his license by the last day of the birth month in odd-numbered years.

B. The renewal notice of the license shall be sent to the last known address of record of each ~~nurse practitioner~~ advanced practice registered nurse. Failure to receive the renewal notice shall not relieve the licensee of the responsibility for renewing the license by the expiration date.

C. The licensed ~~nurse practitioner~~ advanced practice registered nurse shall attest to compliance with continuing competency requirements of current professional certification or continuing education as prescribed in 18VAC90-30-105 and the license renewal fee prescribed in 18VAC90-30-50.

D. The license shall automatically lapse if the licensee fails to renew by the expiration date. Any person practicing as a ~~nurse practitioner~~ an advanced practice registered nurse during the time a license has lapsed shall be subject to disciplinary actions by the boards.

18VAC90-30-105. Continuing competency requirements.

A. In order to renew a license biennially, ~~a nurse practitioner~~ an advanced practice registered nurse initially licensed on or after May 8, 2002, shall hold current professional certification in the area of specialty practice from one of the certifying agencies designated in 18VAC90-30-90, except for those renewing their licenses in accordance with subsection B of this section.

B. In order to renew a license biennially, ~~nurse practitioners~~ advanced practice registered nurses licensed prior to May 8, 2002, or clinical nurse specialists who were registered by the Board of Nursing with a retired certification, shall meet one of the following requirements:

1. Hold current professional certification in the area of specialty practice from one of the certifying agencies designated in 18VAC90-30-90; or
2. Complete at least 40 hours of continuing education in the area of specialty practice approved by one of the certifying agencies designated in 18VAC90-30-90 or approved by Accreditation Council for Continuing Medical Education (ACCME) of the American Medical Association as a Category I Continuing Medical Education (CME) course.

C. The ~~nurse practitioner~~ advanced practice registered nurse shall retain evidence of compliance and all supporting documentation for a period of four years following the renewal period for which the records apply.

D. The boards shall periodically conduct a random audit of their licensees to determine compliance. The ~~nurse practitioners~~ advanced practice registered nurses selected for the audit shall provide the evidence of compliance and supporting documentation within 30 days of receiving notification of the audit.

E. The boards may delegate the authority to grant an extension or exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

18VAC90-30-110. Reinstatement of license.

A. A licensed ~~nurse practitioner~~ advanced practice registered nurse whose license has lapsed may be reinstated within one renewal period by payment of the current renewal fee and the late renewal fee.

B. An applicant for reinstatement of license lapsed for more than one renewal period shall:

1. File the required application and reinstatement fee;
2. Be currently licensed as a registered nurse in Virginia or hold a current multistate licensure privilege as a registered nurse; and

3. Provide evidence of current professional competency consisting of:

- a. Current professional certification by the appropriate certifying agency identified in 18VAC90-30-90;
- b. Continuing education hours taken during the period in which the license was lapsed, equal to the number required for licensure renewal during that period, not to exceed 120 hours; or
- c. If applicable, current, unrestricted licensure or certification in another jurisdiction.

4. If qualified for autonomous practice, provide the required fee and attestation in accordance with 18VAC90-30-86.

C. An applicant for reinstatement of license following suspension or revocation shall:

1. Petition for reinstatement and pay the reinstatement fee;
2. Present evidence that he is currently licensed as a registered nurse in Virginia or hold a current multistate licensure privilege as a registered nurse; and
3. Present evidence that he is competent to resume practice as a licensed ~~nurse practitioner~~ advanced practice registered nurse in Virginia to include:

- a. Current professional certification by the appropriate certifying agency identified in 18VAC90-30-90; or
- b. Continuing education hours taken during the period in which the license was suspended or revoked, equal to the number required for licensure renewal during that period, not to exceed 120 hours.

The committee shall act on the petition pursuant to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

Part III

Practice of Licensed ~~Nurse Practitioners~~ Advanced Practice Registered Nurses

18VAC90-30-120. Practice of licensed ~~nurse practitioners~~ advanced practice registered nurses other than certified registered nurse anesthetists, certified nurse midwives, or clinical nurse specialists.

A. ~~A nurse practitioner~~ An advanced practice registered nurse licensed in a category other than certified registered nurse anesthetist, certified nurse midwife, or clinical nurse specialist shall be authorized to render care in collaboration and consultation with a licensed patient care team physician as part of a patient care team or if determined by the boards to qualify in accordance with 18VAC90-30-86, authorized to practice autonomously without a practice agreement with a patient care team physician.

B. The practice shall be based on specialty education preparation as an advanced practice registered nurse in

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accordance with standards of the applicable certifying organization, as identified in 18VAC90-30-90.

C. All ~~nurse practitioners~~ advanced practice registered nurses licensed in any category other than certified registered nurse anesthetist, certified nurse midwife, or clinical nurse specialist shall practice in accordance with a written or electronic practice agreement as defined in 18VAC90-30-10 or in accordance with 18VAC90-30-86.

D. The written or electronic practice agreement shall include provisions for:

1. The periodic review of patient charts or electronic patient records by a patient care team physician and may include provisions for visits to the site where health care is delivered in the manner and at the frequency determined by the patient care team;
2. Appropriate physician input in complex clinical cases and patient emergencies and for referrals; and
3. The ~~nurse practitioner's~~ advanced practice registered nurse's authority for signatures, certifications, stamps, verifications, affidavits, and endorsements provided it is:
 - a. In accordance with the specialty license of the ~~nurse practitioner~~ advanced practice registered nurse and within the scope of practice of the patient care team physician;
 - b. Permitted by § 54.1-2957.02 or applicable sections of the Code of Virginia; and
 - c. Not in conflict with federal law or regulation.

E. The practice agreement shall be maintained by the ~~nurse practitioner~~ advanced practice registered nurse and provided to the boards upon request. For ~~nurse practitioners~~ advanced practice registered nurses providing care to patients within a hospital or health care system, the practice agreement may be included as part of documents delineating the nurse practitioner's clinical privileges or the electronic or written delineation of duties and responsibilities; however, the ~~nurse practitioner~~ advanced practice registered nurse shall be responsible for providing a copy to the boards upon request.

18VAC90-30-121. Practice of ~~nurse practitioners~~ advanced practice registered nurses licensed as certified registered nurse anesthetists.

A. ~~A nurse practitioner~~ An advanced practice registered nurse licensed in a category of certified registered nurse anesthetist shall be authorized to render care under the supervision of a licensed doctor of medicine, osteopathy, podiatry, or dentistry.

B. The practice of a certified registered nurse anesthetist shall be based on specialty education preparation as an advanced practice registered nurse in accordance with standards of the applicable certifying organization and with the functions and standards defined by the American Association of Nurse Anesthetists (Standards for Nurse Anesthesia Practice, Revised 2013).

18VAC90-30-123. Practice of ~~nurse practitioners~~ advanced practice registered nurses licensed as certified nurse midwives.

A. ~~A nurse practitioner~~ An advanced practice registered nurse licensed in the category of certified nurse midwife who has practiced fewer than 1,000 hours shall practice in consultation with a licensed physician in accordance with a practice agreement between the ~~nurse practitioner~~ advanced practice registered nurse and the physician or with a certified nurse midwife who has practiced for at least two years prior to entering into the practice agreement. Such practice agreement shall address the availability of the physician or the certified nurse midwife for routine and urgent consultation on patient care.

B. The practice agreement shall be maintained by the nurse midwife and provided to the boards upon request. For nurse midwives providing care to patients within a hospital or health care system, the practice agreement may be included as part of documents delineating the nurse midwife's clinical privileges or the electronic or written delineation of duties and responsibilities; however, the nurse midwife shall be responsible for providing a copy to the boards upon request.

C. ~~A nurse practitioner~~ An advanced practice registered nurse licensed in the category of a certified nurse midwife shall practice in accordance with the Standards for the Practice of Midwifery (Revised 2011) defined by the American College of Nurse-Midwives.

18VAC90-30-124. Direction and supervision of laser hair removal.

A. ~~A nurse practitioner~~ An advanced practice registered nurse, as authorized pursuant to § 54.1-2957 of the Code of Virginia, may perform or supervise the performance of laser hair removal upon completion of training in the following:

1. Skin physiology and histology;
2. Skin type and appropriate patient selection;
3. Laser safety;
4. Operation of laser device to be used;
5. Recognition of potential complications and response to any actual complication resulting from a laser hair removal treatment; and
6. A minimum number of 10 proctored patient cases with demonstrated competency in treating various skin types.

B. ~~Nurse practitioners~~ Advanced practice registered nurses who have been performing laser hair removal prior to August 7, 2019, are not required to complete the training specified in subsection A of this section.

C. ~~A nurse practitioner~~ An advanced practice registered nurse who delegates the practice of laser hair removal and provides supervision for such practice shall ensure the supervised

person has completed the training required in subsection A of this section.

D. ~~A nurse practitioner~~ An advanced practice registered nurse who performs laser hair removal or who supervises others in the practice shall receive ongoing training as necessary to maintain competency in new techniques and laser devices. The ~~nurse practitioner advanced practice registered nurse~~ shall ensure that persons the ~~nurse practitioner advanced practice registered nurse~~ supervises also receive ongoing training to maintain competency.

E. ~~A nurse practitioner~~ An advanced practice registered nurse may delegate laser hair removal to a properly trained person under the ~~nurse practitioner's~~ advanced practice registered nurse's direction and supervision. Direction and supervision shall mean that the ~~nurse practitioner advanced practice registered nurse~~ is readily available at the time laser hair removal is being performed. The supervising ~~nurse practitioner advanced practice registered nurse~~ is not required to be physically present but is required to see and evaluate a patient for whom the treatment has resulted in complications prior to the continuance of laser hair removal treatment.

F. Prescribing of medication shall be in accordance with § 54.1-3303 of the Code of Virginia.

18VAC90-30-125. Practice of nurse practitioners licensed as clinical ~~nurse specialists~~ advanced practice registered nurses.

A. ~~Nurse practitioners~~ Advanced practice registered nurses licensed in the category of clinical nurse specialist shall practice in consultation with a licensed physician in accordance with a practice agreement between the ~~nurse practitioner advanced practice registered nurse~~ and the licensed physician.

B. Such practice agreement shall address the availability of the physician for routine and urgent consultation on patient care. Evidence of a practice agreement shall be maintained by a ~~nurse practitioner~~ an advanced practice registered nurse and provided to the boards upon request.

C. The practice of clinical nurse specialists shall be consistent with the standards of care for the profession and with applicable laws and regulations.

18VAC90-30-160. Prohibited practice.

Practice as a ~~licensed nurse practitioner~~ an advanced practice registered nurse shall be prohibited if the license as a ~~nurse practitioner~~ an advanced practice registered nurse or a registered nurse is lapsed, inactive, revoked, or suspended.

18VAC90-30-220. Grounds for disciplinary action against the license of a licensed ~~nurse practitioner~~ advanced practice registered nurse.

The boards may deny licensure or relicensure, revoke or suspend the license, or take other disciplinary action upon

proof that the ~~nurse practitioner~~ advanced practice registered nurse:

1. Has had a license or multistate privilege to practice nursing in this Commonwealth or in another jurisdiction revoked or suspended or otherwise disciplined;
2. Has directly or indirectly represented to the public that the ~~nurse practitioner advanced practice registered nurse~~ is a physician, or is able to, or will practice independently of a physician;
3. Has exceeded the authority as a licensed ~~nurse practitioner~~ advanced practice registered nurse;
4. Has violated or cooperated in the violation of the laws or regulations governing the practice of medicine, nursing or ~~nurse practitioners~~ advanced practice registered nurses;
5. Has become unable to practice with reasonable skill and safety to patients as the result of a physical or mental illness or the excessive use of alcohol, drugs, narcotics, chemicals, or any other type of material;
6. Has violated or cooperated with others in violating or attempting to violate any law or regulation, state or federal, relating to the possession, use, dispensing, administration, or distribution of drugs;
7. Has failed to comply with continuing competency requirements as set forth in 18VAC90-30-105;
8. Has willfully or negligently breached the confidentiality between a practitioner and a patient. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful;
9. Has engaged in unauthorized use or disclosure of confidential information received from the Prescription Monitoring Program, the electronic system within the Department of Health Professions that monitors the dispensing of certain controlled substances; or
10. Has engaged in conversion therapy with a person younger than 18 years of age.

18VAC90-30-230. Administrative proceedings.

A. The provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) shall govern proceedings on questions of violation of 18VAC90-30-220.

B. Except as provided in 18VAC90-30-240, the Committee of the Joint Boards of Nursing and Medicine shall conduct all proceedings prescribed herein and shall take action on behalf of the boards.

C. When a person's license to practice nursing has been suspended or revoked by the Board of Nursing, the ~~nurse practitioner~~ advanced practice registered nurse license shall be

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suspended pending a hearing simultaneously with the institution of proceedings for a hearing.

D. Sanctions or other terms and conditions imposed by consent orders entered by the Board of Nursing on the license to practice nursing may apply to the ~~nurse practitioner~~ advanced practice registered nurse license, provided the consent order has been accepted by the Committee of the Joint Boards of Nursing and Medicine.

18VAC90-30-240. Delegation of proceedings.

A. Decision to delegate. In accordance with subdivision 10 of § 54.1-2400 (~~40~~) of the Code of Virginia, the Committee of the Joint Boards of Nursing and Medicine (committee) may delegate an informal fact-finding proceeding to an agency subordinate ~~upon determination that probable cause exists that a nurse practitioner may be subject to a disciplinary action.~~

B. Criteria for delegation. Cases that involve intentional or negligent conduct that caused serious injury or harm to a patient may not be delegated to an agency subordinate, except as may be approved by the chair of the committee.

C. Criteria for an agency subordinate.

1. An agency subordinate authorized by the committee to conduct an informal fact-finding proceeding may include current or past board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.

2. The Executive Director of the Board of Nursing shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.

3. The committee may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.

Chapter 40

Regulations for Prescriptive Authority for ~~Nurse Practitioners~~ Advanced Practice Registered Nurses

18VAC90-40-10. Definitions.

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

"Acute pain" means pain that occurs within the normal course of a disease or condition or as the result of surgery for which controlled substances containing an opioid may be prescribed for no more than three months.

"Advanced practice registered nurse" means an advanced practice registered nurse who has met the requirements for licensure as an advanced practice registered nurse as stated in 18VAC90-30.

"Boards" means the Virginia Board of Medicine and the Virginia Board of Nursing.

"Certified nurse midwife" means an advanced practice registered nurse who is certified in the specialty of nurse midwifery and who is jointly licensed by the Boards of Medicine and Nursing as ~~a nurse practitioner~~ an advanced practice registered nurse pursuant to § 54.1-2957 of the Code of Virginia.

"Chronic pain" means nonmalignant pain that goes beyond the normal course of a disease or condition for which controlled substances containing an opioid may be prescribed for a period greater than three months.

"Clinical nurse specialist" means an advanced practice registered nurse who is certified in the specialty of clinical nurse specialist and who is jointly licensed by the Boards of Medicine and Nursing as ~~a nurse practitioner~~ an advanced practice registered nurse pursuant to § 54.1-2957 of the Code of Virginia.

"Committee" means the Committee of the Joint Boards of Nursing and Medicine.

"FDA" means the U.S. Food and Drug Administration.

"MME" means morphine milligram equivalent.

"Nonprofit health care clinics or programs" means a clinic organized in whole or in part for the delivery of health care services without charge or when a reasonable minimum fee is charged only to cover administrative costs.

~~"Nurse practitioner" means an advanced practice registered nurse who has met the requirements for licensure as a nurse practitioner as stated in 18VAC90-30.~~

"Practice agreement" means a written or electronic agreement jointly developed by the patient care team physician and the ~~nurse practitioner~~ advanced practice registered nurse for the practice of the ~~nurse practitioner~~ advanced practice registered nurse that also describes the prescriptive authority of the ~~nurse practitioner~~ advanced practice registered nurse, if applicable. For a ~~nurse practitioner~~ an advanced practice registered nurse licensed in the category of certified nurse midwife, the practice agreement is a statement jointly developed with the consulting physician or a certified nurse midwife with at least two years of clinical experience. For a ~~nurse practitioner~~ an advanced practice registered nurse licensed in the category of clinical nurse specialist, the practice agreement shall be between the ~~nurse practitioner~~ advanced practice registered nurse and a consulting physician.

"Prescription Monitoring Program" means the electronic system within the Department of Health Professions that monitors the dispensing of certain controlled substances.

"SAMHSA" means the federal Substance Abuse and Mental Health Services Administration.

18VAC90-40-20. Authority and administration of regulations.

A. The statutory authority for this chapter is found in §§ 54.1-2957.01, 54.1-3303, 54.1-3401, and 54.1-3408 of the Code of Virginia.

B. Joint boards of nursing and medicine.

1. The Committee of the Joint Boards of Nursing and Medicine shall be appointed to administer this chapter governing prescriptive authority.
2. The boards hereby delegate to the Executive Director of the Virginia Board of Nursing the authority to issue the initial authorization to those persons who meet the requirements set forth in this chapter and to grant extensions or exemptions for compliance with continuing competency requirements as set forth in subsection E of 18VAC90-40-55. Questions of eligibility shall be referred to the committee.
3. All records and files related to prescriptive authority for ~~nurse practitioners~~ advanced practice registered nurses shall be maintained in the office of the Board of Nursing.

18VAC90-40-30. Authority to prescribe, general.

A. No licensed ~~nurse practitioner~~ advanced practice registered nurse shall have authority to prescribe certain controlled substances and devices in the Commonwealth of Virginia except in accordance with this chapter and as authorized by the boards.

B. The boards shall approve prescriptive authority for applicants who meet the qualifications set forth in 18VAC90-40-40 ~~of this chapter~~.

18VAC90-40-40. Qualifications for initial approval of prescriptive authority.

An applicant for prescriptive authority shall meet the following requirements:

1. Hold a current, unrestricted license as ~~a nurse practitioner~~ an advanced practice registered nurse in the Commonwealth of Virginia;
2. Provide evidence of one of the following:
 - a. Continued professional certification as required for initial licensure as ~~a nurse practitioner~~ an advanced practice registered nurse;
 - b. Satisfactory completion of a graduate level course in pharmacology or pharmacotherapeutics obtained as part of the ~~nurse practitioner or~~ advanced practice registered nurse education program within the five years prior to submission of the application;
 - c. Practice as ~~a nurse practitioner~~ an advanced practice registered nurse for no less than 1,000 hours and 15 continuing education units related to the area of practice

for each of the two years immediately prior to submission of the application; or

d. Thirty contact hours of education in pharmacology or pharmacotherapeutics acceptable to the boards taken within five years prior to submission of the application. The 30 contact hours may be obtained in a formal academic setting as a discrete offering or as noncredit continuing education offerings and shall include the following course content:

- (1) Applicable federal and state laws;
- (2) Prescription writing;
- (3) Drug selection, dosage, and route;
- (4) Drug interactions;
- (5) Information resources; and
- (6) Clinical application of pharmacology related to specific scope of practice;

3. Develop a practice agreement between the ~~nurse practitioner~~ advanced practice registered nurse and the patient care team physician as required in 18VAC90-40-90; and

4. File a completed application and pay the fees as required in 18VAC90-40-70.

18VAC90-40-55. Continuing competency requirements.

A. A licensee with prescriptive authority shall meet continuing competency requirements for biennial renewal as a licensed ~~nurse practitioner~~ advanced practice registered nurse. Such requirements shall address issues such as ethical practice, an appropriate standard of care, patient safety, and appropriate communication with patients.

B. ~~A nurse practitioner~~ An advanced practice registered nurse with prescriptive authority shall obtain a total of eight hours of continuing education in pharmacology or pharmacotherapeutics for each biennium in addition to the minimal requirements for compliance with subsection B of 18VAC90-30-105.

C. The ~~nurse practitioner~~ advanced practice registered nurse with prescriptive authority shall retain evidence of compliance and all supporting documentation for a period of four years following the renewal period for which the records apply.

D. The boards shall periodically conduct a random audit of their licensees to determine compliance. The ~~nurse practitioners~~ advanced practice registered nurses selected for the audit shall provide the evidence of compliance and supporting documentation within 30 days of receiving notification of the audit.

E. The boards may delegate to the committee the authority to grant an extension or an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

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18VAC90-40-90. Practice agreement.

A. With the exceptions listed in subsection E of this section, ~~a nurse practitioner~~ an advanced practice registered nurse with prescriptive authority may prescribe only within the scope of the written or electronic practice agreement with a patient care team physician.

B. At any time there are changes in the patient care team physician, authorization to prescribe, or scope of practice, the ~~nurse practitioner~~ advanced practice registered nurse shall revise the practice agreement and maintain the revised agreement.

C. The practice agreement shall contain the following:

1. A description of the prescriptive authority of the ~~nurse practitioner~~ advanced practice registered nurse within the scope allowed by law and the practice of the ~~nurse practitioner~~ advanced practice registered nurse.

2. An authorization for categories of drugs and devices within the requirements of § 54.1-2957.01 of the Code of Virginia.

3. The signature of the patient care team physician who is practicing with the ~~nurse practitioner~~ advanced practice registered nurse or a clear statement of the name of the patient care team physician who has entered into the practice agreement.

D. In accordance with § 54.1-2957.01 of the Code of Virginia, a physician shall not serve as a patient care team physician to more than six ~~nurse practitioners~~ advanced practice registered nurses with prescriptive authority at any one time.

E. Exceptions.

1. ~~A nurse practitioner~~ An advanced practice registered nurse licensed in the category of certified nurse midwife and holding a license for prescriptive authority may prescribe in accordance with a written or electronic practice agreement with a consulting physician or with a certified nurse midwife who has practiced for at least two years prior to entering into a practice agreement. ~~A nurse practitioner~~ An advanced practice registered nurse in the category of certified nurse midwife who has qualified for autonomous practice as set forth in 18VAC90-30-87 may prescribe without a practice agreement.

2. ~~A nurse practitioner~~ An advanced practice registered nurse licensed in the category of a clinical nurse specialist and holding authorization for prescriptive authority may prescribe in accordance with a written or electronic practice agreement with a consulting physician or may prescribe Schedule VI controlled substances without the requirement for inclusion of such prescriptive authority in a practice agreement.

3. ~~A nurse practitioner~~ An advanced practice registered nurse who is licensed in a category other than certified nurse

midwife, certified registered nurse anesthetist, or clinical nurse specialist, and who has met the qualifications for autonomous practice as set forth in 18VAC90-30-86 may prescribe without a practice agreement with a patient care team physician.

18VAC90-40-110. Disclosure.

A. The ~~nurse practitioner~~ advanced practice registered nurse shall include on each prescription issued or dispensed his signature and the Drug Enforcement Administration (DEA) number, when applicable. If the ~~nurse practitioner's~~ advanced practice registered nurse's practice agreement authorizes prescribing of only Schedule VI drugs and the ~~nurse practitioner~~ advanced practice registered nurse does not have a DEA number, he shall include the prescriptive authority number as issued by the boards.

B. The ~~nurse practitioner~~ advanced practice registered nurse shall disclose to patients at the initial encounter that he is a licensed ~~nurse practitioner~~ advanced practice registered nurse. Such disclosure may be included on a prescription pad or may be given in writing to the patient.

C. The ~~nurse practitioner~~ advanced practice registered nurse shall disclose, upon request of a patient or a patient's legal representative, the name of the patient care team physician and information regarding how to contact the patient care team physician.

18VAC90-40-120. Dispensing.

~~A nurse practitioner~~ An advanced practice registered nurse may dispense only those manufacturers' samples of drugs that are included in the written or electronic practice agreement.

18VAC90-40-121. Prescribing for self or family.

A. Treating or prescribing shall be based on a bona fide practitioner-patient relationship, and prescribing shall meet the criteria set forth in § 54.1-3303 of the Code of Virginia.

B. ~~A nurse practitioner~~ An advanced practice registered nurse shall not prescribe a controlled substance to himself or a family member, other than Schedule VI as defined in § 54.1-3455 of the Code of Virginia, unless the prescribing occurs in an emergency situation or in isolated settings where there is no other qualified practitioner available to the patient, or it is for a single episode of an acute illness through one prescribed course of medication.

C. When treating or prescribing for self or family, the ~~nurse practitioner~~ advanced practice registered nurse shall maintain a patient record documenting compliance with statutory criteria for a bona fide practitioner-patient relationship.

18VAC90-40-130. Grounds for disciplinary action.

A. The boards may deny approval of prescriptive authority, revoke or suspend authorization, or take other disciplinary

actions against ~~a nurse practitioner~~ an advanced practice registered nurse who:

1. Exceeds ~~his~~ the advanced practice registered nurse's authority to prescribe or prescribes outside of the written or electronic practice agreement with the patient care team physician or, for certified nurse midwives, the practice agreement with the consulting physician;
2. Has had his license as ~~a nurse practitioner~~ an advanced practice registered nurse suspended, revoked, or otherwise disciplined by the boards pursuant to 18VAC90-30-220; or
3. Fails to comply with requirements for continuing competency as set forth in 18VAC90-40-55.

B. Unauthorized use or disclosure of confidential information received from the Prescription Monitoring Program shall be grounds for disciplinary action.

18VAC90-40-140. Administrative proceedings.

A. Except as provided for delegation of proceedings to an agency subordinate in 18VAC90-30-240, the Committee of the Joint Boards of Nursing and Medicine shall conduct all hearings prescribed herein and shall take action on behalf of the boards.

B. The ~~nurse practitioner~~ advanced practice registered nurse with prescriptive authority shall be subjective to the grounds for disciplinary action set forth in 18VAC90-30-220.

C. When the license of ~~a nurse practitioner~~ an advanced practice registered nurse has been suspended or revoked by the joint boards, prescriptive authority shall be suspended pending a hearing simultaneously with the institution of proceedings for a hearing.

D. Any violation of law or of this chapter may result in disciplinary action including the revocation or suspension of prescriptive authority and may also result in additional sanctions imposed on the license of the ~~nurse practitioner~~ advanced practice registered nurse by the joint boards or upon the license of the registered nurse by the Board of Nursing.

18VAC90-40-250. General provisions.

A. Practitioners engaged in office-based opioid addiction treatment with buprenorphine shall have obtained a waiver from SAMHSA and the appropriate U.S. Drug Enforcement Administration registration.

B. Practitioners shall abide by all federal and state laws and regulations governing the prescribing of buprenorphine for the treatment of opioid use disorder.

C. ~~Nurse practitioners~~ Advanced practice registered nurses who have obtained a SAMHSA waiver shall only prescribe buprenorphine for opioid addiction pursuant to a practice agreement with a SAMHSA-waivered doctor of medicine or doctor of osteopathic medicine unless the ~~nurse practitioner~~

advanced practice registered nurse has been authorized by the boards for autonomous practice.

D. Practitioners engaged in medication-assisted treatment shall either provide counseling in their practice or refer the patient to a mental health service provider, as defined in § 54.1-2400.1 of the Code of Virginia, who has the education and experience to provide substance misuse counseling. The practitioner shall document provision of counseling or referral in the medical record.

VA.R. Doc. No. R24-7516; Filed September 6, 2023, 4:08 p.m.

BOARD OF PHARMACY

Final Regulation

REGISTRAR'S NOTICE: The Board of Pharmacy is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 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).**

Statutory Authority: §§ 54.1-2400 and 54.1-3443 of the Code of Virginia.

Effective Date: November 8, 2023.

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 compounds from regulatory text that have been placed in Schedule I of the Drug Control Act, into § 54.1-3446 of the Code of Virginia, pursuant to Chapters 188 and 189 of the 2023 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. 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~~

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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.

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-cyclohexylmethylamino-propiofenone (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.

☞ 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-[5-nitro-2-(4-propoxybenzyl)-1H-benzimidazol-1-yl]ethanamine (other name: Protonitazene), 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. 1-(1,3-benzodioxol-5-yl)-2-(cyclohexylamino)butan-1-one (other names: Cybutylone, N-cyclohexyl 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.

3. Compounds expected to have depressant properties. 8-bromo-6-(2-chlorophenyl)-1-methyl-4H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine (other names: Clobromazolam, Phenazolam), 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.

4. Cannabimimetic agents.

a. 5-bromo-N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1H-indazole-3-carboxamide (other name: ADB-5Br-INACA), 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)-5-bromo-1-butylindazole-3-carboxamide (other name: ADB-5Br-BUTINACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until July 31, 2024, unless enacted into law in the Drug Control Act.

~~D.~~ 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-methyl-N-phenyl-N-[1-(2-phenylethyl)piperidin-4-yl]butanamide (other name: 2-methyl butyryl fentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

2. Compounds expected to have hallucinogenic properties.

a. 1-(7-methoxy-1,3-benzodioxol-5-yl)propan-2-amine (other names: 5-methoxy-3,4-methylenedioxyamphetamine, 3-methoxy MDA, MMDA), 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. 1-[1-(3-chlorophenyl)cyclohexyl]-piperidine (other names: 3-Chloro Phencyclidine, 3Cl-PCP, 3-chloro PCP), 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. Compound expected to have depressant properties. 7-bromo-5-phenyl-1,3-dihydro-1,4-benzodiazepin-2-one (other names: Desalkylgidazepam, Bromonordiazepam), 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.

4. Compound classified as a cannabimimetic agent. Methyl N-[(5-bromo-1H-indazol-3-yl)carbonyl]-3-methyl-valinate (other name: MDMB-5Br-INACA), 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 12, 2024, unless enacted into law in the Drug Control Act.

~~E.~~ 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. Synthetic opioids:

a. 2-(4-isopropoxybenzyl)-5-nitro-1-[2-(pyrrolidin-1-yl)ethyl]-1H-benzo[d]imidazole (other name: N-Pyrrolidino Isotonitazene), 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. 5-nitro-2-(4-propoxybenzyl)-1-[2-(pyrrolidin-1-yl)ethyl]-1H-benzo[d]imidazole (other names: N-Pyrrolidino Protonitazene, Protonitazepyne), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

c. N-phenyl-N-(1-propionyl-4-piperidinyl)-propanamide (other name: N-propionyl Norfentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

2. Synthetic compounds.

a. N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)pentanamide (other names: para-fluoro valeryl fentanyl, para-fluoro pentanoyl fentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

b. N-(4-fluorophenyl)-N-[1-(2-phenylethyl)piperidin-4-yl]acetamide (other name: para-fluoroacetyl fentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

3. Compounds expected to have hallucinogenic properties.

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a. 1-[1-(3-fluorophenyl)cyclohexyl]piperidine (other names: 3-fluoro Phencyclidine, 3F-PCP), 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)-2-(2-fluorophenyl)-cyclohexanone (other names: 2-fluoro-2-oxo PCE, 2-fluoro NENDCK), 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. Compounds expected to have depressive properties:

a. 6-(4-chlorophenyl)-1-methyl-4H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine (other names: 4'-chloro Deschloroalprazolam, 4'Cl-Deschloroalprazolam), 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. 7-chloro-5-(2-chlorophenyl)-1-methyl-3H-1,4-benzodiazepin-2-one (other names: Diclazepam, 2-Chlorodiazepam), 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.

5. Central nervous system stimulant. 2-(3-chlorophenyl)-3-methylmorpholine (other name: 3-chlorophenmetrazine), its salts, isomers (optical, position, and geometric), and salts of isomers.

The placement of drugs listed in this subsection shall remain in effect until March 27, 2025, unless enacted into law in the Drug Control Act.

VA.R. Doc. No. R24-7581; Filed September 6, 2023, 4:05 p.m.

Final Regulation

EDITOR'S NOTE: 18VAC110-20-150 was amended as part of the proposed regulation published in [39:7 VA.R. 1053-1058 November 21, 2022](#). An intervening action, R21-6488, published as a final regulation in [39:7 VA.R.1052-1053 November 21, 2022](#), made the same amendments to 18VAC110-20-150 as this action and added 18VAC110-21-46 to the Virginia Administrative Code (VAC). This intervening action finalized the amendments to 18VAC110-20-150 and some of the text of 18VAC110-21-46, effective December 21, 2022. Therefore, 18VAC110-20-150 is not being published as the amendments made in this action are currently effective in VAC. Additionally, text in 18VAC110-21-46 that is currently effective in VAC is not displayed underlined in this final regulation, although it was underlined in the proposed regulation.

Title of Regulation: **18VAC110-21. Regulations Governing the Licensure of Pharmacists and Registration of Pharmacy Technicians (amending 18VAC110-21-46).**

Statutory Authority: §§ 54.1-2400 and 54.1-3303.1 of the Code of Virginia.

Effective Date: November 8, 2023.

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:

Pursuant to Chapter 214 of the 2021 Acts of Assembly, the amendments add drugs and devices that may be initiated by a pharmacist and the authority to dispense controlled paraphernalia or other supplies or equipment to 18VAC110-21-46, a section added by an emergency regulatory action in 2020 (37:12 VA.R. 1316-1317 September 14, 2020), which became effective in the Virginia Administrative Code on December 21, 2022. The amendments (i) define drugs, devices, and controlled paraphernalia pursuant to applicable statute; (ii) include on the list vaccines on the Immunization Schedule published by the Centers for Disease Control and Prevention (CDC) or that have a current emergency use authorization from the U.S. Food and Drug Administration; (iii) include on the list tuberculin purified protein derivative for tuberculosis testing; (iv) include on the list controlled substances for the prevention of human immunodeficiency virus, including controlled substances prescribed for pre-exposure and post-exposure prophylaxis pursuant to guidelines and recommendations of the CDC; and (v) add a reporting requirement, pursuant to § 32.1-46.01 of the Code of Virginia, for pharmacists administering certain vaccines.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

18VAC110-21-46. Initiation of treatment by a pharmacist.

A. Pursuant to § 54.1-3303.1 of the Code of Virginia, a pharmacist may initiate treatment with, dispense, or administer the following drugs and devices to persons 18 years of age or older:

1. Naloxone or other opioid antagonist, including such controlled paraphernalia as defined in § 54.1-3466 of the Code of Virginia as may be necessary to administer such naloxone or other opioid antagonist;
2. Epinephrine;
3. Injectable or self-administered hormonal contraceptives, provided the patient completes an assessment consistent

with the United States Medical Eligibility Criteria for Contraceptive Use;

4. Prenatal vitamins for which a prescription is required;
5. Dietary fluoride supplements, in accordance with recommendations of the American Dental Association for prescribing of such supplements for persons whose drinking water has a fluoride content below the concentration recommended by the U.S. Department of Health and Human Services; ~~and~~
6. ~~Medications~~ Drugs and devices as defined in § 54.1-3401 of the Code of Virginia, controlled paraphernalia as defined in § 54.1-3466 of the Code of Virginia, and other supplies and equipment available over the counter covered by the patient's health carrier when the patient's out-of-pocket cost is lower than the out-of-pocket cost to purchase an over-the-counter equivalent of the same drug, device, controlled paraphernalia, or other supplies or equipment;
7. Vaccines included on the Immunization Schedule published by the Centers for Disease Control and Prevention or that have a current emergency use authorization from the U.S. Food and Drug Administration;
8. Tuberculin purified protein derivative for tuberculosis testing; and
9. Controlled substances for the prevention of human immunodeficiency virus, including controlled substances prescribed for pre-exposure and post-exposure prophylaxis pursuant to guidelines and recommendations of the Centers for Disease Control and Prevention.

B. Pharmacists who initiate treatment with, dispense, or administer a drug or device pursuant to subsection A of this section shall:

1. Follow the statewide protocol adopted by the board for each ~~drug or~~ device, controlled paraphernalia, or other supplies or equipment.
2. Notify the patient's primary health care provider that treatment has been initiated with such ~~drug or~~ device, controlled paraphernalia, or other supplies or equipment or that such ~~drug or~~ device has, controlled paraphernalia, or other supplies or equipment have been dispensed or administered to the patient, provided that the patient consents to such notification. If the patient does not have a primary health care provider, the pharmacist shall counsel the patient regarding the benefits of establishing a relationship with a primary health care provider and, upon request, provide information regarding primary health care providers, including federally qualified health centers, free clinics, or local health departments serving the area in which the patient is located. If the pharmacist is initiating treatment with, dispensing, or administering injectable or self-administered hormonal contraceptives, the pharmacist shall counsel the patient regarding seeking preventative care,

including (i) routine well-woman visits, (ii) testing for sexually transmitted infections, and (iii) pap smears. If the pharmacist is administering a vaccine pursuant to this section, the pharmacist shall report such administration to the Virginia Immunization Information System in accordance with the requirements of § 32.1-46.01 of the Code of Virginia.

3. Maintain a patient record for a minimum of six years following the last patient encounter with the following exceptions:
 - a. Records that have previously been transferred to another practitioner or health care provider or provided to the patient or the patient's personal representative; or
 - b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time.
4. Perform the activities in a manner that protects patient confidentiality and complies with the Health Insurance Portability and Accountability Act, 42 USC §_1320d et seq.

VA.R. Doc. No. R22-6989; Filed September 7, 2023, 8:20 a.m.

BOARD OF PHYSICAL THERAPY

Final Regulation

REGISTRAR'S NOTICE: The Board of Physical Therapy 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: **18VAC112-20. Regulations Governing the Practice of Physical Therapy (amending 18VAC112-20-121).**

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

Effective Date: November 8, 2023.

Agency Contact: Corie Tillman Wolf, Executive Director, Board of Physical Therapy, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4674, FAX (804) 527-4413, or email ptboard@dhp.virginia.gov.

Summary:

Pursuant to Chapters 136 and 137 of the 2023 Acts of Assembly, the amendments exclude dry needling from invasive procedures that may only be performed under the referral and direction of a doctor of medicine, osteopathy, chiropractic, podiatry, or dental surgery.

18VAC112-20-121. Practice of dry needling.

~~A. Dry needling is an invasive procedure that requires referral and direction in accordance with § 54.1-3482 of the Code of~~

Regulations

Virginia. Referral should be in writing; if the initial referral is received orally, it shall be followed up with a written referral.

~~B.~~ A. Dry needling is not an entry level skill but an advanced procedure that requires additional post-graduate training.

1. The training shall be specific to dry needling and shall include emergency preparedness and response, contraindications and precautions, secondary effects or complications, palpation and needle techniques, and physiological responses.

2. The training shall consist of didactic and hands-on laboratory education and shall include passage of a theoretical and practical examination. The hands-on laboratory education shall be face-to-face.

3. The training shall be in a course approved or provided by a sponsor listed in subsection B of 18VAC112-20-131.

4. The practitioner shall not perform dry needling beyond the scope of the highest level of the practitioner's training.

~~C.~~ B. Prior to the performance of dry needling, the physical therapist shall obtain informed consent from the patient or the patient's representative. The informed consent shall include the risks and benefits of the technique. The informed consent form shall be maintained in the patient record.

~~D.~~ C. Dry needling shall only be performed by a physical therapist trained pursuant to subsection ~~B~~ A of this section and shall not be delegated to a physical therapist assistant or other support personnel.

VA.R. Doc. No. R24-7546; Filed September 6, 2023, 4:21 p.m.

BOARD OF COUNSELING

Final Regulation

REGISTRAR'S NOTICE: The Board of Counseling 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: 18VAC115-15. Delegation of Informal Fact-Finding to an Agency Subordinate (amending 18VAC115-15-10).

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

Effective Date: November 8, 2023.

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

Summary:

Pursuant to Chapter 191 of the 2023 Acts of Assembly, the amendments remove a limitation that agency subordinates be used only for disciplinary matters and allow boards that use agency subordinates to employ those agency subordinates to hear credentials or applications cases as well as disciplinary cases.

18VAC115-15-10. Decision to delegate.

In accordance with subdivision 10 of § 54.1-2400 ~~(40)~~ of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate ~~upon determination that probable cause exists that a practitioner may be subject to a disciplinary action.~~

VA.R. Doc. No. R24-7550; Filed September 6, 2023, 4:15 p.m.

BOARD OF PSYCHOLOGY

Final Regulation

REGISTRAR'S NOTICE: The Board of Psychology 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: 18VAC125-15. Regulations Governing Delegation to an Agency Subordinate (amending 18VAC125-15-10).

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

Effective Date: November 8, 2023.

Agency Contact: Jaime Hoyle, Executive Director, Board of Psychology, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4406, FAX (804) 327-4435, or email jaime.hoyle@dhp.virginia.gov.

Summary:

Pursuant to Chapter 191 of the 2023 Acts of Assembly, the amendments remove a limitation that agency subordinates be used only for disciplinary matters and allow boards that use agency subordinates to employ those agency subordinates to hear credentials or applications cases as well as disciplinary cases.

18VAC125-15-10. Decision to delegate.

In accordance with subdivision 10 of § 54.1-2400 ~~(40)~~ of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate ~~upon determination that probable cause exists that a practitioner may be subject to a disciplinary action.~~

VA.R. Doc. No. R24-7564; Filed September 6, 2023, 4:13 p.m.

BOARD OF SOCIAL WORK

Final Regulation

REGISTRAR'S NOTICE: The Board of Social work 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: 18VAC140-20. Regulations Governing the Practice of Social Work (amending 18VAC140-20-171).

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

Effective Date: November 8, 2023.

Agency Contact: Jaime Hoyle, Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@dhp.virginia.gov.

Summary:

Pursuant to Chapter 191 of the 2023 Acts of Assembly, the amendments remove a limitation that agency subordinates be used only for disciplinary matters and allow boards that use agency subordinates to employ those agency subordinates to hear credentials or applications cases as well as disciplinary cases.

18VAC140-20-171. Criteria for delegation of informal fact-finding proceedings to an agency subordinate.

A. Decision to delegate. In accordance with subdivision 10 of § 54.1-2400 (40) of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate ~~upon determination that probable cause exists that a practitioner may be subject to a disciplinary action.~~

B. Criteria for delegation. Cases that may not be delegated to an agency subordinate include violations of standards of practice as set forth in 18VAC140-20-150, except as may otherwise be determined by the probable cause committee in consultation with the board chair.

C. Criteria for an agency subordinate.

1. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.

2. The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.

3. The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.

VA.R. Doc. No. R24-7587; Filed September 6, 2023, 4:12 p.m.

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

Proposed Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: 20VAC5-309. Rules for Enforcement of the Underground Utility Damage Prevention Act (amending 20VAC5-309-15 through 20VAC5-309-60, 20VAC5-309-90, 20VAC5-309-110, 20VAC5-309-120, 20VAC5-309-150, 20VAC5-309-165, 20VAC5-309-180, 20VAC5-309-190, 20VAC5-309-200; adding 20VAC5-309-210, 20VAC5-309-215).

Statutory Authority: §§ 12.1-13 and 56-265.30 of the Code of Virginia.

Public Hearing Information: A public hearing will be held upon request.

Public Comment Deadline: January 12, 2024.

Agency Contact: William H. Harrison IV, Associate General Counsel, Office of General Counsel, Public Utility Regulation Division, State Corporation Commission P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9228, or email william.harrison@scc.virginia.gov.

Summary:

Pursuant to Chapters 299 and 300 of the 2023 Acts of Assembly, the proposed amendments align Rules for Enforcement of the Underground Utility Damage Prevention Act (20VAC5-309) with statutory changes, including (i) updating and adding new definitions; (ii) aligning regulatory text with statute; (iii) clarifying the commission's inspection authority; and (iv) requiring that, in the event of an unintended release of hazardous gas or liquid, an excavator must remain on site, at a safe distance, until such time as emergency response personnel arrive to the site.

Regulations

AT RICHMOND, SEPTEMBER 12, 2023
COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
CASE NO. URS-2023-00251

Ex Parte: In the matter concerning a
rulemaking proceeding to revise the Commission's Rules
for Enforcement of the Virginia Underground Utility
Damage
Prevention Act, 20 VAC 5-309-10 et seq.

ORDER FOR NOTICE AND COMMENT

Virginia Code ("Code") § 56-265.30 directs the State Corporation Commission ("Commission") to enforce the provisions of Chapter 10.3 of Title 56, the Virginia Underground Utility Damage Prevention Act ("Act"), and provides for the Commission's promulgation of rules or regulations necessary to implement the Commission's authority. The Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act ("Rules") are set forth in Chapter 309 of Title 20 of the Virginia Administrative Code.¹ During its 2023 Session, the Virginia General Assembly passed Senate Bill 1145 and House Bill 2132 amending, among other things, procedural due process and Commission authority as set forth by the Act, effective July 1, 2023. The Commission's Division of Utility and Railroad Safety ("Division") has indicated that changes to the Commission's authority and due process requirements render it in the public interest to enact amendments to the Rules. Attachment A to this Order for Notice and Comment ("Order") contains the Division's proposed revisions to the Rules ("Proposed Rules").

NOW THE COMMISSION, upon consideration of the foregoing, is of the opinion and finds that a proceeding should be established to adopt revisions to the Rules to align with the recent changes to the Act. Attachment A to this Order contains the Proposed Rules. We will direct that notice of the Proposed Rules be given to interested persons and that they be provided an opportunity to file written comments on, proposed modifications or supplements to, or request a hearing on the Proposed Rules. We further find that a copy of the Proposed Rules should be sent to the Registrar of Regulations for publication in the Virginia Register of Regulations.

To promote administrative efficiency and timely service of filings upon participants, the Commission will, among other things, direct the electronic filing of testimony and pleadings unless they contain confidential information, and require electronic service on participants in this proceeding.

Accordingly, IT IS ORDERED THAT:

- (1) This matter is docketed as Case No. URS-2023-00251.
- (2) All comments, pleadings or other documents filed in this matter should be submitted electronically to the extent authorized by Rule 5VAC5-20-150, Copies and format, of the Commission's Rules of Practice and Procedure ("Rules of

Practice").² Confidential and Extraordinarily Sensitive Information shall not be submitted electronically and should comply with 5VAC5-20-170, Confidential information, of the Rules of Practice. Any person seeking to hand deliver and physically file or submit any pleading or other document shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery.

(3) Pursuant to 5VAC5-20-140, Filing and service, of the Rules of Practice, the Commission directs that service on participants and the Commission's Staff ("Staff") in this matter shall be accomplished by electronic means. Concerning Confidential or Extraordinarily Sensitive Information, participants and Staff are instructed to work together to agree upon the manner in which documents containing such information shall be served upon one another, to the extent practicable, in an electronically protected manner, even if such information is unable to be filed in the Office of the Clerk, so that no participant or Staff is impeded from participating in this matter.

(4) Staff shall forward an electronic copy of this Order, including a copy of the Proposed Rules, to the Registrar of Regulations for publication in the Virginia Register of Regulations.

(5) An electronic copy of the Proposed Rules may be obtained by submitting a request to William Henry Harrison IV, Esq., in the Commission's Office of General Counsel at the following email address: william.harrison@scc.virginia.gov. An electronic copy of the Proposed Rules can be found on the Commission's website: scc.virginia.gov/pages/Rulemaking. Interested persons may also download unofficial copies of the Order and the Proposed Rules from the Commission's website: scc.virginia.gov/pages/Case-Information.

(6) Staff shall provide copies of this Order by electronic transmission, or when electronic transmission is not possible, by mail, to: individuals, organizations, and companies who have been identified by Staff as potentially being interested in this proceeding.

(7) On or before January 12, 2024, any interested person may file comments on the Proposed Rules by following the instructions found on the Commission's website: scc.virginia.gov/casecomments/Submit-Public-Comments.

Those unable, as a practical matter, to submit comments electronically, may file such comments by U.S. mail to the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Such comments may also include proposals and hearing requests. All comments shall refer to Case No. URS-2023-00251. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be adequately addressed in written comments. If a sufficient request for hearing is not received, the Commission may consider the matter and enter an order based upon the papers filed herein.

(8) On or before February 2, 2024, Staff shall file with the Clerk of the Commission a report on or a response to any

comments, proposals, or requests for hearing submitted to the Commission on the Proposed Rules.

(9) All documents filed in paper form with the Office of the Clerk of the Commission in this docket may use both sides of the paper. In all other respects, except as modified by this order, all filings shall comply fully with the requirements of 5VAC5-20-150, Copies and format, of the Rules of Practice.

(10) This matter is continued.

Commissioner Patricia L. West participated in this matter.

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.

¹20VAC5-309-10 et seq.

²5VAC5-20-10 et seq.

20VAC5-309-15. Definitions.

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

"Act" means the Underground Utility Damage Prevention Act (Chapter 10.3 (§ 56-265.14 et seq.) of Title 56 of the Code of Virginia).

"Clear evidence" as used in § 56-265.24 C of the Code of Virginia shall include, ~~but is not limited to,~~ visual evidence of an unmarked utility line, knowledge of the presence of a utility line, or faded marks from previous marking of a utility line.

"Division" means the State Corporation Commission's Division of Utility and Railroad Safety.

"GPS" means global positioning system.

"Installation records of a utility line" means maps, drawings, diagram, sketches, or any other depictions or descriptions of an underground utility line that reflect the location at the time of installation in a reasonably accurate manner.

"Locate" or "marking" means an operator's or ~~its~~ an operator's contract locator's markings of an underground utility line.

"Parcel" means land description that records the boundaries of privately-owned property, including the entire property without regards to easements.

"Serious impact on public health" means any condition involving a water or sewer utility line that creates, or may create, a danger to the health and well being of the public.

20VAC5-309-20. Report of probable violations.

Any person, as defined in § 56-265.15 of the Code of Virginia, may report probable violations of Chapter 10.3 of Title 56 to the State Corporation Commission, Division of Utility and Railroad Safety (division). The reports of probable violations may be submitted to the division in writing, by

phone, ~~fax, e-mail or email,~~ or in person. All written reports of probable violations shall include the information requested on SCC Form DPA-1, if available. All probable violations shall be reported to the division within 30 days of a person becoming aware of the circumstances constituting the probable violations.

20VAC5-309-30. Commission staff investigation of probable violations.

Upon receipt of a report of a probable violation, the State Corporation Commission staff ("staff") shall conduct an investigation to examine all the relevant facts regarding the reported probable violation. The investigation may include, among other things, records verification, informal meetings, teleconferences, and photo-documentation. Responses to reports of probable violations may be provided to the division in writing, by phone, ~~fax, e-mail or email,~~ or in person. Upon completion of the investigation, the staff shall review its findings and recommendations with the Advisory Committee established in accordance with § 56-265.31 of the ~~Act~~ Code of Virginia.

20VAC5-309-40. Advisory Committee review of probable violations.

A. The Advisory Committee (committee), established by the State Corporation Commission (commission), shall meet on a periodic basis to review probable violations of the Act, ~~this chapter,~~ and the commission staff's (staff) findings and recommendations relative to such violations. Upon determination of either the staff or the committee that a violation may have occurred, and that an enforcement action is required, the staff shall take one or more of the following actions:

1. Issue a warning letter to the person alleged to have committed the violation (~~respondent~~ defendant);
2. Issue an information letter to a county, city, or town alleged to have committed the violation;
3. Enter settlement negotiations with the ~~respondent~~ defendant. Upon reaching agreement on settlement terms, the division shall present the proposed settlement to the commission for final acceptance or rejection; or
4. Request the issuance of a "Rule to Show Cause" order pursuant to 5VAC5-20-90 of the commission's Rules of Practice and Procedure.

B. In the event that the staff but not the committee recommends enforcement action against a probable violator, ~~notwithstanding 20VAC5-309-40~~ notwithstanding subdivision A 3 of this section, the staff may not pursue a settlement with the probable violator absent the initiation of a rule to show cause. As part of its request for a rule to show cause, staff shall report to the commission the committee's recommendations and reason or reasons for the committee's recommendations.

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C. As soon as practicable after its establishment, the committee shall develop and implement a set of bylaws. These bylaws shall delineate the committee's practice and procedures relative to performing the duties assigned by the commission, including the review of probable violations of the Act and this chapter.

D. If deemed necessary, the committee shall establish one or more subcommittees of experts in the operations covered by the Act. These subcommittees shall assist the committee in performing its assigned duties.

20VAC5-309-50. Commission action.

A. The State Corporation Commission (commission) may accept or reject a proposed settlement to resolve probable violations of the Act and this chapter. If the commission rejects a proposed settlement, a public hearing will be scheduled to receive evidence and take appropriate enforcement action as provided by the commission's Rules of Practice and Procedure (~~5VAC5-20-10 et seq.~~) (5VAC5-20).

B. If the commission finds, after a hearing, that a violation has occurred or is continuing, it may issue a remedial order. The remedial order may direct the party ~~or parties~~ to take any action which is consistent with such party's ~~or parties'~~ obligations under the Act, including the payment of a civil penalty as provided by § 56-265.32 of the Code of Virginia. A remedial order issued by the commission under this section shall be effective upon issuance, in accordance with its terms, unless stayed, suspended, modified, or rescinded.

C. If the commission finds that a violation has occurred or is continuing and presents an immediate potential danger to life, health, property, or essential public service, the commission may issue a temporary injunction and schedule a hearing and require the respondent to show cause why it should not be enjoined on account of the alleged violation ~~or violations~~ of the Act and this chapter.

20VAC5-309-60. Civil penalties Sanctions.

A. The State Corporation Commission (commission) may, by judgment entered after a hearing on notice duly served on any person not less than 30 days before the date of the hearing, enjoin or impose sanctions not inconsistent with Chapter 3 (§ 12.1-12 et seq.) of Title 12.1 and § 56-265.32 of the Code of Virginia if it is proved that the person violated any of the provisions of this chapter as a result of a failure to exercise reasonable care. Any proceeding or civil penalty undertaken pursuant to this section shall not prevent nor preempt the right of any party to obtain civil damages for personal injury or property damage in private causes of action. This subsection shall not authorize the commission to impose civil penalties on any county, city, town, or other political subdivision. However, the commission shall inform the counties, cities, towns, and other political subdivisions of reports of alleged violations involving the locality or political subdivision and, at the

request of the locality or political subdivision, suggest corrective action.

~~B.~~ In determining the amount of any civil penalty included in a settlement, the nature, circumstances, and gravity of the violation; the degree of the ~~respondent's~~ defendant's culpability; the ~~respondent's~~ defendant's history of prior offenses; and such other factors as may be appropriate shall be considered.

~~B. C.~~ The ~~respondent~~ defendant shall pay a civil penalty that has been assessed or compromised by submitting to the division a certified check made payable to the Treasurer of Virginia in the correct amount. All such penalties shall be deposited in the Underground Utility Damage Prevention Special Fund ~~and shall be used for administering the regulatory program authorized by the Act. Any excess funds shall be used for public awareness programs established pursuant to subsection B of § 56-265.16:1 of the Code of Virginia.~~

20VAC5-309-90. Emergency excavation or demolition.

A. No person shall serve an emergency ~~notice on the notification center~~ locate request unless the work to be performed is in response to an "emergency," as the term is defined in § 56-265.15 of the Code of Virginia.

B. When excavation or demolition is required during an emergency as defined in § 56-265.15 of the Code of Virginia, all reasonable precautions shall be taken to protect underground utility lines that may be located at the site of the excavation. These precautions shall include, ~~but are not limited to,~~ the following:

1. Dispatched personnel or crews responding to the emergency shall notify the notification center ~~and request by~~ requesting an emergency locate of the underground utility lines at the earliest reasonable opportunity;
2. After arriving at the site, the person responding to the emergency shall determine the need for immediate action;
3. If immediate action is required, all reasonable precautions shall be taken to protect the underground utility lines. These actions shall include, ~~but are not limited to,~~ the following:
 - a. Conduct a thorough site assessment to determine the location of underground utility lines;
 - b. Locate the underground utility lines with acceptable equipment, if possible;
 - c. Hand dig around the underground utility lines;
 - d. Directly notify the utility line operators, if necessary; and
 - e. If prudent, the excavator shall wait for marking of the excavation area by operators having utility lines in the excavation area.

20VAC5-309-110. General marking requirements.

A. All markings shall be suitable for their intended purpose for a period of 15 working days beginning at 7 a.m. on the next working day following ~~notice by the excavator to the notification center~~ a locate request or the scheduled excavation date.

B. Markings shall be made at sufficient intervals to clearly indicate the approximate horizontal location and direction of the underground utility line. However, the distance between any two marks indicating the same utility line shall not exceed 20 feet. Site conditions or directional changes of the underground utility line shall be considered to determine the need for shorter distance between marks.

C. Markings of underground utility lines shall be by means of stakes, paint, flags, or combination thereof. The terrain, site conditions, and the type and extent of the proposed excavation shall be considered to determine the most suitable means to mark underground utility lines.

D. Paint marks shall be approximately ~~8~~ eight to 10 inches in length and one to two inches in width except when "spot" marking is necessary.

E. A minimum of three separate marks shall be made for each underground utility line marking.

F. Valve box covers that are at grade and visible shall be marked in response to a locate request with the appropriate color in accordance with the Act.

G. If in the process of marking an underground utility line, a customer-owned underground utility line of the same type is discovered, the operator or its contract locator shall make a reasonable effort to contact the excavator or the customer to advise of the presence of the line.

H. Where the proposed excavation crosses an underground utility line, markings shall be at intervals that clearly define the route of the underground line.

I. All markings shall extend if practical, a reasonable distance beyond the boundaries of the specific location of the proposed work as detailed on the ~~ticket~~ locate request.

J. If the use of line marking is considered damaging to property (driveways, landscaping, historic locations to the extent boundaries are known), "spot" marking or other suitable marking methods shall be used.

K. Markings shall be valid for an excavation site for 15 working days beginning at 7 a.m. on the next working day following ~~notice to the notification center~~ the locate request or the scheduled excavation date by the excavator or until one of the following events occurs:

1. The markings become faded, illegible, or destroyed; or
2. If the markings were placed in response to an emergency and the emergency condition has ceased to exist.

L. Where permitted by the operator's records, all utility lines of the same type in the same trench owned by the same operator shall be marked individually or by a single mark. If a single mark is used, the number of the utility lines shall be indicated at every other mark.

M. Operators or their contract locators shall use all information necessary to mark their facilities accurately.

N. Markings of an underground ~~pipeline~~ utility line greater than 12 inches in nominal outside dimension shall be marked with line markings indicating the approximate outer dimensions of the utility line and include the size in inches at every other mark.

O. Duct structures and conduit systems shall be marked with line markings indicating the approximate outer dimensions of the duct structure or conduit system and a solid closed circle over the approximate center of the duct structure or conduit system.

P. In areas where marks would be destroyed, such as high traffic areas, gravel areas, or dirt areas, or where surface conditions are such that the placement of marks directly over the utility line is not possible, offset markings shall be used. The offset marks shall be placed on a permanent surface, which is not likely to be destroyed. Offset marks shall include a line marking placed parallel to the underground utility line and an arrow, pointing in the direction of the utility line, with the distance in feet and inches to the location of the utility line shown on the right side of the arrow and size, material type, and the operator's letter designation information on the left side of the arrow. When possible, offset marks shall be used in conjunction with locate marks placed in accordance with the Act.

Q. The assigned letter designations for each operator to be used in conjunction with markings of underground utility lines shall be the same as those assigned by the notification center certified for a geographic area, subject to the review of the same and approval of such designations ~~in writing~~ by the advisory committee. Such approved designations by the ~~advisory~~ Advisory Committee (committee) shall be deemed final unless appealed to the State Corporation Commission (commission) within 30 days of the ~~advisory~~ committee's written evidence of approval. Operators wishing to appeal the letter designations assigned in accordance with this section may file an appropriate formal pleading with the commission seeking review of the assigned letter designation within 30 days of the issuance of the written approval of the ~~advisory~~ committee.

R. The symbols for marking of underground utility lines in compliance with § 56-265.19 F (ii) of the ~~Act~~ Code of Virginia shall be the same as those placed in response to a ~~notice of proposed excavation or demolition~~ locate request.

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20VAC5-309-120. Notification of clear evidence.

No person shall serve a ~~notice on the notification center~~ locate request regarding clear evidence of the presence of an unmarked utility line pursuant to § 56-265.24 C of the Code of Virginia unless (i) the excavator has previously ~~notified the notification center of the proposed excavation~~ submitted a locate request pursuant to § 56-265.17 A of the Code of Virginia, (ii) the excavator has complied with the requirements of 20VAC5-309-180, and (iii) the excavator has observed clear evidence of the presence of an unmarked utility line in the area of the proposed excavation.

20VAC5-309-150. Requirement for trenchless excavation.

A. Any person conducting trenchless excavation shall take all reasonable steps necessary to protect and support underground utility lines. Except as provided in subsection B of this section, these steps shall include the following:

1. The excavator should verify that all utility lines in the area are marked by reviewing the positive response system and comparing them to the marks on site;
2. The excavator shall ensure that bore equipment stakes are installed at a safe distance from marked utility lines;
3. When grounding rods are used, the excavator shall ensure that they are installed at a safe distance (at least 24 inches plus the width of the utility line, if known) away from the marked or staked location of utility lines;
4. The excavator shall ensure sufficient clearance is maintained between the bore path and any underground utility lines during pullback;
5. The excavator shall give special consideration to water and sewer systems within the area that cannot be located accurately;
6. Unless prohibited by other laws, ordinances, regulations, or rules of governmental and regulatory authorities having jurisdiction, the excavator shall expose all utility lines that will be in the bore path by hand digging to establish the underground utility line's location prior to commencing bore. For a parallel type bore, unless prohibited by other laws, ordinances, regulations, or rules of governmental and regulatory authorities having jurisdiction, the excavator shall expose the utility line by hand digging at reasonable distances along the bore path;
7. The excavator shall ensure the drill head locating device is functioning properly and within its specification prior to commencing the bore;
8. The excavator shall visually check the drill head as it passes through potholes, entrances, and exit pits; and
9. If the depth indicated by the locating device is lower than the bottom of the pothole or pit, the excavator shall cease

boring until the hole or pit can be hand excavated further to maintain a visual inspection of the drill head.

B. Notwithstanding the requirements of subdivision A 6 of this section, any person conducting trenchless excavation crossing any gravity fed sewer main or combination storm/sanitary sewer system utility lines need not expose such utility lines by hand digging if, in addition to meeting the other applicable requirements set forth in subsection A of this section, the following steps are taken:

1. Prior to commencing a trenchless excavation project, the excavator shall receive documentation from the utility line operator (such as, but not limited to, documentation through the permitting process) documenting that the operator has been notified of the proposed trenchless excavation and that trenchless excavation will be used to cross its underground utility line. The scope of a trenchless excavation project shall not exceed the scope of a single notice of excavation;
2. Prior to commencing the boring process, the excavator shall determine (i) the depth of the utility line through appropriate locating technology and (ii) the diameter and condition of the utility line using a sewer system camera with video recording capability;
3. The excavator shall ensure that a clearance of at least three feet is maintained between the bore path and the utility line;
4. After the trenchless excavation project has been completed, the excavator or a qualified contractor shall use a closed circuit sewer system video camera to determine the condition of the utility line and ensure that no cross bore or other damage has occurred;
5. The excavator or qualified contractor shall immediately notify the utility line operator of any damage found; and
6. After the bore has been completed, the excavator or qualified contractor shall make all video documentation available to the utility line operator and the division upon request. Such video documentation shall be maintained and made available for 12 months from the time of the notice of excavation.

C. The provisions of subsection B of this section shall apply only to gravity fed sewer mains or combination storm/sanitary systems that are considered "utility lines" as that term is defined in § 56-265.15 of the ~~Aet~~ Code of Virginia.

20VAC5-309-165. Operator's responsibilities for abandoned utility lines.

A. Upon receipt of an additional ~~notice to the notification center~~ locate request pursuant to § 56-265.24 C of the Code of Virginia, if the operator determines that an abandoned utility line exists, the operator shall provide the status of the utility line to the excavator within 27 hours, excluding Saturdays, Sundays, and legal holidays, from the time the excavator makes the ~~additional notice to the notification center~~ locate

request. The excavator and operator may negotiate a mutually agreeable time period in excess of 27 hours for the operator to provide such information to the excavator if site conditions prohibit the operator from making such a determination or extraordinary or exigent circumstances exist, as defined in § 56-265.15 of the Code of Virginia. If the site conditions prohibit the operator from making such a determination or extraordinary or exigent circumstances exist, the operator shall directly notify the person who proposes to excavate or demolish and shall, in addition, notify that person of the date and time when the status of the utility line will be determined. The deferral to determine the status of the utility line shall be no longer than 96 hours from 7 a.m. on the next working day following the excavator's additional ~~notice to the notification center~~ locate request.

B. The operator shall record and maintain the location information of the abandoned utility line as determined by the operator. Such records need not include abandoned underground electric, telecommunications, cable television, water, and sewer lines connected to a single family dwelling unit.

20VAC5-309-180. Excavator site inspection.

Prior to excavation, excavators shall verify they are at the correct location ~~and~~; shall verify locate markings with the positive response system; and, to the best of their ability, check for unmarked utility lines. If unmarked utility lines are identified, the excavator shall comply with the requirements of § 56-265.24 C of the Code of Virginia.

20VAC5-309-190. Delineating specific location of a proposed excavation or demolition.

A. Any person, as defined in § 56-265.15 of the Code of Virginia, ~~providing notice of a proposed excavation or demolition~~ submitting a locate request shall clearly describe the limits of the proposed excavation or demolition with sufficient detail to enable the operators to ascertain the location of the proposed excavation. The specific location of the proposed excavation or demolition may include, ~~but is not limited to~~:

1. GPS coordinates taken at a single point where work is planned or GPS coordinates taken to delineate a line, multi-segment line, or polygon. When providing a single point, line, or multi-segment line, the person providing notice shall include an area measured in feet from the coordinates that describe the work area. If a polygon is used, the proposed work area shall be inside the polygon. GPS nomenclatures used for providing coordinates to the notification center shall be as approved by the advisory committee.

2. White lining to delineate the area where excavation will take place. For single point excavation, the area shall be marked using dots, dashes, or white flags to show the operators the area of excavation. If utility markings are desired outside a white lined area, the excavator shall

provide clear instructions, to include the distance in feet outside the white lined area, to the notification center. For continuous excavations, such as trenching and boring, the excavator shall mark the center line of excavation by the use of dots or dashes. The excavation width, in feet, shall be indicated on either side of the center line in legible figures or noted in the marking instructions given to the notification center.

3. White lining performed by electronic means using aerial imagery. White lining performed by electronic means shall follow the same requirements as listed in subdivision 2 of this subsection.

4. A reference to the two nearest intersecting streets, if available, or driving directions.

B. In the event that a proposed excavation or demolition is planned at a single address at which there is no more than one structure, the area of proposed excavation or demolition may, if geographically feasible, be described by dividing the parcel or property into four quadrants from the perspective of facing the front of the property using the center of the structure as the center point of the four quadrants. If no structure exists on the property, the center of the parcel or property will be used as the center point of the four quadrants. These four quadrants shall be referred to as Front Left, Front Right, Rear Left, and Rear Right. If the proposed area consists only of Front Left and Front Right quadrants, the term "Front" shall be sufficient. If the proposed area of excavation consists only of Rear Left and Rear Right quadrants, the term "Rear" shall be sufficient. If the proposed area of excavation consists only of Front Left and Rear Left quadrants, the term "Left Side" shall be sufficient. If the proposed area of excavation consists only of Front Right and Rear Right quadrants, the term "Right Side" shall be sufficient. If the proposed area of excavation includes three out of the four quadrants, the entire property may be used for the proposed excavation or demolition.

C. If the ~~notice of proposed excavation or demolition~~ locate request does not contain specific location information, the notification center shall suspend the issuance of the ~~notice~~ locate request until specific location information is obtained, except in the case of excavations or demolitions performed during an emergency, as defined in § 56-265.15 of the Code of Virginia. The notification center shall issue the emergency notices with as much information as is available to it.

D. The area covered under each locate request shall not exceed 1/3 of a mile. A parcel defined within the existing notification center mapping data that has one or more sides that is 1/3 of a mile or longer shall not automatically exceed the area covered by a single locate request.

20VAC5-309-200. Reporting damage by calling 911.

In the event that damage to an underground utility line results in the escape of any flammable, toxic, hazardous, or corrosive gas or liquid, the excavator shall, in addition to complying with

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§§ 56-265.24 D and E of the Code of Virginia, promptly report the damage to the appropriate authorities by calling the 911 or official emergency telephone number if 911 service is unavailable for any reason. The excavator shall remain at or near the site of the damage, at a safe distance from the escape of any flammable, toxic, hazardous, or corrosive gas or liquid and shall make contact with the utility line operator upon arrival on site.

20VAC5-309-210. Provision of access to facilities and records.

Upon presenting appropriate credential, agents of the division responsible for determining compliance with the Act or compliance with 49 USC § 60101 et seq. or regulations or orders issued thereunder shall be provided access to relevant excavation or demolitions sites, incident or accident sites, facilities, or infrastructure to determine compliance or jurisdiction upon request.

If agents of the division responsible for determining compliance with the Act or compliance with 49 USC § 60101 et seq. or regulations or orders issued thereunder inspect or investigate an accident or incident involving facilities jurisdictional to the commission authority, the operator or owner of those facilities shall make available to the representative records and information that pertain to the event, including procedures, records, and test results.

20VAC5-309-215. Enforcement of § 56-265.24:1 of the Code of Virginia.

Enforcement of § 56-265.24:1 of the Code of Virginia shall reside with the circuit court of competent jurisdiction, unless such court declines to exercise its authority.

VA.R. Doc. No. R24-7673; Filed September 13, 2023, 10:44 a.m.



TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Final Regulation

REGISTRAR'S NOTICE: The State Board of Social 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 board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **22VAC40-705. Child Protective Services (amending 22VAC40-705-30, 22VAC40-705-80, 22VAC40-705-190).**

Statutory Authority: § 63.2-217 of the Code of Virginia.

Effective Date: November 8, 2023.

Agency Contact: Shannon Hartung, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7554, FAX (804) 726-7499, or email shannon.hartung1@dss.virginia.gov.

Summary:

The amendments conform the regulation to the following legislation adopted during the 2023 Session of the General Assembly:

Chapter 170, which establishes that if a local multidisciplinary team determines that an interview of a child at a child advocacy center (CAC) is needed and the interview cannot be completed within 14 days within the jurisdiction of the local department of social services (LDSS), the LDSS may facilitate the interview with a CAC in another jurisdiction;

Chapter 568, which clarifies that the definition of an abused or neglected child excludes a child whose parents or other person responsible for the child's care allows the child to participate in reasonable independent childhood activities, such as traveling to and from school by bicycle or foot, playing outdoors, and staying home alone for reasonable period of time. The reasonable independent childhood activities must be appropriate based on the child's age, maturity, and physical and mental abilities; and

Chapter 771, which allows a teacher licensed by the Board of Education or through an alternative pathway and employed by a local school board to petition the circuit court in the jurisdiction of the local department for a trial de novo, by judge or jury, within 30 days of the appellant's receipt of the state hearing officer's decision, replacing the existing appeal procedure for a judicial review of the agency action or the state hearing officer's decision under the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) for licensed teachers.

22VAC40-705-30. Types of abuse and neglect.

A. Physical abuse occurs when a caretaker creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon a child a physical injury by other than accidental means or creates a substantial risk of death, disfigurement, or impairment of bodily functions, including, ~~but not limited to,~~ a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § 18.2-248 of the Code of Virginia.

B. Physical neglect occurs when there is the failure to provide food, clothing, shelter, necessary medical treatment, or supervision for a child to the extent that the child's health or safety is endangered. This also includes abandonment and situations where the parent's or caretaker's own incapacitating behavior or absence prevents or severely limits the performing of child caring tasks pursuant to § 63.2-100 of the Code of Virginia. This also includes a child under the age of 18 years whose parent or other person responsible for his care knowingly leaves the child alone in the same dwelling as a person, not related by blood or marriage, who has been convicted of an offense against a minor for which registration is required as a violent sexual offender pursuant to § 9.1-902 of the Code of Virginia. In situations where the neglect is the result of family poverty and there are no outside resources available to the family, the parent or caretaker shall not be determined to have neglected the child; however, the local department may provide appropriate services to the family.

No child whose parent or other person responsible for the child's care allows the child to engage in independent activities without adult supervision shall for that reason alone be considered to be an abused or neglected child, provided that (i) such independent activities are appropriate based on the child's age, maturity, and physical and mental abilities and (ii) such lack of supervision does not constitute conduct that is so grossly negligent as to endanger the health or safety of the child. Such independent activities include traveling to or from school or nearby locations by bicycle or on foot, playing outdoors, or remaining at home for a reasonable period of time. Nothing in this subsection shall be construed to limit the provisions of § 16.1-278.4 of the Code of Virginia.

1. Physical neglect may include multiple occurrences or a one-time critical or severe event that results in a threat to health or safety.
2. Physical neglect may include failure to thrive.
 - a. Failure to thrive occurs as a syndrome of infancy and early childhood that is characterized by growth failure, signs of severe malnutrition, and variable degrees of developmental retardation.
 - b. Failure to thrive can only be diagnosed by a physician and is caused by nonorganic factors.
3. Physical neglect may include medical neglect.
 - a. Medical neglect occurs when there is the failure by the caretaker to obtain or follow through with a complete regimen of medical, mental, or dental care for a condition that if untreated could result in illness or developmental delays. However, a decision by parents or other persons legally responsible for the child to refuse a particular medical treatment for a child with a life-threatening condition shall not be deemed a refusal to provide necessary care if (i) such decision is made jointly by the parents or other person legally responsible for the child and the child; (ii) the child has reached 14 years of age and

sufficiently mature to have an informed opinion on the subject of his medical treatment; (iii) the parents or other person legally responsible for the child and the child have considered alternative treatment options; and (iv) the parents or other person legally responsible for the child and the child believe in good faith that such decision is in the child's best interest.

b. Medical neglect also includes withholding of medically indicated treatment.

(1) A child who, in good faith, is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall not for that reason alone be considered a neglected child in accordance with § 63.2-100 of the Code of Virginia.

(2) For the purposes of this chapter, "withholding of medically indicated treatment" does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when in the treating physician's or physicians' reasonable medical judgment:

- (a) The infant is chronically and irreversibly comatose;
- (b) The infant has a terminal condition and the provision of such treatment would (i) merely prolong dying; (ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; (iii) otherwise be futile in terms of the survival of the infant; or (iv) be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.

C. Mental abuse or neglect occurs when a caretaker creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon a child a mental injury by other than accidental means or creates a substantial risk of impairment of mental functions.

1. Mental abuse or neglect includes acts of omission by the caretaker resulting in harm to a child's psychological or emotional health or development.
2. Documentation supporting a nexus between the actions or inactions of the caretaker and the mental dysfunction or threat of dysfunction demonstrated by the child is required in order to make a founded disposition.
3. Mental abuse or neglect may include failure to thrive.
 - a. Failure to thrive occurs as a syndrome of infancy and early childhood that is characterized by growth failure, signs of severe malnutrition, and variable degrees of developmental retardation.
 - b. Failure to thrive can only be diagnosed by a physician and is caused by nonorganic factors.

D. Sexual abuse occurs when the child's parent, caretaker, or intimate partner of such parent or caretaker commits or allows to be committed any act of sexual exploitation, including sex

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trafficking as defined in 22VAC40-705-10, or any sexual act upon a child in violation of the law.

22VAC40-705-80. Family assessment and investigation contacts.

A. During the course of the family assessment, the child protective services worker shall document in writing in the state automated system the following contacts and observations. When any of these contacts or observations is not made, the child protective services worker shall document in writing why the specific contact or observation was not made.

1. The child protective services worker shall conduct a face-to-face interview with and observe the alleged victim child within the determined response time. When a victim child is younger than two years of age, this contact shall be within 24 hours of receiving the report.
2. The child protective services worker shall conduct a face-to-face interview with and observe all minor siblings residing in the home.
3. The child protective services worker shall conduct a face-to-face interview with and observe all other children residing in the home with parental permission.
4. The child protective services worker shall conduct a face-to-face interview with the alleged victim child's parents or guardians or any caretaker named in the report.
5. The child protective services worker shall observe the family environment, contact pertinent collaterals, and review pertinent records in consultation with the family.

B. During the course of the investigation, the child protective services worker shall document in writing in the state automated system the following contacts and observations. When any of these contacts or observations is not made, the child protective services worker shall document in writing why the specific contact or observation was not made.

1. The child protective services worker shall conduct a face-to-face interview with and observation of the alleged victim child within the determined response time. When a victim child is younger than two years of age, this contact shall be within 24 hours of receiving the report. If a local multidisciplinary team has determined that an interview of the child by a child advocacy center recognized by the National Children's Alliance is needed and an interview with a recognized child advocacy center within the jurisdiction cannot be completed within 14 days, the local department may facilitate the interview with a recognized child advocacy center located in another jurisdiction. All interviews with alleged victim children must be electronically recorded except when the child protective services worker determines that:
 - a. The child's safety may be endangered by electronically recording his statement;

- b. The age or developmental capacity of the child makes electronic recording impractical;
- c. The child refuses to participate in the interview if electronic recording occurs;
- d. In the context of a team investigation with law-enforcement personnel, the team or team leader determines that electronic recording is not appropriate; or
- e. The victim provided new information as part of a family assessment and it would be detrimental to reinterview the victim and the child protective services worker provides a detailed narrative of the interview in the investigation record.

In the case of an interview conducted with a nonverbal child where none of the exceptions in this subdivision apply, it is appropriate to electronically record the questions being asked by the child protective services worker and to describe, either verbally or in writing, the child's responses. A child protective services worker shall document in detail in the record and discuss with supervisory personnel the basis for a decision not to electronically record an interview with the alleged victim child.

A child protective services finding may be based on the written narrative of the child protective services worker in cases where an electronic recording is unavailable due to equipment failure or the exceptions in this subdivision 1.

2. The child protective services worker shall conduct a face-to-face interview with and observe all minor siblings residing in the home.
3. The child protective services worker shall conduct a face-to-face interview with and observe all other children residing in the home with parental permission.
4. The child protective services worker shall conduct a face-to-face interview with the alleged abuser or neglector.
 - a. The child protective services worker shall inform the alleged abuser or neglector of his right to electronically record any communication pursuant to § 63.2-1516 of the Code of Virginia.
 - b. If requested by the alleged abuser or neglector, the local department shall provide the necessary equipment in order to electronically record the interview and retain a copy of the electronic recording.
5. The child protective services worker shall conduct a face-to-face interview with the alleged victim child's parents or guardians.
6. The child protective services worker shall observe the environment where the alleged victim child lives. This requirement may be waived in complaints or reports of child abuse and neglect that took place in state licensed and religiously exempted child day centers, regulated and unregulated family day homes, private and public schools, group residential facilities, hospitals, or institutions where

the alleged abuser or neglector is an employee or volunteer at such facility.

7. The child protective services worker shall observe the site where the alleged incident took place.

8. The child protective services worker shall conduct interviews with collaterals who have pertinent information relevant to the investigation and the safety of the child.

C. Pursuant to §§ 63.2-1505 and 63.2-1506 of the Code of Virginia, local departments may obtain and consider statewide criminal history record information from the Central Criminal Records Exchange and shall obtain and consider results of a search of the Central Registry on any individual who is the subject of a child abuse and neglect investigation or family assessment where there is evidence of child abuse or neglect and the local department is evaluating the safety of the home and whether removal is necessary to ensure the child's safety. The local department may also obtain a criminal record check and a Central Registry check on all adult household members residing in the home of the alleged abuser or neglector and where the child visits. Pursuant to § 19.2-389 of the Code of Virginia, local departments are authorized to receive criminal history information on the person who is the subject of the investigation as well as other adult members of the household for the purposes in § 63.2-1505 of the Code of Virginia. The results of the criminal record history search may be admitted into evidence if a child abuse or neglect petition is filed in connection with the child's removal. Local departments are prohibited from dissemination of this information except as authorized by the Code of Virginia.

D. Pursuant to §§ 63.2-1505 and 63.2-1506 of the Code of Virginia, local departments must determine whether the subject of an investigation or family assessment has resided in another state within the last five years, and if he has resided in another state, shall request a search of the child abuse and neglect registry or equivalent registry maintained by such state.

22VAC40-705-190. Appeals.

A. Appeal is the process by which the abuser or neglector may request amendment of the record when the investigation into the complaint has resulted in a founded disposition of child abuse or neglect.

B. If the alleged abuser or neglector is found to have committed abuse or neglect, that alleged abuser or neglector may, within 30 days of being notified of that determination, submit a written request for an amendment of the determination and the local department's related records, pursuant to § 63.2-1526 A of the Code of Virginia. The local department shall conduct an informal conference in an effort to examine the local department's disposition and reasons for it and consider additional information about the investigation and disposition presented by the alleged abuser or neglector. The local department shall notify the child abuse and neglect information system that an appeal is pending.

C. Whenever an appeal is requested and a criminal charge or investigation is also filed or commenced against the appellant for the same conduct involving the same victim child as investigated by the local department, the appeal process shall be stayed until the criminal prosecution in the trial court is completed, until the criminal investigation is closed, or in the case of a criminal investigation, 180 days have passed since the appellant's request for an appeal, pursuant to § 63.2-1526 C of the Code of Virginia. During such stay, the appellant's right of access to the records of the local department regarding the matter being appealed shall also be stayed. Once the criminal prosecution in trial court has been completed, the criminal investigation has been completed, or in the case of a criminal investigation, 180 days have passed since the appellant's request for an appeal, the local department shall advise the appellant in writing of his right to resume his appeal within the timeframe provided by law and regulation pursuant to § 63.2-1526 C of the Code of Virginia.

D. The local department shall conduct an informal, local conference and render a decision on the appellant's request to amend the record within 45 days of receiving the request. If the local department either refuses the appellant's request for amendment of the record as a result of the local conference, or if the local department fails to act within 45 days of receiving such request, the appellant may, within 30 days thereafter and in writing, request the commissioner for an administrative hearing pursuant to § 63.2-1526 A of the Code of Virginia.

E. The appellant may request, in writing, an extension of the 45-day requirement for a specified period of time, not to exceed an additional 60 days. When there is an extension period, the 30-day timeframe to request an administrative hearing from the Commissioner of the Department of Social Services shall begin on the termination of the extension period pursuant to § 63.2-1526 A of the Code of Virginia.

F. Upon written request, the local department shall provide the appellant all information used in making its determination. Disclosure of the reporter's name or information that may endanger the well-being of a child shall not be released. The identity of any collateral witness or any other person shall not be released if disclosure may endanger that witness's or person's life or safety. Information prohibited from being disclosed by state or federal law or regulation shall not be released. In case of any information withheld, the appellant shall be advised of the general nature of the information and the reasons, of privacy or otherwise, that it is being withheld, pursuant to § 63.2-1526 A of the Code of Virginia.

G. The director of the local department, or a designee of the director, shall preside over the local conference. With the exception of the director of the local department, no person whose regular duties include substantial involvement with child abuse and neglect cases shall preside over the local conference pursuant to § 63.2-1526 A of the Code of Virginia.

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1. The appellant may be represented by counsel pursuant to § 63.2-1526 A of the Code of Virginia.

2. The appellant shall be entitled to present the testimony of witnesses, documents, factual data, arguments, or other submissions of proof pursuant to § 63.2-1526 A of the Code of Virginia.

3. The director of the local department or a designee of the director shall notify the appellant, in writing, of the results of the local conference within 45 days of receipt of the written request from the appellant unless the timeframe has been extended as described in subsection E of this section. The director of the local department or the designee of the director shall have the authority to sustain, amend, or reverse the local department's findings. Notification of the results of the local conference shall be mailed, certified with return receipt, to the appellant. The local department shall notify the child abuse and neglect information system of the results of the local conference.

H. If the appellant is unsatisfied with the results of the local conference, the appellant may, within 30 days of receiving notice of the results of the local conference, submit a written request to the commissioner for an administrative hearing pursuant to § 63.2-1526 B of the Code of Virginia.

1. The commissioner shall designate a member of his staff to conduct the proceeding pursuant to § 63.2-1526 B of the Code of Virginia.

2. A hearing officer shall schedule a hearing date within 45 days of the receipt of the appeal request unless there are delays due to subpoena requests, depositions, or scheduling problems.

3. After a party's written motion and showing good cause, the hearing officer may issue subpoenas for the production of documents or to compel the attendance of witnesses at the hearing. The victim child and that child's siblings shall not be subpoenaed, deposed, or required to testify, pursuant to § 63.2-1526 B of the Code of Virginia.

4. Upon petition, the juvenile and domestic relations district court shall have the power to enforce any subpoena that is not complied with or to review any refusal to issue a subpoena. Such decisions may not be further appealed except as part of a final decision that is subject to judicial review pursuant to § 63.2-1526 B of the Code of Virginia.

5. Upon providing reasonable notice to the other party and the hearing officer, a party may, at his own expense, depose a nonparty and submit that deposition at, or prior to, the hearing. The victim child and the child's siblings shall not be deposed. The hearing officer is authorized to determine the number of depositions that will be allowed pursuant to § 63.2-1526 B of the Code of Virginia.

6. The local department shall provide the hearing officer a copy of the investigation record prior to the administrative

hearing. By making a written request to the local department, the appellant may obtain a copy of the investigation record. The appellant shall be informed of the procedure by which information will be made available or withheld from him.

In any case of information withheld, the appellant shall be advised of the general nature of the information and the reasons that it is being withheld pursuant to § 63.2-1526 B of the Code of Virginia.

7. The appellant and the local department may be represented by counsel at the administrative hearing.

8. The hearing officer shall administer an oath or affirmation to all parties and witnesses planning to testify at the hearing pursuant to § 63.2-1526 B of the Code of Virginia.

9. The local department shall have the burden to show that the preponderance of the evidence supports the founded disposition. The local department shall be entitled to present the testimony of witnesses, documents, factual data, arguments, or other submissions of proof.

10. The appellant shall be entitled to present the testimony of witnesses, documents, factual data, arguments, or other submissions of proof.

11. The hearing officer may allow either party to submit new or additional evidence at the administrative hearing if it is relevant to the matter being appealed.

12. The hearing officer shall not be bound by the strict rules of evidence. However, the hearing officer shall only consider that evidence, presented by either party, ~~which~~ that is substantially credible or reliable.

13. The hearing officer may allow the record to remain open for a specified period of time, not to exceed 14 days, to allow either party to submit additional evidence unavailable for the administrative hearing.

14. In the event that new or additional evidence is presented at the administrative hearing, the hearing officer may remand the case to the local department for reconsideration of the findings. If the local department fails to act within 14 days or fails to amend the findings to the satisfaction of the appellant, then the hearing officer shall render a decision, pursuant to § 63.2-1526 B of the Code of Virginia.

I. Within 60 days of the close of receiving evidence, the hearing officer shall render a written decision. The hearing officer shall have the authority to sustain, amend, or reverse the local department's findings. The written decision of the hearing officer shall state the findings of fact, conclusions based on regulation and policy, and the final disposition. The decision will be sent to the appellant by certified mail, return receipt requested. Copies of the decision shall be mailed to the appellant's counsel, the local department, and the local department's counsel. The hearing officer shall notify the child abuse and neglect information system of the hearing decision.

The local department shall notify all other prior recipients of the record of the findings of the hearing officer's decision.

J. The hearing officer shall notify the appellant of the appellant's further right of review in circuit court in the event that the appellant is not satisfied with the written decision of the hearing officer. Appeals are governed by Part 2A of the Rules of the Supreme Court of Virginia, unless otherwise provided by § 63.2-1526 of the Code of Virginia. The local department shall have no further right of review pursuant to § 63.2-1526 B of the Code of Virginia.

~~K.~~ In the event that the hearing officer's decision is appealed to circuit court pursuant to Part 2A of the Rules of the Supreme Court of Virginia, the department shall prepare a transcript for that proceeding. That transcript or narrative of the evidence shall be provided to the circuit court along with the complete hearing record. If a court reporter was hired by the appellant, the court reporter shall prepare the transcript and provide the court with a transcript.

K. Should the person aggrieved by the hearing officer's decision be a teacher licensed by the State Board of Education or through an alternative pathway and employed by a local school board, the aggrieved person may petition the circuit court for a trial de novo, by judge or jury. Such petition shall be filed within 30 days of the aggrieved person's receipt of the hearing officer's decision in the circuit court in the jurisdiction where the applicable local department is located. Such aggrieved person is barred from filing any action for judicial review of the agency action or the hearing officer's decision under Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

VA.R. Doc. No. R24-7601; Filed September 19, 2023, 1:58 p.m.

GOVERNOR

EXECUTIVE ORDER NUMBER TWENTY SEVEN (2023)

Declaration of a State of Emergency Due to Severe Flooding and Tropical Storm Impacts across the Commonwealth

Importance of the Issue

The Virginia Emergency Operations Center has been actively monitoring the movement of severe weather heading toward Virginia, with anticipated arrival on the evening of Friday, September 22, 2023. The National Weather Service forecasts are predicting tropical storm force winds, heavy rain, coastal flooding, and high surf to portions of the Chesapeake Bay and Atlantic Ocean coastlines. Strengthening is expected throughout the day and into Saturday, and the system is forecasted to become a Tropical Storm as it approaches the coast of North Carolina. The system is expected to bring tropical-storm conditions to portions of the southeast and mid-Atlantic coast to include large swaths of the Commonwealth. This is an unusual storm, which has been difficult to accurately forecast, approaching large population centers with many at-risk communities. Accordingly, the pre-positioning of response assets and supplies will be necessary to assist our local and state partners. The Virginia Emergency Support Team will activate for 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, 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.

Following a declaration of a local emergency pursuant to § 44-146.21 of the Code of Virginia, if a local governing body determines that evacuation is deemed necessary for the preservation of life or other emergency mitigation, response or recovery, pursuant to § 44-146.17 A (1) of the Code of Virginia, I direct the evacuation of all or part of the populace therein from such areas and upon such timetable as the local governing body, in coordination with the Virginia Emergency Operations Center (VEOC), acting on behalf of the State Coordinator of Emergency Management, shall determine. Notwithstanding the foregoing, I reserve the right to direct and compel evacuation from the same and different areas and determine a different timetable both where local governing bodies have made such a determination and where local governing bodies have not made such a determination.

Violations of any order to citizens to evacuate shall constitute a violation of this Executive Order and are punishable as a Class 1 misdemeanor.

This Executive Order also covers preparatory actions for this event that began on September 21, 2023.

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 \$350,000.00 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 \$100,000.00 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 22, 2023, and shall remain in full force and in effect until September 24, 2023, 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 22nd day of September 2023.

/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, 201 North Ninth Street, Richmond, Virginia 23219.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Title of Document: [Additional Information on Chapters 229 and 230 of the 2023 Acts of Assembly.](#)

Public Comment Deadline: November 8, 2023.

Effective Date: November 9, 2023.

Agency Contact: 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, or email ruthanne.walker@dbhds.virginia.gov.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

AUCTIONEERS BOARD

BOARD FOR BARBERS AND COSMETOLOGY

BOARD FOR BRANCH PILOTS

CEMETERY BOARD

COMMON INTEREST COMMUNITY BOARD

BOARD FOR CONTRACTORS

FAIR HOUSING BOARD

BOARD FOR HEARING AID SPECIALISTS AND OPTICIANS

BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

REAL ESTATE APPRAISER BOARD

REAL ESTATE BOARD

BOARD FOR PROFESSIONAL SOIL SCIENTISTS, WETLAND PROFESSIONALS, AND GEOLOGISTS

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS AND ONSITE SEWAGE SYSTEM PROFESSIONALS

Title of Document: [Americans with Disabilities Act Compliance.](#)

Public Comment Deadline: November 8, 2023.

Effective Date: November 9, 2023.

Agency Contact: Joe Haughwout, Regulatory Affairs Manager, Department of Professional and Occupational Regulation, Perimeter Center, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8566, or email joseph.haughwout@dpor.virginia.gov.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

Title of Document: [Guidance for Telepractice.](#)

Public Comment Deadline: November 8, 2023.

Effective Date: November 9, 2023.

Agency Contact: Erin Barrett, Director of Legislative and Regulatory Affairs, 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 FOR AGING AND REHABILITATIVE SERVICES

Title of Document: [Auxiliary Grant Manual - Selected Revisions for Chapters A, B, and K.](#)

Public Comment Deadline: November 8, 2023.

Guidance Documents

Effective Date: November 9, 2023.

Agency Contact: Charlotte Arbogast, Senior Policy Analyst and Regulatory Coordinator, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7093, or email charlotte.arbogast@dars.virginia.gov.

STATE BOARD OF EDUCATION

Title of Document: [Guidelines for Local Alternative Assessments: 2023 to 2024 and Beyond](#).

Public Comment Deadline: November 8, 2023.

Effective Date: November 9, 2023.

Agency Contact: Jim Chapman, Director of Board Relations, 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.

GENERAL NOTICES

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

State Human Rights Committee Decision on Variances to the Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services

Notice of action: The Department of Behavioral Health and Developmental Services (DBHDS), in accordance with Part VI, Variances (12VAC35-115-220), of the Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services (12VAC35-115), hereafter referred to as the "Human Rights Regulations," is announcing a decision on applications for proposed variances to the Human Rights Regulations submitted to the State Human Rights Committee (SHRC). The purpose of the regulations is to ensure and protect the legal and human rights of individuals receiving services in facilities or programs operated, licensed, or funded by DBHDS.

Each variance application referenced the specific part of these regulations to which a variance is needed, the proposed wording of the substitute rule or procedure, and the justification for a variance. Such applications also describe time limits and other conditions for duration and the circumstances that will end the applicability of the variance.

Purpose of notice: After considering all available information, at its meeting on August 17, 2023, the SHRC voted to approve the listed applications for variances to the Human Rights Regulations for a three-year period, with quarterly updates to the local human rights committee, annual updates to the SHRC, and assurance that any human rights complaints or violations associated with the variances are reported to the Regional Advocate within 24 hours of discovery. Additionally, the SHRC required Kempsville Center for Behavioral Health to continue the staffing ratio of one staff member per a maximum of three individuals while unit restrictions are being implemented.

Variance to Procedures to Ensure Dignity:

12VAC35-115-50 C 7 and C 8: In order to maintain the safety and security of residents (youth) the programs restrict communication via telephone and visitation to only those placed on a list generated at admission with input from the parent or legal guardian, the resident, or the Clinical Treatment Team.

1. Holiday House of Portsmouth (12VAC35-115-50 C 8 only)
2. The Barry Robinson Center
3. Kempsville Center for Behavioral Health
4. Newport News Behavioral Health Center

Variance to Procedures for Restrictions on Freedoms of Everyday Life:

12VAC35-115-100 A 1 a and A 1 g: In order to utilize a point level system (Behavior Management Model) affecting movement of an individual within the service setting (grounds, community, purchases in program store).

1. Harbor Point Behavioral Health Center
2. Kempsville Center for Behavioral Health (requiring an individual earn points through a level system in order to access the store)
3. Newport News Behavioral Health Center (12VAC35-115-100 A 1 a only)

Variance to Procedures for Use of Seclusion, Restraint, and Time Out

12VAC35-115-110 C 16: In order to utilize time out as part of the unit restriction policy.

Kempsville Center for Behavioral Health (at times deemed necessary due to unsafe behaviors, to provide additional safety and security measures by preventing movement by an individual from the individual's assigned unit for periods longer than 30 minutes)

Contact Information: Taneika Goldman, Director, Office of Human Rights, Department of Behavioral Health and Developmental Services, 1220 East Bank Street, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-3988, FAX (833) 734-2308, or email taneika.goldman@dbhds.virginia.gov.

DEPARTMENT OF CONSERVATION AND RECREATION

Application Opportunity for 2023 Department of Conservation and Recreation Flood Resilience Funding Opportunities

Applications are now open for the 2023 Department of Conservation and Recreation (DCR) flood resilience funding opportunities. The Community Flood Preparedness Fund (Round 4) application period will close on November 12, 2023, at 11:59 p.m. The Resilient Virginia Revolving Loan Fund (Round 1) application period will close on December 12, 2023, at 11:59 p.m. Applications must be submitted electronically via the WebGrants portal at <https://vadcr.webgrantscloud.com/index.do>.

DCR serves as the administrative and coordinating agency for state flood preparedness and protection grants.

The Virginia Community Flood Preparedness Fund (CFPF) was established pursuant to §§ 10.1-603.24 and 10.1-603-25 and Article 4 (§ 10.1-1329 et seq.) of Chapter 13 of Title 10.1 of the Code of Virginia and the provisions of § 10.1-1330, Clean Energy and Community Flood Preparedness Fund, of

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the Code of Virginia, pursuant to Chapters 1219 and 1280 of the 2020 Acts of Assembly.

The Resilient Virginia Revolving Loan Fund (RVRF) was established pursuant to § 62.1-203 of the Code of Virginia by Chapters 739 and 782 of the Code of Virginia.

Both funding opportunities integrate resilience planning principles, floodplain management, and nature-based solutions to reduce flood risk across the Commonwealth. Additional guidance can be found in the Grant Manuals and Summary of Changes:

[2023 Community Flood Preparedness Fund Manual](#)

[2023 Resilient Virginia Revolving Fund Manual](#)

[CFPF and RVFR Summary of Changes](#)

Contact Information: Angela Davis, Acting Division Director, Floodplain Management, Department of Conservation and Recreation, 600 East Main Street, 24th Floor, Richmond, VA 23219, telephone (804) 371-6135, or email angela.davis@dcr.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice of Intent Withdrawn Caden Energix Piney River LLC - Amherst County

Caden Energix Piney River LLC (Project No. RE0000154) has withdrawn its notice of intent to submit the necessary documentation for a 50-megawatt permit by rule for a small renewable energy project (solar) in Amherst County. The original notice of intent was published in [36:18 VA.R. 2155 April 27, 2020](#).

Contact Information: Amber Foster, Small Renewable Energy Permit by Rule Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 774-8474, or email amber.foster@deq.virginia.gov.

Proposed Enforcement Action for Hampton Roads Connector Partners

An enforcement action has been proposed for Hampton Roads Connector Partners, for violations of State Water Control Law in Norfolk, Virginia. Descriptions of the proposed actions are available at the Department of Environmental Quality office listed or online at <http://www.deq.virginia.gov>. Russell Deppe will accept comments from October 9, 2023, to November 9, 2023.

Contact Information: Russell Deppe, Enforcement Specialist, Department of Environmental Quality, 5636 Southern Boulevard, Virginia Beach, VA 23462, FAX (804) 698-4178, or email russell.deppe@deq.virginia.gov.

Proposed Enforcement Action for Zia's Sunrise Inc.

An enforcement action has been proposed for Zia's Sunrise Inc. for violations of State Water Control Law in Williamsburg, Virginia. Descriptions of the proposed actions are available at the Department of Environmental Quality office listed or online at <http://www.deq.virginia.gov>. Comments will be accepted from October 9, 2023, to November 9, 2023.

Contact Information: Russell Deppe, Enforcement Specialist, Department of Environmental Quality, 5636 Southern Boulevard, Virginia Beach, VA 23462, or email russell.deppe@deq.virginia.gov.

Public Meeting and Opportunity for Public Comment for a Cleanup Study of the Middle Fork Holston River in Smyth, Wythe, and Washington Counties and the Tributaries Greenway Creek, Hall Creek, Byers Creek, Cedar Creek, and Tattle Branch in Washington County

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 (TMDL) report, for the Middle Fork Holston River in Smyth, Wythe, and Washington Counties and the tributaries Greenway Creek, Hall Creek, Byers Creek, Cedar Creek, and Tattle Branch in Washington County. These streams are listed as impaired since monitoring data does not meet Virginia's water quality standards for aquatic life (benthics). Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the State Water Control Law requires 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 Code of Virginia for adoption of the WLA into the Water Quality Management Planning Regulation, 9VAC25-720, after completion of the study. The adoption of the WLA may require new or additional requirements for entities holding a Virginia Pollutant Discharge Elimination System (VPDES) permit in the Middle Fork Holston River, Greenway Creek, Hall Creek, Byers Creek, Cedar Creek, and Tattle Branch.

A study has been completed for the Middle Fork Holston River, Greenway Creek, Hall Creek, Byers Creek, Cedar Creek, and Tattle Branch to identify pollutant sources and recommend reductions needed from the sources to meet water quality standards. At the meeting, DEQ will present the results of the study and provide an overview of the draft report. Citizens are invited to provide comment on the study.

Cleanup study location: The cleanup study addresses the following impaired stream segments: Middle Fork Holston River (12.99 miles) in Wythe and Smyth Counties from the mainstem headwaters upstream at Groseclose downstream to the Dutton Branch confluence and the mainstem Middle Fork Holston River segment (3.42 miles) in Washington County

from the Sulphur Springs Creek confluence to Edmondson Dam. Impaired segments also included in the study are Greenway Creek (5.02 miles) from the headwaters downstream to the confluence with the Middle Fork Holston River; Hall Creek (6.91 miles) from headwaters north of Emory through Emory and Henry College to the Byers Creek confluence; Byers Creek (0.49 miles) from Hall Creek and Indian Run confluence downstream to Middle Fork Holston River confluence; Cedar Creek (5.61 miles) from confluence of East Fork Cedar Creek and West Fork Cedar Creek through Cedarville to Middle Fork Holston confluence; and Tattle Branch (2.77 miles) from headwaters to Byers Creek confluence. All of these are in Washington County.

Technical Advisory Committee: Technical advisory committee meetings to assist in development of this cleanup study were held on September 8, 2022, and July 11, 2023.

Public meeting: The final public meeting on the development of the cleanup study will be held at Emory and Henry College, Van Dyke Center, Board of Visitors Room, 30461 Garnand Drive, Emory, Virginia on Thursday, October 19, 2023, at 6:30 p.m. In the event of inclement weather, the meeting will be held on Thursday, October 26, 2023, at the Virginia Department of Environmental Quality, 355 Deadmore Street, Abingdon, Virginia at 6:30 p.m.

Public comment period: October 20, 2023, to November 20, 2023.

How to comment: DEQ accepts written comments by email or postal mail. All comments must be received by DEQ during the comment period. Submittals must include the name, organization represented (if any), mailing addresses, and telephone numbers of the commenter or requester.

Contact agency staff for public comments, document requests, and additional information.

The public may review the cleanup study at <https://www.deq.virginia.gov/our-programs/water/water-quality/tmdl-development/tmdls-under-development>.

Contact Information: Kelly Miller, Department of Environmental Quality, Southwest Regional Office, 355A Deadmore Street, Abingdon, VA 24210, telephone (276) 676-4879, or email kelly.miller@deq.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Intent to Amend the Virginia State Plan for Medical Assistance Pursuant to § 1902(a)(13) of the Social Security Act (USC § 1396a(a)(13)) - Pharmacists as Providers

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for

Establishing Payment Rates; Other Types of Care (12VAC30-80).

This notice is intended to satisfy the requirements of 42 CFR 447.205 and § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review from the agency contact listed.

DMAS is specifically soliciting input from stakeholders, providers, and beneficiaries on the potential impact of the proposed changes discussed in this notice. Comments or inquiries may be submitted, in writing, within 30 days of this notice publication to meredith.lee@dmass.virginia.gov and such comments are available for review at the same address. Comments may also be submitted, in writing, on the Virginia Regulatory Town Hall public comment forum at <https://townhall.virginia.gov/L/generalnotice.cfm>.

Methods and Standards for Establishing Payment Rates-Other Types of Care (12VAC30-80)

In accordance with Chapter 412 of the 2023 Acts of Assembly, the state plan is being revised to provide reimbursement to a pharmacist, pharmacy technician, or pharmacy intern when the services are (i) performed under the terms of a collaborative agreement as defined in § 54.1-3300 of the Code of Virginia and consistent with the terms of a managed care contractor provider contract or the state plan or (ii) related to services and treatment in accordance with § 54.1-3303.1 of the Code of Virginia.

There is no expected increase or decrease in annual aggregate expenditures.

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@dmass.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, 201 North Ninth Street, 4th 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

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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.