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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>).

December 2023 through December 2024

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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
40:14	February 7, 2024	February 26, 2024
40:15	February 21, 2024	March 11, 2024
40:16	March 6, 2024	March 25, 2024
40:17	March 20, 2024	April 8, 2024
40:18	April 3, 2024	April 22, 2024
40:19	April 17, 2024	May 6, 2024
40:20	May 1, 2024	May 20, 2024
40:21	May 15, 2024	June 3, 2024
40:22	May 29, 2024	June 17, 2024
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
41:7	October 30, 2024	November 18, 2024
41:8	November 13, 2024	December 2, 2024
41:9	November 27, 2024	December 16, 2024
41:10	December 11, 2024	December 30, 2024

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Agency Decision

Title of Regulation: 4VAC20-610. Pertaining to Commercial Fishing and Mandatory Harvest Reporting.

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

Name of Petitioner: Bill Dunn.

Nature of Petitioner's Request: Petition for regulation to ensure proper gear type use in Virginia waters pertaining to depth of current purse seine nets utilized by the Menhaden purse seine net fishery in relationship to the depth of the Chesapeake Bay.

Currently "Ocean Harvesters," a subsidiary of Omega Protein and two other private menhaden companies (i.e., Purse Seine Fishery) are utilizing purse seine nets that extend 50 to 60 feet down in the shallow water column within the confines of Virginia's portion of the Chesapeake Bay and Virginia waters inside the exclusive economic zone offshore. This has caused massive fish kills of both the primary target of menhaden as well as fish kills of game fish, such as Red Drum, that occurred this past year. Improper gear type usage in waters is allowing these nets to catch game fish that feed on menhaden, which can't escape through the bottom per design of the net before it is closed (or pursed), as they are dragged on the sea bottom. In addition, these nets when dragged along the bottom due to current cause net tears, which if the net has been "pursed" releases many now dead or dying fish into the waters.

This improper use of purse seine nets, that is, allowing them to scrape the sea bottom, is also destroying massive amounts of submerged aquatic vegetation, such as sea grass and other bottom growth. When conditions are right this dead submerged aquatic vegetation shows up on the shore as occurred at Kiptopeke State Park last year with bycatch and massive amounts of displaced seagrass along the beach.

The most recent description of net depths used by Ocean Harvesters was evidenced in the December 6 Marine Resources Commission (MRC) meeting seen at approximately 3:06:40. These were nets depths of 50 to 60 feet by Captain Thomas Moore of Ocean Harvesters: <https://www.youtube.com/watch?v=Cn-ow-dNfsE>.

This practice of ensuring a "safety zone" below the net when deployed is documented in many publications and is specifically outlined in the Marine Stewardship Council (MSC) of which Omega Protein has gone to great lengths to become an accredited member. MSC states that "Purse-seine fishing in open water is generally considered to be an efficient form of fishing. It has no contact with the seabed and can have low levels of bycatch (accidental catch of unwanted species)." <https://www.msc.org/what-we-are-doing/our-approach/fishing-methods-and-gear-types/purse-seine>

Purse Seine net design dictates that the net be deployed to a depth that is above the sea bottom in order to alleviate the issues described in this petition, but for some reason their use in the shallow waters of the Chesapeake Bay as well as inshore portions of Virginia's coastal waters has been overlooked by the management groups controlling their use and needs to be addressed as a gear type use restriction issue. Currently per § 28.2-410 of the Code of Virginia, Virginia only regulates a mesh size of these nets to not be less than 1-3/4 inches with no net depth restrictions listed to ensure a safety zone below the net when deployed.

The Virginia MRC has only recently acquired jurisdiction of this fishery, and the depth of these nets used has never been discussed as a regulation to prevent the problems discussed in this petition. These problems need to be addressed as the proper method to regulate in order to prevent menhaden spill/kills, unwanted bycatch, and damage to Virginia's sea bottom vegetation.

I hereby request that the MRC implement regulations prescribing the depth of these purse seine nets within the shallow waters of Virginia's Chesapeake Bay and offshore waters to meet the purse sein net design criterion in order to provide no contact with the seabed and eliminate these issues. This could be implemented with a regulation such as "No Purse Seine net may be placed in any area of Virginia's waters that is less than five feet deeper than the depth of the actual net utilized."

Agency Decision: Request denied.

Statement of Reason for Decision: Based on public comment and staff analysis, the Marine Resources Commission denies the petition for rulemaking for the following reasons:

Environmental impact: No evidence of improper gear usage as indicated by the petition for rulemaking. No evidence of purse seine nets dragging the bottom of the Chesapeake Bay. Empirical knowledge indicates a relatively low environmental impact across time and space. Due to the natural depth distribution of seagrasses in the Chesapeake Bay, this gear type is unlikely to encounter these seagrasses on the seafloor.

Goal alignment: The proposed rulemaking has the potential to inadvertently eliminate purse seine fishing in the Chesapeake Bay, which may not align with the original intent of the petition. A majority of the public comment conflated petition concerns and public discourse regarding the potential impacts of Atlantic menhaden fisheries removals from the spatial scale of the Chesapeake Bay. Multiple research proposals seek to address these potential impacts are being considered by the commission, the Virginia Institute of Marine Science, and other research partners, but are not pertinent to the petition's request for rulemaking.

Economic considerations: The petition has the potential to create unintended economic consequences across purse seine sectors and the end user of these fisheries products. A

Petitions for Rulemaking

comprehensive economic impact assessment would need to be considered to ensure that any changes in regulation do not disproportionately affect the livelihoods of those economies involved in purse seine fishing.

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

VA.R. Doc. No. PFR24-19; Filed July 06, 2023, 12:01 p.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF SOCIAL WORK

Agency Decision

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

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

Name of Petitioner: Shanta Denard Clay.

Nature of Petitioner's Request: The petitioner requests that the Board of Social Work amend 18VAC140-20-70 to set passage of the licensure examination at a score of 99 for all levels of licensure.

Agency Decision: Request denied.

Statement of Reason for Decision: At its meeting on November 3, 2023, the board voted to take no action on the petition because the board does not control or evaluate the passing score on the national examination. The passing score can change from year to year depending on the test version used, and the board does include individual passing scores in regulations for examinations as a policy.

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

VA.R. Doc. No. PFR24-17; Filed July 06, 2023, 12:13 p.m.

Agency Decision

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

Statutory Authority: §§ 54.1-2400 and 54.1-3708 of the Code of Virginia.

Name of Petitioner: Erin Tomlinson.

Nature of Petitioner's Request: The petitioner requests that the Board of Social Work amend 18VAC140-20-105 B 1 d to

include Eye Movement Desensitization and Reprocessing International Association and American Psychological Association approved trainings as approved continuing education.

Agency Decision: Request granted.

Statement of Reason for Decision: At its meeting on November 3, 2023, the board voted to initiate a rulemaking to include trainings approved by the American Psychological Association as approved continuing education in 18VAC140-20-105 B 1 d. The board will file a notice of intended regulatory action to begin the regulatory process for change.

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

VA.R. Doc. No. PFR24-18; Filed August 11, 2023, 2:58 p.m.

PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

Report of Findings

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Agriculture and Consumer Services conducted a periodic review and a small business impact review of **2VAC5-115, Regulations for Determining Whether a Facility Meets the Purpose of Finding Permanent Adoptive Homes for Animals**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated September 12, 2023, to support this decision.

The regulation establishes criteria to determine if a facility is operating for the purpose of finding permanent adoptive homes for animals by requiring that a facility engage in activities that promote adoption, such as being accessible to the public, advertising adoption, transferring animals to other releasing agencies for adoption, temporarily placing animals in a foster home while awaiting adoption, or offering services to keep animals in their permanent home. The regulation was deemed necessary by the General Assembly for the protection of animal welfare. The board received public response that the regulation is clearly and concisely written and easily understandable. The regulation contains no more requirements than necessary to achieve its purpose.

Based on public comments received by the agency, the board will retain the regulation without amendment. Chapter 319 of the 2016 Acts of Assembly requires the board to "adopt regulations that determine whether a private animal shelter meets the purpose of finding permanent adoptive homes for animals." The comments that the board received all supported retaining the regulation without amendment. The board has not received any complaints regarding this regulation since it became effective in 2019.

The regulation does not overlap or conflict with federal or other state laws or regulations. No changes to technology, economic conditions, or other factors have occurred since this regulation became effective in 2019 that would necessitate amendments to the regulation. The board is not aware of any direct or indirect impacts on small businesses, as the regulants are private animal shelters, which, by law, must be nonprofit organizations. The regulation does not require economic investment from regulants, which minimizes its economic impact.

Contact Information:Carolynn Bissett, Program Manager, Office of Veterinary Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-4560, or email carolynn.bissett@vdacs.virginia.gov.

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Agriculture and Consumer Services conducted a periodic review and a small business impact review of **2VAC5-336, Regulations for Enforcement of the Virginia Tree and Crop Pests Law - Spotted Lanternfly Quarantine**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated October 2, 2023, to support this decision.

This regulation supports the economic welfare of the Commonwealth by protecting the public from damage caused by the spotted lanternfly. The spotted lanternfly can cause damage to Virginia's agricultural and forestry industries, as well as native plant life. In 2018, the known distribution of spotted lanternfly in Virginia was limited to approximately three-square miles. In 2019, the distribution increased to 11 square miles, and in 2020, the distribution had increased to approximately 35 square miles. As of 2023, the estimated distribution of spotted lanternfly in Virginia is approximately 337 square miles. While the distribution of the spotted lanternfly has increased in Virginia since 2018, the quarantine has likely slowed the rate at which the spotted lanternfly has spread.

The quarantine provides protections to Virginia's vineyards, as the spotted lanternfly causes damage to grape vines. The spotted lanternfly can significantly impact the photosynthetic capability of wine grapes, reducing fruit yield and quality and damaging overall vine health. The regulation is clearly written and easy to understand. The regulation clearly lists which types of articles are subject to the regulation and plainly lists each county and city that is subject to the quarantine. It also provides the conditions that a person or business must meet in order to move regulated articles out of quarantine zones in plain language that is easily understood.

The agency is recommending that this regulation stay in effect without change because the quarantine has likely slowed the rate at which the spotted lanternfly has spread in the Commonwealth.

The agency has determined that there is a continued need for this regulation. This regulation requires that businesses located in infested areas (quarantined localities) obtain a spotted lanternfly permit from the Virginia Department of Agriculture and Consumer Services and ensures that regulated articles are inspected and found to be free from spotted lanternfly life stages prior to moving those regulated articles from regulated to nonregulated areas. If this regulation was not in place, persons conducting business in infested areas would be allowed to freely move articles capable of transporting spotted lanternfly life stages to noninfested areas of Virginia, thereby resulting in an increased rate at which the spotted lanternfly spreads to noninfested areas. The board has determined that it is appropriate for this regulation to apply to all businesses in infested areas as exceptions for small businesses would undermine the purpose of the quarantine and could contribute to the spread of spotted lanternfly.

The regulation is not complex and does not overlap, duplicate, or conflict with federal or state law or regulation. The regulation was established in 2019 and expanded in 2021 and 2022. In the period since this regulation was last amended,

Periodic Reviews and Small Business Impact Reviews

there have not been any significant changes to technology, economic conditions, or other factors that would necessitate modifications to the regulation. The agency has not received any comments or complaints from the public, including small businesses, regarding this regulation.

Contact Information: David Gianino, Program Manager, Office of Plant Industry Services, Department of Agriculture And Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3515, or email david.gianino@vdacs.virginia.gov.

2022. This regulation is evaluated and necessary changes are made to the regulation when the general permit is amended.

Contact Information: Joseph Bryan, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-2659, or email joseph.bryan@deq.virginia.gov.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Water Control Board conducted a periodic review and a small business impact review of **9VAC25-840, Erosion and Sediment Control Regulations; 9VAC25-850, Erosion and Sediment Control and Stormwater Management Certification Regulations; and 9VAC25-870, Virginia Stormwater Management Program (VSMP) Regulation;** and determined that these regulations should be repealed. The exempt final regulatory action repealing 9VAC25-840, 9VAC25-850, and 9VAC25-870, which is published in this issue of the Virginia Register, serves as the report of findings.

Contact Information: 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.w.rochet@deq.virginia.gov.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Water Control Board conducted a periodic review and a small business impact review of **9VAC25-820, 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,** and determined that this regulation should be amended. The board is publishing its report of findings dated October 10, 2023, to support this decision.

Section 62.1-44.19:14 of the Code of Virginia directs the State Water Control Board to issue this regulation. This regulation protects the water quality of state surface waters and thus is necessary for the protection of public health, safety, and welfare. The regulation is clearly written and easily understandable. The regulation is effective and continues to be needed; however, this general permit is scheduled to expire on June 1, 2026. This regulation will be amended to reissue the general permit, and the agency will consider revisions to the permit as part of the amendment process. One public comment was submitted in favor of retaining the regulation in its current form and cited the requirement in state law for the board to issue a watershed general VPDES permit.

The regulation establishes the procedures for the permitting of total nitrogen and total phosphorus discharges in the Chesapeake Bay watershed and allows for trading of nutrient credits to minimize costs to the regulated facilities, including small businesses, and allows for future growth. This regulation is clearly written and easily understandable and accomplishes the objectives of applicable law. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation as the State Water Control Board is the delegated authority to regulate point source discharges to surface water. The State Water Control Board last amended this regulation in

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

DEPARTMENT OF HEALTH PROFESSIONS

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Health Professions conducted a periodic review and a small business impact review of **18VAC76-10, Regulations Governing the Health Practitioners' Monitoring Program for the Department of Health Professions,** and determined that this regulation should be amended. The department is publishing its report of findings dated November 6, 2023, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare because it sets forth the program operations and requirements related to the Health Practitioners' Monitoring Program (HPMP). The regulation is necessary to continue operation of HPMP and to continue assisting practitioners dealing with substance abuse and impairment issues who are otherwise safe to practice. This regulation is additionally necessary to protect public health, safety, and welfare by providing a mechanism for oversight of individuals who may not be safe to practice without adequate monitoring. The department has reviewed this chapter and determined that it is clearly written and understandable.

Periodic Reviews and Small Business Impact Reviews

The department has decided to retain and amend this regulation. The statutory requirement for regulations to implement HPMP still exists in the Code of Virginia; therefore the regulation is needed. Additionally, HPMP is used by thousands of practitioners that recognize the need to obtain treatment to continue practicing in a health care field. The department has not received any comments related to this periodic review. The regulation is not complex. The regulation does not overlap, duplicate, or conflict with state or federal law or regulation. This regulation has been amended seven times in the last 20 years.

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

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Nursing conducted a periodic review and a small business impact review of **18VAC90-11, Public Participation Guidelines**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated November 14, 2023, to support this decision.

This regulation of the Board of Nursing is necessary for the protection of public health, safety, and welfare because it sets forth procedures for participation of the public in the development of board regulations. Additionally, the regulation is required by statute, and the board has no discretion not to maintain the regulation. The Board of Nursing has reviewed this regulation and determined that it is clearly written and understandable.

The board has decided to retain the regulation without amendment. The public participation guidelines are a model regulation provided by the Department of Planning and Budget. The Department of Planning and Budget has not updated this regulation, therefore the board has not adopted any changes to the regulation.

There have been no complaints received related to this regulation, which is not complex. The regulation does not overlap with any other law. The regulation has not changed since approximately 2017. The board will alter the regulation if and when the Department of Planning and Budget recommends changes to the model regulation.

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.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Social Services conducted a periodic review and a small business impact review of **22VAC40-670, Degree Requirements for Family Services Occupational Group**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated October 18, 2023, to support this decision.

The administrative regulation is necessary for the protection of public health, safety, or welfare of the individuals, families, groups, communities, and organizations that are served. The regulation is clearly written and specifies minimum education and entrance standards regarding persons who can be employed in a position assigned to the Family Services Occupational Group, which provides direct client services. The regulation is consistent with the Federal Standards for a Merit System of Personnel Administration (5 CFR Part 900, Subpart F), specific to recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.

The decision of the Virginia Department of Social Services is to retain the regulation without amendment. The regulation, in its present form, aids in supporting local partners by permitting only qualified employees to enter the Family Services Occupational Group. This regulation supports professional qualifications and standards of those local employees who work in Family Services occupational roles who are providing direct support to families and the community and who work with other local partners external to the local department of social services. It also helps to establish accepted, consistent behavioral conduct of family services professionals in the course of their duties and at different levels of the occupational group. Also, this regulation supports the institution of family and family stability by clarifying that only qualified employees will work with families who need assistance. Changes to these requirements could diminish professional standards.

This regulation applies to the State Board of Social Services adoption of regulation to maintain entrance standards of employees hired and employed by local departments of social services. This regulation is not applicable to small businesses and therefore, will not have an impact on small businesses.

Contact Information: Leighann Smigielski, Policy Analyst Senior, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7059, or r.leighann.smigielski@dss.virginia.gov.



NOTICES OF INTENDED REGULATORY ACTION

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR BARBERS AND COSMETOLOGY

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 Barbers and Cosmetology intends to consider amending **18VAC41-20, Barbering and Cosmetology 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 regulation provides for the licensure of barbers, master barbers, cosmetologists, nail technicians, and wax technicians; licensure of shops and salons; licensure of schools for these professions; and certification of instructors. The goals of the action include (i) reviewing discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program; (ii) ensuring the regulation conforms to current Virginia law and meets applicable federal requirements, is organized, clear, and understandable, and provides minimal burdens on regulants while still protecting the public; and (iii) making sure the regulation reflects current Department of Professional and Occupational Regulation procedures and policies, along with 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: January 17, 2024.

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

VA.R. Doc. No. R24-7708; Filed November 8, 2023, 5:03 p.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 Barbers and Cosmetology intends to consider amending **18VAC41-50, Tattooing 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 regulation provides for the licensure of tattooers, permanent cosmetic tattooers, master permanent cosmetic tattooers; licensure of parlors; licensure of schools; and certification of instructors. The goals of the action include (i) reviewing discretionary requirements imposed on regulated parties to determine whether such requirements impose

burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program; (ii) ensuring the regulation conforms to current Virginia law and meets applicable federal requirements, is organized, clear, and understandable, and provides minimal burdens on regulants while still protecting the public; and (iii) making sure the regulation reflects current Department of Professional and Occupational Regulation procedures and policies, along with 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: January 17, 2024.

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

VA.R. Doc. No. R24-7712; Filed November 8, 2023, 5:03 p.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 Barbers and Cosmetology intends to consider amending **18VAC41-60, Body-Piercing 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 regulation provides for the licensure of body-piercers and ear-only body piercers, licensure of body-piercing salons and ear-only body piercing salons, and approval of body-piercing apprenticeship programs. The goals of the action include (i) reviewing discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program; (ii) ensuring the regulation conforms to current Virginia law and meets applicable federal requirements, is organized, clear, and understandable, and provides minimal burdens on regulants while still protecting the public; and (iii) making sure the regulation reflects current Department of Professional and Occupational Regulation procedures and policies, along with 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: January 17, 2024.

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

VA.R. Doc. No. R24-7714; Filed November 8, 2023, 5:04 p.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 Barbers and Cosmetology intends to consider amending **18VAC41-70, Esthetics 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 regulation provides for the licensure of estheticians and master estheticians; licensure of spas; licensure of esthetics schools; and certification of instructors. The goals of the action include (i) reviewing discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program; (ii) ensuring the regulation conforms to current Virginia law and meets applicable federal requirements, is organized, clear, and understandable, and provides minimal burdens on regulants while still protecting the public; and (iii) making sure the regulation reflects current Department of Professional and Occupational Regulation procedures and policies, along with 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: January 17, 2024.

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

VA.R. Doc. No. R24-7715; Filed November 8, 2023, 5:04 p.m.

BOARD FOR BRANCH PILOTS

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 Branch Pilots intends to consider amending **18VAC45-20, Board for Branch Pilots**. 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 regulation provides for the licensure of limited branch pilots and branch pilots. The goals of the action include (i) reviewing discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program; (ii) ensuring the regulation conforms to current Virginia law and meets applicable federal requirements, is organized, clear, and understandable, and

provides minimal burdens on regulants while still protecting the public; and (iii) making sure the regulation reflects current Department of Professional and Occupational Regulation procedures and policies, along with 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: § 54.1-902 of the Code of Virginia.

Public Comment Deadline: January 3, 2024.

Agency Contact: Kathleen R. Nosbisch, Executive Director, Board for Branch Pilots, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (804) 527-4294, or email branchpilots@dpor.virginia.gov.

VA.R. Doc. No. R24-7632; Filed November 9, 2023, 8:01 a.m.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS, WETLAND PROFESSIONALS, AND GEOLOGISTS

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 Professional Soil Scientists, Wetland Professionals, and Geologists intends to consider amending **18VAC145-20, Professional Soil Scientists 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 regulation provides for the licensure of professional soil scientists. The goals of the action include (i) reviewing discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program; (ii) ensuring the regulation conforms to current Virginia law and meets applicable federal requirements, is organized, clear, and understandable, and provides minimal burdens on regulants while still protecting the public; and (iii) making sure the regulation reflects current Department of Professional and Occupational Regulation procedures and policies, along with 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: January 3, 2024.

Agency Contact: Kathleen R. Nosbisch, Executive Director, Board for Professional Soil Scientists, Wetland Professionals, and Geologists, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (804) 527-4294, or email branchpilots@dpor.virginia.gov.

VA.R. Doc. No. R24-7619; Filed November 9, 2023, 8:02 a.m.

Notices of Intended Regulatory Action

Notice of Extension of Public Comment Period

Title of Regulation: 18VAC145-30. Regulations Governing Certified Professional Wetland Delineators.

Notice is hereby given that the Board for Professional Soil Scientists, Wetland Professionals, and Geologists is extending the public comment period regarding the Notice of Intended Regulatory Action published in [40:5 V.A.R. 279 October 23, 2023](#). In accordance with § 2.2-4007.01 of the Code of Virginia, the board noticed that it intended to consider amending **18VAC145-30, Regulations Governing Certified Professional Wetland Delineators**, 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 and 54.1-2203 of the Code of Virginia.

Public Comment Deadline: December 8, 2023.

Agency Contact: Kathleen R. Nobsch, Executive Director, Board for Professional Soil Scientists, Wetland Professionals, and Geologists, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (804) 527-4294, or email soilscientist@dpor.virginia.gov.

VA.R. Doc. No. R24-7618; Filed November 21, 12:00 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 8. EDUCATION

STATE BOARD OF EDUCATION

Action Withdrawn

Title of Regulation: **8VAC20-131. Regulations Establishing Standards for Accrediting Public Schools in Virginia.**

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

The State Board of Education has WITHDRAWN the regulatory action for **8VAC20-131, Regulations Establishing Standards for Accrediting Public Schools in Virginia**, which was published as a Notice of Intended Regulatory Action in **37:17 VA.R. 2385-2386 April 12, 2021**. The purpose of the proposed action was to (i) make clarifying technical edits, (ii) incorporate items unaddressed during the comprehensive update in 2017, and (iii) address negative or unintended consequences of the new, as of 2017, accreditation model and correct errors where prudent. This action is being withdrawn by the State Board of Education.

Agency Contact: Jim Chapman, Regulatory and Legal Coordinator, Department of Education, James Monroe Building, 25th Floor, 101 North 14th Street, Richmond, VA 23219, telephone (804) 225-2540, or email jim.chapman@doe.virginia.gov.

VA.R. Doc. No. R21-6549; Filed November 3, 2023, 2:54 p.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act in accordance with the ninth enactment of Chapters 68 and 758 of the 2016 Acts of Assembly, which exempts the actions of the board relating to the adoption of regulations necessary to implement the provisions of the act, however the board must (i) provide a Notice of Intended Regulatory Action, (ii) form a stakeholders advisory group, (iii) provide for a 60-day public comment period prior to the board's adoption of the regulations, and (iv) provide the board with a written summary of comments received and responses to comments prior to the board's adoption of the regulations.

Titles of Regulations: **9VAC25-840. Erosion and Sediment Control Regulations (repealing 9VAC25-840-10 through 9VAC25-840-100).**

9VAC25-850. Erosion and Sediment Control and Stormwater Management Certification Regulations (repealing 9VAC25-850-10 through 9VAC25-850-90).

9VAC25-870. Virginia Stormwater Management Program (VSMP) Regulation (repealing 9VAC25-870-10 through 9VAC25-870-830).

9VAC25-875. Virginia Erosion and Stormwater Management Regulation (adding 9VAC25-875-10 through 9VAC25-875-1420).

Statutory Authority: § 62.1-44.15:28 of the Code of Virginia; Chapters 68 and 758 of the 2016 Acts of Assembly.

Effective Date: July 1, 2024.

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 rebeccah.rochet@deq.virginia.gov.

Background: Chapters 68 and 758 of the 2016 Acts of Assembly combine the existing Virginia Stormwater Management Act and Virginia Erosion and Sediment Control Law to create the Virginia Erosion and Stormwater Management Act. The legislation directs the State Water Control Board to permit, regulate, and control both erosion and stormwater runoff for this legislation to become effective. In promulgating the regulation to trigger the effectiveness of the legislation, the board was required to (i) provide a Notice of Intended Regulatory Action, (ii) form a stakeholders advisory group, (iii) provide for a 60-day public comment period prior to the board's adoption of the regulations, and (iv) provide a written summary of comments received and responses to comments prior to adopting of the regulation.

Summary:

Pursuant to Chapters 68 and 758 of the 2016 Acts of Assembly, this regulatory action consolidates 9VAC25-840 (Erosion and Sediment Control Regulations), 9VAC25-850 (Erosion and Sediment Control and Stormwater Certification Regulations), and 9VAC25-870 (Virginia Stormwater Management Program Regulations) into a single regulatory chapter, the Virginia Erosion and Stormwater Management Regulation (9VAC25-875). Through consolidating these three chapters, the new regulation (i) clarifies program requirements, (ii) eliminates redundancies, and (iii) corrects inconsistencies between erosion and sediment control regulations and

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stormwater management program regulations. No substantive changes to existing erosion and sediment control minimum standards or to the post-construction stormwater management technical criteria are part of this regulatory action.

Chapter 875

Virginia Erosion and Stormwater Management Regulation

Part I

Definitions and Applicability for Virginia Erosion and Stormwater Management Programs and Virginia Erosion and Sediment Control Programs

9VAC25-875-10. General.

For the purpose of applying this chapter, the words and terms shall have the meanings given to them in 9VAC25-875-20. The words and terms defined in Part II (9VAC25-875-40 et seq.), Part III (9VAC25-875-210 et seq.), Article 4 (9VAC25-875-670 et seq.) of Part V (9VAC25-875-470 et seq.), and Part VII (9VAC25-875-850 et seq.) of this chapter are applicable only to the part in which they are defined.

9VAC25-875-20. Definitions.

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

"10-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.

"Adequate channel" means a channel that will convey the designated frequency storm event, neither overtopping the channel bank nor causing erosive damage to the channel bed or banks.

"Agreement in lieu of a plan" means a contract between the VESMP authority or the department acting as a VSMP authority and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of VESMA for the construction of a (i) single-family detached residential structure 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 VESMP authority in lieu of a soil erosion control and stormwater management plan or by the department acting as a VSMP authority in lieu of a stormwater management plan.

"Applicant" means a person submitting a soil erosion control and stormwater management plan to a VESMP authority, or a stormwater management plan to the department when it is serving as a VSMP authority, for approval in order to obtain authorization to commence a land-disturbing activity.

"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.

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.

"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.

"Certification" means the designation issued by the department, on behalf of the Commonwealth, to individuals who have completed department-approved training programs and met any additional eligibility requirements or in other ways demonstrated adequate knowledge and experience in accordance with the eligibility requirements of 9VAC25-875-410 related to the specified classifications (9VAC25-875-400) within the separate subject areas of ESC or SWM or both.

"Certified inspector" means an employee or agent of a VESCP, VESMP, or VSMP authority who (i) holds a certification from the department in the area of project inspection or (ii) is enrolled in the department's training program for project inspection and successfully completes such program within one year after enrollment.

"Certified plan reviewer" means an employee or agent of a VESCP, VESMP, or VSMP authority who (i) holds a certification from the department in the area of plan review; (ii) is enrolled in the department's training program for plan review and successfully completes such program within one year after enrollment; or (iii) is licensed as a professional engineer, architect, landscape architect, land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia, or professional soil scientist as defined in § 54.1-2200 of the Code of Virginia.

"Certified program administrator" means an employee or agent of a VESCP, VESMP, or VSMP authority who holds a certification from the department in the classification of program administrator.

"Channel" means a natural stream 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 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 Code of Virginia. 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).

"Classification" means the four specific certification designations assigned to the roles of program administrator, plan reviewer, inspector, and combined administrator within the areas of ESC, SWM, or both ESC and SWM for a dual classification.

"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.

"Cofferdam" means a watertight temporary structure in a river, lake, or other body of water for keeping the water from an enclosed area that has been pumped dry so that bridge foundations, dams, or other submerged structural pieces may be constructed.

"Combined administrator for ESC" means anyone who is responsible for performing the combined duties of a program administrator, plan reviewer, and inspector of a VESCP authority or the ESC component of a VESMP authority.

"Combined administrator for SWM" means anyone who is responsible for performing the combined duties of a program administrator, plan reviewer, and inspector of a VSMP authority or the SWM component of a VESMP authority.

"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.

"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 9VAC25-875-1120 and 9VAC25-875-1130.

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

"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.

"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 or the director's 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 that 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.

"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.

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

"Dual combined administrator for ESC and SWM" means anyone who is responsible for performing the combined duties of a program administrator, plan reviewer, and inspector of a VESMP authority.

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

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

"Erosion and sediment control 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 to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives.

"Erosion and Sediment Control Law for Localities Not Administering a Virginia Erosion and Stormwater Management Program" or "ESCL" means Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Erosion impact area" means an area of land that is not associated with a current land-disturbing activity but is subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

"ESC" means erosion and sediment control.

"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 services, 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.

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

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

"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.

"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.

"Inspection" means an onsite review of the project's compliance with any applicable design criteria, or an onsite review to obtain information or conduct surveys or investigations necessary in the implementation or enforcement of the VESMA, ESCL, and applicable regulations.

"Inspector" means the individual who, as a representative of a VESCP authority, a VESMP authority, or a VSMP authority, is responsible for periodically examining the ESC, SWM, or both ESC and SWM activities and premises of a land-disturbing activity for compliance with the ESCL VESMA, and associated regulations as may be applicable.

"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 may result in soil

erosion or has the potential to change its runoff characteristics, including construction activity such as the clearing, grading, excavating, or filling of land.

"Land-disturbance approval" means an approval allowing a land-disturbing activity to commence issued by (i) a VESMP or VSMP authority after the requirements of § 62.1-44.15:34 of the Code of Virginia have been met or (ii) a VESCP authority after the requirements of § 62.1-44.15:55 of the Code of Virginia have been met.

"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.

"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.

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

"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 modification" means the modification or amendment of an existing MS4 individual permit before its expiration that is not a minor modification as defined in this chapter.

"Manmade" means constructed by man.

"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 permit before

its expiration for the reasons listed at 40 CFR 122.63 and as specified in 9VAC25-875-1240. "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 permit modification or amendment does not substantially alter permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

"Municipal separate storm sewer system" or "MS4" means the same as the term "municipal separate storm sewer" is defined in § 62.1-44.3 of the Code of Virginia.

"Municipal Separate Storm Sewer System Management Program" or "MS4 Program" means a management program covering the duration of a permit for a MS4 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 requirements of the CWA and regulations and the VESMA and its attendant regulations, using management practices, control techniques, and system, design, and engineering methods, and such other provisions that are appropriate.

"Natural channel design concepts" means the utilization of engineering analysis and 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 bankfull bench and 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.

"Nonerodible" means a material, for example, riprap, concrete, or plastic, that will not experience surface wear due to natural forces.

"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.

"Operator" means the owner or operator of any facility or activity subject to the VESMA and this chapter. In the context

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"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 permit or VESMP authority permit conditions (i.e., the person is 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 an MS4, "operator" means the operator of the regulated MS4 system.

"Owner" means the same as that term is defined in § 62.1-44.3 of the Code of Virginia. For a regulated land-disturbing activity that does not require a permit, "owner" also means the owner of the freehold of the premises or lesser estate therein, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a property.

"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" means a VPDES permit issued by the department pursuant to § 62.1-44.15 of the Code of Virginia for stormwater discharges from a land-disturbing activity or MS4.

"Permittee" means the person to whom the permit is issued.

"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.

"Plan reviewer" means anyone who is responsible for reviewing and evaluating ESC, SWM, or ESM plans and supporting documents for approval by a VESCP authority in the area of ESC, a VSMP authority in the area of SWM, or a VESMP authority in the areas of both ESC and SWM.

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

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

"Predevelopment" refers to the conditions that exist at the time that plans for the land-disturbing activity are submitted to the VESCP, VESMP, or VSMP authority. Where phased development or plan approval occurs (e.g., preliminary grading, demolition of existing structures, or roads and utilities), the existing conditions at the time prior to the commencement of land-disturbing activity 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.

"Program administrator" means the individual responsible for administering and enforcing the program of a VESCP authority in the area of ESC, the program of a VSMP authority in the area of SWM, or the program of a VESMP authority in the areas of both ESC and SWM.

"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.

"Responsible land disturber" or "RLD" means an individual holding a certificate issued by the department who is responsible for carrying out the land-disturbing activity in accordance with the approved erosion and sediment control plan. The RLD may be the owner, applicant, permittee, designer, superintendent, project manager, contractor, or any other project or development team member. The RLD must be designated on the erosion and sediment control plan or permit as defined in this chapter as a prerequisite for engaging in land disturbance.

"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" means maximum velocity, peak flow rate, volume, and flow duration.

"Runoff volume" means the volume of water that runs off the land development project from a prescribed storm event.

"Rural Tidewater locality" means any locality that is (i) subject to the provisions of the Chesapeake Bay Preservation Act 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.

"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" or "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.

"Shoreline erosion control project" means an erosion control project approved by local wetlands boards, the Virginia Marine Resources Commission, the department, or the U.S. 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.

"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.

"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.

"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 shall 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 provide an 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), 9VAC25-875-940, 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.

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"Soil erosion" means the movement of soil by wind or water into state waters or onto lands in the Commonwealth.

"Soil erosion control and stormwater management plan," "erosion control and stormwater management plan," or "ESM plan" means a document describing methods for controlling soil erosion and managing stormwater in accordance with the requirements adopted pursuant to the VESMA. The ESM plan may consist of aspects of the erosion and sediment control plan and the stormwater management plan as each is described in this chapter.

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

"State" means the Commonwealth of Virginia.

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

"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.

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

"Stormwater," for the purposes of the VESMA, 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 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 system" includes the

main channel and the flood-prone area adjacent to the main channel.

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

"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 describing methods for complying with the requirements of a VESMP or VSMP.

"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 VESMP or 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 EPA.

"SWM" means stormwater management.

"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.

"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 permit cycle.

"Town" means an incorporated town.

"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.

"Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by the department that is 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, policies and guidelines, technical materials, and requirements for plan review, inspection, and evaluation consistent with the requirements of the ESCL.

"Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means a locality that is approved by the department to operate a Virginia Erosion and Sediment Control Program in accordance with Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia. Only a locality for which the department administered a Virginia

Stormwater Management Program as of July 1, 2017, is authorized to choose to operate a VESCP pursuant to Article 2.4 (§ 62.1-44.15:51 et seq. of the Code of Virginia). A locality that has chosen not to establish a VESMP pursuant to subdivision B 3 of § 62.1-44.15:27 of the Code of Virginia is required to become a VESCP authority in accordance with the ESCL.

"Virginia Erosion and Stormwater Management Act" or "VESMA" means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1, State Water Control Law, of Title 62.1 of the Code of Virginia.

"Virginia Erosion and Stormwater Management Program" or "VESMP" means a program established by a VESMP authority for the effective control of soil erosion and sediment deposition and the management of the quality and quantity of runoff resulting from land-disturbing activities to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources. The program shall include such items as local ordinances, rules, requirements for permits and land-disturbance approvals, policies and guidelines, technical materials, and requirements for plan review, inspection, and enforcement consistent with the requirements of the VESMA.

"Virginia Erosion and Stormwater Management Program authority" or "VESMP authority" means the department or a locality approved by the department to operate a VESMP. For state agency or federal entity land-disturbing activities and land-disturbing activities subject to approved standards and specifications, the department shall serve as the VESMP authority.

"Virginia Pollutant Discharge Elimination System 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 BMP Clearinghouse" means a collection that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the VESMA and associated regulations.

"Virginia Stormwater Management Handbook" means a collection of pertinent information that provides general guidance for compliance with the VESMA 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 established by the department pursuant to § 62.1-44.15:27.1 of the Code of Virginia on behalf of a locality on or after July 1, 2014, to manage the quality and quantity of runoff resulting from any land-disturbing activity that (i) disturbs one acre or more of land or (ii) disturbs less than one acre of land and is part of a larger common plan of

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development or sale that results in one acre or more of land disturbance.

"Virginia Stormwater Management Program authority" or "VSMP authority" means the department when administering a VSMP on behalf of a locality that, pursuant to subdivision B 3 of § 62.1-44.15:27 of the Code of Virginia, has chosen not to adopt and administer a VESMP.

"Wasteload allocation" or "wasteload" 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. Wasteload allocations are a type of water quality-based effluent limitation.

"Water quality technical criteria" means standards set forth in regulations adopted pursuant to the VESMA that establish minimum design criteria for measures to control nonpoint source pollution.

"Water quantity technical criteria" means standards set forth in regulations adopted pursuant to the VESMA 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 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.

9VAC25-875-30. Applicability of incorporated by references based on the dates that they became effective.

Except as noted, when a regulation of the United States set forth in the Code of Federal Regulations is referenced and incorporated in this chapter, that regulation shall be as it exists and has been published in the July 1, 2022, update.

Part II

Virginia Erosion and Stormwater Management Program

Article 1

Definitions, Purpose, and Applicability

9VAC25-875-40. Definitions.

For the purposes of this part only, the following words and terms have the following meanings unless the context clearly indicates otherwise:

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

"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 stormwater management, does not include the exclusions found in 9VAC25-875-860.

9VAC25-875-50. Purpose.

The purpose of this part is to provide the framework for the administration, implementation, and enforcement of the VESMA. This part delineates the roles and responsibilities associated with a locality's VESMP and the department's VSMP. This part also establishes the department's procedures for approving the administration of a VESMP authority and includes the department's oversight authority over a VESMP.

9VAC25-875-60. Applicability.

This part is applicable to:

1. Any local government that administers a VESMP;
2. The department that administers a VESMP and VSMP; and
3. The department in its administrative oversight of VESMPs.

Article 2

Land-Disturbing Activities

9VAC25-875-70. Regulated land-disturbing activities.

A. Land-disturbing activities that meet one of the criteria in this subsection are regulated as follows:

1. Land-disturbing activity that disturbs 10,000 square feet or more, although the locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, not in an area of a locality designated as a Chesapeake Bay Preservation Area, and not part of a common plan of development or sale, is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) of Part V (9VAC25-875-470 et seq.) of this chapter.
2. Land-disturbing activity that disturbs 2,500 square feet or more, although the locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, and in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 and Article 3 (9VAC25-875-570 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq.) of Part V of this chapter is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490. For land-disturbing activities for single-family detached residential structures, Article 2 of Part V and water quantity technical criteria, 9VAC25-875-600, shall apply to any land-disturbing activity that disturbs 2,500 square feet or more of land, and the locality also may require compliance with the water

quality technical criteria, 9VAC25-875-580 and 9VAC25-875-590.

3. Land-disturbing activity that disturbs less than one acre, but is part of a larger common plan of development or sale that disturbs one acre or more, is subject to criteria defined in Article 2 and Article 3 of Part V unless Article 4 of Part V of this chapter is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.

4. Land-disturbing activity that disturbs one acre or more is subject to criteria defined in Article 2 and Article 3 of Part V unless Article 4 of Part V is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.

B. A locality may, by local ordinance adopted pursuant to § 62.1-44.15:33 or 62.1-44.15:65 of the Code of Virginia, adopt more stringent local requirements.

9VAC25-875-80. Land-disturbing activities in a Chesapeake Bay Preservation Area.

A. Localities subject to the Chesapeake Bay Preservation Act shall regulate runoff associated with land-disturbing activities in a Chesapeake Bay Preservation Area that are equal to or greater than 2,500 square feet but less than one acre in accordance with the following:

1. After June 30, 2014, such land-disturbing activities shall not require completion of a registration statement or require coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities (9VAC25-880 et seq.) but shall be subject to the technical criteria and program and administrative requirements set out in 9VAC25-875-740.

2. A local land disturbance approval, as applicable, shall be provided for the land-disturbing activity.

3. The locality shall regulate such land-disturbing activities in compliance with the:

- a. Program requirements in 9VAC25-875-100;
- b. Plan review requirements in 9VAC25-875-110 with the exception of subsection D of 9VAC25-875-110 or as allowed in subsection A of 9VAC25-875-750;
- c. Long-term stormwater management facility requirements of 9VAC25-875-130;
- d. Inspection requirements of 9VAC25-875-140 with the exception of subdivisions A 3 and A 4 of 9VAC25-875-140;
- e. Enforcement components of 9VAC25-875-150;
- f. Hearing procedures in effect in the locality;
- g. Exception conditions of 9VAC25-875-170, excluding subsection A of 9VAC25-875-170, which is not applicable; and

h. Reporting and recordkeeping requirements of 9VAC25-875-180 with the exception of subdivision B 3 of 9VAC25-875-180.

B. A locality subject to the Chesapeake Bay Preservation Act shall adopt an ordinance that incorporates the components of this section.

C. As authorized by § 62.1-44.15:28 of the Code of Virginia, a locality may collect a fee as specified in 9VAC25-875-1400.

9VAC25-875-90. Activities not required to comply with the VESMA.

A. Notwithstanding any other provisions of the VESMA, the following activities are not required to comply with the requirements of the VESMA unless otherwise required by federal law:

- 1. Minor land-disturbing activities, including home gardens and individual home landscaping, repairs, and maintenance work;
- 2. Installation, maintenance, or repair of any individual service connection;
- 3. Installation, maintenance, or repair of any underground utility line when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;
- 4. Installation, maintenance, or repair of any septic tank line or drainage field unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
- 5. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.2 of the Code of Virginia;
- 6. Clearing of lands specifically for bona fide agricultural purposes; the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations; agricultural engineering operations, including construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; or as additionally set forth by the board in regulations. However, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163 of the Code of Virginia;
- 7. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

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8. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Virginia Marine Resources Commission, or the U.S. Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to the VESMA and the regulations adopted pursuant thereto;

9. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company;

10. Land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the VESMP or VSMP authority shall be advised of the disturbance within seven days of commencing the land-disturbing activity, and compliance with the administrative requirements of 9VAC25-875-530 is required within 30 days of commencing the land-disturbing activity; and

11. Discharges to a sanitary sewer or a combined sewer system that are not from a land-disturbing activity.

B. Notwithstanding any other provision of the VESMA, the following activities are required to comply with the soil erosion control requirements but are not required to comply with the water quantity and water quality technical criteria, unless otherwise required by federal law:

1. Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use;

2. Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this subsection; and

3. Discharges from a land-disturbing activity to a sanitary sewer or a combined sewer system.

Article 3

Programs Operated by a VESMP Authority

9VAC25-875-100. Criteria for programs operated by a VESMP authority.

A. Each locality that operates a regulated MS4 or that chooses to administer a VESMP shall, by ordinance, establish a VESMP that shall be administered in conjunction with a local MS4 management program, if applicable, and that shall include the following:

1. Ordinances, policies, and technical materials consistent with regulations adopted in accordance with the VESMA;

2. Requirements for land-disturbance approvals;

3. Requirements for plan review, inspection, and enforcement consistent with the requirements of the VESMA, including provisions requiring periodic inspections of the installation of stormwater management measures. A VESMP authority may require monitoring and reports from the person responsible for meeting the permit conditions to ensure compliance with the permit and to determine whether the measures required in the permit provide effective stormwater management;

4. Provisions charging each applicant a reasonable fee to defray the cost of program administration for a regulated land-disturbing activity that does not require permit coverage. Such fee may be in addition to any fee charged pursuant to the statewide fee schedule established in accordance with subdivision 9 of § 62.1-44.15:28 of the Code of Virginia, although payment of fees may be consolidated in order to provide greater convenience and efficiency for those responsible for compliance with the program. A VESMP authority shall hold a public hearing prior to establishing such fees. The fee shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and the VESMP authority's expense involved;

5. Provisions for long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff; and

6. Provisions for the coordination of the VESMP with flood insurance, flood plain management, and other programs requiring compliance prior to authorizing land disturbance in order to make the submission and approval of plans, issuance of land-disturbance approvals, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs.

B. A VESMP authority may enter into agreements or contracts with the department, soil and water conservation districts, adjacent localities, planning district commissions, or other public or private entities to carry out or assist with plan review and inspections.

C. A VESMP authority shall obtain evidence of permit coverage from the department's online reporting system, where such coverage is required, prior to providing land-disturbance approval.

D. The VESMP authority responsible for regulating the land-disturbing activity shall require compliance with its applicable ordinances and the conditions of its land-disturbance approval and plan specifications.

E. A locality serving as a VESMP authority is authorized to adopt more stringent soil erosion control or stormwater management ordinances than those necessary to ensure compliance with the board's minimum regulations when

adopted in accordance with § 62.1-44.15:33 of the Code of Virginia.

F. Nothing in this part shall be construed as authorizing a locality to regulate, or to require prior approval by the locality for, a state or federal project, unless authorized by separate statute.

G. A VESMP authority may require, excluding state agencies and federal entities, the submission of a reasonable performance bond or other financial surety and provide for the release of such sureties in accordance with the criteria set forth in § 62.1-44.15:34 of the Code of Virginia.

H. A VESMP authority shall have provisions for collection, distribution to the state if required, and expenditure of permit fees.

I. Notice of termination of general permit coverage.

1. A VESMP authority shall recommend that the department terminate coverage under a General VPDES Permit for Discharges of Stormwater from Construction Activities (Construction General Permit) within 60 days of receiving a complete notice of termination from the operator of the construction activity.

2. Coverage under a Construction General Permit shall be deemed to be terminated 90 days after the receipt by the VESMP authority of a complete notice of termination from the operator of the construction activity.

3. If a VESMP authority receives a notice of termination of a Construction General Permit that it determines to be incomplete, the VESMP authority shall, within a reasonable time, inform the operator of the construction activity of such incompleteness and provide the operator with a detailed list itemizing the elements of information that are missing from the notice.

9VAC25-875-110. Plan review requirements.

A. A VESMP authority shall review and approve soil erosion control and stormwater management (ESM) plans, except for activities not required to comply with the requirements of the VESMA, pursuant to § 62.1-44.15:34 of the Code of Virginia. Activities not required to comply with VESMA are defined in 9VAC25-875-90.

B. Section 62.1-44.15:34 of the Code of Virginia and 9VAC25-875-530 state that a person shall not conduct any land-disturbing activity until (i) that person has submitted to the appropriate VESMP authority an application that includes a permit registration statement, if required, a soil erosion control and stormwater management plan or an executed agreement in lieu of a plan, if required; and (ii) the VESMP authority has issued its land-disturbance approval. In addition, as a prerequisite to engaging in an approved land-disturbing activity, the name of the individual who will be assisting the owner in carrying out the activity and holds a Responsible

Land Disturber Certificate pursuant to § 62.1-44.15:30 of the Code of Virginia shall be submitted to the VESMP authority. Any VESMP authority may waive the Responsible Land Disturber Certificate requirement for an agreement in lieu of a plan; however, if a violation occurs during the land-disturbing activity, then the owner shall correct the violation and provide the name of the individual holding a Responsible Land Disturber Certificate as provided by § 62.1-14:30 of the Code of Virginia. Failure to provide the name of an individual holding a Responsible Land Disturber Certificate prior to engaging in land-disturbing activities may result in revocation of the land-disturbance approval and shall subject the owner to the penalties provided by the VESMA.

C. A VESMP authority shall approve or disapprove an ESM plan according to the following:

1. A VESMP authority shall determine the completeness of any application within 15 days after receipt, and shall act on any application within 60 days after it has been determined to be complete.

2. The VESMP authority shall issue either land-disturbance approval or denial and provide written rationale for any denial.

3. Prior to issuing a land-disturbance approval, a VESMP authority shall be required to obtain evidence of permit coverage when such coverage is required.

4. The VESMP authority shall act on the resubmitted application within 45 days after receipt including determination of completeness within the first 15 days.

D. Prior to issuance of any land-disturbance approval, the VESMP authority may also require an applicant, excluding state agencies and federal entities, to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the VESMP authority, to ensure that measures could be taken by the VESMP authority at the applicant's expense should the applicant fail, after proper notice, within the time specified to comply with the conditions imposed by the VESMP authority as a result of the applicant's land-disturbing activity. If the VESMP authority takes such action upon such failure by the applicant, the VESMP authority may collect from the applicant the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within 60 days of the completion of the VESMP authority's conditions, such bond, cash escrow, letter of credit, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated.

E. The VESMP authority may require changes to an approved ESM plan in the following cases:

1. Where inspection has revealed that the plan is inadequate to satisfy applicable regulations or ordinances; or

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2. Where the owner finds that because of changed circumstances or for other reasons the plan cannot be effectively carried out, and proposed amendments to the plan consistent with the requirements of the Act are agreed to by the VESMP authority and the owner.

F. In order to prevent further erosion, a VESMP authority may require approval of an erosion and sediment control plan and a stormwater management plan for any land identified as an erosion impact area by the VESMP authority.

G. A VESMP authority may enter into an agreement with an adjacent VESMP authority regarding the administration of multijurisdictional projects, specifying who shall be responsible for all or part of the administrative procedures. Should adjacent VESMP authorities fail to reach such an agreement, each shall be responsible for administering the area of the multijurisdictional project that lies within its jurisdiction.

H. No VESMP authority may grant an exception to, or waiver of, post-development nonpoint nutrient runoff compliance requirements unless offsite options have been considered and found not available in accordance with subsection D of § 62.1-44.15:35 of the Code of Virginia.

I. A VESMP authority is authorized to cooperate and enter into agreements with any federal or state agency in connection with the requirements for land-disturbing activities in accordance with § 62.1-44.15:50 of the Code of Virginia.

9VAC25-875-120. Plan review coordination with the department.

A. A VESCP authority that chooses to become a VESMP authority may opt to coordinate the plan review component of its program with the department through an executed agreement pursuant to § 62.1-44.15:27 B 2 of the Code of Virginia. The department may recover the cost of the plan review service from the VESMP authority.

B. A VESMP authority implementing its program in coordination with the department pursuant to § 62.1-44.15:27 B 2 of the Code of Virginia shall determine the completeness of any application within 15 days after receipt, and shall:

1. Act on any application within 60 days after it has been determined by the VESMP authority to be complete;
2. Forward a soil erosion control and stormwater management plan to the department for review within five days of receipt. If the plan is incomplete, the department shall return the plan to the locality immediately and the application process shall start over. If the plan is complete, the department shall review the plan for compliance with the water quality and water quantity technical criteria and provide the department's recommendation to the VESMP authority; and

3. Either (i) issue the land-disturbance approval or (ii) issue a denial and provide a written rationale for the denial. In no case shall a locality have more than 60 days for its decision on an application after the application has been determined to be complete. Prior to issuing a land-disturbance approval, a VESMP authority shall be required to obtain evidence of permit coverage when such coverage is required.

C. The VESMP authority also shall forward to the department any resubmittal of a previously disapproved application within five days after receipt, and the VESMP authority shall determine whether the plan is complete within 15 days of its receipt of the plan. The department shall review the plan for compliance with the water quality and water quantity technical criteria and provide its recommendation to the VESMP authority, and the VESMP authority shall act on the resubmitted application within 45 days after receipt.

9VAC25-875-130. Long-term maintenance of stormwater management facilities.

A. As required in 9VAC25-875-535, the operator shall submit a construction record drawing for permanent stormwater management facilities to the VESMP authority. The record drawing shall contain a statement signed by a professional registered in the Commonwealth of Virginia pursuant to Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia, stating that to the best of the professional's knowledge, the construction record drawing shows all adjustments and revisions to the stormwater management plan made during construction and serve as a permanent record of the actual location of all constructed elements.

B. The provision of long-term responsibility for and maintenance of stormwater management facilities and other techniques specified to manage the quality or quantity of runoff is required. Such requirements shall be set forth in an instrument recorded in the local land records prior to permit termination or earlier as required by the authority and shall at a minimum:

1. Be submitted to the authority for review and approval prior to the approval of the stormwater management plan;
2. Be stated to run with the land;
3. Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;
4. Provide for inspections and maintenance and the submission of inspection and maintenance reports to the VESCP, VESMP, or VSMP authority; and
5. Be enforceable by all appropriate governmental parties.

C. At the discretion of the VESMP authority, such recorded instruments need not be required for stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which such facilities are located, provided it is demonstrated to the satisfaction of the authority

that future maintenance of such facilities will be addressed through an enforceable mechanism at the discretion of the authority.

9VAC25-875-140. Inspections.

A. The VESMP authority shall inspect the land-disturbing activity during construction for:

1. Compliance with the approved erosion and sediment control plan;
2. Compliance with the approved stormwater management plan;
3. Development, updating, and implementation of a pollution prevention plan; and
4. Development and implementation of any additional control measures necessary to address a TMDL.

B. The VESMP authority shall conduct periodic inspections on all projects during construction. The VESMP authority shall either:

1. Provide for an inspection during or immediately following initial installation of erosion and sediment controls, at least once in every two-week period, within 48 hours following any runoff producing storm event, and at the completion of the project prior to the release of any performance bonds; or
2. Establish an alternative inspection program that ensures compliance with the approved erosion and sediment control plan. Any alternative inspection program shall be:
 - a. Approved by the department prior to implementation;
 - b. Established in writing;
 - c. Based on a system of priorities that, at a minimum, address the amount of disturbed project area, site conditions, and stage of construction; and
 - d. Documented by inspection records.

C. The VESMP authority shall establish an inspection program that ensures that permanent stormwater management facilities are being adequately maintained as designed after completion of land-disturbing activities. Inspection programs shall:

1. Be approved by the department;
2. Ensure that each stormwater management facility is inspected by the VESMP authority or the VESMP authority's designee, not to include the owner, except as provided in subsections D and E of this section, at least once every five years; and
3. Be documented by records.

D. The VESMP authority may utilize the inspection reports of the owner of a stormwater management facility as part of an inspection program established in subsection B of this section if the inspection is conducted by a person who is licensed as a

professional engineer, architect, landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the code of Virginia; a person who works under the direction and oversight of the licensed professional engineer, architect, landscape architect, or land surveyor; or a person who holds an appropriate certificate of competence from the department.

E. If a recorded instrument is not required pursuant to 9VAC25-875-130, a VESMP authority shall develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located. Such a strategy may include periodic inspections, homeowner outreach and education, or other method targeted at promoting the long-term maintenance of such facilities. Such facilities shall not be subject to the requirement for an inspection to be conducted by the VESMP authority.

9VAC25-875-150. Enforcement.

A. A locality's VESMP authority shall incorporate components from subdivisions 1 and 2 of this subsection into its ordinance.

1. Informal and formal administrative enforcement procedures may include:

- a. Right of entry in accordance with § 62.1-44.15:39 of the Code of Virginia.
- b. Verbal warnings and inspection reports;
- c. Notices of corrective action;
- d. Notices to comply in accordance with § 62.1-44.15:37 of the Code of Virginia;
- e. Stop work orders in accordance with § 62.1-44.15:37 of the Code of Virginia;
- f. Special orders in accordance with §§ 62.1-44.15:25.1 and 62.1-44.15:48 of the Code of Virginia;
- g. Consent orders in accordance with §§ 62.1-44.15:25.1 and 62.1-44.15:48 of the Code of Virginia; and
- h. Public notice and comment periods.

2. Civil and criminal judicial enforcement procedures may include:

- a. Schedule of civil penalties in accordance with §§ 62.1-44.15:25.1 and 62.1-44.15:48 of the Code of Virginia;
- b. Criminal penalties in accordance with § 62.1-44.15:48 of the Code of Virginia; and
- c. Injunctions in accordance with § 62.1-44.15:48 of the Code of Virginia.

B. A locality's VESMP authority shall develop policies and procedures that outline the steps to be taken regarding enforcement actions under the VESMA and attendant regulations and local ordinances.

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C. Each locality subject to an MS4 permit shall adopt an ordinance to implement a municipal separate storm sewer system management program that is consistent with this chapter and that contains provisions as required to comply with an MS4 permit. Such locality may utilize the civil penalty provisions in subdivision A 2 of § 62.1-44.15:48 of the Code of Virginia, the injunctive authority as provided for in subsection C of § 62.1-44.15:48 of the Code of Virginia, the civil charges as authorized in § 62.1-44.15:25.1 of the Code of Virginia, and the criminal provisions in § 62.1-44.32 of the Code of Virginia, to enforce the ordinance. At the request of another MS4, the locality may apply the penalties provided for in this section to direct or indirect discharges to any MS4 located within its jurisdiction in accordance with § 62.1-44.15:49 of the Code of Virginia.

D. Penalties imposed in accordance with § 62.1-44.15:48 of the Code of Virginia may reflect the degree of harm caused by the violation and take into account the economic benefit to the violator from noncompliance.

E. Pursuant to subsection L of § 62.1-44.15:27 of the Code of Virginia, authorization to administer a VESMP program shall not remove from the department the authority to enforce the provisions of the VESMA and attendant regulations.

F. The department may terminate permit coverage during its term and require application for an individual permit or deny a permit renewal application for failure to comply with permit conditions or on its own initiative in accordance with the VESMA and this chapter.

G. Pursuant to § 62.1-44.15:48 of the Code of Virginia, civil penalties recovered by a locality's VESMP authority shall be paid into the treasury of the locality in which the violation occurred and are to be used solely for stormwater management capital projects.

9VAC25-875-160. Hearings.

Any permit applicant, permittee, or person subject to permit requirements under the VESMA aggrieved by any action of the department taken without a formal hearing may demand in writing a formal hearing pursuant to § 62.1-44.25 of the Code of Virginia and shall ensure that all hearings held under this chapter shall be conducted in a manner consistent with § 62.1-44.26 of the Code of Virginia or as otherwise provided by law. A locality holding hearings under this chapter shall do so in a manner consistent with local hearing procedures. The provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) shall not apply to decisions rendered by localities. Appeals of decisions rendered by localities shall be conducted in accordance with local appeal procedures and shall include an opportunity for judicial review in the circuit court of the locality in which the land disturbance occurs or is proposed to occur. Unless otherwise provided by law, the circuit court shall conduct such review in accordance with the standards established in § 2.2-4027 of the Code of

Virginia, and the decisions of the circuit court shall be subject to review by the Court of Appeals, as in other cases under this chapter.

9VAC25-875-170. Variances and exceptions.

A. A VESMP authority may grant variances to waive or modify any of the erosion and sediment control requirements of Article 2 (9VAC25-875-540 et seq.) of Part V (9VAC25-875-470 et seq.) of this chapter that are deemed inappropriate or too restrictive for site conditions may be requested from the VESMP authority under these conditions:

1. At the time of plan submission, an applicant may request a variance to become part of the approved erosion and sediment control plan. The applicant shall explain the reasons for requesting variances in writing. Specific variances which are allowed by the authority shall be documented in the plan.

2. During construction, the person responsible for implementing the approved plan may request a variance in writing from the authority. The authority shall respond in writing either approving or disapproving such a request. If the authority does not approve a variance within 10 days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a variance request with additional documentation.

B. A VESMP authority may grant exceptions to the provisions of Article 3 (9VAC25-875-570 et seq.) of Part V of this chapter. An exception may be granted provided that (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so that the intent of the VESMA and this chapter are preserved, (iii) granting the exception will not confer any special privileges that are denied in other similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created.

C. Economic hardship alone is not a sufficient reason to grant an exception from the requirements of this chapter.

D. Under no circumstance shall the authority (i) grant an exception to the requirement that the land-disturbing activity obtain required permits, or (ii) approve the use of a BMP not found through the Virginia Stormwater BMP Clearinghouse, except where allowed under Article 4 (9VAC25-875-670 et seq.) of Part V of this chapter.

E. Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite options available through 9VAC25-875-610 have been considered and found not available.

F. A record of all exceptions granted shall be maintained by the authority in accordance with 9VAC25-875-180.

9VAC25-875-180. Reports and recordkeeping.

A. On a fiscal year basis (July 1 to June 30), a VESMP authority shall report to the department by October 1 of each year in a format provided by the department. The information to be provided shall include the following:

1. Information, not previously reported to the department through other reporting requirements, on each permanent stormwater management facility completed during the fiscal year to include type of stormwater management facility, geographic coordinates, acres treated, and the surface waters or karst features into which the stormwater management facility will discharge;
2. A listing of each land-disturbing activity for which a plan has been approved by the VESMP authority;
3. Number and type of enforcement actions during the fiscal year; and
4. Number of exceptions granted during the fiscal year.

B. A VESMP authority shall keep records in accordance with the following:

1. Project records, including approved soil erosion control and stormwater management plans, shall be kept for three years after permit termination or project completion;
2. Stormwater management facility inspection records shall be documented and retained for at least five years from the date of inspection;
3. Construction record drawings shall be maintained in perpetuity or until a stormwater management facility is removed; and
4. All registration statements submitted in accordance with 9VAC25-875-530 shall be documented and retained for at least three years from the date of project completion or permit termination.

Article 4

Authorization and Review Procedures for VESMPs

9VAC25-875-190. Review and evaluation of VESMPs.

A. The department shall review each approved VESMP at least once every five years on a review schedule approved by the department. The department may review a VESMP on a more frequent basis if deemed necessary and shall notify the VESMP authority if such review is scheduled.

B. The review of an approved VESMP shall consist of the following:

1. Consultation with the VESMP administrator or designee;
2. A review of the local ordinances and other applicable documents;
3. A review of a subset of the plans approved by the VESMP authority for consistency of application, including

exceptions granted and calculations or other documentation that demonstrates that all erosion and sediment control minimum standards are met and required nutrient reductions are achieved using appropriate onsite and offsite compliance options;

4. Inspections of regulated activities; and

5. A review of enforcement actions and an accounting of amounts recovered through enforcement actions where applicable.

C. The department shall coordinate the once per five year review with the department's other program reviews for the same entity to avoid redundancy.

D. The department shall determine if the VESMP and ordinances where applicable are consistent with the VESMA and this chapter and notify the VESMP authority of its findings. The Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) shall govern the review activities and proceedings of the department and the judicial review thereof.

E. If the department determines that the deficiencies noted in the review will cause the VESMP to be out of compliance with the VESMA and attendant regulations, the department shall notify the VESMP authority concerning the deficiencies and provide a reasonable period of time in accordance with subdivision 19 of § 62.1-44.15 of the Code of Virginia for corrective action to be taken. If the VESMP authority agrees to the corrective action approved by the department, the VESMP will be considered to be conditionally compliant with the VESMA and attendant regulations until a subsequent finding of compliance is issued by the department. If the VESMP authority fails to implement the necessary compliance actions identified by the department within the specified time, the department may take action pursuant to subdivision 19 of § 62.1-44.15 of the Code of Virginia.

Article 5

VSMP Operated by the Department

9VAC25-875-200. Criteria for a VSMP.

A. The department shall administer a VSMP on behalf of any locality that notifies the department that the locality has chosen to not administer a VESMP as provided by § 62.1-44.15:27 B 3 of the Code of Virginia.

B. Per § 62.1-44.15:27.1 B of the Code of Virginia, the department shall administer a VSMP consistent with the stormwater management requirements defined for a VESMP.

C. The department shall review and approve stormwater management plans by the schedule defined in 9VAC25-875-110, except for activities not required to comply with the requirements of the VESMA, pursuant to § 62.1-44.15:34 of the Code of Virginia and 9VAC25-875-90.

D. The director or the director's designee may perform any act of the department provided under the VESMA and this

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chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

Part III

Virginia Erosion and Sediment Control Program

Article 1

Definitions, Purpose, and Applicability

9VAC25-875-210. Definitions.

For the purposes of this part only, the following words and terms have the following meanings unless the context clearly indicates otherwise:

"Act" means the Erosion and Sediment Control Law for Localities Not Administering a Virginia Erosion and Stormwater Management Program (ESCL), Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"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 detached residential structure 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 a formal site plan.

"Applicant" means any person submitting an erosion and sediment control plan for approval in order to obtain authorization for land-disturbing activities to commence.

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

"Land disturbance" or "land-disturbing activity" means any manmade change to the land surface that may result in soil erosion or has the potential to change its runoff characteristics, including the clearing, grading, excavating, transporting, and filling of land.

"Owner" means the same as provided in § 62.1-44.3 of the Code of Virginia. For a land-disturbing activity that is regulated under the ESCL, "owner" also includes the owner of the freehold of the premises or lesser estate therein, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a property.

9VAC25-875-220. Purpose.

The purpose of this part is to provide the framework for the administration, implementation, and enforcement of the Virginia Erosion and Sediment Control Law for Localities Not Administering a Virginia Erosion and Stormwater Management Program (ESCL). This part delineates the roles

associated with a VESCP. This part also establishes the department's procedures for approving the administration of a VESCP authority and includes the department's oversight authority over a VESCP.

9VAC25-875-230. Applicability.

This part is applicable to:

1. Any local government that administers a VESCP;
2. The department that administers a VESCP; and
3. The department in its administrative oversight of VESCPs.

Article 2

Land-Disturbing Activities

9VAC25-875-240. Criteria for determining status of land-disturbing activity.

A. The program administrator shall determine the validity of a claim of exempt status by a property owner who disturbs 10,000 square feet or more or 2,500 square feet or more in all areas of jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830). As soon as a nonexempt status is determined, the requirements of the ESCL shall be immediately enforced.

B. Should a land-disturbing activity not begin during the 180-day period following approval of the erosion and sediment control plan or cease for more than 180 days, the VESCP authority may evaluate the existing approved erosion and sediment control plan to determine whether the plan still satisfies local and state erosion and sediment control criteria and to verify that all design factors are still valid. If the VESCP authority finds the previously filed plan to be inadequate, a modified plan shall be submitted and approved prior to the resumption of land-disturbing activity.

C. Shoreline erosion control projects are not subject to Part V (9VAC25-875-470 et seq.) of this chapter. However, land-disturbing activity immediately outside the limits of the shoreline erosion project is subject to the ESCL and Part V of this chapter.

D. Whenever land-disturbing activity involves activity at a separate location, including borrow and disposal areas, the VESCP authority may either:

1. Consider the offsite activity as being part of the proposed land-disturbing activity; or
2. If the offsite activity is already covered by an approved erosion and sediment control plan, the VESCP authority may require the applicant to provide proof of the approval and to certify that the plan will be implemented in accordance with the ESCL and Part V of this chapter.

9VAC25-875-250. Regulated land-disturbing activities.

A. Land-disturbing activities that meet one of the criteria in this subsection are regulated as follows:

1. Land-disturbing activity that disturbs 10,000 square feet or more, although the locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, not in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) of Part V (9VAC25-875-470 et seq.) of this chapter.

2. Land-disturbing activity that disturbs 2,500 square feet or more, although the locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, and in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 of Part V of this chapter.

B. A locality may, by local ordinance adopted pursuant to § 62.1-44.15:65 of the Code of Virginia, adopt more stringent local requirements.

9VAC25-875-260. Land-disturbing activities in Chesapeake Bay Preservation Areas.

A. Localities subject to the Chesapeake Bay Preservation Act shall regulate runoff associated with land-disturbing activities in a Chesapeake Bay Preservation Area equal to or greater than 2,500 square feet but less than one acre in accordance with the following:

1. The technical criteria and program and administrative requirements set out in 9VAC25-875-740;

2. A local land disturbance approval, as applicable, shall be provided for the land-disturbing activity;

3. The locality shall regulate such land-disturbing activities in compliance with the:

a. Program requirements in 9VAC25-875-100;

b. Plan review requirements in 9VAC25-875-110 with the exception of subsection D of 9VAC25-875-110 or as allowed in subsection A of 9VAC25-875-750;

c. Long-term stormwater management facility requirements of 9VAC25-875-130;

d. Inspection requirements of 9VAC25-875-140 with the exception of subdivisions A 3 and A 4 of 9VAC25-875-140;

e. Enforcement components of 9VAC25-875-150;

f. Hearing procedures in effect in the locality;

g. Exception conditions of 9VAC25-875-170, excluding subsection A of 9VAC25-875-170, which is not applicable; and

h. Reporting and recordkeeping requirements of 9VAC25-875-180 with the exception of subdivision B 3 of 9VAC25-875-180.

B. A locality subject to the Chesapeake Bay Preservation Act shall adopt an ordinance that incorporates the components of this section.

C. As authorized by § 62.1-44.15:28 of the Code of Virginia, a locality may collect a fee as specified in 9VAC25-875-1400.

9VAC25-875-270. State agency land-disturbing activities.

A. All state agency land-disturbing activities that are not exempt and that have commenced without an approved erosion and sediment control plan shall immediately cease until the state agency has either (i) submitted standards and specifications for its conduct of land-disturbing activities that has been reviewed and approved by the department as being consistent with the ESCL and attendant regulations, or (ii) an erosion and sediment control plan has been submitted to and approved by the department. A formal "Notice of Plan Requirement" will be sent to the state agency under whose purview the project lies since that agency is responsible for compliance with the ESCL and this chapter.

B. Where inspections by department personnel reveal deficiencies in carrying out an approved plan, the person responsible for carrying out the plan, as well as the state agency responsible, will be issued a notice to comply with specific actions and the deadlines that shall be met. Failure to meet the prescribed deadlines can result in the issuance of a stop work order for all land-disturbing activities on the project at the discretion of the department. The stop work order will be lifted once the required erosion and sediment control measures are in place and inspected by department staff.

C. Whenever the Commonwealth or any of its agencies fails to comply within the time provided in an appropriate final order, the director of the department may petition for compliance as follows: For violations in the Natural and Historic Resources Secretariat, to the Secretary of Natural and Historic Resources; for violations in other secretariats, to the appropriate secretary; for violations in other state agencies, to the head of such agency. Where the petition does not achieve timely compliance, the director shall bring the matter to the Governor for resolution. The department may also pursue enforcement as provided by § 62.1-44.15:63 of the Code of Virginia.

D. Where compliance will require the appropriation of funds, the director shall cooperate with the appropriate agency head in seeking such an appropriation; where the director determines that an emergency exists, the director shall petition the Governor for funds from the Civil Contingency Fund or other appropriate source.

9VAC25-875-280. Activities not required to comply with the ESCL.

Notwithstanding any other provisions of the Erosion and Sediment Control Law for Localities Not Administering a Virginia Erosion and Stormwater Management Program

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(ESCL), the following activities are not required to comply with the ESCL unless otherwise required by federal law:

1. Disturbance of a land area of less than 10,000 square feet in size or less than 2,500 square feet in an area designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq. of the Code of Virginia). However, the governing body of the program authority may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply;
2. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs, and maintenance work;
3. Installation, maintenance, or repair of any individual service connection;
4. Installation, maintenance, or repair of any underground utility line when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;
5. Installation, maintenance, or repair of any septic tank line or drainage field unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
6. Permitted surface or deep mining operations and projects or oil and gas operations and projects conducted pursuant to Title 45.2 of the Code of Virginia;
7. Clearing of lands specifically for bona fide agricultural purposes; the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations; agricultural engineering operations, including construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; or as additionally set forth by the board in regulations. However, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163 of the Code of Virginia;
8. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
9. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Virginia Marine Resources Commission, or the U.S. Army Corps of Engineers; however, any associated land that is

disturbed outside of this exempted area shall remain subject to the ESCL and the regulations adopted pursuant thereto;

10. Land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the VESCP authority shall be advised of the disturbance within seven days of commencing the land-disturbing activity, and compliance with the administrative requirements of Article 2 (9VAC25-875-540 et seq.) of Part V (9VAC25-875-470 et seq.) of this chapter is required within 30 days of commencing the land-disturbing activity;

11. Discharges to a sanitary sewer or a combined sewer system that are not from a land-disturbing activity; and

12. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company.

Article 3

Programs Operated by a VESCP Authority

9VAC25-875-290. Criteria for programs operated by a VESCP authority.

A. At a minimum, a VESCP shall provide that (i) an erosion and sediment control plan shall be reviewed and approved by a certified plan reviewer; (ii) inspections of land-disturbing activities shall be conducted by a certified inspector; and (iii) a VESCP shall contain a certified program administrator, a certified plan reviewer, and a certified project inspector, who may be the same person pursuant to § 62.1-44.15:53 of the Code of Virginia. The requirements for each position identified in this subsection are specified in Part IV (9VAC25-875-380 et seq.) of this chapter.

B. A VESCP authority may enter into agreements or contracts with soil and water conservation districts, adjacent localities, or other public or private entities to assist with carrying out the provisions of this chapter, including the review and determination of adequacy of erosion and sediment control plans submitted for land-disturbing activities on units of land as well as for monitoring, reports, inspections, and enforcement of such land-disturbing activities.

C. The VESCP operated by a county, city, or town shall include provisions for the coordination of the VESCP with flood insurance, flood plain management, and other programs requiring compliance prior to authorizing a land-disturbing activity in order to make the submission and approval of plans, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs pursuant to § 62.1-44.15:54 of the Code of Virginia.

D. A VESCP authority may enter into an agreement with an adjacent VESCP or VESMP authority regarding the

administration of multijurisdictional projects specifying who shall be responsible for all or part of the administrative procedures. Should adjacent authorities fail to come to such an agreement, each shall be responsible for administering the area of the multijurisdictional project that lies within its jurisdiction.

E. Where the land-disturbing activity results from the construction of a (i) single-family detached residential structure or (ii) a 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%, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the VESCP authority pursuant to § 62.1-44-15:55 A of the Code of Virginia. For a single-family detached residential structure with less than one acre of land disturbance, an agreement in lieu of a plan may be used when either (a) it is located within a common plan of development or sale with an approved stormwater pollution prevention plan consistent with 9VAC25-875-500 and a permit, if required; or (b) the single-family detached residential is located outside of a common plan of development or sale.

F. A VESCP authority may adopt more stringent soil erosion and sediment control ordinances pursuant to § 62.1-44.15:65 of the Code of Virginia.

G. Any VESCP authority that administers a VESCP may charge applicants a reasonable fee to defray the costs of program administration. A VESCP authority shall hold a public hearing prior to establishing a schedule of fees. The fee shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and the VESCP authority's expense involved.

9VAC25-875-300. Plan review requirements.

A. The VESCP authority shall review erosion and sediment control plans that detail the criteria, techniques, and methods as defined in 9VAC25-875-550 for land-disturbing activities described in 9VAC25-875-560. Activities not required to comply with VESCL are defined in 9VAC25-875-280.

B. When determined that the plan meets the minimum criteria, techniques, and methods as defined in 9VAC25-875-550, the VESCP authority shall review erosion and sediment control plans submitted and grant written approval within 60 days of the receipt of the plan.

C. When the VESCP authority determines a plan is inadequate, written notice stating the specific reasons for disapproval shall be communicated to the applicant within 45 days. The notice shall specify the modifications, terms, and conditions that are necessary for approval of the plan. If no action is taken by the VESCP authority within 45 days, the plan shall be deemed approved and the proposed activity authorized. The VESCP authority shall act on any erosion and sediment control plan that has been previously deemed

inadequate within 45 days after receipt of a revised plan if deemed adequate.

D. For sites requiring coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities, the VESCP authority shall obtain evidence of such coverage prior to approving the erosion and sediment control plan.

E. The person responsible for carrying out the plan shall provide the name of an individual holding a certificate to the VESCP authority who will be in charge of and responsible for carrying out the land-disturbing activity. However, the VESCP authority may waive the Responsible Land Disturber Certificate requirement for an agreement in lieu of a plan in accordance with § 62.1-44.15:55 of the Code of Virginia.

F. The VESCP authority may require approval of an erosion and sediment control plan for any land identified as an erosion impact area in accordance with § 62.1-44.15.55 of the Code of Virginia.

G. All erosion and sediment control structures and systems shall be maintained, inspected, and repaired as needed to ensure continued performance of their intended function. A statement describing the maintenance responsibilities of the individual responsible for carrying out the land-disturbing activity shall be included in the approved erosion and sediment control plan.

9VAC25-875-310. Plan review coordination with the department for solar projects.

A. Any VESCP authority that does not operate a regulated municipal separate storm sewer system and for which the department did not administer a Virginia Stormwater Management Program as of July 1, 2020, shall notify the department if it decides to have the department provide the VESCP authority with (i) review of the erosion and sediment control plan required by § 62.1-44.15:55 A of the Code of Virginia and (ii) a recommendation on the plan's compliance with the requirements of Part V (9VAC25-875-470 et seq.) of this chapter for any solar project and its associated infrastructure with a rated electrical generation capacity exceeding five megawatts.

B. Any VESCP authority that notifies the department pursuant to this section shall within five days of receiving the erosion and sediment control plan forward the plan to the department for review. If the plan forwarded to the department is incomplete, the department shall return the plan to the VESCP authority immediately, and the application process shall start over. If the plan forwarded to the department is complete, the department shall review the plan for compliance with the requirements of Part V of this chapter and provide a recommendation to the VESCP authority. The VESCP authority shall then (i) grant written approval of the plan or (ii) provide written notice of disapproval of the plan in accordance with § 62.1-44.15:55 B of the Code of Virginia.

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C. Any VESCP authority that notifies the department pursuant to this section shall within five days of receiving the resubmittal of a previously disapproved erosion and sediment control plan forward the resubmitted plan to the department for review. The department shall review the resubmitted plan for compliance with the requirements of Part V of this chapter and provide a recommendation to the VESCP authority. The VESCP authority shall then (i) grant written approval of the plan or (ii) provide written notice of disapproval of the plan in accordance with § 62.1-44.15:55 B of the Code of Virginia.

9VAC25-875-320. Long-term maintenance of stormwater management facilities.

A. A recorded instrument shall be submitted to the VESCP authority in accordance with 9VAC25-875-535.

B. The department shall enforce permits and require compliance with its applicable regulations, including when serving as a VSMP authority in a locality that chose not to adopt a VESMP in accordance with § 62.1-44.15:27 of the Code of Virginia.

9VAC25-875-330. Inspections.

A. The VESCP authority (i) shall provide for periodic inspections of the land-disturbing activity and require that an individual holding a certificate, as provided by § 62.1-44.15:52 of the Code of Virginia, will be in charge of and responsible for carrying out the land-disturbing activity and (ii) may require monitoring and reporting from the person responsible for carrying out the erosion and sediment control plan, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sediment. However, any VESCP authority may waive the certificate requirement for an agreement in lieu of a plan.

B. Periodic inspections by the VESCP authority are required on all projects. The VESCP authority shall either:

1. Provide for an inspection during or immediately following initial installation of erosion and sediment controls, at least once in every two-week period, within 48 hours following any runoff producing storm event, and at the completion of the project prior to the release of any performance bonds; or
2. Establish an alternative inspection program that ensures compliance with the approved erosion and sediment control plan. Any alternative inspection program shall be:
 - a. Approved by the department prior to implementation;
 - b. Established in writing;
 - c. Based on a system of priorities that, at a minimum, address the amount of disturbed project area, site conditions, and stage of construction; and
 - d. Documented by inspection records.

9VAC25-875-340. Enforcement.

A. Each VESCP authority shall incorporate components from subdivisions 1 and 2 of this subsection.

1. Informal and formal administrative enforcement procedures may include:

- a. Right of entry in accordance § 62.1-44.15:60 of the Code of Virginia.
- b. Verbal warnings and inspection reports;
- c. Notices of corrective action;
- d. Notices to comply in accordance with § 62.1-44.15:58 of the Code of Virginia;
- e. Consent special orders and civil charges in accordance § 62.1-44.15:63 of the Code of Virginia;
- f. Stop work orders in accordance with of § 62.1-44.15:58 of the Code of Virginia; and
- g. Public notice and comment periods for proposed settlements and consent special orders.

2. Civil and judicial enforcement procedures may include:

- a. Schedule of civil penalties in accordance with §§ 62.1-44.15:54 and 62.1-44.15:63 of the Code of Virginia; and
- b. Injunctions in accordance §§ 62.1-44.15:58 and 62.1-44.15:63 of the Code of Virginia.

B. Each VESCP authority shall develop policies and procedures that outline the steps to be taken regarding enforcement actions under the ESCL and attendant regulations and local ordinances.

C. Penalties imposed in accordance with §§ 62.1-44.15:54 and 62.1-44.15:63 of the Code of Virginia may reflect the degree of harm caused by the violation and take into account the economic benefit to the violator from noncompliance.

D. Pursuant to § 62.1-44.15:25 of the Code of Virginia, authorization to administer a VESCP program shall not remove from the department the authority to enforce the provisions of the ESCL and attendant regulations.

E. The department may terminate permit coverage during the permit's term and require application for an individual permit or deny a permit renewal application for failure to comply with permit conditions or on the department's own initiative in accordance with the ESCL and this chapter.

F. Pursuant to § 62.1-44.15:63 A of the Code of Virginia, civil penalties recovered by a VESCP authority shall be paid into the treasury of the locality in which the violation occurred and are to be used solely for stormwater management capital projects.

9VAC25-875-350. Variances.

A variance to waive or modify any of the erosion and sediment control requirements of Article 2 (9VAC25-874-540 et seq.) of Part V (9VAC25-875-470 et seq.) of this chapter that

are deemed inappropriate or too restrictive for site conditions may be requested from the VESCP authority under these conditions:

1. At the time of plan submission, an applicant may request a variance to become part of the approved erosion and sediment control plan. The applicant shall explain the reasons for requesting variances in writing. Specific variances which are allowed by the authority shall be documented in the plan; or
2. During construction, the person responsible for implementing the approved plan may request a variance in writing from the authority. The authority shall respond in writing either approving or disapproving such a request. If the authority does not approve a variance within 10 days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a variance request with additional documentation.

9VAC25-875-360. VESCP reporting and record keeping requirements.

Each VESCP authority shall report to the department, at least monthly, in a method such as an online reporting system and on a time schedule established by the department, a listing of each land-disturbing activity for which a plan has been approved by the VESCP authority under the ESCL and this part.

Article 4

Review Procedures for VESCPs

9VAC25-875-370. Review and evaluation of VESCPs.

A. This section sets forth the criteria that will be used by the department to determine whether a locality operating a VESCP under authority of the ESCL, a "VESCP authority," satisfies minimum standards of effectiveness, as follows.

Each VESCP must contain an ordinance or other appropriate document adopted by the VESCP authority. Such document must be consistent with the ESCL and Part III (9VAC25-875-210 et seq.) of this chapter, including the following criteria:

1. The document shall include or reference the definition of land-disturbing activity, including exemptions as well as any other significant terms, as necessary to produce an effective VESCP;
2. The document shall identify the VESCP authority and any soil and water conservation district, adjacent locality, or other public or private entities that the VESCP authority entered into agreements or contracts with to assist with carrying out the provisions of the ESCL and Part III of this chapter and must include the requirements and design standards to be used in the program;
3. The document shall include procedures for submission and approval of plans, issuance of permits, monitoring and inspections of land-disturbing activities. The position,

agency, department, or other party responsible for conducting inspections shall be identified. The VESCP authority shall maintain, either onsite or in VESCP files, a copy of the approved plan and a record of inspections for each active land-disturbing activity;

4. Each VESCP operated by a county, city, or town shall include provisions for the integration of the VESCP with flood insurance, flood plain management, and other programs requiring compliance prior to authorizing a land-disturbing activity in order to make the submission and approval of plans, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs; and

5. The VESCP authority must take appropriate enforcement actions, where authorized to do so, to achieve compliance with the program and maintain a record of enforcement actions for all active land-disturbing activities.

B. The department shall periodically conduct a comprehensive review and evaluation of each VESCP authority pursuant to subdivision (19) of § 62.1-44.15 of the Code of Virginia. The department will coordinate the review with its other program reviews for the same entity to avoid redundancy. The review and evaluation of a VESCP authority shall consist of the following: (i) consultation with the local program administrator or designee; (ii) review of the local ordinance and other applicable documents; (iii) review of plans approved by the VESCP authority; (iv) inspection of regulated activities; and (v) review of enforcement actions where authorized to do so. The department is also authorized to conduct a partial VESCP compliance review.

C. Each VESCP authority shall be reviewed and evaluated by the department for effectiveness in carrying out the ESCL and Part III of this chapter using the criteria in this section.

D. If deficiencies noted in the review will cause the VESCP to be inconsistent with the ESCL or this chapter, the department shall provide the VESCP authority with a copy of the department's decision that specifies the deficiencies, action needed to be taken, and an approved corrective action plan and schedule required to attain the minimum standard of effectiveness. If the VESCP authority has not implemented the necessary compliance actions identified by the department within the corrective action schedule, or such additional period as is granted to complete the implementation of the corrective action, then the department shall have the authority to (i) issue a special order to any VESCP authority imposing a civil penalty set out in § 62.1-44.15 of the Code of Virginia or (ii) revoke its approval of the VESCP. The Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and Article 5 (§ 62.1-44.20 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia shall govern the review activities and proceedings of the department and the judicial review thereof. In lieu of issuing a special order or revoking the program, the department

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is authorized to take legal action against a VESCP authority to ensure compliance.

E. Review and evaluation of VESCPs shall be conducted according to a schedule adopted by the department in accordance with subdivision (19) of § 62.1-44.15 of the Code of Virginia.

Part IV

Certification of VESCP, VSMP, and VESMP Personnel

9VAC25-875-380. Purpose.

The purpose of this part is to guide the issuance of certifications required by §§ 62.1-44.15:52 E and 62.1-44.15:53 of the Code of Virginia (ESCL) and § 62.1-44.15:30 of the Code of Virginia (VESMA).

9VAC25-875-390. Applicability.

This part is applicable to:

1. Every VESCP authority, VESMP authority, or VSMP authority that administers a VESCP, VESMP, or VSMP may be applicable. Staff of a VESCP authority must be certified in accordance with §§ 62.1-44.15:52 E and 62.1-44.15:53 of the ESCL. Staff of a VESMP authority or VSMP authority must be certified in accordance with § 62.1-44.15:30 of the VESMA.

2. Anyone who is contracted by a VESCP authority, a VESMP authority, or a VSMP authority to perform any or all of the functions of that authority as may be applicable. This person will be subject to the same certification requirements as the authority.

3. Any state agency, federal entity, or public or private entity authorized under § 62.1-44.15:31 of the Code of Virginia to implement approved standards and specifications. Personnel implementing approved standards and specifications pursuant to subsection D.5 of § 62.1-44.15:31 of the Code of Virginia must obtain certifications or qualifications comparable to those required for VESMP personnel pursuant to subsection C of § 62.1-44.15:30 of the Code of Virginia.

4. Anyone voluntarily seeking certifications or certificates from the department for classifications described in 9VAC25-875-400.

9VAC25-875-400. Certificates and certifications.

A. Certifications shall be issued by the department to individuals who successfully complete the department-approved training program, which includes obtaining a passing score on the applicable certification examination or otherwise fulfilling the requirements of 9VAC25-875-410 for the following classifications:

1. Program administrator for ESC. This classification applies to individuals who administer the program in the area of ESC pursuant to this chapter. This certification is a

requirement for any individual employed to perform the duties of a program administrator for ESC by a VESCP or VESMP authority, or an agent of a VESCP or VESMP authority. This certification also serves as the ESC component required for the dual program administrator certification.

2. Inspector for ESC. This classification applies to individuals who perform inspections of land-disturbing activities in the area of ESC pursuant to this chapter. This certification is a requirement for any individual employed as an inspector for ESC by a VESCP or VESMP authority, or an agent of a VESCP or VESMP authority. This certification also serves as the ESC component required for the dual inspector certification.

3. Plan reviewer for ESC. This classification applies to individuals who review plans in the area of ESC for approval by a VESCP or VESMP authority pursuant to this chapter. This certification is a requirement for any individual employed as a plan reviewer for ESC by a VESCP or VESMP authority, or an agent of a VESCP or VESMP authority. This certification also serves as the ESC component required for the dual plan reviewer certification.

4. Combined administrator for ESC. This classification applies to individuals who perform the combined duties of Program Administrator, Inspector, and Plan Reviewer in the area of ESC pursuant to this chapter. This certification is a requirement for any individual employed as a combined administrator for ESC by a VESCP or VESMP authority, or an agent of a VESCP or VESMP authority. This certification also serves as the ESC component required for the dual combined administrator certification.

5. Program administrator for SWM. This classification applies to individuals who administer the program in the area of SWM pursuant to this chapter. This certification is a requirement for any individual employed to perform the duties of a program administrator for SWM by a VSMP or VESMP authority, or an agent of a VSMP or VESMP authority. This certification also serves as the SWM component required for the dual program certification.

6. Inspector for SWM. This classification applies to individuals who conduct inspections in the area of SWM pursuant to this chapter. This certification is a requirement for any individual employed to perform the duties of an inspector for SWM by a VSMP or VESMP authority, or an agent of a VSMP or VESMP authority. This certification also serves as the SWM component required for the dual inspector certification.

7. Plan reviewer for SWM. This classification applies to individuals who review plans in the area of SWM pursuant to this chapter. This certification is a requirement for any individual employed to perform the duties of a plan reviewer for SWM by a VSMP or VESMP authority, or an agent of a

VSMP or VESMP authority. This certification also serves as the SWM component required for the dual plan reviewer certification.

8. Combined administrator for SWM. This classification applies to individuals who perform the combined duties of program administrator, inspector, and plan reviewer in the area of SWM pursuant to this chapter. This certification is a requirement for any individual employed to perform the duties of a combined administrator for SWM by a VSMP or VESMP authority, or an agent of a VSMP or VESMP authority. This certification also serves as the SWM component required for the dual combined administrator certification.

9. Dual program administrator. This classification applies to individuals who administer the program in the areas of ESC and SWM pursuant to this chapter. This certification satisfies the requirement for any individual employed as a dual program administrator for ESC and SWM by a VESMP authority, an agent of a VESMP authority, or for personnel implementing department-approved standards and specifications pursuant to § 62.1-44.15:31 of the Code of Virginia and attendant regulations.

10. Dual inspector. This classification applies to individuals who conduct inspections in the areas of ESC and SWM pursuant to this chapter. This certification satisfies the requirement for any individual employed as a dual inspector for ESC and SWM by a VESMP authority, an agent of a VESMP authority, or for personnel implementing department-approved standards and specifications pursuant to § 62.1-44.15:31 of the Code of Virginia and attendant regulations.

11. Dual plan reviewer. This classification applies to individuals who review plans in the areas of ESC and SWM for approval by a VESMP authority pursuant to this chapter. This certification satisfies the requirement for any individual employed as a dual plan reviewer for ESC and SWM by a VESMP authority, an agent of a VESMP authority, or for personnel implementing department-approved standards and specifications pursuant to § 62.1-44.15:31 of the Code of Virginia and attendant regulations.

12. Dual combined administrator. This classification applies to individuals who perform the combined duties of program administrator, inspector, and plan reviewer in the areas of ESC and SWM pursuant to this chapter. This certification satisfies the requirement for any individual employed as a dual combined administrator for ESC and SWM by a VESMP authority, an agent of a VESMP authority, or for personnel implementing department-approved standards and specifications pursuant to § 62.1-44.15:31 of the Code of Virginia and attendant regulations.

B. The classifications in subdivisions A 1 through A 8 of this section may be used to serve as the ESC or SWM components

required for personnel implementing department-approved standards and specifications pursuant to § 62.1-44.15:31 of the Code of Virginia and attendant regulations.

C. A certificate shall be issued by the department for the responsible land disturber.

D. Any individual employed as a plan reviewer who is licensed as a professional engineer, architect, landscape architect, land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia, or professional soil scientist as defined in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia shall qualify as a certified plan reviewer for ESC and will not require a certification from the department. In lieu of an individual holding this department certification, such individual shall produce a current professional license or certification upon request of the department.

E. Any individual who holds a valid and unexpired certification issued by the department in the classification of ESC or SWM, or who obtains such certification, and who later successfully obtains an additional certification from the department in the parallel ESC or SWM classification may surrender both certifications to the department for issuance of a dual certification in both ESC and SWM. Such a request must be made while both of the ESC and SWM certifications obtained are valid and unexpired. The expiration date of the dual certification shall be three years from the date of expiration of the additional certification acquired.

9VAC25-875-410. Eligibility requirements.

A. Certification may be achieved by:

1. Obtaining a total of 800 hours of experience as an ESC, SWM, or a dual program administrator, plan reviewer, inspector, or combined administrator and obtaining a passing score on the certification examination administered by the department in the applicable ESC or SWM area; or both ESC and SWM for the dual certification; or

2. Completing a department-approved training program in the classifications of program administrator, plan reviewer, inspector, or combined administrator and, within one year of completing the training program, obtain a passing score on the certification examination administered by the department in the applicable ESC or SWM area, or both ESC and SWM for the dual certification.

a. Combined administrators must complete the training program for program administrator, inspector, and plan reviewer within the applicable area of ESC or SWM.

b. Dual combined administrators must complete the training program for program administrator, inspector, and plan reviewer within both areas of ESC and SWM.

B. Certification and recertification shall be valid for three years except as otherwise set out in 9VAC25-875-400 D or 9VAC25-875-460.

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C. Recertification may be obtained for classifications outlined in 9VAC25-875-400 of this part prior to the expiration date of a certification by:

1. Completing continuing education contact hours in accordance with department guidance and paying the required fee for recertification;

2. Being a professional registered in the Commonwealth pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia or a professional soil scientist as defined in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia, and paying the required fee for recertification. Such professionals shall be deemed to satisfy the provisions of this subsection for ESC classifications in subdivisions A 1 through A 4 of 9VAC25-875-400. However, such professionals when in the classification of plan reviewer for ESC shall be exempt from the recertification requirements and fees of this part provided they maintain their professional license;

3. Being a professional registered in the Commonwealth pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia and paying the required fee for recertification. Such professionals shall be deemed to satisfy the provisions of this subsection for SWM and dual classifications in subdivisions A 5 through A 12 of 9VAC25-875-400;

4. Successfully completing a department-approved training program and paying the required fee for recertification; or

5. Obtaining a passing score on the recertification examination.

D. Responsible Land Disturber (RLD) Certificate may be obtained by completing a department-approved training program for RLDs for ESC.

1. The RLD Certificate and any renewal thereof shall be valid for three years.

2. Renewal of the RLD Certificate may be obtained by completing a department-approved training program for RLDs.

3. Being a professional registered in the Commonwealth pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia or a professional soil scientist as defined in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia shall be deemed to satisfy the provisions of this subsection for an RLD Certificate in subsection C of 9VAC25-875-400 or any renewal thereof.

9VAC25-875-420. Classification acknowledgment for the purposes of program compliance reviews.

For the purposes of VESCP or VESMP compliance reviews and evaluations, the certification requirements of §§ 62.1-44.15:53 and 62.1-44.15:30 of the Code of Virginia shall be deemed to have been met if the VESCP or VESMP authority

has an individual enrolled in the department's ESC or SWM training programs set forth in 9VAC25-875-410 A 2 a and A 2 b for the necessary classifications and such individual obtains certification within one year of completing the necessary training programs.

9VAC25-875-430. Certification program fees.

A. Certification, recertification, dual certification, and RLD Certificate issuance and reissuance fees shall be collected to cover the administrative cost for the certification program.

B. A fee will also be charged to present education and training programs that support the certification program.

C. Fees are nonrefundable, except as authorized by the department and shall not be prorated.

9VAC25-875-440. Examination.

A. A department-approved examination shall be administered by the department.

B. An applicant may take the certification examination for the desired certification after fulfilling the prerequisite experience requirement or completing a department-approved training program.

C. An applicant who is unsuccessful in passing an examination will be allowed to pay the appropriate fee and retake the appropriate examination.

D. A minimum passing score of 70% will be required on the appropriate certification examination.

E. All applicants will be notified of the results within 60 days of the examination.

9VAC25-875-450. Reserved.

9VAC25-875-460. Discipline for certified personnel.

The department may suspend, revoke, or refuse to grant or renew the certification or certificate of any individual if the department, in an informal fact finding under § 2.2-4019 of the Code of Virginia, finds that:

1. The certification or certificate was obtained or renewed through fraud or misrepresentation;

2. The individual who holds a certification or certificate has violated or cooperated with others in violating any provision of this part;

3. The individual who holds a certification or certificate has not demonstrated reasonable care, judgment, or application of knowledge and ability in the performance of duties; or

4. The individual who holds a certification or certificate has made any material misrepresentation in the course of performing duties.

Part V
Criteria and Requirements for Regulated Land-Disturbing
Activities
Article 1
Administrative Criteria

9VAC25-875-470. Applicability.

A. Land-disturbing activities that meet one of the criteria in this subsection are regulated as follows:

1. Land-disturbing activity that disturbs 10,000 square feet or more, although a locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, not in an area of a locality designated as a Chesapeake Bay Preservation Area, and not part of a common plan of development or sale, is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) of this part of this chapter.

2. Land-disturbing activity that disturbs 2,500 square feet or more, although a locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, and in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 and Article 3 (9VAC25-875-570 et seq.) of this part unless Article 4 (9VAC25-875-670 et seq.) of this part is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490. For land-disturbing activities for single-family detached residential structures, Article 2 of this part and water quantity technical criteria, 9VAC25-875-600, shall apply to any land-disturbing activity that disturbs 2,500 square feet or more of land, and the locality also may require compliance with the water quality technical criteria, 9VAC25-875-580 and 9VAC25-875-590.

3. Land-disturbing activity that disturbs less than one acre, but is part of a larger common plan of development or sale that disturbs one acre or more, is subject to criteria defined in Article 2 and Article 3 of this part unless Article 4 of this part is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.

4. Land-disturbing activity that disturbs one acre or more is subject to criteria defined in Article 2 and Article 3 of this part unless Article 4 of this part is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.

B. A locality may, by local ordinance adopted pursuant to § 62.1-44.15:33 or 62.1-44.15:65 of the Code of Virginia, adopt more stringent local requirements.

9VAC25-875-480. Applicability of other laws and regulations; time limits on applicability of approved design criteria.

A. Nothing in this chapter shall be construed as limiting the applicability of other laws and regulations, including, the Clean Water Act, VESMA, ESCL, and the Chesapeake Bay Preservation Act, and all applicable regulations adopted in

accordance with those laws, or the rights of other federal agencies, state agencies, or local governments to impose more stringent technical criteria or other requirements as allowed by law.

B. Land-disturbing activities that obtain an initial permit or commence land disturbance prior to July 1, 2014, shall be conducted in accordance with the technical criteria of Article 4 (9VAC25-875-670 et seq.) of this part. Such projects shall remain subject to the technical criteria of Article 4 of this part for two additional permit cycles. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the board.

C. Land-disturbing activities that obtain an initial permit on or after July 1, 2014, shall be conducted in accordance with the technical criteria of Article 3 (9VAC25-875-570 et seq.) of this part, except as provided for in 9VAC25-875-490. Land-disturbing activities conducted in accordance with the technical criteria of Article 3 of this part shall remain subject to the technical criteria of Article 3 of this part for two additional permit cycles. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the board.

D. Nothing in this section shall preclude an operator from constructing to a more stringent standard at the operator's discretion.

9VAC25-875-490. Grandfathering.

A. Any land-disturbing activity shall be considered grandfathered by the VESMP authority and shall be subject to the technical criteria of Article 4 (9VAC25-875-670 et seq.) of this part provided:

1. A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by the locality to be equivalent thereto (i) was approved by the locality prior to July 1, 2012; (ii) provided a layout as defined in 9VAC25-875-670; (iii) will comply with the technical criteria of Article 4 of this part; and (iv) has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorus leaving each point of discharge and such that there is no increase in the volume or rate of runoff;

2. A permit has not been issued prior to July 1, 2014; and

3. Land disturbance did not commence prior to July 1, 2014.

B. Locality, state, and federal projects shall be considered grandfathered by the VESMP authority and shall be subject to the technical criteria of Article 4 of this part provided:

1. There has been an obligation of locality, state, or federal funding, in whole or in part, prior to July 1, 2012, or the department has approved a stormwater management plan prior to July 1, 2012;

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2. A permit has not been issued prior to July 1, 2014; and
3. Land disturbance did not commence prior to July 1, 2014.

C. Land disturbing activities grandfathered under subsections A and B of this section shall remain subject to the technical criteria of Article 4 of this part for one additional permit cycle. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the board.

D. In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the technical criteria of Article 4 of this part.

E. Nothing in this section shall preclude an operator from constructing to a more stringent standard at the operator's discretion.

9VAC25-875-500. Stormwater pollution prevention plan requirements.

A. A stormwater pollution prevention plan shall include an approved erosion and sediment control plan, an approved stormwater management plan, a pollution prevention plan for regulated land-disturbing activities, and a description of any additional control measures necessary to address a TMDL pursuant to subsection E of this section.

B. An erosion and sediment control plan consistent with the requirements of 9VAC25-875-550 must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the VESCP authority, VESMP authority, or the department.

C. A stormwater management plan consistent with the requirements of 9VAC25-875-510 must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the VESMP authority or the department.

D. A pollution prevention plan that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site and describe control measures that will be used to minimize pollutants in stormwater discharges from the construction site must be developed before land disturbance commences.

E. In addition to the requirements of subsections A through D of this section, if a specific wasteload allocation for a pollutant has been established in an approved TMDL and is assigned to stormwater discharges from a construction activity, additional control measures must be identified and implemented by the operator so that discharges are consistent with the assumptions and requirements of the wasteload allocation.

F. The stormwater pollution prevention plan (SWPPP) must address the following requirements as specified in 40 CFR 450.21, to the extent otherwise required by state law or regulations and any applicable requirements of a permit:

1. Control stormwater volume and velocity within the site to minimize soil erosion;

2. Control stormwater discharges, including both peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion;

3. Minimize the amount of soil exposed during construction activity;

4. Minimize the disturbance of steep slopes;

5. Minimize sediment discharges from the site. The design, installation, and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity, and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site;

6. Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal, and maximize stormwater infiltration, unless infeasible;

7. Minimize soil compaction and, unless infeasible, preserve topsoil;

8. Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating, or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. Stabilization must be completed within a period of time determined by the VESMP authority or the department as the VSMP authority. In arid, semi-arid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the VESMP authority or department; and

9. Utilize outlet structures that withdraw water from the surface, unless infeasible, when discharging from basins and impoundments.

G. The SWPPP shall be amended whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters and that has not been previously addressed in the SWPPP. The SWPPP must be maintained at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site.

9VAC25-875-510. Stormwater management plan requirements.

A. A stormwater management plan shall be developed and submitted to the VESMP authority or the department as the VSMP authority. The stormwater management plan shall be

implemented as approved or modified by the VESMP authority or department and shall be developed in accordance with the following:

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

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

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

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

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

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

4. A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;

5. Information on the proposed stormwater management facilities, including (i) detailed narrative on the conversion to a long-term stormwater management facility if the facility was used as a temporary ESC measure; (ii) the type of facilities; (iii) location, including geographic coordinates; (iv) acres treated; and (v) the surface waters or karst features into which the facility will discharge;

6. Hydrologic and hydraulic computations, including runoff characteristics;

7. Documentation and calculations verifying compliance with the water quality and quantity requirements of this chapter;

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

a. All contributing drainage areas;

b. Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;

c. Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;

d. Current land use including existing structures, roads, and locations of known utilities and easements;

e. Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;

f. The limits of clearing and grading, and the proposed drainage patterns on the site;

g. Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and

h. Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including planned locations of utilities, roads, and easements;

9. If an operator intends to meet the requirements established in 9VAC25-875-580 or 9VAC25-875-600 through the use of offsite compliance options, where applicable, then a letter of availability from the offsite provider must be included; and

10. If payment of a fee is required with the stormwater management plan submission to the VESMP authority or the department, the fee in accordance with Part VIII (9VAC25-875-1290 et seq.) of this chapter must have been submitted.

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

9VAC25-875-520. Pollution prevention plans.

A. A plan for implementing pollution prevention measures during construction activities shall be developed, implemented, and updated as necessary. The pollution prevention plan shall detail the design, installation, implementation, and maintenance of effective pollution prevention measures as specified in 40 CFR 450.21(d) to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:

1. Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;

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2. Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and

3. Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

B. The pollution prevention plan shall include effective best management practices to prohibit the following discharges in accordance with 40 CFR 450.21(e):

1. Wastewater from washout of concrete, unless managed by an appropriate control;

2. Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;

3. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and

4. Soaps or solvents used in vehicle and equipment washing.

C. Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls in accordance with 40 CFR 450.21(c).

9VAC25-875-530. Applying for permit coverage.

A. The operator must submit a complete and accurate registration statement in accordance with the General VPDES Permit for Discharges of Stormwater from Construction Activities (9VAC25-880) if such statement is required, on the official department form to the VESMP or department as the VSMP authority in order to apply for permit coverage. The registration statement must be signed by the operator in accordance with 9VAC25-875-940. In accordance with § 62.1-44.15:28 of the Code of Virginia, no registration statement is required for coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities (Construction General Permit) for a small construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale.

B. A person shall not conduct any land-disturbing activity until (i) the person has submitted to the appropriate VESMP authority or the department as the VSMP authority an application that includes a permit registration statement, if required, an ESM plan or an executed agreement in lieu of a plan, if required, and (ii) the VESMP authority or department has issued its land-disturbance approval. For a single family detached residential structure with less than one acre of land disturbance, an agreement in lieu of a plan may be used when either (a) it is located within a common plan of development or sale with an approved stormwater pollution prevention plan consistent with 9VAC25-875-500 and a permit, if required; or

(b) the single-family detached residential is located outside of a common plan of development or sale.

C. In addition, as a prerequisite to engaging in an approved land-disturbing activity, the name of the individual who will be assisting the owner in carrying out the activity and holds a Responsible Land Disturber Certificate pursuant to § 62.1-44.15:30 of the Code of Virginia shall be submitted to the VESMP authority or department.

D. Any VESMP authority or the department as the VSMP authority may waive the Responsible Land Disturber Certificate requirement for an agreement in lieu of a plan; however, if a violation occurs during the land-disturbing activity, then the owner shall correct the violation and provide the name of the individual holding a Responsible Land Disturber Certificate as provided by § 62.1-14:30 of the Code of Virginia. Failure to provide the name of an individual holding a Responsible Land Disturber Certificate prior to engaging in land-disturbing activities may result in revocation of the land-disturbance approval and shall subject the owner to the penalties provided in the VESMA.

9VAC25-875-535. Long-term maintenance of stormwater management facilities.

A. The operator shall submit a construction record drawing for permanent stormwater management facilities to the VESMP or VSMP authority based on the locality where the land-disturbing activity will occur. The record drawing shall contain a statement signed by a professional registered in the Commonwealth of Virginia pursuant to Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia, stating that to the best of the professional's knowledge, the construction record drawing shows all adjustments and revisions to the stormwater management plan made during construction and serve as a permanent record of the actual location of all constructed elements.

B. The provision of long-term responsibility for and maintenance of stormwater management facilities and other techniques specified to manage the quality or quantity of runoff is required. Such requirements shall be set forth in an instrument recorded in the local land records prior to permit termination or earlier as required by the authority and shall at a minimum:

1. Be submitted to the authority for review and approval prior to the approval of the stormwater management plan;

2. Be stated to run with the land;

3. Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;

4. Provide for inspections and maintenance and the submission of inspection and maintenance reports to the VESCP, VSMP, or VESMP authority; and

5. Be enforceable by all appropriate governmental parties.

C. At the discretion of the VESMP authority, such recorded instruments need not be required for stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located, provided it is demonstrated to the satisfaction of the authority that future maintenance of such facilities will be addressed through an enforceable mechanism at the discretion of the authority.

Article 2
Soil Erosion Requirements

9VAC25-875-540. Applicability.

A. This article sets forth minimum standards for the effective control of soil erosion, sediment deposition, and nonagricultural runoff.

B. In accordance with Item 360 I1 of Chapter 3 of the 2012 Acts of Assembly, Special Session I, public institutions of higher education, including community colleges, colleges, and universities, shall be subject to project review and compliance for state erosion and sediment control requirements by the VESCP or VESMP authority of the locality within which the land-disturbing activity is located, unless such institution submits standards and specifications to the department in accordance with § 62.1-44.15:31 of the Code of Virginia.

9VAC25-875-550. Erosion and sediment control plan requirements.

A. An erosion and sediment control plan shall be filed for a development and the buildings constructed within, regardless of the phasing of construction. The erosion and sediment control plan shall contain all major conservation decisions to ensure that the entire unit of land will be so treated to achieve the conservation objectives in 9VAC25-875-560. The erosion and sediment control plan may include:

1. Appropriate maps;
2. An appropriate soil and water plan inventory and management information with needed interpretations; and
3. A record of decisions contributing to conservation treatment.

B. The person responsible for carrying out the plan shall provide the name of an individual holding a certificate who will be in charge of and responsible for carrying out the land-disturbing activity to the VESCP or VESMP authority. However, the VESCP or VESMP authority may waive the Responsible Land Disturber Certificate requirement for an agreement in lieu of a plan in accordance with § 62.1-44.15:34 or 62.1-44.15:55 of the Code of Virginia.

C. If individual lots or sections in a residential development are being developed by different property owners, all land-disturbing activities related to the building construction shall be covered by an erosion and sediment control plan or an agreement in lieu of a plan signed by the property owner.

D. Land-disturbing activity of less than 10,000 square feet on individual lots in a residential development shall not be considered exempt from the provisions of the VESMA, ESCL, or this chapter if the total land-disturbing activity in the development is equal to or greater than 10,000 square feet.

9VAC25-875-560. Erosion and sediment control criteria, techniques, and methods: minimum standards.

An erosion and sediment control plan consistent with the following criteria, techniques, and methods shall be submitted to the VESMP authority or VESCP authority for review and approval:

1. Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site. Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days. Permanent stabilization shall be applied to areas that are to be left dormant for more than one year.

2. During construction of the project, soil stockpiles and borrow areas shall be stabilized or protected with sediment trapping measures. The applicant is responsible for the temporary protection and permanent stabilization of all soil stockpiles on site as well as borrow areas and soil intentionally transported from the project site.

3. A permanent vegetative cover shall be established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved that is uniform, is mature enough to survive, and will inhibit erosion.

4. Sediment basins and traps, perimeter dikes, sediment barriers, and other measures intended to trap sediment shall be constructed as a first step in any land-disturbing activity and shall be made functional before upslope land disturbance takes place.

5. Stabilization measures shall be applied to earthen structures such as dams, dikes, and diversions immediately after installation.

6. Sediment traps and sediment basins shall be designed and constructed based upon the total drainage area to be served by the trap or basin.

a. The minimum storage capacity of a sediment trap shall be 134 cubic yards per acre of drainage area and the trap shall only control drainage areas less than three acres.

b. Surface runoff from disturbed areas that is comprised of flow from drainage areas greater than or equal to three acres shall be controlled by a sediment basin. The minimum storage capacity of a sediment basin shall be 134 cubic yards per acre of drainage area. The outfall system shall, at a minimum, maintain the structural integrity of the basin during a 25-year storm of 24-hour

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duration. Runoff coefficients used in runoff calculations shall correspond to a bare earth condition or those conditions expected to exist while the sediment basin is utilized.

7. Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion. Slopes that are found to be eroding excessively within one year of permanent stabilization shall be provided with additional slope stabilizing measures until the problem is corrected.

8. Concentrated runoff shall not flow down cut or fill slopes unless contained within an adequate temporary or permanent channel, flume, or slope drain structure.

9. Whenever water seeps from a slope face, adequate drainage or other protection shall be provided.

10. All storm sewer inlets that are made operable during construction shall be protected so that sediment-laden water cannot enter the conveyance system without first being filtered or otherwise treated to remove sediment.

11. Before newly constructed stormwater conveyance channels or pipes are made operational, adequate outlet protection and any required temporary or permanent channel lining shall be installed in both the conveyance channel and receiving channel.

12. When work in a live watercourse is performed, precautions shall be taken to minimize encroachment, control sediment transport, and stabilize the work area to the greatest extent possible during construction. Nonerodible material shall be used for the construction of causeways and cofferdams. Earthen fill may be used for these structures if armored by nonerodible cover materials.

13. When a live watercourse must be crossed by construction vehicles more than twice in any six-month period, a temporary vehicular stream crossing constructed of nonerodible material shall be provided.

14. All applicable federal, state, and local requirements pertaining to working in or crossing live watercourses shall be met.

15. The bed and banks of a watercourse shall be stabilized immediately after work in the watercourse is completed.

16. Underground utility lines shall be installed in accordance with the following standards in addition to other applicable criteria:

- a. No more than 500 linear feet of trench may be opened at one time.
- b. Excavated material shall be placed on the uphill side of trenches.
- c. Effluent from dewatering operations shall be filtered or passed through an approved sediment trapping device, or both and discharged in a manner that does not adversely affect flowing streams or off-site property.

d. Material used for backfilling trenches shall be properly compacted in order to minimize erosion and promote stabilization.

e. Restabilization shall be accomplished in accordance with this chapter.

f. Applicable safety requirements shall be complied with.

17. Where construction vehicle access routes intersect paved or public roads, provisions shall be made to minimize the transport of sediment by vehicular tracking onto the paved surface. Where sediment is transported onto a paved or public road surface, the road surface shall be cleaned thoroughly at the end of each day. Sediment shall be removed from the roads by shoveling or sweeping and transported to a sediment control disposal area. Street washing shall be allowed only after sediment is removed in this manner. This provision shall apply to individual development lots as well as to larger land-disturbing activities.

18. All temporary erosion and sediment control measures shall be removed within 30 days after final site stabilization or after the temporary measures are no longer needed, unless otherwise authorized by the VESCP or VESMP authority. Trapped sediment and the disturbed soil areas resulting from the disposition of temporary measures shall be permanently stabilized to prevent further erosion and sedimentation.

19. Properties and waterways downstream from development sites shall be protected from sediment deposition, erosion, and damage due to increases in volume, velocity, and peak flow rate of stormwater runoff for the stated frequency storm of 24-hour duration in accordance with the following standards and criteria. Stream restoration and relocation projects that incorporate natural channel design concepts are not manmade channels and shall be exempt from any flow rate capacity and velocity requirements for natural or manmade channels:

a. Concentrated stormwater runoff leaving a development site shall be discharged directly into an adequate natural or manmade receiving channel, pipe, or storm sewer system. For those sites where runoff is discharged into a pipe or pipe system, downstream stability analyses at the outfall of the pipe or pipe system shall be performed.

b. Adequacy of all channels and pipes shall be verified in the following manner:

(1) The applicant shall demonstrate that the total drainage area to the point of analysis within the channel is 100 times greater than the contributing drainage area of the project in question; or

(2) (a) Natural channels shall be analyzed by the use of a two-year storm to verify that stormwater will not overtop channel banks nor cause erosion of channel bed or banks.

(b) All previously constructed manmade channels shall be analyzed by the use of a 10-year storm to verify that

stormwater will not overtop the stormwater's banks and by the use of a two-year storm to demonstrate that stormwater will not cause erosion of channel bed or banks; and

(c) Pipes and storm sewer systems shall be analyzed by the use of a 10-year storm to verify that stormwater will be contained within the pipe or system.

c. If existing natural receiving channels or previously constructed manmade channels or pipes are not adequate, the applicant shall:

(1) Improve the channels to a condition where a 10-year storm will not overtop the banks and a two-year storm will not cause erosion to the channel, the bed, or the banks;

(2) Improve the pipe or pipe system to a condition where the 10-year storm is contained within the appurtenances;

(3) Develop a site design that will not cause the predevelopment peak runoff rate from a two-year storm to increase when runoff outfalls into a natural channel or will not cause the predevelopment peak runoff rate from a 10-year storm to increase when runoff outfalls into a manmade channel; or

(4) Provide a combination of channel improvement, stormwater detention, or other measures that is satisfactory to the VESCP or VESMP authority to prevent downstream erosion.

d. The applicant shall provide evidence of permission to make the improvements.

e. All hydrologic analyses shall be based on the existing watershed characteristics and the ultimate development condition of the subject project.

f. If the applicant chooses an option that includes stormwater detention, the applicant shall obtain approval from the VESCP or VESMP authority for a plan for maintenance of the detention facilities. The plan shall set forth the maintenance requirements of the facility and the person responsible for performing the maintenance.

g. Outfall from a detention facility shall be discharged to a receiving channel, and energy dissipators shall be placed at the outfall of all detention facilities as necessary to provide a stabilized transition from the facility to the receiving channel.

h. All on-site channels must be verified to be adequate.

i. Increased volumes of sheet flows that may cause erosion or sedimentation on adjacent property shall be diverted to a stable outlet, adequate channel, pipe, or pipe system or to a detention facility.

j. In applying these stormwater management criteria, individual lots or parcels in a residential, commercial, or industrial development shall not be considered to be separate development projects. Instead, the development, as a whole, shall be considered to be a single development project. Hydrologic parameters that reflect the ultimate

development condition shall be used in all engineering calculations.

k. All measures used to protect properties and waterways shall be employed in a manner that minimizes impacts on the physical, chemical, and biological integrity of rivers, streams, and other waters of the state.

l. Any plan approved prior to July 1, 2014, that provides for stormwater management that addresses any flow rate capacity and velocity requirements for natural or manmade channels shall satisfy the flow rate capacity and velocity requirements for natural or manmade channels if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5-year, two-year, and 10-year 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming the site was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when the site was in a good forested condition divided by the runoff volume from the site in the site's proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or manmade channels as defined in any regulations promulgated pursuant to § 62.1-44.15:28 of the Code of Virginia (VESMA) or § 62.1-44.15:54 or 62.1-44.15:65 of the Code of Virginia (ESCL).

m. For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements of § 62.1-44.15:52 A of the Code of Virginia (ESCL) and this subdivision 19 shall be satisfied by compliance with water quantity requirements in the VESMA and attendant regulations, unless such land-disturbing activities (i) are in accordance with provisions for time limits on applicability of approved design criteria in 9VAC25-875-480 or grandfathering in 9VAC25-875-490, in which case the flow rate capacity and velocity requirements of § 62.1-44.15:52 A of the Code of Virginia (ESCL) shall apply; or (ii) are exempt pursuant to § 62.1-44.15:34 G 2 of the Code of Virginia (VESMA).

n. Compliance with the water quantity minimum standards set out in 9VAC25-875-600 shall be deemed to satisfy the requirements of this subdivision 19.

Article 3

Water Quantity and Water Quality Technical Criteria

9VAC25-875-570. Applicability.

In accordance with the board's authority and except as provided in 9VAC25-875-490, this article establishes the minimum technical criteria that shall be employed to protect the quality and quantity of state waters from the potential harm

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of unmanaged stormwater runoff resulting from land-disturbing activities.

9VAC25-875-580. Water quality design criteria requirements.

A. In order to protect the quality of state waters and to control the discharge of stormwater pollutants from regulated activities, the following minimum design criteria and statewide standards for stormwater management shall be applied to the site.

1. New development. The total phosphorus load of new development projects shall not exceed 0.41 pounds per acre per year, as calculated pursuant to 9VAC25-875-590.

2. Development on prior developed lands.

a. For land-disturbing activities disturbing greater than or equal to one acre that result in no net increase in impervious cover from the predevelopment condition, the total phosphorus load shall be reduced at least 20% below the predevelopment total phosphorus load.

b. For regulated land-disturbing activities disturbing less than one acre that result in no net increase in impervious cover from the predevelopment condition, the total phosphorus load shall be reduced at least 10% below the predevelopment total phosphorus load.

c. For land-disturbing activities that result in a net increase in impervious cover over the predevelopment condition, the design criteria for new development shall be applied to the increased impervious area. Depending on the area of disturbance, the criteria of subdivision 2 a or 2 b of this subsection shall be applied to the remainder of the site.

d. In lieu of subdivision 2 c of this subsection, the total phosphorus load of a linear development project occurring on prior developed lands shall be reduced 20% below the predevelopment total phosphorus load.

e. The total phosphorus load shall not be required to be reduced to below the applicable standard for new development unless a more stringent standard has been established by a locality.

B. Compliance with subsection A of this section shall be determined in accordance with 9VAC25-875-590.

C. Nothing in this section shall prohibit a VESMP authority from establishing more stringent water quality design criteria requirements in accordance with § 62.1-44.15:33 of the Code of Virginia.

9VAC25-875-590. Water quality compliance.

A. Compliance with the water quality design criteria set out in subdivisions A 1 and A 2 of 9VAC25-875-580 shall be determined by utilizing the Virginia Runoff Reduction Method or another equivalent methodology that is approved by the department.

B. The BMPs listed in this subsection are approved for use as necessary to effectively reduce the phosphorus load and runoff volume in accordance with the Virginia Runoff Reduction Method. Other approved BMPs found through the Virginia Stormwater BMP Clearinghouse may also be utilized. Design specifications and the pollutant removal efficiencies for all approved BMPs are found through the Virginia Stormwater BMP Clearinghouse.

1. Vegetated Roof (Version 2.3, March 1, 2011);

2. Rooftop Disconnection (Version 1.9, March 1, 2011);

3. Rainwater Harvesting (Version 1.9.5, March 1, 2011);

4. Soil Amendments (Version 1.8, March 1, 2011);

5. Permeable Pavement (Version 1.8, March 1, 2011);

6. Grass Channel (Version 1.9, March 1, 2011);

7. Bioretention (Version 1.9, March 1, 2011);

8. Infiltration (Version 1.9, March 1, 2011);

9. Dry Swale (Version 1.9, March 1, 2011);

10. Wet Swale (Version 1.9, March 1, 2011);

11. Sheet Flow to Filter/Open Space (Version 1.9, March 1, 2011);

12. Extended Detention Pond (Version 1.9, March 1, 2011);

13. Filtering Practice (Version 1.8, March 1, 2011);

14. Constructed Wetland (Version 1.9, March 1, 2011); and

15. Wet Pond (Version 1.9, March 1, 2011).

C. Nonproprietary BMPs differing from those listed in subsection B of this section shall be reviewed and approved by the director in accordance with procedures established by the department.

D. Proprietary BMPs listed through the Virginia Stormwater BMP Clearinghouse are approved for use in accordance with the Virginia Runoff Reduction Method. Any proprietary BMP approved for use after July 1, 2020, must meet the requirements of § 62.1-44.15:28 A 9 of the Code of Virginia.

E. A VESMP authority may establish limitations on the use of specific BMPs in accordance with § 62.1-44.15:33 of the Code of Virginia.

F. The VESMP authority or department as the VSMP authority shall have the discretion to allow for application of the design criteria to each drainage area of the site. However, where a site drains to more than one HUC, the pollutant load reduction requirements shall be applied independently within each HUC unless reductions are achieved in accordance with a comprehensive watershed stormwater management plan in accordance with 9VAC25-875-660.

G. Offsite alternatives where allowed in accordance with 9VAC25-875-610 may be utilized to meet the design criteria of subsection A of 9VAC25-875-580.

H. Any publicly owned treatment works that is permitted under the watershed general VPDES permit pursuant to § 62.1-44.19:14 of the Code of Virginia and is constructing or expanding the treatment works, wastewater collection system, or other facility used for public wastewater utility operations may, in accordance with § 62.1-44.19:21.2 C of the Code of Virginia, permanently retire a portion of the publicly owned treatment works' wasteload allocation to meet the design criteria of subsection A of 9VAC25-875-580. Notice shall be given by such applicant to the VESMP authority and to the department.

9VAC25-875-600. Water quantity.

A. Channel protection and flood protection shall be addressed in accordance with the minimum standards set out in this section, which are established pursuant to the requirements of § 62.1-44.15:28 of the Code of Virginia or as permitted in accordance with § 62.1-44.15:27.2 of the Code of Virginia. Nothing in this section shall prohibit a locality's VESMP authority from establishing a more stringent standard in accordance with § 62.1-44.15:33 of the Code of Virginia especially where more stringent requirements are necessary to address total maximum daily load requirements or to protect exceptional state waters. Compliance with the minimum standards set out in this section shall be deemed to satisfy the requirements of subdivision 19 of 9VAC25-875-560.

B. Channel protection. Concentrated stormwater flow shall be released into a stormwater conveyance system and shall meet the criteria in subdivision 1, 2, or 3 of this subsection, where applicable, from the point of discharge to a point to the limits of analysis in subdivision 4 of this subsection.

1. Manmade stormwater conveyance systems. When stormwater from a development is discharged to a manmade stormwater conveyance system, following the land-disturbing activity, either:

- a. The manmade stormwater conveyance system shall convey the post-development peak flow rate from the two-year 24-hour storm event without causing erosion of the system. Detention of stormwater or downstream improvements may be incorporated into the approved land-disturbing activity to meet this criterion, at the discretion of the VESMP authority or department as the VSMP authority; or
- b. The peak discharge requirements for concentrated stormwater flow to natural stormwater conveyance systems in subdivision 3 of this subsection shall be met.

2. Restored stormwater conveyance systems. When stormwater from a development is discharged to a restored stormwater conveyance system that has been restored using

natural design concepts, following the land-disturbing activity, either:

- a. The development shall be consistent, in combination with other stormwater runoff, with the design parameters of the restored stormwater conveyance system that is functioning in accordance with the design objectives; or
- b. The peak discharge requirements for concentrated stormwater flow to natural stormwater conveyance systems in subdivision 3 of this subsection shall be met.

3. Natural stormwater conveyance systems. When stormwater from a development is discharged to a natural stormwater conveyance system, the maximum peak flow rate from the one-year 24-hour storm following the land-disturbing activity shall be calculated either:

a. In accordance with the following methodology:

$$Q_{\text{Developed}} \leq I.F. * (Q_{\text{Pre-developed}} * RV_{\text{Pre-Developed}}) / RV_{\text{Developed}}$$

Under no condition shall $Q_{\text{Developed}}$ be greater than $Q_{\text{Pre-Developed}}$ nor shall $Q_{\text{Developed}}$ be required to be less than that calculated in the equation $(Q_{\text{Forest}} * RV_{\text{Forest}}) / RV_{\text{Developed}}$; where

I.F. (Improvement Factor) equals 0.8 for sites > 1 acre or 0.9 for sites ≤ 1 acre.

$Q_{\text{Developed}}$ = The allowable peak flow rate of runoff from the developed site.

$RV_{\text{Developed}}$ = The volume of runoff from the site in the developed condition.

$Q_{\text{Pre-Developed}}$ = The peak flow rate of runoff from the site in the pre-developed condition.

$RV_{\text{Pre-Developed}}$ = The volume of runoff from the site in pre-developed condition.

Q_{Forest} = The peak flow rate of runoff from the site in a forested condition.

RV_{Forest} = The volume of runoff from the site in a forested condition; or

b. In accordance with another methodology that is demonstrated by the VESMP authority to achieve equivalent results and is approved by the department.

4. Limits of analysis. Unless subdivision 3 of this subsection is utilized to show compliance with the channel protection criteria, stormwater conveyance systems shall be analyzed for compliance with channel protection criteria to a point where either:

- a. Based on land area, the site's contributing drainage area is less than or equal to 1.0% of the total watershed area; or
- b. Based on peak flow rate, the site's peak flow rate from the one-year 24-hour storm is less than or equal to 1.0% of the existing peak flow rate from the one-year 24-hour storm prior to the implementation of any stormwater quantity control measures.

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C. Flood protection. Concentrated stormwater flow shall be released into a stormwater conveyance system and shall meet one of the following criteria as demonstrated by use of acceptable hydrologic and hydraulic methodologies:

1. Concentrated stormwater flow to stormwater conveyance systems that currently do not experience localized flooding during the 10-year 24-hour storm event: The point of discharge releases stormwater into a stormwater conveyance system that, following the land-disturbing activity, confines the post-development peak flow rate from the 10-year 24-hour storm event within the stormwater conveyance system. Detention of stormwater or downstream improvements may be incorporated into the approved land-disturbing activity to meet this criterion, at the discretion of the VESMP authority.

2. Concentrated stormwater flow to stormwater conveyance systems that currently experience localized flooding during the 10-year 24-hour storm event: The point of discharge either:

a. Confines the post-development peak flow rate from the 10-year 24-hour storm event within the stormwater conveyance system to avoid the localized flooding. Detention of stormwater or downstream improvements may be incorporated into the approved land-disturbing activity to meet this criterion at the discretion of the VESMP authority or department as the VSMP authority; or

b. Releases a post-development peak flow rate for the 10-year 24-hour storm event that is less than the predevelopment peak flow rate from the 10-year 24-hour storm event. Downstream stormwater conveyance systems do not require any additional analysis to show compliance with flood protection criteria if this option is utilized.

3. Limits of analysis. Unless subdivision 2 b of this subsection is utilized to comply with the flood protection criteria, stormwater conveyance systems shall be analyzed for compliance with flood protection criteria to a point where:

a. The site's contributing drainage area is less than or equal to 1.0% of the total watershed area draining to a point of analysis in the downstream stormwater conveyance system;

b. Based on peak flow rate, the site's peak flow rate from the 10-year 24-hour storm event is less than or equal to 1.0% of the existing peak flow rate from the 10-year 24-hour storm event prior to the implementation of any stormwater quantity control measures; or

c. The stormwater conveyance system enters a mapped floodplain or other flood-prone area, adopted by ordinance, of any locality.

D. Increased volumes of sheet flow resulting from pervious or disconnected impervious areas or from physical spreading

of concentrated flow through level spreaders shall be identified and evaluated for potential impacts on down-gradient properties or resources. Increased volumes of sheet flow that will cause or contribute to erosion, sedimentation, or flooding of down gradient properties or resources shall be diverted to a stormwater management facility or a stormwater conveyance system that conveys the runoff without causing down-gradient erosion, sedimentation, or flooding. If all runoff from the site is sheet flow and the conditions of this subsection are met, no further water quantity controls are required.

E. For purposes of computing predevelopment runoff, all pervious lands on the site shall be assumed to be in good hydrologic condition in accordance with the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) standards, regardless of conditions existing at the time of computation. Predevelopment runoff calculations utilizing other hydrologic conditions may be utilized provided that it is demonstrated to and approved by the VESMP authority that actual site conditions warrant such considerations.

F. Predevelopment and post-development runoff characteristics and site hydrology shall be verified by site inspections, topographic surveys, available soil mapping or studies, and calculations consistent with good engineering practices. Guidance provided in the Virginia Stormwater Management Handbook and the Virginia Stormwater BMP Clearinghouse shall be considered appropriate practices.

9VAC25-875-610. Offsite compliance options.

A. No offsite option shall be used in contravention of local water quality-based limitations (i) determined pursuant to subsection B of § 62.1-44.19:14 of the Code of Virginia, (ii) adopted pursuant to § 62.1-44.15:33 of the Code of Virginia or other applicable authority, (iii) deemed necessary to protect public water supplies from demonstrated adverse nutrient impacts, or (iv) as otherwise may be established or approved by the department. Where such a limitation exists, offsite options may be used provided that such options do not preclude or impair compliance with the local limitation.

B. Unless prohibited by subsection A of this section, a VESMP authority or the department as the VSMP authority:

1. May allow the use of offsite options for compliance with water quality and water quantity technical criteria established pursuant to § 62.1-44.15:28 of the Code of Virginia, in whole or in part; and

2. Shall allow the use of nutrient credits for compliance with the water quality technical criteria when:

a. Less than five acres of land will be disturbed;

b. The phosphorous water quality reduction requirement is less than 10 pounds per year; or

c. It is demonstrated to the satisfaction of the VESMP authority or department as the VSMP authority that (i) alternative site designs have been considered that may

accommodate onsite best management practices, (ii) onsite best management practices have been considered in alternative site designs to the maximum extent practicable, (iii) appropriate onsite best management practices will be implemented, and (iv) compliance with quality technical criteria cannot practicably be met onsite. The requirements of clauses (i) through (iv) of this subdivision shall be deemed to have been met if it is demonstrated that onsite control of at least 75% of the required phosphorous water quality reduction will be achieved.

C. The VESMP authority or department as the VSMP authority shall require that offsite options approved by the department or applicable state board achieve the necessary phosphorous water quality reductions prior to the commencement of the land-disturbing activity. In the case of a phased project, the land disturber may acquire or achieve the offsite nutrient reductions prior to the commencement of each phase of the land-disturbing activity in an amount sufficient for each such phase.

D. Nutrient credits shall not be used to address water quantity technical criteria.

E. Nutrient credits shall be generated in the same or adjacent fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, as the land-disturbing activity. If no credits are available within these subbasins when the VESMP or department as the VSMP authority accepts the final site design, credits available within the same tributary may be used. The following requirements apply to the use of nutrient credits:

1. Documentation of the acquisition of nutrient credits shall be provided to the VESMP authority and the department or the department as the VSMP authority in a certification from the credit provider documenting the number of phosphorus nutrient credits acquired and the associated ratio of nitrogen nutrient credits at the credit-generating entity.

2. Application fees are provided in Certification of Nonpoint Source Nutrient Credits (9VAC25-900). Fees shall be deposited into the Virginia Stormwater Management Fund established by § 62.1-44.15:29 of the Code of Virginia.

3. For that portion of a site's compliance with water quality technical criteria being obtained through nutrient credits, the land disturber shall (i) comply with a one-to-one ratio of the nutrient credits to the site's remaining post-development nonpoint nutrient runoff compliance requirement being met by credit use and (ii) use credits certified as perpetual credits pursuant to Article 4.02 (§ 62.1-44.19:12 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

4. A VESMP or the department as the VSMP authority shall allow the full or partial substitution of perpetual nutrient credits for existing onsite nutrient controls when (i) the nutrient credits will compensate for 10 or fewer pounds of the annual phosphorous requirement associated with the

original land-disturbing activity or (ii) existing onsite controls are not functioning as anticipated after reasonable attempts to comply with applicable maintenance agreements or requirements and the use of nutrient credits will account for the deficiency. Upon determination by the VESMP or department that the conditions established by clause (i) or (ii) of this subdivision have been met, the party responsible for maintenance shall be released from maintenance obligations related to the onsite phosphorous controls for which the nutrient credits are substituted.

F. Exchange of a credit released by the department is subject to the provisions of § 62.1-44.15:35, 62.1-44.19:15, or 62.1-44.19:21 of the Code of Virginia. Where necessary to ensure compliance with local water quality requirements, the exchange of a credit released by the department is conditioned by 9VAC25-900-91 B and C.

9VAC25-875-620. Design storms and hydrologic methods.

A. Unless otherwise specified, the prescribed design storms are the one-year, two-year, and 10-year 24-hour storms using the site-specific rainfall precipitation frequency data recommended by the U.S. National Oceanic and Atmospheric Administration (NOAA) Atlas 14. Partial duration time series shall be used for the precipitation data.

B. Unless otherwise specified, all hydrologic analyses shall be based on the existing watershed characteristics and how the ultimate development condition of the subject project will be addressed.

C. The U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) synthetic 24-hour rainfall distribution and models, including TR-55 and TR-20; hydrologic and hydraulic methods developed by the U.S. Army Corps of Engineers; or other standard hydrologic and hydraulic methods shall be used to conduct the analyses described in this part.

D. For drainage areas of 200 acres or less, the VESMP authority or department as the VSMP authority may allow for the use of the Rational Method for evaluating peak discharges.

E. For drainage areas of 200 acres or less, the VESMP authority or department as the VSMP authority may allow for the use of the Modified Rational Method for evaluating volumetric flows to stormwater conveyances.

9VAC25-875-630. Stormwater harvesting.

In accordance with § 62.1-44.15:28 of the Code of Virginia, stormwater harvesting is encouraged for the purposes of landscape irrigation systems, fire protection systems, flushing water closets and urinals, and other water handling systems to the extent such systems are consistent with federal, state, and local regulations.

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9VAC25-875-640. Linear development projects.

Linear development projects shall control post-development stormwater runoff in accordance with a site-specific stormwater management plan or a comprehensive watershed stormwater management plan developed in accordance with this chapter.

9VAC25-875-650. Stormwater management impoundment structures or facilities.

A. Stormwater management wet ponds and extended detention ponds that are not covered by the Impounding Structure Regulations (4VAC50-20) shall, at a minimum, be engineered for structural integrity for the 100-year storm event.

B. Construction of stormwater management impoundment structures or facilities may occur in karst areas only after a study of the geology and hydrology of the area has been conducted to determine the presence or absence of karst features that may be impacted by stormwater runoff and BMP placement.

C. Discharge of stormwater runoff to a karst feature shall meet the water quality criteria set out in 9VAC25-875-580 and the water quantity criteria set out in 9VAC25-875-600. Permanent stormwater management impoundment structures or facilities shall only be constructed in karst features after completion of a geotechnical investigation that identifies any necessary modifications to the BMP to ensure its structural integrity and maintain its water quality and quantity efficiencies. The person responsible for the land-disturbing activity is encouraged to screen for known existence of heritage resources in the karst features.

9VAC25-875-660. Comprehensive stormwater management plans.

A VESMP authority may develop comprehensive stormwater management plans to be approved by the department that meet the water quality objectives, quantity objectives, or both of this part:

1. Such plans shall ensure that offsite reductions equal to or greater than those that would be required on each contributing site are achieved within the same HUC or within another locally designated watershed. Pertaining to water quantity objectives, the plan may provide for implementation of a combination of channel improvement, stormwater detention, or other measures that are satisfactory to the locality's VESMP authority to prevent downstream erosion and flooding.

2. If the land use assumptions upon which the plan was based change or if any other amendments are deemed necessary by the locality's VESMP authority, such authority shall provide plan amendments to the department for review and approval.

3. During the plan's implementation, the locality's VESMP authority shall document nutrient reductions credited to the BMPs specified in the plan.

4. State agencies and federal entities may develop comprehensive stormwater management plans and may participate in locality-developed comprehensive stormwater management plans where practicable and permitted by the locality's VESMP authority.

Article 4

Water Quantity and Water Quality Technical Criteria for Grandfathered Projects and Time Limits of Applicability Projects

9VAC25-875-670. Definitions.

For the purposes of this article only, the following words and terms have the following meanings unless the context clearly indicates otherwise:

"Aquatic bench" means a 10-foot to 15-foot wide bench around the inside perimeter of a permanent pool that ranges in depth from zero to 12 inches. Vegetated with emergent plants, the bench augments pollutant removal, provides habitats, conceals trash and water level fluctuations, and enhances safety.

"Average land cover condition" means a measure of the average amount of impervious surfaces within a watershed, assumed to be 16% or a calculated watershed-specific value for the average land cover condition as approved by the Chesapeake Bay Local Assistance Board prior to September 13, 2011.

"Bioretention basin" means a water quality BMP engineered to filter the water quality volume (i) through an engineered planting bed consisting of a vegetated surface layer (vegetation, mulch, ground cover), planting soil, and sand bed and (ii) into the in-situ material.

"Bioretention filter" means a bioretention basin with the addition of a sand filter collector pipe system beneath the planting bed.

"Constructed wetlands" means areas intentionally designed and created to emulate the water quality improvement function of wetlands for the primary purpose of removing pollutants from stormwater.

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

"Grassed swale" means an earthen conveyance system that is broad and shallow with erosion resistant grasses and check dams, engineered to remove pollutants from stormwater runoff by filtration through grass and infiltration into the soil.

"Infiltration facility" means a stormwater management facility that temporarily impounds runoff and discharges it via

infiltration through the surrounding soil. While an infiltration facility may also be equipped with an outlet structure to discharge impounded runoff, such discharge is normally reserved for overflow and other emergency conditions. Since an infiltration facility impounds runoff only temporarily, it is normally dry during nonrainfall periods. Infiltration basin, infiltration trench, infiltration dry well, and porous pavement shall be considered infiltration facilities.

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

"Nonpoint source pollutant runoff load" or "pollutant discharge" means the average amount of a particular pollutant measured in pounds per year, delivered in a diffuse manner by stormwater runoff.

"Planning area" means a designated portion of the parcel on which the land development project is located. Planning areas shall be established by delineation on a master plan. Once established, planning areas shall be applied consistently for all future projects.

"Sand filter" means a contained bed of sand that acts to filter the first flush of runoff. The runoff is then collected beneath the sand bed and conveyed to an adequate discharge point or infiltrated into the in-situ soils.

"Shallow marsh" means a zone within a stormwater extended detention basin that exists from the surface of the normal pool to a depth of six to 18 inches, and has a large surface area and, therefore, requires a reliable source of baseflow, groundwater supply, or a sizeable drainage area to maintain the desired water surface elevations to support emergent vegetation.

"Stormwater detention basin" or "detention basin" means a stormwater management facility that temporarily impounds runoff and discharges it through a hydraulic outlet structure to a downstream conveyance system. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and are, therefore, not considered in the facility's design. Since a detention facility impounds runoff only temporarily, it is normally dry during nonrainfall periods.

"Stormwater extended detention basin" or "extended detention basin" means a stormwater management facility that temporarily impounds runoff and discharges it through a hydraulic outlet structure over a specified period of time to a downstream conveyance system for the purpose of water quality enhancement or stream channel erosion control. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and, therefore, are not considered in the facility's design. Since an extended detention basin impounds runoff only temporarily, it is normally dry during nonrainfall periods.

"Stormwater extended detention basin-enhanced" or "extended detention basin-enhanced" means an extended detention basin modified to increase pollutant removal by providing a shallow marsh in the lower stage of the basin.

"Stormwater retention basin" or "retention basin" means a stormwater management facility that includes a permanent impoundment, or normal pool of water, for the purpose of enhancing water quality and, therefore, is normally wet even during nonrainfall periods. Storm runoff inflows may be temporarily stored above this permanent impoundment for the purpose of reducing flooding or stream channel erosion.

"Stormwater retention basin I" or "retention basin I" means a retention basin with the volume of the permanent pool equal to three times the water quality volume.

"Stormwater retention basin II" or "retention basin II" means a retention basin with the volume of the permanent pool equal to four times the water quality volume.

"Stormwater retention basin III" or "retention basin III" means a retention basin with the volume of the permanent pool equal to four times the water quality volume with the addition of an aquatic bench.

"Vegetated filter strip" means a densely vegetated section of land engineered to accept runoff as overland sheet flow from upstream development. It shall adopt any natural vegetated form, from grassy meadow to small forest. The vegetative cover facilitates pollutant removal through filtration, sediment deposition, infiltration, and absorption and is dedicated for that purpose.

"Water quality volume" means the volume equal to the first 1/2-inch of runoff multiplied by the impervious surface of the land development project.

9VAC25-875-680. Applicability.

This part specifies the technical criteria for regulated land-disturbing activities that are not subject to the technical criteria of Article 3 (9VAC25-875-570 et seq.) of this part in accordance with 9VAC25-875-490.

9VAC25-875-690. General.

A. Determination of flooding and channel erosion impacts to receiving streams due to land-disturbing activities shall be measured at each point of discharge from the land disturbance and such determination shall include any runoff from the balance of the watershed that also contributes to that point of discharge.

B. The specified design storms shall be defined as either a 24-hour storm using the rainfall distribution recommended by the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) when using NRCS methods or as the storm of critical duration that produces the greatest required storage volume at the site when using a design method such as the Modified Rational Method.

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C. For purposes of computing runoff, all pervious lands in the site shall be assumed prior to development to be in good condition (if the lands are pastures, lawns, or parks), with good cover (if the lands are woods), or with conservation treatment (if the lands are cultivated); regardless of conditions existing at the time of computation.

D. Construction of stormwater management facilities or modifications to channels shall comply with all applicable laws, regulations, and ordinances. Evidence of approval of all necessary permits shall be presented.

E. Impounding structures that are not covered by the Impounding Structure Regulations (4VAC50-20) shall be engineered for structural integrity during the 100-year storm event.

F. Predevelopment and post-development runoff rates shall be verified by calculations that are consistent with good engineering practices.

G. Outflows from a stormwater management facility or stormwater conveyance system shall be discharged to an adequate channel.

H. Proposed residential, commercial, or industrial subdivisions shall apply these stormwater management criteria to the land disturbance as a whole. Individual lots in new subdivisions shall not be considered separate land-disturbing activities, but rather the entire subdivision shall be considered a single land development project. Hydrologic parameters shall reflect the ultimate land disturbance and shall be used in all engineering calculations.

I. All stormwater management facilities shall have an inspection and maintenance plan that identifies the owner and the responsible party for carrying out the inspection and maintenance plan.

J. Construction of stormwater management impoundment structures within a Federal Emergency Management Agency (FEMA) designated 100-year floodplain shall be avoided whenever possible. When this is unavoidable, all stormwater management facility construction shall be in compliance with all applicable regulations under the National Flood Insurance Program (44 CFR Part 59).

K. Natural channel characteristics shall be preserved to the maximum extent practicable.

L. Land-disturbing activities shall comply with the ESCL or VESMA, as applicable, and attendant regulations.

M. Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in Resource Protection Areas defined in the Chesapeake Bay Preservation Act provided such facilities are allowed and constructed in accordance with the VESMA and this chapter, and provided that (i) the local government has conclusively

established that the location of the facility within the Resource Protection Area is the optimum location; (ii) the size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment, or both; (iii) the facility must be consistent with a comprehensive stormwater management plan developed and approved in accordance with 9VAC25-875-660 or with a stormwater management plan that has been approved prior to July 1, 2012, by the department, the Chesapeake Bay Local Assistance Board prior to its abolishment on July 1, 2012, or the Board of Conservation and Recreation; (iv) all applicable permits for construction in state or federal waters must be obtained from the appropriate state and federal agencies; (v) approval must be received from the local government prior to construction; and (vi) routine maintenance is allowed to be performed on such facilities to ensure that they continue to function as designed. It is not the intent of this subsection to allow a best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located within a Resource Protection Area.

9VAC25-875-700. Water quality.

A. Compliance with the water quality criteria may be achieved by applying the performance-based criteria or the technology-based criteria to either the site or a planning area.

B. Performance-based criteria. For land-disturbing activities, the calculated post-development nonpoint source pollutant runoff load shall be compared to the calculated predevelopment load based upon the average land cover condition or the existing site condition. A BMP shall be located, designed, and maintained to achieve the target pollutant removal efficiencies specified in Table 1 of this section to effectively reduce the pollutant load to the required level based upon the following four applicable land development situations for which the performance criteria apply:

1. Situation 1 consists of land-disturbing activities where the existing percent impervious cover is less than or equal to the average land cover condition and the proposed improvements will create a total percent impervious cover that is less than the average land cover condition.

Requirement: No reduction in the after disturbance pollutant discharge is required.

2. Situation 2 consists of land-disturbing activities where the existing percent impervious cover is less than or equal to the average land cover condition and the proposed improvements will create a total percent impervious cover that is greater than the average land cover condition.

Requirement: The pollutant discharge after disturbance shall not exceed the existing pollutant discharge based on the average land cover condition.

3. Situation 3 consists of land-disturbing activities where the existing percent impervious cover is greater than the average land cover condition.

Requirement: The pollutant discharge after disturbance shall not exceed (i) the pollutant discharge based on existing conditions less 10% or (ii) the pollutant discharge based on the average land cover condition, whichever is greater.

4. Situation 4 consists of land-disturbing activities where the existing percent impervious cover is served by an existing stormwater management BMP that addresses water quality.

Requirement: The pollutant discharge after disturbance shall not exceed the existing pollutant discharge based on the existing percent impervious cover while served by the existing BMP. The existing BMP shall be shown to have been designed and constructed in accordance with proper design standards and specifications and to be in proper functioning condition.

C. Technology-based criteria. For land-disturbing activities, the post-developed stormwater runoff from the impervious cover shall be treated by an appropriate BMP as required by the post-developed condition percent impervious cover as specified in Table 1 of this section. The selected BMP shall be located, designed, and maintained to perform at the target pollutant removal efficiency specified in Table 1 or those found in 9VAC25-875-590.

D. Design standards and specifications for the BMPs in Table 1 of this section that meet the required target pollutant removal efficiency are available in the Virginia Stormwater Management Handbook. Other approved BMPs available through the Virginia Stormwater BMP Clearinghouse may also be utilized.

Water Quality BMP*	Target Phosphorus Removal Efficiency	Percent Impervious Cover
Vegetated filter strip	10%	16-21%
Grassed swale	15%	
Constructed wetlands	20%	22-37%
Extended detention (2 x WQ Vol)	35%	
Retention basin I (3 x WQ Vol)	40%	
Bioretention basin	50%	38-66%
Bioretention filter	50%	
Extended detention basin-enhanced	50%	
Retention basin II (4 x WQ Vol)	50%	
Infiltration (1 x WQ Vol)	50%	

Sand filter	65%	67-100%
Infiltration (2 x WQ Vol)	65%	
Retention basin III (4 x WQ Vol with aquatic bench)	65%	

*Innovative or alternate BMPs not included in this table may be allowed at the discretion of the local program administrator or the department. Innovative or alternate BMPs not included in this table that target appropriate nonpoint source pollution other than phosphorous may be allowed at the discretion of the local program administrator or the department

E. The VESMP authority or department as the VSMP authority may allow the use of offsite nutrient credits under Article 4 (9VAC25-875-670 et seq.) of this part in accordance with 9VAC25-875-610.

9VAC25-875-710. Stream channel erosion.

A. Properties and receiving waterways downstream of any land-disturbing activity shall be protected from erosion and damage due to changes in runoff rate of flow and hydrologic characteristics, including changes in volume, velocity, frequency, duration, and peak flow rate of stormwater runoff in accordance with the minimum design standards set out in this section.

B. The VESMP authority or department as the VSMP authority shall require compliance with subdivision 19 of 9VAC25-875-560.

C. The locality's VESMP authority may determine that some watersheds or receiving stream systems require enhanced criteria in order to address the increased frequency of bankfull flow conditions (top of bank) brought on by land-disturbing activities or where more stringent requirements are necessary to address total maximum daily load requirements or to protect exceptional waters. Therefore, in lieu of the reduction of the two-year post-developed peak rate of runoff as required in subsection B of this section, the land development project being considered shall provide 24-hour extended detention of the runoff generated by the one-year, 24-hour duration storm.

D. In addition to subsections B and C of this section, a locality's VESMP authority by local ordinance may in accordance with § 62.1-44.15:33 of the Code of Virginia, or the board by state regulation may adopt more stringent channel analysis criteria or design standards to ensure that the natural level of channel erosion, to the maximum extent practicable, will not increase due to the land-disturbing activities. These criteria may include the following:

1. Criteria and procedures for channel analysis and classification.
2. Procedures for channel data collection.

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3. Criteria and procedures for the determination of the magnitude and frequency of natural sediment transport loads.

4. Criteria for the selection of proposed natural or manmade channel linings.

9VAC25-875-720. Flooding.

A. Downstream properties and waterways shall be protected from damages from localized flooding due to changes in runoff rate of flow and hydrologic characteristics, including changes in volume, velocity, frequency, duration, and peak flow rate of stormwater runoff in accordance with the minimum design standards set out in this section.

B. The 10-year post-developed peak rate of runoff from the development site shall not exceed the 10-year predeveloped peak rate of runoff.

C. In lieu of subsection B of this section, localities may, by ordinance in accordance with § 62.1-44.15:33 of the Code of Virginia, adopt alternate design criteria based upon geographic, land use, topographic, geologic factors, or other downstream conveyance factors as appropriate.

D. Linear development projects shall not be required to control post-developed stormwater runoff for flooding, except in accordance with a watershed or regional stormwater management plan.

9VAC25-875-730. Regional (watershed-wide) stormwater management plans.

Water quality requirements and where allowed, water quantity requirements, may be achieved in accordance with sections 9VAC25-875-610 and 9VAC25-875-660.

Article 5

Criteria for Land-Disturbing Activities in Chesapeake Bay Preservation Areas

9VAC25-875-740. Land-disturbing activities in Chesapeake Bay Preservation Areas.

A. In order to protect the quality of state waters and to control the discharge of stormwater pollutants from land-disturbing activities, runoff associated with land-disturbing activities in Chesapeake Bay Preservation Areas that are equal to or greater than 2,500 square feet but less than one acre shall be regulated by localities subject to the Chesapeake Bay Preservation Act or, in the case of state and federal agency projects, the department. In regulating such land-disturbing activities in accordance with subsection B of this section, localities shall have the same authority and responsibilities as set forth for VESCP and VESMP authorities.

B. After June 30, 2014, such land-disturbing activities shall not require completion of a registration statement or require coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities but shall be subject to the following technical criteria and program and

administrative requirements unless excluded under 9VAC25-875-90 and 9VAC25-875-280:

1. An erosion and sediment control plan consistent with the requirements of 9VAC25-875-550 must be designed and implemented during land-disturbing activities. Prior to land disturbance, this plan must be approved by either the VESCP or VESMP authority in accordance with this chapter;

2. A stormwater management plan consistent with the requirements of 9VAC25-875-510 must be designed and implemented during the land-disturbing activity. The stormwater management plan shall be developed and submitted in accordance with 9VAC25-875-510. Prior to land disturbance, this plan must be approved by the VESCP or VESMP authority;

3. Exceptions may be requested in accordance with 9VAC25-875-170;

4. Long-term maintenance of stormwater management facilities shall be provided for and conducted in accordance with 9VAC25-875-535;

5. Water quality design criteria in 9VAC25-875-580 shall be applied to the site;

6. Water quality compliance shall be achieved in accordance with 9VAC25-875-590;

7. Channel protection and flood protection shall be achieved in accordance with 9VAC25-875-600 or as permitted by subsection B of 9VAC25-875-750;

8. Offsite compliance options in accordance with 9VAC25-875-610 shall be available to land-disturbing activities in Chesapeake Bay Preservation Areas that are equal to or greater than 2,500 square feet but less than one acre; and

9. Such land-disturbing activities shall be subject to the design storm and hydrologic methods set out in 9VAC25-875-620, linear development controls in 9VAC25-875-640, and criteria associated with stormwater impoundment structures or facilities in 9VAC25-875-650.

9VAC25-875-750. Land-disturbing activities in Chesapeake Bay Preservation Areas in rural Tidewater localities.

A. Acceptance of signed and sealed plans in lieu of local plan review. In lieu of a local plan review or retaining a local certified plan reviewer, a rural Tidewater locality may accept plans and supporting calculations for erosion and sediment control and stormwater management for any land-disturbing activity equal to or greater than 2,500 square feet but less than one acre if the following criteria are met:

1. The plans are prepared and submitted by a professional licensed to engage in practice in the Commonwealth under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia and who shall hold a

certificate of competence in the appropriate subject area, as provided in § 62.1-44.15:30 of the Code of Virginia; and

2. The plan and supporting calculations are appropriately signed and sealed by the professional with a certification that states: "This plan is designed in accordance with applicable state law and regulations."

B. For determining the water quantity technical criteria applicable to a land disturbance equal to or greater than 2,500 square feet, but less than one acre, any rural Tidewater locality may elect to use certain tiered water quantity control standards based on the percentage of impervious cover in the watershed as provided in § 62.1-44.15:27.2 of the Code of Virginia.

C. Tiered approach to water quantity technical criteria compliance.

1. A rural Tidewater locality may adopt the following tiered approach to water quantity management based on the percent impervious cover of the watershed in accordance with this subsection for land-disturbing activities that disturb an area of 2,500 square feet or more but less than one acre:

a. For less than 5.0% impervious cover, apply the Virginia Erosion and Sediment Control Minimum Standard 19 in effect prior to July 1, 2014, for the protection of downstream properties and waterways from sediment deposition, erosion, and damage due to increases in volume, velocity, and peak flow rate of stormwater runoff for the stated frequency storm of 24-hour duration.

b. For 5.0% or more impervious cover but less than 7.5%, detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm, which practices shall be exempt from any flow rate capacity and velocity requirements for natural or manmade channels.

c. For 7.5% impervious cover or more, apply the water quantity technical criteria in accordance with 9VAC25-875-600.

2. The establishment and conduct of the tiered approach by the locality pursuant to this section shall be subject to review by the department.

3. Prior to the adoption and implementation of the tiered approach to water quantity management, the local governing body shall:

a. Develop a watershed map that includes the following:

(1) The boundaries of the locality and each watershed located partially or wholly within the locality based on the most recent version of Virginia's 6th order National Watershed Boundary Dataset;

(2) The percentage of impervious cover within each watershed. Data provided by the Virginia Geographic Information Network (VGIN) shall be sufficient for the initial determination of impervious cover percentage at the time of the initial adoption of the map; and

(3) The locations at which the governing body expects or proposes that development should occur and may indicate the projected future percentage of impervious cover based on proposed development. The governing body may designate certain areas within a watershed in which it proposes that denser-than-average development shall occur and may designate environmentally sensitive areas in which the water quantity technical criteria in 9VAC25-875-600 shall apply.

b. After the watershed map has been developed, the governing body may then approve and adopt the map by a majority vote of its membership and publish it as the official watershed map of the locality. No official watershed map shall be adopted by the governing body or have any effect until it is approved by an ordinance duly passed by the governing body of the locality after a public hearing, preceded by public notice as required by § 15.2-2204 of the Code of Virginia. Within 30 days after adoption of the official watershed map, the governing body shall file the watershed map in the office of the clerk of the circuit court.

4. At least once per year, the governing body shall by majority vote make additions to or modifications of the official watershed map to reflect actual development projects. The governing body shall change the indication on the map of the impervious cover percentage within a watershed where the percentage has changed and shall update the map and supporting datasets with actual development project information, including single-family housing projects and any projects covered by the General VPDES Permit for Discharges of Stormwater from Construction Activities (9VAC25-880) and administered by the department for opt-out localities pursuant to § 62.1-44.15:27 of the Code of Virginia. The governing body may incorporate into the official watershed map the most recent VGIN data, including data on state and federal projects that are not reviewed or approved by the locality. The governing body shall keep current its impervious cover percentage for each watershed located within the locality as reflected in the official watershed map and shall make the map and such percentages available to the public.

5. The locality shall notify the department and update the official watershed map within 12 months of the approval of the development plan for any project that exceeds the percent impervious cover percentage of the watershed in which it is located and causes the impervious cover percentage for the watershed to increase such that the watershed percent impervious cover is categorized by the next higher tier pursuant to subdivision 1 of this subsection.

6. No official watershed map or its adopting or amending ordinance shall take precedence over any duly adopted zoning ordinance, comprehensive plan, or other local land-use ordinance, and in the case of a conflict, the official

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watershed map or ordinance shall yield to such land-use ordinance.

Article 6

Additional Criteria and Requirements for Land-Disturbing Activities by State Agencies and Federal Entities

9VAC25-875-760. Soil erosion control and stormwater management for land-disturbing activities.

The department shall act as a VESMP where state agencies and federal entities have not submitted standards and specifications to the department for approval. When a state agency or federal entity submits a soil erosion control and stormwater management plan (ESM plan) for a project, land disturbance shall not commence until the department has reviewed and approved the plan and has issued permit coverage when it is required in accordance with § 62.1-44.15:34 of the Code of Virginia.

1. The department shall not approve an ESM plan submitted by a state agency or federal entity for a project involving a land-disturbing activity (i) in any locality that has not adopted a local program with more stringent ordinances than those of the state program or (ii) in multiple jurisdictions with separate local programs, unless the plan is consistent with the requirements of the state program.

2. The department shall not approve an ESM plan submitted by a state agency or federal entity for a project involving a land-disturbing activity in one locality with a local program with more stringent ordinances than those of the state program, unless the plan is consistent with the requirements of the local program.

3. If onsite changes occur, the state agency or federal entity shall submit an amended ESM plan to the department.

4. The state agency or federal entity responsible for the land-disturbing activity shall ensure compliance with the approved ESM plan. As necessary, the department shall provide project oversight and enforcement.

9VAC25-875-770. State agency land-disturbing activities.

A. All state agency land-disturbing activities that are not exempt and that have commenced without an approved erosion and sediment control plan shall immediately cease until the state agency has either submitted standards and specifications for its conduct of land-disturbing activities which has been reviewed and approved by the department as being consistent with the VESMA and attendant regulations or an erosion and sediment control plan has been submitted to and approved by the department. A formal Notice of Plan Requirement will be sent to the state agency under whose purview the project lies since that agency is responsible for compliance with the State Water Control Law and this chapter.

B. Where inspections by department personnel reveal deficiencies in carrying out an approved plan, the person responsible for carrying out the plan, as well as the state agency

responsible, will be issued a notice to comply with specific actions and the deadlines that shall be met. Failure to meet the prescribed deadlines can result in the issuance of a stop work order for all land-disturbing activities on the project at the discretion of the department. The stop work order will be lifted once the required erosion and sediment control measures are in place and inspected by department staff.

C. Whenever the Commonwealth or any of its agencies fails to comply within the time provided in an appropriate final order, the director of the department may petition for compliance as follows: For violations in the Natural and Historic Resources Secretariat, to the Secretary of Natural and Historic Resources; for violations in other secretariats, to the appropriate Secretary; for violations in other state agencies, to the head of such agency. Where the petition does not achieve timely compliance, the director shall bring the matter to the Governor for resolution. The department may also pursue enforcement as provided by § 62.1-44.15:48 of the Code of Virginia and Article 5 (§ 62.1-44.20 et seq.) of the State Water Control Law.

D. Where compliance will require the appropriation of funds, the director shall cooperate with the appropriate agency head in seeking such an appropriation; where the director determines that an emergency exists, the director shall petition the Governor for funds from the Civil Contingency Fund or other appropriate source.

9VAC25-875-780. Stormwater management permit applications.

A. Approval of a permit application (registration statement) for a land-disturbing activity by a state agency or federal entity shall be subject to the following conditions:

1. The state agency or federal entity shall comply with all applicable requirements of the permit (9VAC25-880) and shall certify that all land clearing, construction, land development, and drainage will be done according to the permit.

2. The land development shall be conducted only within the area specified in the approved plan and covered by the permit.

3. No changes may be made to a plan for which a permit has been issued without review and written approval by the department.

4. The department shall be notified at least one week prior to the preconstruction meeting and at least one week prior to the commencement of land-disturbing activity.

5. The department shall conduct random inspections of the project to ensure compliance with the permit.

6. The department shall require inspections and reports from the state agency or federal entity responsible for compliance

with the permit and to determine if the measures required in the permit provide effective stormwater management.

B. Compliance with the permit shall be subject to the following conditions:

1. Where inspection by the responsible state agency or federal entity reveals deficiencies in carrying out a permitted activity, the responsible state agency or federal entity shall ensure compliance with the issued permit, permit conditions, and plan specifications.

2. Where inspections by department personnel reveal deficiencies in carrying out the permit, the responsible state agency or federal entity shall be issued a notice to comply, with corrective actions specified and the deadline within which the work shall be performed.

3. Whenever the Commonwealth or any of its state agencies fail to comply within the time provided in a notice to comply, the director may petition the secretary of a given secretariat or an agency head for a given state agency for compliance. Where the petition does not achieve timely compliance, the director shall bring the matter to the Governor for resolution.

4. Where compliance for a state agency will require the appropriation of funds, the director shall cooperate with the appropriate agency head in seeking such an appropriation; where the director determines that an emergency exists, the director shall petition the Governor for funds from the Civil Contingency Fund or other appropriate source.

5. The department may also seek compliance through other means specified in the State Water Control Law.

9VAC25-875-790. Maintenance and inspections.

A. Responsibility for the operation and maintenance of stormwater management facilities shall remain with the state agency or federal entity and shall pass to any successor or owner. If portions of the land are to be sold, legally binding arrangements shall be made to pass the basic responsibility to successors in title. These arrangements shall designate for each project the property owner, governmental agency, or other legally established entity to be permanently responsible for maintenance.

B. At a minimum, a stormwater management facility shall be inspected by the responsible state agency or federal entity on an annual basis and after any storm which causes the capacity of the facility principal spillway to be exceeded.

C. During construction of the stormwater management facilities, the department shall make inspections on a random basis.

D. The department shall require inspections and reports from the state agency or federal entity responsible for ensuring compliance with the permit and to determine if the measures required in the permit provide effective stormwater management.

E. Inspection reports shall be maintained as part of the land disturbance project file.

9VAC25-875-800. Reporting on stormwater management.

State agencies shall report annually, on a schedule to be specified, to the department on the extent to which stormwater management programs have reduced nonpoint source pollution to the Commonwealth's waters and mitigated the effects of localized flooding. The report shall provide the following: data on the number and types of stormwater management facilities installed in the preceding year; the drainage area or watershed size served; the receiving stream or hydrologic unit; a summary of monitoring data, if any; and other data useful in determining the effectiveness of the programs and BMP technologies in current use.

9VAC25-875-810. Technical criteria and requirements for state or federal projects.

A. Erosion and sediment control and stormwater management plans prepared for state projects shall comply with the technical criteria outlined in this part and any locality's VESCP or VESMP authority's technical requirements adopted pursuant to §§ 62.1-44.15:28 and 62.1-44.15:52 of the Code of Virginia.

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

Part VI Standards and Specifications Program

9VAC25-875-820. Applicability.

This part is applicable to any state agency, federal entity, or public or private entity that is authorized to submit standards and specifications to the department in accordance with § 62.1-44.15:31 of the Code of Virginia.

9VAC25-875-830. Standards and specifications for state agencies, federal entities, and other specified entities.

A. The program requirements in Part V (9VAC25-875-470 et seq.) shall be implemented by a state agency or federal entity, and other specified entities with department-approved standards and specifications.

B. As an alternative to submitting soil erosion control and stormwater management plans for its land-disturbing activities, the Virginia Department of Transportation shall and any other state agency or federal entity may submit standards and specifications for its conduct of land-disturbing activities for department approval. Approved standards and specifications shall be consistent with the VESMA. The department shall have 60 days after receipt in which to act on any standards and specifications submitted or resubmitted to the department for approval.

C. As an alternative to submitting soil erosion control and stormwater management plans, electric, natural gas, and

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telephone utility companies; interstate and intrastate natural gas pipeline companies; railroad companies; and authorities created pursuant to § 15.2-5102 of the Code of Virginia may submit standards and specifications for department approval that describe how land-disturbing activities shall be conducted. Such standards and specifications may be submitted for the following types of projects:

1. Construction, installation, or maintenance of electric transmission and distribution lines, oil or gas transmission and distribution pipelines, communication utility lines, and water and sewer lines; and
2. Construction of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company.

The department shall have 60 days after receipt in which to act on any standards and specifications submitted or resubmitted to it for approval. A linear project not included in subdivision 1 or 2 of this subsection, or for which the owner chooses not to submit standards and specifications, shall comply with the requirements of the VESMP or the VESCP and VSMP, as appropriate, in any locality within which the project is located.

D. As an alternative to submitting soil erosion control and stormwater management plans, any person engaging in more than one jurisdiction in the creation and operation of a wetland mitigation or stream restoration bank that has been approved and is operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of a wetlands mitigation or stream restoration bank, pursuant to a mitigation banking instrument signed by the department, the Virginia Marine Resources Commission, or the U.S. Army Corps of Engineers, may submit standards and specifications for department approval that describe how land-disturbing activities shall be conducted. The department shall have 60 days after receipt in which to act on standards and specifications submitted to it or resubmitted to it for approval.

E. All standards and specifications submitted to the department shall be periodically updated according to a schedule to be established by the department and shall be consistent with the requirements of the VESMA. Approval of standards and specifications by the department does not relieve the owner or operator of the duty to comply with any other applicable local ordinances or regulations. Standards and specifications shall include:

1. Technical criteria to meet the requirements of the VESMA and regulations developed under it;
2. Provisions for the long-term responsibility and maintenance of any stormwater management control devices and other techniques specified to manage the quantity and quality of runoff;

3. Provisions for administration of the standards and specifications program, project-specific plan design, plan review and plan approval, and construction inspection and compliance;

4. Provisions for ensuring that personnel and contractors assisting the owner in carrying out the land-disturbing activity obtain training or qualifications for soil erosion control and stormwater management as set forth in Part IV (9VAC25-875-380 et seq.) of this chapter;

5. Provisions for ensuring that personnel implementing approved standards and specifications pursuant to this section obtain certifications or qualifications comparable to those required for VESMP personnel pursuant to subsection C of § 62.1-44.15:30 of the Code of Virginia;

6. Implementation of a project tracking system that ensures notification to the department of all land-disturbing activities covered under the VESMA; and

7. Requirements for documenting onsite changes as they occur to ensure compliance with the requirements of the VESMA.

F. The department shall perform random site inspections or inspections in response to a complaint to ensure compliance with the VESMA and this chapter.

G. The department shall assess an administrative charge to cover the costs of services rendered associated with its responsibilities pursuant to this section, including standards and specifications review and approval, project inspections, and compliance. The department may take enforcement actions in accordance with the VESMA and related regulations.

9VAC25-875-840. Reserved.

Part VII

Virginia Pollutant Discharge Elimination System (VPDES)

Permits

Article 1

Definitions

9VAC25-875-850. Definitions.

For the purposes of this part only, the following words and terms have the following meanings unless the context clearly indicates otherwise:

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

"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 VESMA, 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 the CWA.

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

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

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

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

"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.

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

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

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

"Existing permit" means for the purposes of this chapter a permit issued by the department and currently held by a 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. The term 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 VPDES point source or treatment works treating domestic sewage or any other facility or activity, including land or appurtenances thereto, that is subject to regulation under the VPDES program.

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

"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 permit (other than the permit for discharges from the municipal separate storm sewer), discharges resulting from firefighting activities, and discharges identified by and in compliance with 9VAC25-875-970 D 2 c (3).

"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 within 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.

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

"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.

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

"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).

"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, and BMPs 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.

"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.

"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 is not a new source; and
4. Which has never received a finally effective separate VPDES or 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 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 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.

"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))

"Outfall," when used in reference to municipal separate storm sewers, means 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 that

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.

"Permit" means a VPDES permit issued by the department pursuant to § 62.1-44.15 of the Code of Virginia for stormwater discharges from a land-disturbing activity or MS4.

"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 used either to facilitate production or for disposal purposes 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.

"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.

"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" means an existing VPDES 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.

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

"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 9VAC25-875-950 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.

"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.

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

"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 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), (g), (h), or (i), or 316(a) of the CWA.

"Virginia Pollutant Discharge Elimination System 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.

"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 water, and serve the purposes of the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), the VESMA (§ 62.1-44.15:24 et seq. of the Code of Virginia), and the CWA (33 USC § 1251 et seq.).

"Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

Article 2

General Program Requirements Related to MS4s and Land-Disturbing Activities

9VAC25-875-860. Exclusions.

The following discharges do not require permits:

1. Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion neither applies to rubbish, trash, garbage, or other such materials discharged overboard nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility, or a seafood processing facility or when secured to a storage facility or a seafood processing facility or when secured to the bed of the ocean, contiguous zone, or surface waters for the purpose of mineral or oil exploration or development.
2. Discharges of dredged or fill material into surface waters that are regulated under § 404 of the CWA.
3. The introduction of sewage, industrial wastes, or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to surface waters are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other party not leading to treatment works.
4. Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 40 CFR Part 300 (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances).
5. Any introduction of pollutants from nonpoint source agricultural and silvicultural activities, including stormwater runoff from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges from concentrated animal feeding operations, discharges from concentrated aquatic animal production facilities, discharges to aquaculture projects, and discharges from silvicultural point sources.
6. Return flows from irrigated agriculture.
7. Discharges into a privately owned treatment works, except as the department may otherwise require.

9VAC25-875-870. Prohibitions.

A. Except in compliance with a permit issued by the department pursuant to the Virginia Erosion and Stormwater

Management Act, it shall be unlawful for any person to discharge stormwater into state waters from municipal separate storm sewer systems or land-disturbing activities.

B. Any person in violation of subsection A of this section that discharges or causes or allows a discharge of stormwater into or upon state waters from municipal separate storm sewer systems or land-disturbing activities or that discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of subsection A of this section, shall notify the department of the discharge immediately upon discovery of the discharge but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted by the owner to the department within five days of discovery of the discharge. The written report shall contain:

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

C. No permit may be issued:

1. When the conditions of the permit do not provide for compliance with the applicable requirements of the CWA or the State Water Control Law or regulations promulgated under the CWA or the State Water Control Law;
2. When the permit applicant is required to obtain a state or other appropriate certification under § 401 of the CWA and that certification has not been obtained or waived;
3. When the regional administrator has objected to issuance of the permit;
4. When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states;
5. When, in the judgment of the Secretary of the Army, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;
6. For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;

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7. For any discharge inconsistent with a plan or plan amendment approved under § 208(b) of the CWA;

8. For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans in the following circumstances:

a. Before the promulgation of guidelines under § 403(c) of the CWA (for determining degradation of the waters of the territorial seas, the contiguous zone, and the oceans) unless the department determines permit issuance to be in the public interest; or

b. After promulgation of guidelines under § 403(c) of the CWA, when insufficient information exists to make a reasonable judgment whether the discharge complies with them.

9. To a new source or a new discharger if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment that does not meet applicable water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by the State Water Control Law and § 301(b)(1)(A) and (b)(1)(B) of the CWA, and for which the department has performed a pollutants load allocation for the pollutant to be discharged, must demonstrate, before the close of the public comment period, that:

a. There are sufficient remaining pollutant load allocations to allow for the discharge; and

b. The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. The department may waive the submission of information by the new source or new discharger required by this subdivision 9 b if the department determines that it already has adequate information to evaluate the request. An explanation of the development of limitations to meet the criteria of this subdivision 9 b is to be included in the fact sheet to the permit under 9VAC25-875-1090.

9VAC25-875-880. Effect of a permit.

A. Except for any toxic effluent standards and prohibitions imposed under § 307 of the CWA and standards for sewage sludge use or disposal under § 405(d) of the CWA, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with the State Water Control Law and with §§ 301, 302, 306, 307, 318, 403, and 405(a) through (b) of the CWA. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in this chapter.

B. The issuance of a permit does not convey any property rights of any sort or any exclusive privilege.

C. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights or any infringement of state or local law or regulations.

9VAC25-875-890. Continuation of expiring permits.

A. The permit shall expire at the end of its term, except that the conditions of an expired permit continue in force until the effective date of a new permit if:

1. The permittee has submitted a timely application as required by this chapter, which is a complete application for a new permit; and

2. The department, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit.

B. Permits continued under this section remain fully effective and enforceable.

C. When the permittee is not in compliance with the conditions of the expiring or expired permit, the department may choose to do any or all of the following:

1. Initiate enforcement action based upon the permit which has been continued;

2. Issue a notice of intent to deny the new permit. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

3. Issue a new permit with appropriate conditions; or

4. Take other actions authorized by this chapter.

9VAC25-875-900. Confidentiality of information.

A. The department or the VESMP authority may require every permit applicant or permittee to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of permit applicant's or permittee's discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law and this chapter. Any personal information shall not be disclosed except to an appropriate official of the department or VESMP authority or as may be authorized pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia). However:

1. Disclosure of records of the department or the VESMP authority relating to (i) active federal environmental enforcement actions that are considered confidential under federal law and (ii) enforcement strategies, including proposed sanctions for enforcement actions, is prohibited. Upon request, such records shall be disclosed after a proposed sanction resulting from the investigation has been determined by the department or the VESMP authority.

2. Any secret formula, secret processes, or secret methods other than effluent data submitted to the department pursuant to this chapter may be claimed as confidential by the submitter in accordance with 40 CFR 122.7. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "secret formulae," "secret processes," or "secret methods" on each page containing such information. If no claim is made at the time of submission, the department may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

3. This section shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any land-disturbing activity that may have occurred, or similar documents.

B. Claims of confidentiality for the following information will be denied:

1. The name and address of any permit applicant or permittee; and
2. Permit applications, permits, and effluent data.

C. Information required by permit application forms provided by the department may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

9VAC25-875-910. Guidance documents.

The department may develop and use guidance, as appropriate, to implement technical and regulatory details of the VPDES permit program. Such guidance is distinguished from regulation by the fact that it is not binding on either the department or permittees. If a more appropriate methodology than that called for in guidance is available in a given situation, the more appropriate methodology shall be used to the extent it is consistent with applicable regulations and the Virginia Erosion and Stormwater Management Act.

Article 3
Permit Applications

9VAC25-875-920. Application for a permit.

A. Duty to apply. Any person who discharges or proposes to discharge stormwater into or upon state waters from municipal separate storm sewer systems or land-disturbing activities and who does not have an effective permit, except persons covered by general permits, excluded from the requirement for a permit by this chapter, shall submit a complete application in accordance with this section.

B. Who applies. When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.

C. Time to apply. Any person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the department. Stormwater discharges from large construction activities and stormwater discharges associated with small construction activities shall submit applications at least 90 days before the date on which construction is to commence. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 90-day or 180-day requirements to avoid delay.

D. Duty to reapply. All permittees with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit unless permission for a later date has been granted by the department. The department shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

E. Completeness. The department shall not issue a permit before receiving a complete application for a permit except for general permits. An application for a permit is complete when the department receives an application form and any supplemental information which are completed to its satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity.

F. Information requirements. All applicants for permits shall provide the following information using the application form provided by the department:

1. The activities conducted by the permit applicant which require it to obtain a permit;
2. Name, mailing address, and location of the facility for which the application is submitted;
3. Up to four SIC codes which best reflect the principal products or services provided by the facility;
4. The operator's name, address, telephone number, email address, ownership status, and status as federal, state, private, public, or other entity;
5. Whether the facility is located on Indian lands;
6. A listing of all permits or construction approvals received, applied for, or to be applied for under any of the following programs:
 - a. Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA) (42 USC § 6921);
 - b. Underground Injection Control (UIC) program under the Safe Drinking Water Act (SDWA) (42 USC § 300h);

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c. VPDES program under the CWA and the State Water Control Law;

d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act (42 USC § 4701 et seq.);

e. Nonattainment program under the Clean Air Act (42 USC § 4701 et seq.);

f. National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act (42 USC § 4701 et seq.);

g. Ocean dumping permits under the Marine Protection Research and Sanctuaries Act (33 USC § 14 et seq.);

h. Dredge or fill permits under § 404 of the CWA;

i. A permit under the CWA and the Virginia Erosion and Stormwater Management Act; and

j. Other relevant environmental permits;

7. A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, that depicts: the facility and (i) each of the source's intake and discharge structures; (ii) each of the source's hazardous waste treatment, storage, or disposal facilities; (iii) each well where fluids from the facility are injected underground; and (iv) those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the permit applicant in the map area; and

8. A brief description of the nature of the business.

G. Variance requests. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in this subsection:

1. Fundamentally different factors.

a. A request for a variance based on the presence of fundamentally different factors from those on which the effluent limitations guideline was based shall be filed as follows:

(1) For a request from best practicable control technology currently available (BPT), by the close of the public comment period for the draft permit; or

(2) For a request from best available technology economically achievable (BAT) or best conventional pollutant control technology (BCT), by no later than 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.

b. The request shall explain how the requirements of the applicable regulatory or statutory criteria have been met.

2. A request for a variance from the BAT requirements for CWA § 301(b)(2)(F) pollutants (commonly called

nonconventional pollutants) pursuant to § 301(c) of the CWA because of the economic capability of the owner or operator, or pursuant to § 301(g) of the CWA (provided, however, that a § 301(g) variance may only be requested for ammonia, chlorine, color, iron, total phenols (when determined by the administrator to be a pollutant covered by § 301(b)(2)(F) of the CWA), and any other pollutant that the administrator lists under § 301(g)(4) of the CWA) must be made as follows:

a. For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

(1) Submitting an initial request to the regional administrator, as well as to the department, stating the name of the discharger, the permit number, the outfall number, the applicable effluent guideline, and whether the discharger is requesting a § 301(c) or § 301(g) of the CWA modification, or both. This request must have been filed not later than 270 days after promulgation of an applicable effluent limitation guideline; and

(2) Submitting a completed request no later than the close of the public comment period for the draft permit demonstrating that: (i) all reasonable ascertainable issues have been raised and all reasonably available arguments and materials supporting their position have been submitted; and (ii) that the applicable requirements of 40 CFR Part 125 have been met. Notwithstanding this provision, the complete application for a request under § 301(g) of the CWA shall be filed 180 days before EPA must make a decision (unless the Regional Administrator establishes a shorter or longer period); or

b. For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with subdivision 2 a (2) of this subsection and need not be preceded by an initial request under subdivision 2 a (1) of this subsection.

3. A modification under § 302(b)(2) of the CWA of requirements under § 302(a) of the CWA for achieving water quality related effluent limitations may be requested no later than the close of the public comment period for the draft permit on the permit from which the modification is sought.

4. A variance for alternate effluent limitations for the thermal component of any discharge must be filed with a timely application for a permit under this section, except that if thermal effluent limitations are established on a case-by-case basis or are based on water quality standards the request for a variance may be filed by the close of the public comment period for the draft permit. A copy of the request shall be sent simultaneously to the department.

H. Expedited variance procedures and time extensions.

1. Notwithstanding the time requirements in subsection G of this section, the department may notify a permit applicant before a draft permit is issued that the draft permit will likely

contain limitations that are eligible for variances. In the notice the department may require the permit applicant as a condition of consideration of any potential variance request to submit a request explaining how the requirements of 40 CFR Part 125 applicable to the variance have been met and may require its submission within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations that may become effective upon final grant of the variance.

2. A discharger who cannot file a timely complete request required under subdivisions G 2 a (2) or G 2 b of this section may request an extension. The extension may be granted or denied at the discretion of the department. Extensions shall be no more than six months in duration.

I. Recordkeeping. Permit applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least three years from the date the application is signed.

9VAC25-875-930. Permit rationale.

In granting a permit pursuant to this chapter, the department shall provide in writing a clear and concise statement of the legal basis, scientific rationale, and justification for the decision reached. When the decision of the department is to deny a permit, the department shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the denial, the scientific justification for the same, and how the department's decision is in compliance with applicable laws and regulations. Copies of the decision, certified by the director, shall be mailed by certified mail to the permittee or applicant.

9VAC25-875-940. Signatories to permit applications and reports.

A. All permit applications shall be signed as follows:

1. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign

documents has been assigned or delegated to the manager in accordance with corporate procedures;

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

3. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

B. All reports required by permits, and other information requested by the department shall be signed by a person described in subsection A of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

1. The authorization is made in writing by a person described in subsection A of this section;

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

3. The written authorization is submitted to the department.

C. If an authorization under subsection B of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection B of this section must be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

D. Any person signing a document under subsection A or B of this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

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E. Electronic reporting. If documents described in subsection A or B of this section are submitted electronically by or on behalf of a VPDES-regulated facility, any person providing the electronic signature for such documents shall meet all relevant requirements of this section and shall ensure that all of the relevant requirements of Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D) are met for that submission.

9VAC25-875-950. Stormwater discharges.

A. Permit requirements.

1. Prior to October 1, 1994, discharges composed entirely of stormwater shall not be required to obtain a permit except:

- a. A discharge with respect to which a permit has been issued prior to February 4, 1987;
- b. A stormwater discharge associated with large construction activity;
- c. A discharge from a large municipal separate storm sewer system;
- d. A discharge from a medium municipal separate storm sewer system; or
- e. A discharge that either the department or the regional administrator determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to surface waters. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying stormwater runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances that do not require a permit under subdivision 2 of this subsection or agricultural stormwater runoff that is exempted from the definition of point source.

The department may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the department may consider the following factors:

- (1) The location of the discharge with respect to surface waters;
- (2) The size of the discharge;
- (3) The quantity and nature of the pollutants discharged to surface waters; and
- (4) Other relevant factors.

2. The department may not require a permit for discharges of stormwater runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows that are from conveyances or systems of conveyances, including pipes, conduits, ditches, and channels, used for collecting and conveying precipitation runoff and that are not contaminated by contact with or that has not come into

contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations.

3. a. Permits must be obtained for all discharges from large and medium municipal separate storm sewer systems.

b. The department may either issue one system-wide permit covering all discharges from municipal separate storm sewers within a large or medium municipal storm sewer system or issue distinct permits for appropriate categories of discharges within a large or medium municipal separate storm sewer system, including all discharges owned or operated by the same municipality; located within the same jurisdiction; all discharges within a system that discharge to the same watershed; discharges within a system that are similar in nature; or for individual discharges from municipal separate storm sewers within the system.

c. The operator of a discharge from a municipal separate storm sewer that is part of a large or medium municipal separate storm sewer system must either:

(1) Participate in a permit application (to be a permittee or a state co-permittee) with one or more other operators of discharges from the large or medium municipal storm sewer system that covers all, or a portion of all, discharges from the municipal separate storm sewer system;

(2) Submit a distinct permit application that only covers discharges from the municipal separate storm sewers for which the operator is responsible; or

(3) A regional authority may be responsible for submitting a permit application under the following guidelines:

(a) The regional authority together with permit co-applicants shall have authority over a stormwater management program that is in existence or shall be in existence at the time Part 1 of the application is due;

(b) The permit applicant or co-applicants shall establish their ability to make a timely submission of Part 1 and Part 2 of the municipal application;

(c) Each of the operators of municipal separate storm sewers within large or medium municipal separate storm sewer systems, which are under the purview of the designated regional authority, shall comply with the application requirements of subsection C of this section.

d. One permit application may be submitted for all or a portion of all municipal separate storm sewers within adjacent or interconnected large or medium municipal separate storm sewer systems. The department may issue one system-wide permit covering all or a portion of all municipal separate storm sewers in adjacent or interconnected large or medium municipal separate storm sewer systems.

e. Permits for all or a portion of all discharges from large or medium municipal separate storm sewer systems that

are issued on a system-wide, jurisdiction-wide, watershed, or other basis may specify different conditions relating to different discharges covered by the permit, including different management programs for different drainage areas that contribute stormwater to the system.

f. State co-permittees need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they are operators.

4. In addition to meeting the requirements of subsection B of this section, an operator of a stormwater discharge associated with a large construction activity that discharges through a large or medium municipal separate storm sewer system shall submit to the operator of the municipal separate storm sewer system receiving the discharge no later than May 15, 1991, or 180 days prior to commencing such discharge, the name of the facility; a contact person and telephone number; the location of the discharge; a description, including Standard Industrial Classification, that best reflects the principal products or services provided by each facility; and any existing permit number.

5. The department may issue permits for municipal separate storm sewers that are designated under subdivision A 1 e of this section on a system-wide basis, jurisdiction-wide basis, watershed basis, or other appropriate basis or may issue permits for individual discharges.

6. Conveyances that discharge stormwater runoff combined with municipal sewage are point sources that must obtain separate VPDES permits in accordance with the procedures of 9VAC25-31 and are not subject to the provisions of this section.

7. Whether a discharge from a municipal separate storm sewer is or is not subject to regulation under this subsection shall have no bearing on whether the owner or operator of the discharge is eligible for funding under Title II, Title III, or Title VI of the CWA.

8. a. On and after October 1, 1994, for discharges composed entirely of stormwater, that are not required by subdivision 1 of this subsection to obtain a permit, operators shall be required to obtain a permit only if:

(1) The discharge is from a small MS4 required to be regulated pursuant to 9VAC25-875-970 B;

(2) The discharge is a stormwater discharge associated with small construction activity as defined in 9VAC25-875-20;

(3) The department or the EPA regional administrator determines that stormwater controls are needed for the discharge based on wasteload allocations that are part of total maximum daily loads (TMDLs) that address the pollutants of concern; or

(4) The department or the EPA regional administrator determines that the discharge or category of discharges within a geographic area contributes to a violation of a

water quality standard or is a significant contributor of pollutants to surface waters.

b. Operators of small MS4s designated pursuant to subdivisions 8 a (1), (3), and (4) of this subsection shall seek coverage under a permit in accordance with 9VAC25-875-970 C, D, and E. Operators of nonmunicipal sources designated pursuant to subdivisions 8 a (2), (3), and (4) of this subsection shall seek coverage under a permit in accordance with subdivision B 1 of this section.

c. Operators of stormwater discharges designated pursuant to subdivisions 8 a (3) and (4) of this subsection shall apply to the department for a permit within 180 days of receipt of notice, unless permission for a later date is granted by the department.

B. Application requirements for stormwater discharges associated with large and small construction activity. Dischargers of stormwater associated with large and small construction activity are required to apply for an individual permit or seek coverage under a promulgated stormwater general permit. Facilities that are required to obtain an individual permit or any discharge of stormwater that the department is evaluating for designation under subdivision A 1 e of this section and is not a municipal separate storm sewer shall submit a state application in accordance with the requirements of 9VAC25-875-920 as modified and supplemented by the provisions of this subsection.

1. The operator of an existing or new stormwater discharge that is associated with a large or small construction activity shall provide a narrative description of:

a. The location, including a map, and the nature of the construction activity;

b. The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;

c. Proposed measures, including best management practices, to control pollutants in stormwater discharges during construction, including a brief description of applicable state and VESCP requirements;

d. Proposed measures to control pollutants in stormwater discharges that will occur after construction operations have been completed, including a brief description of applicable state or local VESCP requirements;

e. An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil, or the quality of the discharge;

f. The name of the receiving water; and

g. The location of Chesapeake Bay Preservation Areas.

2. Permit applicants shall provide such other information the department may reasonably require to determine whether to issue a permit.

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C. Application requirements for large and medium municipal separate storm sewer discharges. The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the department under subdivision A 1 e of this section may submit a jurisdiction-wide or system-wide permit application. Where more than one public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a permit co-applicant to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under subdivision A 1 e of this section shall include:

1. Part 1 of the application shall consist of:

a. The permit applicant's name, address, telephone number, and email address; ownership status; status as a state or local government entity; and the name, address, telephone number, and email address of a contact person;

b. A description of existing legal authority to control discharges to the municipal separate storm sewer system. When existing legal authority is not sufficient to meet the criteria provided in subdivision 2 a of this subsection, the description shall list additional authorities as will be necessary to meet the criteria and shall include a schedule and commitment to seek such additional authority that will be needed to meet the criteria;

c. Source identification.

(1) A description of the historic use of ordinances, guidance, or other controls that limited the discharge of nonstormwater discharges to any publicly owned treatment works serving the same area as the municipal separate storm sewer system.

(2) A USGS 7.5 minute topographic map (or equivalent topographic map with a scale between 1:10,000 and 1:24,000, if cost effective) extending one mile beyond the service boundaries of the municipal storm sewer system covered by the permit application. The following information shall be provided:

(a) The location of known municipal storm sewer system outfalls discharging to surface waters;

(b) A description of the land use activities (e.g., divisions indicating undeveloped, residential, commercial, agricultural, and industrial uses) accompanied with estimates of population densities and projected growth for a 10-year period within the drainage area served by the separate storm sewer. For each land use type, an estimate of an average runoff coefficient shall be provided;

(c) The location and a description of the activities of the facility of each currently operating or closed municipal landfill or other treatment, storage, or disposal facility for municipal waste;

(d) The location and the permit number of any known discharge to the municipal storm sewer that has been issued a permit;

(e) The location of major structural controls for stormwater discharge (retention basins, detention basins, major infiltration devices, etc.); and

(f) The identification of publicly owned parks, recreational areas, and other open lands;

d. Discharge characterization.

(1) Monthly mean rain and snow fall estimates (or summary of weather bureau data) and the monthly average number of storm events.

(2) Existing quantitative data describing the volume and quality of discharges from the municipal storm sewer, including a description of the outfalls sampled, sampling procedures, and analytical methods used.

(3) A list of water bodies that receive discharges from the municipal separate storm sewer system, including downstream segments, lakes, and estuaries, where pollutants from the system discharges may accumulate and cause water degradation and a brief description of known water quality impacts. At a minimum, the description of impacts shall include a description of whether the water bodies receiving such discharges have been:

(a) Assessed and reported in § 305(b) of the CWA reports submitted by the state, the basis for the assessment (evaluated or monitored), a summary of designated use support and attainment of the State Water Control Law and the CWA goals (fishable and swimmable waters), and causes of nonsupport of designated uses;

(b) Listed under § 304(l)(1)(A)(i), (1)(A)(ii), or (1)(B) of the CWA that is not expected to meet water quality standards or water quality goals;

(c) Listed in State Nonpoint Source Assessments required by § 319(a) of the CWA that, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain water quality standards due to storm sewers, construction, highway maintenance, and runoff from municipal landfills and municipal sludge adding significant pollution (or contributing to a violation of water quality standards);

(d) Identified and classified according to eutrophic condition of publicly owned lakes listed in state reports required under § 314(a) of the CWA (include the following: a description of those publicly owned lakes for which uses are known to be impaired; a description of procedures, processes, and methods to control the discharge of pollutants from municipal separate storm sewers into such lakes; and a description of methods and procedures to restore the quality of such lakes);

(e) Areas of concern of the Great Lakes identified by the International Joint Commission;

(f) Designated estuaries under the National Estuary Program under § 320 of the CWA;

(g) Recognized by the permit applicant as highly valued or sensitive waters;

(h) Defined by the state or U.S. Fish and Wildlife Service's National Wetlands Inventory as wetlands; and

(i) Found to have pollutants in bottom sediments, fish tissue or biosurvey data.

(4) Results of a field screening analysis for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the permit application. At a minimum, a screening analysis shall include a narrative description, for either each field screening point or major outfall, of visual observations made during dry weather periods. If any flow is observed, two grab samples shall be collected during a 24-hour period with a minimum period of four hours between samples. For all such samples, a narrative description of the color, odor, turbidity, and the presence of an oil sheen or surface scum, as well as any other relevant observations regarding the potential presence of nonstormwater discharges or illegal dumping shall be provided. In addition, a narrative description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or surfactants) shall be provided along with a description of the flow rate. Where the field analysis does not involve analytical methods approved under 40 CFR Part 136, the permit applicant shall provide a description of the method used, including the name of the manufacturer of the test method along with the range and accuracy of the test. Field screening points shall be either major outfalls or other outfall points (or any other point of access such as manholes) randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid that contain a segment of the storm sewer system or major outfall. The field screening points shall be established using the following guidelines and criteria:

(a) A grid system consisting of perpendicular north-south and east-west lines spaced 1/4 mile apart shall be overlaid on a map of the municipal storm sewer system, creating a series of cells;

(b) All cells that contain a segment of the storm sewer system shall be identified; one field screening point shall be selected in each cell; major outfalls may be used as field screening points;

(c) Field screening points should be located downstream of any sources of suspected illegal or illicit activity;

(d) Field screening points shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system, within each cell; however, safety of personnel and accessibility of the

location should be considered in making this determination;

(e) Hydrological conditions; total drainage area of the site; population density of the site; traffic density; age of the structures or buildings in the area; history of the area; and land use types;

(f) For medium municipal separate storm sewer systems, no more than 250 cells need to have identified field screening points; in large municipal separate storm sewer systems, no more than 500 cells need to have identified field screening points; cells established by the grid that contain no storm sewer segments will be eliminated from consideration; if fewer than 250 cells in medium municipal sewers are created, and fewer than 500 in large systems are created by the overlay on the municipal sewer map, then all those cells that contain a segment of the sewer system shall be subject to field screening (unless access to the separate storm sewer system is impossible); and

(g) Large or medium municipal separate storm sewer systems that are unable to utilize the procedures described in subdivisions 1 d (4) (a) through (f) of this subsection because a sufficiently detailed map of the separate storm sewer systems is unavailable shall field screen no more than 500 or 250 major outfalls respectively (or all major outfalls in the system, if fewer); in such circumstances, the permit applicant shall establish a grid system consisting of north-south and east-west lines spaced 1/4 mile apart as an overlay to the boundaries of the municipal storm sewer system, thereby creating a series of cells; the permit applicant will then select major outfalls in as many cells as possible until at least 500 major outfalls (large municipalities) or 250 major outfalls (medium municipalities) are selected; a field screening analysis shall be undertaken at these major outfalls.

(5) Information and a proposed program to meet the requirements of subdivision 2 c of this subsection. Such description shall include: the location of outfalls or field screening points appropriate for representative data collection under subdivision 2 c (1) of this subsection, a description of why the outfall or field screening point is representative, the seasons during which sampling is intended, and a description of the sampling equipment. The proposed location of outfalls or field screening points for such sampling should reflect water quality concerns (see subdivision 1 d (3) of this subsection) to the extent practicable;

e. Management programs.

(1) A description of the existing management programs to control pollutants from the municipal separate storm sewer system. The description shall provide information on existing structural and source controls, including operation and maintenance measures for structural controls, that are currently being implemented. Such

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controls may include procedures to control pollution resulting from construction activities, floodplain management controls, wetland protection measures, best management practices for new subdivisions, and emergency spill response programs. The description may address controls established under state law as well as local requirements.

(2) A description of the existing program to identify illicit connections to the municipal storm sewer system. The description should include inspection procedures and methods for detecting and preventing illicit discharges and describe areas where this program has been implemented; and

f. Fiscal resources. A description of the financial resources currently available to the municipality to complete Part 2 of the permit application. A description of the municipality's budget for existing stormwater programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for stormwater programs.

2. Part 2 of the application shall consist of:

a. A demonstration that the permit applicant can operate pursuant to legal authority established by statute, ordinance, or series of contracts that authorizes or enables the permit applicant at a minimum to:

(1) Control through ordinance, permit, contract, order, or similar means the contribution of pollutants to the municipal storm sewer by stormwater discharges associated with industrial activity and the quality of stormwater discharged from sites of industrial activity;

(2) Prohibit through ordinance, order, or similar means illicit discharges to the municipal separate storm sewer;

(3) Control through ordinance, order, or similar means the discharge to a municipal separate storm sewer of spills, dumping, or disposal of materials other than stormwater;

(4) Control through interagency agreements among permit co-applicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system;

(5) Require compliance with conditions in ordinances, permits, contracts, or orders; and

(6) Carry out all inspection, surveillance, and monitoring procedures necessary to determine compliance and noncompliance with permit conditions, including the prohibition on illicit discharges to the municipal separate storm sewer;

b. The location of any major outfall that discharges to surface waters that was not reported under subdivision 1 c (2) (a) of this subsection. Provide an inventory, organized by watershed of the name and address, and a description (such as SIC codes) that best reflects the principal products or services provided by each facility that may

discharge, to the municipal separate storm sewer, stormwater associated with industrial activity;

c. When quantitative data for a pollutant are required under subdivision 2 c (1) (c) of this subsection, the permit applicant must collect a sample of effluent in accordance with 9VAC25-875-960 and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved the permit applicant may use any suitable method but must provide a description of the method. The permit applicant must provide information characterizing the quality and quantity of discharges covered in the permit application, including:

(1) Quantitative data from representative outfalls designated by the department (based on information received in Part 1 of the application, the department shall designate between five and 10 outfalls or field screening points as representative of the commercial, residential, and industrial land use activities of the drainage area contributing to the system or where there are less than five outfalls) covered in the application, the department shall designate all outfalls developed as follows:

(a) For each outfall or field screening point designated under this subsection, samples shall be collected of stormwater discharges from three storm events occurring at least one month apart in accordance with the requirements at 9VAC25-875-960 (the department may allow exemptions to sampling three storm events when climatic conditions create good cause for such exemptions);

(b) A narrative description shall be provided of the date and duration of the storm event or events sampled, rainfall estimates of the storm event that generated the sampled discharge, and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event;

(c) For samples collected and described under subdivisions 2 c (1) (a) and (1) (b) of this subsection, quantitative data shall be provided for the organic pollutants listed in Table II; the pollutants listed in Table III (toxic metals, cyanide, and total phenols) of 40 CFR Part 122 Appendix D, and for the following pollutants:

Total suspended solids (TSS)

Total dissolved solids (TDS)

Chemical oxygen demand (COD)

Biochemical oxygen demand (BOD₅)

Oil and grease

Fecal coliform

Fecal streptococcus

pH

Total Kjeldahl nitrogen

Nitrate plus nitrite

Dissolved phosphorus

Total ammonia plus organic nitrogen

Total phosphorus

(d) Additional limited quantitative data required by the department for determining permit conditions (the department may require that quantitative data shall be provided for additional parameters and may establish sampling conditions, such as the location, season of sample collection, form of precipitation (snow melt, rainfall) and other parameters necessary to ensure representativeness);

(2) Estimates of the annual pollutant load of the cumulative discharges to surface waters from all identified municipal outfalls and the event mean concentration of the cumulative discharges to surface waters from all identified municipal outfalls during a storm event (as described under 9VAC25-875-960) for BOD₅, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modeling, data analysis, and calculation methods;

(3) A proposed schedule to provide estimates for each major outfall identified in either subdivision 2 b or 1 c (2) (a) of this subsection of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under subdivision 2 c (1) of this subsection; and

(4) A proposed monitoring program for representative data collection for the term of the permit that describes the location of outfalls or field screening points to be sampled (or the location of instream stations), why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment;

d. A proposed management program that covers the duration of the permit. It shall include a comprehensive planning process that involves public participation and, where necessary, intergovernmental coordination to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions that are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each permit co-applicant. Proposed programs may impose controls on a system wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the department when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on:

(1) A description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description shall include:

(a) A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers;

(b) A description of planning procedures, including a comprehensive master plan to develop, implement, and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers that receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed. Controls to reduce pollutants in discharges from municipal separate storm sewers containing construction site runoff are addressed in subdivision 2 d (4) of this subsection;

(c) A description of practices for operating and maintaining public streets, roads, and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities;

(d) A description of procedures to ensure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from stormwater is feasible;

(e) A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage, or disposal facilities for municipal waste that shall identify priorities and procedures for inspections and establishing and implementing control measures for such discharges (this program can be coordinated with the program developed under subdivision 2 d (3) of this subsection); and

(f) A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides, and fertilizer that will include, as appropriate, controls such as educational activities, permits, certifications, and other measures for commercial applicators and distributors and controls for application in public right-of-ways and at municipal facilities;

(2) A description of a program, including a schedule to detect and remove (or require the discharger to the municipal separate storm sewer to obtain a separate permit

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for) illicit discharges and improper disposal into the storm sewer. The proposed program shall include:

(a) A description of a program, including inspections, to implement and enforce an ordinance, orders, or similar means to prevent illicit discharges to the municipal separate storm sewer system; this program description shall address all types of illicit discharges, however the following category of nonstormwater discharges or flows shall be addressed where such discharges are identified by the municipality as sources of pollutants to surface waters: water line flushing, landscape irrigation, diverted stream flows, rising groundwaters, uncontaminated groundwater infiltration to separate storm sewers, uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (program descriptions shall address discharges or flows from firefighting only where such discharges or flows are identified as significant sources of pollutants to surface waters);

(b) A description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by such field screens;

(c) A description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of nonstormwater (such procedures may include: sampling procedures for constituents such as fecal coliform, fecal streptococcus, surfactants (Methylene Blue Active Substances - MBAS), residual chlorine, fluorides, and potassium; testing with fluorometric dyes; or conducting in storm sewer inspections where safety and other considerations allow. Such description shall include the location of storm sewers that have been identified for such evaluation.);

(d) A description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer;

(e) A description of a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers;

(f) A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and

(g) A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary.

(3) A description of a program to monitor and control pollutants in stormwater discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to § 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA, 42 USC § 11023), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:

(a) Identify priorities and procedures for inspections and establishing and implementing control measures for such discharges;

(b) Describe a monitoring program for stormwater discharges associated with the industrial facilities identified in subdivision 2 d (3) of this subsection, to be implemented during the term of the permit, including the submission of quantitative data on the following constituents: any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing separate VPDES permit for a facility; oil and grease, COD, pH, BOD₅, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under 9VAC25-875-960 G and H; and

(4) A description of a program to implement and maintain structural and nonstructural best management practices to reduce pollutants in stormwater runoff from construction sites to the municipal storm sewer system, which program shall include:

(a) A description of procedures for site planning that incorporate consideration of potential water quality impacts;

(b) A description of requirements for nonstructural and structural best management practices;

(c) A description of procedures for identifying priorities for inspecting sites and enforcing control measures that consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and

(d) A description of appropriate educational and training measures for construction site operators;

e. Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal stormwater quality management program. The assessment shall also identify known impacts of stormwater controls on groundwater;

f. For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and

maintenance expenditures necessary to accomplish the activities of the programs under subdivisions 2 c and d of this subsection. Such analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds;

g. Where more than one legal entity submits an application, the application shall contain a description of the roles and responsibilities of each legal entity and procedures to ensure effective coordination; and

h. Where requirements under subdivisions 1 d (5), 2 b, 2 c (2), and 2 d of this subsection are not practicable or are not applicable, the department may exclude any operator of a discharge from a municipal separate storm sewer that is designated under subdivision A 1 e of this section or that is located in the counties listed in 40 CFR Part 122 Appendix H or Appendix I (except municipal separate storm sewers that are located in the incorporated places, townships, or towns within such counties) from such requirements. The department shall not exclude the operator of a discharge from a municipal separate storm sewer identified in 40 CFR Part 122 Appendix F, G, H, or I from any of the permit application requirements under this subdivision except where authorized under this subsection.

D. Petitions.

1. Any operator of a municipal separate storm sewer system may petition the appropriate authority or the department to require a separate permit for any discharge into the municipal separate storm sewer system.

2. Any person may petition the department to require a permit for a discharge that is composed entirely of stormwater that contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters.

3. Any person may petition the department for the designation of a large, medium, or small municipal separate storm sewer system as defined by this chapter.

4. The department shall make a final determination on any petition received under this section within 90 days after receiving the petition with the exception of petitions to designate a small MS4, in which case the department shall make a final determination on the petition within 180 days after the petition's receipt.

9VAC25-875-960. Effluent sampling procedures.

A. Permit applicants for discharges from large and small municipal storm sewers or municipal storm sewers designated under 9VAC25-875-950 A 1 e shall provide the following information to the department, using application forms provided by the department.

B. Information on stormwater discharges that is to be provided as specified in 9VAC25-875-950. When quantitative data for a pollutant are required, the permit applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved the permit applicant may use any suitable method but must provide a description of the method. When a permit applicant has two or more outfalls with substantially identical effluents, the department may allow the permit applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in subsections F and G of this section that a permit applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, for discharges other than stormwater discharges, the department may waive composite sampling for any outfall for which the permit applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four grab samples will be a representative sample of the effluent being discharged.

C. For stormwater discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50% from the average or median rainfall event in that area. For all permit applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a stormwater discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of 15 minutes. However, a minimum of one grab sample may be taken for stormwater discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For stormwater discharge samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first 30 minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in 9VAC25-875-950 C 1. For all stormwater permit applicants taking flow-weighted composites, quantitative data must be reported for all

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pollutants specified in 9VAC25-875-950 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The department may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rain fall), protocols for collecting samples under 40 CFR Part 136, and additional time for submitting data on a case-by-case basis. A permit applicant is expected to know or have reason to believe that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant or on any previous analyses for the pollutant. For example, any pesticide manufactured by a facility may be expected to be present in contaminated stormwater runoff from the facility.

D. Every permit applicant must report quantitative data for every outfall for the following pollutants:

Biochemical oxygen demand (BOD₅)

Chemical oxygen demand

Total organic carbon

Total suspended solids

Ammonia (as N)

Temperature (both winter and summer)

pH

E. The department may waive the reporting requirements for individual point sources or for a particular industry category for one or more of the pollutants listed in subsection C of this section if the permit applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

F. Each permit applicant with processes in one or more primary industry category (see 40 CFR Part 122 Appendix A) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater:

1. The organic toxic pollutants in the fractions designated in Table I of 40 CFR Part 122 Appendix D for the permit applicant's industrial category unless the permit applicant qualifies as a small business. Table II of 40 CFR Part 122 Appendix D lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure that uses gas chromatography or mass spectrometry. A determination that a permit applicant falls within a particular industrial category for the purposes of selecting fractions for testing is

not conclusive as to the permit applicant's inclusion in that category for any other purposes; and

2. The pollutants listed in Table III of 40 CFR Part 122 Appendix D (the toxic metals, cyanide, and total phenols).

G. 1. Each permit applicant must indicate whether the permit applicant knows or has reason to believe that any of the pollutants in Table IV of 40 CFR Part 122 Appendix D (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the permit applicant must report quantitative data. For every pollutant discharged that is not so limited in an effluent limitations guideline, the permit applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

2. Each applicant must indicate whether the applicant knows or has reason to believe that any of the pollutants listed in Table II or Table III of 40 CFR Part 122 Appendix D (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under subsection F of this section, is discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater the permit applicant must report quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater the permit applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, in concentrations less than 100 ppb, the permit applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. A permit applicant qualifying as a small business is not required to analyze for pollutants listed in Table II of 40 CFR Part 122 Appendix D (the organic toxic pollutants).

H. Each permit applicant must indicate whether the permit applicant knows or has reason to believe that any of the pollutants in Table V of 40 CFR Part 122 Appendix D (certain hazardous substances and asbestos) are discharged from each outfall. For every pollutant expected to be discharged, the permit applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.

I. Each permit applicant must report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

1. Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); 2-(2,4,5-trichlorophenoxy) propanoic acid

(Silvex, 2,4,5,-TP); 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

2. Knows or has reason to believe that TCDD is or may be present in an effluent.

9VAC25-875-970. Small municipal separate storm sewer systems.

A. Objectives of the stormwater regulations for small MS4s.

1. Subsections A through G of this section are written in a "readable regulation" format that includes both rule requirements and guidance. The recommended guidance is distinguished from the regulatory requirements by putting the guidance in a separate subdivision headed by the word "Note."

2. Under the statutory mandate in § 402(p)(6) of the Clean Water Act, the purpose of this portion of the stormwater program is to designate additional sources that need to be regulated to protect water quality and to establish a comprehensive stormwater program to regulate these sources.

3. Stormwater runoff continues to harm the nation's waters. Runoff from lands modified by human activities can harm surface water resources in several ways, including by changing natural hydrologic patterns and by elevating pollutant concentrations and loadings. Stormwater runoff may contain or mobilize high levels of contaminants, such as sediment, suspended solids, nutrients, heavy metals, pathogens, toxins, oxygen-demanding substances, and floatables.

4. The department strongly encourages partnerships and the watershed approach as the management framework for efficiently, effectively, and consistently protecting and restoring aquatic ecosystems and protecting public health.

B. As an operator of a small MS4, am I regulated under the state's stormwater program?

1. Unless you qualify for a waiver under subdivision 3 of this subsection, you are regulated if you operate a small MS4, including systems operated by federal, state, tribal, and local governments, including the Virginia Department of Transportation; and

a. Your small MS4 is located in an urbanized area as determined by the latest decennial census by the Bureau of the Census (if your small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated); or

b. You are designated by the department, including where the designation is pursuant to subdivisions C 3 a and b of this section or is based upon a petition under 9VAC25-875-950 D.

2. You may be the subject of a petition to the department to require a permit for your discharge of stormwater. If the department determines that you need a permit, you are required to comply with subsections C through E of this section.

3. The department may waive the requirements otherwise applicable to you if you meet the criteria of subdivision 4 or 5 of this subsection B. If you receive a waiver under this section, you may subsequently be required to seek coverage under a permit in accordance with subdivision C 1 of this section if circumstances change. (See also subdivision E 2 of this section).

4. The department may waive permit coverage if your MS4 serves a population of less than 1,000 within the urbanized area and you meet the following criteria:

a. Your system is not contributing substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the department; and

b. If you discharge any pollutants that have been identified as a cause of impairment of any water body to which you discharge, stormwater controls are not needed based on wasteload allocations that are part of an approved "total maximum daily load" (TMDL) that addresses the pollutants of concern.

5. The department may waive permit coverage if your MS4 serves a population under 10,000 and you meet the following criteria:

a. The department has evaluated all surface waters, including small streams, tributaries, lakes, and ponds, that receive a discharge from your MS4;

b. For all such waters, the department has determined that stormwater controls are not needed based on wasteload allocations that are part of an approved TMDL that addresses the pollutants of concern or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutants of concern;

c. For the purpose of subdivision 5 of this subsection, the pollutants of concern include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from your MS4; and

d. The department has determined that future discharges from your MS4 do not have the potential to result in exceedances of water quality standards, including impairment of designated uses or other significant water quality impacts, including habitat and biological impacts.

C. If I am an operator of a regulated small MS4, how do I apply for a permit and when do I have to apply?

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1. If you operate a regulated small MS4 under subsection B of this section, you must seek coverage under a permit issued by the department.

2. You must seek authorization to discharge under a general or individual permit, as follows:

a. If the department has issued a general permit applicable to your discharge and you are seeking coverage under the general permit, you must submit a registration statement that includes the information on your best management practices and measurable goals required by subdivision D 4 of this section. You may file your own registration statement, or you and other municipalities or governmental entities may jointly submit a registration statement. If you want to share responsibilities for meeting the minimum measures with other municipalities or governmental entities, you must submit a registration statement that describes which minimum measures you will implement and identify the entities that will implement the other minimum measures within the area served by your MS4. The general permit will explain any other steps necessary to obtain permit authorization.

b. (1) If you are seeking authorization to discharge under an individual permit and wish to implement a program under subsection D of this section, you must submit an application to the department that includes the information required under 9VAC25-875-920 F and subdivision D 4 of this section, an estimate of square mileage served by your small MS4, and any additional information that the department requests. A storm sewer map that satisfies the requirement of subdivision D 2 c (1) of this section will satisfy the map requirement in 9VAC25-875-920 F 7.

(2) If you are seeking authorization to discharge under an individual permit and wish to implement a program that is different from the program under subsection D of this section, you will need to comply with the permit application requirements of 9VAC25-875-950 C. You must submit both parts of the application requirements in 9VAC25-875-950 C 1 and 2 by March 10, 2003. You do not need to submit the information required by 9VAC25-875-950 C 1 b and C 2 regarding your legal authority, unless you intend for the permit writer to take such information into account when developing your other permit conditions.

(3) If allowed by the department, you and another regulated entity may jointly apply under either subdivision 2 b (1) or (2) of this subsection to be state co-permittees under an individual permit.

c. If your small MS4 is in the same urbanized area as a medium or large MS4 with a permit and that other MS4 is willing to have you participate in that MS4's stormwater program, you and the other MS4 may jointly seek a modification of the other MS4 permit to include you as a limited state co-permittee. As a limited state co-permittee, you will be responsible for compliance with the permit's

conditions applicable to your jurisdiction. If you choose this option you will need to comply with the permit application requirements of 9VAC25-875-950, rather than the requirements of subsection D of this section. You do not need to comply with the specific application requirements of 9VAC25-875-950 C 1 c and d and 9VAC25-875-950 C 2 c (discharge characterization). You may satisfy the requirements in 9VAC25-875-950 C 1 e and 2 d (identification of a management program) by referring to the other MS4's stormwater management program.

d. NOTE: In referencing an MS4's stormwater management program, you should briefly describe how the existing plan will address discharges from your small MS4 or would need to be supplemented in order to adequately address your discharges. You should also explain your role in coordinating stormwater pollutant control activities in your MS4 and detail the resources available to you to accomplish the plan.

3. If you operate a regulated small MS4:

a. Designated under subdivision B 1 a of this section, you must apply for coverage under a permit or apply for a modification of an existing permit under subdivision 2 c of this subsection within 180 days of notice, unless the department grants a later date.

b. Designated under subdivision B 1 b of this section, you must apply for coverage under a permit or apply for a modification of an existing permit under subdivision 2 c of this subsection within 180 days of notice, unless the department grants a later date.

D. As an operator of a regulated small MS4, what will my MS4 permit require?

1. Your MS4 permit will require at a minimum that you develop, implement, and enforce a stormwater management program designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act, the Virginia Erosion and Stormwater Management Act, and the State Water Control Law. Your stormwater management program must include the minimum control measures described in subdivision 2 of this subsection unless you apply for a permit under 9VAC25-875-950 C. For purposes of this section, narrative effluent limitations requiring implementation of best management practices (BMPs) are generally the most appropriate form of effluent limitations when designed to satisfy technology requirements (including reductions of pollutants to the maximum extent practicable) and to protect water quality. Implementation of best management practices consistent with the provisions of the stormwater management program required pursuant to this section and the provisions of the permit required pursuant to subsection C of this section constitutes compliance with the standard of

reducing pollutants to the maximum extent practicable. The department will specify a time period of up to five years from the date of permit issuance for you to develop and implement your program.

2. Minimum control measures.

a. Public education and outreach on stormwater impacts.

(1) You must implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of stormwater discharges on water bodies and the steps that the public can take to reduce pollutants in stormwater runoff.

(2) NOTE: You may use stormwater educational materials provided by the state, your tribe, EPA, environmental, public interest or trade organizations, or other MS4s. The public education program should inform individuals and households about the steps they can take to reduce stormwater pollution, such as ensuring proper septic system maintenance, ensuring the proper use and disposal of landscape and garden chemicals including fertilizers and pesticides, protecting and restoring riparian vegetation, and properly disposing of used motor oil or household hazardous wastes. The department recommends that the program inform individuals and groups how to become involved in local stream and beach restoration activities as well as activities that are coordinated by youth service and conservation corps or other citizen groups. The department recommends that the public education program be tailored, using a mix of locally appropriate strategies, to target specific audiences and communities. Examples of strategies include: distributing brochures or fact sheets, sponsoring speaking engagements before community groups, providing public service announcements, implementing educational programs targeted at school-age children, and conducting community-based projects such as storm drain stenciling, and watershed and beach cleanups. In addition, the department recommends that some of the materials or outreach programs be directed toward targeted groups of commercial, industrial, and institutional entities likely to have significant stormwater impacts. For example, providing information to restaurants on the impact of grease clogging storm drains and to garages on the impact of oil discharges. You are encouraged to tailor your outreach program to address the viewpoints and concerns of all communities, particularly minority and disadvantaged communities, as well as any special concerns relating to children.

b. Public involvement/participation.

(1) You must, at a minimum, comply with state, tribal, and local public notice requirements when implementing a public involvement/participation program.

(2) The department recommends that the public be included in developing, implementing, and reviewing your stormwater management program and that the public participation process should make efforts to reach out and engage all economic and ethnic groups. Opportunities for members of the public to participate in program development and implementation include serving as citizen representatives on a local stormwater management panel, attending public hearings, working as citizen volunteers to educate other individuals about the program, assisting in program coordination with other pre-existing programs, or participating in volunteer monitoring efforts. (Citizens should obtain approval where necessary for lawful access to monitoring sites.)

c. Illicit discharge detection and elimination.

(1) You must develop, implement, and enforce a program to detect and eliminate illicit discharges (as defined in 9VAC25-875-850) into your small MS4.

(2) You must:

(a) Develop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and location of all surface waters that receive discharges from those outfalls;

(b) To the extent allowable under state, tribal, or local law effectively prohibit, through ordinance or other regulatory mechanism, nonstormwater discharges into your storm sewer system and implement appropriate enforcement procedures and actions;

(c) Develop and implement a plan to detect and address nonstormwater discharges, including illegal dumping, to your system; and

(d) Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste.

(3) You need to address the following categories of nonstormwater discharges or flows (i.e., illicit discharges) only if you identify them as significant contributors of pollutants to your small MS4: water line flushing, landscape irrigation, diverted stream flows, rising groundwaters, uncontaminated groundwater infiltration (as defined in 40 CFR 35.2005(20)), uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water. (Discharges or flows from fire-fighting activities are excluded from the effective prohibition against nonstormwater and need only be addressed where they are identified as significant sources of pollutants to surface waters.)

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(4) NOTE: The department recommends that the plan to detect and address illicit discharges include the following four components: (i) procedures for locating priority areas likely to have illicit discharges, (ii) procedures for tracing the source of an illicit discharge, (iii) procedures for removing the source of the discharge, and (iv) procedures for program evaluation and assessment. The department recommends visually screening outfalls during dry weather and conducting field tests of selected pollutants as part of the procedures for locating priority areas. Illicit discharge education actions may include storm drain stenciling; a program to promote, publicize, and facilitate public reporting of illicit connections or discharges; and distribution of outreach materials.

d. Construction site stormwater runoff control.

(1) You must develop, implement, and enforce a program to reduce pollutants in any stormwater runoff to your small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre, or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act. Reduction of stormwater discharges from construction activity disturbing less than one acre must be included in your program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If the department waives requirements for stormwater discharges associated with small construction activity in accordance with the definition in 9VAC25-875-20, you are not required to develop, implement, or enforce a program to reduce pollutant discharges from such sites.

(2) Your program must include the development and implementation of, at a minimum:

(a) An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under state, tribal, or local law;

(b) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

(c) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

(d) Procedures for site plan review which incorporate consideration of potential water quality impacts;

(e) Procedures for receipt and consideration of information submitted by the public; and

(f) Procedures for site inspection and enforcement of control measures.

(3) NOTE: Examples of sanctions to ensure compliance include nonmonetary penalties, fines, bonding requirements, or permit denials for noncompliance. The department recommends that procedures for site plan review include the review of individual pre-construction site plans to ensure consistency with erosion and sediment control requirements. Procedures for site inspections and enforcement of control measures could include steps to identify priority sites for inspection and enforcement based on the nature of the construction activity, topography, and the characteristics of soils and receiving water quality. You are encouraged to provide appropriate educational and training measures for construction site operators. You may wish to require a stormwater pollution prevention plan for construction sites within your jurisdiction that discharge into your system. (See 9VAC25-875-1030 L and subdivision E 2 of this section.) The department may recognize that another government entity may be responsible for implementing one or more of the minimum measures on your behalf.

e. Post-construction stormwater management in new development and redevelopment.

(1) You must develop, implement, and enforce a program to address stormwater runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into your small MS4. Your program must ensure that controls are in place that would prevent or minimize water quality impacts.

(2) You must:

(a) Develop and implement strategies that include a combination of structural and nonstructural best management practices (BMPs) appropriate for your community;

(b) Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under state, tribal, or local law; and

(c) Ensure adequate long-term operation and maintenance of BMPs.

(3) NOTE: If water quality impacts are considered from the beginning stages of a project, new development and potentially redevelopment provide more opportunities for water quality protection. The department recommends that the BMPs chosen be appropriate for the local community, minimize water quality impacts, and attempt to maintain pre-development runoff conditions. In choosing appropriate BMPs, the department encourages you to participate in locally based watershed planning efforts that attempt to involve a diverse group of stakeholders, including interested citizens. When developing a program that is consistent with this measure's intent, the department recommends that you adopt a planning process that

identifies the municipality's program goals (e.g., minimize water quality impacts resulting from post-construction runoff from new development and redevelopment), implementation strategies (e.g., adopt a combination of structural and nonstructural BMPs), operation and maintenance policies and procedures, and enforcement procedures. In developing your program, you should consider assessing existing ordinances, policies, programs, and studies that address stormwater runoff quality. In addition to assessing these existing documents and programs, you should provide opportunities to the public to participate in the development of the program. Nonstructural BMPs are preventative actions that involve management and source controls such as: (i) policies and ordinances that provide requirements and standards to direct growth to identified areas, protect sensitive areas such as wetlands and riparian areas, maintain and increase open space (including a dedicated funding source for open space acquisition), provide buffers along sensitive water bodies, minimize impervious surfaces, and minimize disturbance of soils and vegetation; (ii) policies or ordinances that encourage infill development in higher density urban areas, and areas with existing infrastructure; (iii) education programs for developers and the public about project designs that minimize water quality impacts; and (iv) measures such as minimization of percent impervious area after development and minimization of directly connected impervious areas. Structural BMPs include: storage practices such as wet ponds and extended-detention outlet structures; filtration practices such as grassed swales, sand filters, and filter strips; and infiltration practices such as infiltration basins and infiltration trenches. The department recommends that you ensure the appropriate implementation of the structural BMPs by considering some or all of the following: pre-construction review of BMP designs; inspections during construction to verify BMPs are built as designed; post-construction inspection and maintenance of BMPs; and penalty provisions for the noncompliance with design, construction, or operation and maintenance. Stormwater technologies are constantly being improved, and the department recommends that your requirements be responsive to these changes, developments, or improvements in control technologies.

f. Pollution prevention/good housekeeping for municipal operations.

(1) You must develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials that are available from EPA, state, tribe, or other organizations, your program must include employee training to prevent and reduce stormwater pollution from activities such as park and open space maintenance, fleet

and building maintenance, new construction and land disturbances, and stormwater system maintenance.

(2) NOTE: The department recommends that, at a minimum, you consider the following in developing your program: maintenance activities, maintenance schedules, and long-term inspection procedures for structural and nonstructural stormwater controls to reduce floatables and other pollutants discharged from your separate storm sewers; controls for reducing or eliminating the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, fleet or maintenance shops with outdoor storage areas, salt/sand storage locations and snow disposal areas operated by you, and waste transfer stations; procedures for properly disposing of waste removed from the separate storm sewers and areas listed above (such as dredge spoil, accumulated sediments, floatables, and other debris); and ways to ensure that new flood management projects assess the impacts on water quality and examine existing projects for incorporating additional water quality protection devices or practices. Operation and maintenance should be an integral component of all stormwater management programs. This measure is intended to improve the efficiency of these programs and require new programs where necessary. Properly developed and implemented operation and maintenance programs reduce the risk of water quality problems.

3. If an existing VESMP requires you to implement one or more of the minimum control measures of subdivision 2 of this subsection, the department may include conditions in your permit that direct you to follow that VESMP's requirements rather than the requirements of subdivision 2 of this subsection. A VESMP is a local, state, or tribal municipal stormwater management program that imposes, at a minimum, the relevant requirements of subdivision 2 of this subsection.

4. a. In your permit application (either a registration statement for coverage under a general permit or an individual permit application), you must identify and submit to the department the following information:

(1) The best management practices (BMPs) that you or another entity will implement for each of the stormwater minimum control measures provided in subdivision 2 of this subsection;

(2) The measurable goals for each of the BMPs including, as appropriate, the months and years in which you will undertake required actions, including interim milestones and the frequency of the action; and

(3) The person responsible for implementing or coordinating your stormwater management program.

b. If you obtain coverage under a general permit, you are not required to meet any measurable goals identified in your registration statement in order to demonstrate

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compliance with the minimum control measures in subdivisions 2 c through f of this subsection unless, prior to submitting your registration statement, EPA or the department has provided or issued a menu of BMPs that addresses each such minimum measure. Even if no regulatory authority issues the menu of BMPs, however, you still must comply with other requirements of the general permit, including good faith implementation of BMPs designed to comply with the minimum measures.

c. NOTE: Either EPA or the department will provide a menu of BMPs. You may choose BMPs from the menu or select others that satisfy the minimum control measures.

5. a. You must comply with any more stringent effluent limitations in your permit, including permit requirements that modify or are in addition to the minimum control measures based on an approved total maximum daily load (TMDL) or equivalent analysis. The department may include such more stringent limitations based on a TMDL or equivalent analysis that determines such limitations are needed to protect water quality.

b. NOTE: The department strongly recommends that until the evaluation of the stormwater program in subsection G of this section, no additional requirements beyond the minimum control measures be imposed on regulated small MS4s without the agreement of the operator of the affected small MS4, except where an approved TMDL or equivalent analysis provides adequate information to develop more specific measures to protect water quality.

6. You must comply with other applicable permit requirements, standards and conditions established in the individual or general permit developed consistent with the provisions of 9VAC25-31-190 through 9VAC25-31-250, as appropriate.

7. Evaluation and assessment.

a. You must evaluate program compliance, the appropriateness of your identified best management practices, and progress towards achieving your identified measurable goals. The department may determine monitoring requirements for you in accordance with monitoring plans appropriate to your watershed. Participation in a group monitoring program is encouraged.

b. You must keep records required by the permit for at least three years. You must submit your records to the department only when specifically asked to do so. You must make your records, including a description of your stormwater management program, available to the public at reasonable times during regular business hours (see 9VAC25-875-900 for confidentiality provision). You may assess a reasonable charge for copying. You may require a member of the public to provide advance notice.

c. Unless you are relying on another entity to satisfy your permit obligations under subdivision E 1 of this section,

you must submit annual reports to the department for your first permit term. For subsequent permit terms, you must submit reports in years two and four unless the department requires more frequent reports. As of the start date in Table 1 of 9VAC25-31-1020, all reports submitted in compliance with this subsection shall be submitted electronically by the owner, operator, or the duly authorized representative of the small MS4 to the department in compliance with this section and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-875-940, 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, the owner, operator, or the duly authorized representative of the small MS4 may be required to report electronically if specified by a particular permit. Your report must include:

(1) The status of compliance with permit conditions, an assessment of the appropriateness of your identified best management practices and progress towards achieving your identified measurable goals for each of the minimum control measures;

(2) Results of information collected and analyzed, including monitoring data, if any, during the reporting period;

(3) A summary of the stormwater activities you plan to undertake during the next reporting cycle;

(4) A change in any identified best management practices or measurable goals for any of the minimum control measures; and

(5) Notice that you are relying on another governmental entity to satisfy some of your permit obligations (if applicable).

E. As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?

1. You may rely on another entity to satisfy your permit obligations to implement a minimum control measure if:

a. The other entity, in fact, implements the control measure;

b. The particular control measure, or component thereof, is at least as stringent as the corresponding permit requirement; and

c. The other entity agrees to implement the control measure on your behalf. In the reports you must submit under subdivision D 7 c of this section, you must also specify that you rely on another entity to satisfy some of your permit obligations. If you are relying on another governmental entity regulated under the permit program to satisfy all of your permit obligations, including your

obligation to file periodic reports required by subdivision D 7 c of this section, you must note that fact in your registration statement, but you are not required to file the periodic reports. You remain responsible for compliance with your permit obligations if the other entity fails to implement the control measure (or component thereof). Therefore, the department encourages you to enter into a legally binding agreement with that entity if you want to minimize any uncertainty about compliance with your permit.

2. In some cases, the department may recognize, either in your individual permit or in a general permit, that another governmental entity is responsible under a permit for implementing one or more of the minimum control measures for your small MS4. Where the department does so, you are not required to include such minimum control measure(s) in your stormwater management program. Your permit may be reopened and modified to include the requirement to implement a minimum control measure if the entity fails to implement it.

F. As an operator of a regulated small MS4, what happens if I don't comply with the application or permit requirements in subsections C, D, E of this section? Permits are enforceable under the Clean Water Act and the Virginia Erosion and Stormwater Management Act. Violators may be subject to the enforcement actions and penalties described in Clean Water Act §§ 309(b), (c), and (g) and 505 or under §§ 62.1-44.15:39 through 62.1-44.15:48 of the Code of Virginia and Article 5 of the State Water Control Law. Compliance with a permit issued pursuant to § 402 of the Clean Water Act is deemed compliance, for purposes of §§ 309 and 505, with §§ 301, 302, 306, 307, and 403, except any standard imposed under § 307 for toxic pollutants injurious to human health. If you are covered as a state co-permittee under an individual permit or under a general permit by means of a joint registration statement, you remain subject to the enforcement actions and penalties for the failure to comply with the terms of the permit in your jurisdiction except as set forth in subdivision E 2 of this section.

G. Will the small MS4 stormwater program regulations at subsections B through F of this section change in the future? EPA intends to conduct an enhanced research effort and compile a comprehensive evaluation of the NPDES MS4 stormwater program. The board will reevaluate the regulations based on data from the EPA NPDES MS4 stormwater program, from research on receiving water impacts from stormwater, and the effectiveness of best management practices (BMPs), as well as other relevant information sources.

9VAC25-875-980. General permits.

A. The department may issue a general permit in accordance with the following:

1. The general permit shall be written to cover one or more categories or subcategories of discharges, except those covered by individual permits, within a geographic area. The area should correspond to existing geographic or political boundaries, such as:

- a. Designated planning areas under §§ 208 and 303 of CWA;
- b. Sewer districts or sewer authorities;
- c. City, county, or state political boundaries;
- d. State highway systems;
- e. Standard metropolitan statistical areas as defined by the Office of Management and Budget;
- f. Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202 (May 1, 1974); or
- g. Any other appropriate division or combination of boundaries.

2. The general permit may be written to regulate one or more categories within the area described in subdivision 1 of this subsection, where the sources within a covered subcategory of discharges are stormwater point sources.

3. Where sources within a specific category of dischargers are subject to water quality-based limits imposed pursuant to 9VAC25-875-1030, the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations.

4. The general permit must clearly identify the applicable conditions for each category or subcategory of dischargers covered by the permit.

5. The general permit may exclude specified sources or areas from coverage.

B. Administration.

1. General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of this chapter.

2. Authorization to discharge.

- a. Except as provided in subdivisions 2 e and 2 f of this subsection, dischargers seeking coverage under a general permit shall submit to the department a written notice of intent to be covered by the general permit. A discharger who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge, under the terms of the general permit unless the general permit, in accordance with subdivision 2 e of this subsection, contains a provision that a notice of intent is not required or the department notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with subdivision 2 f of this subsection. A complete and timely notice of intent (NOI) to be covered in accordance with

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general permit requirements fulfills the requirements for permit applications for the purposes of this chapter. As of the start date in Table 1 of 9VAC25-31-1020, all notices of intent submitted in compliance with this subdivision shall be submitted electronically by the discharger (or treatment works treating domestic sewage) to the department in compliance with this subdivision 2 and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-875-940, 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, dischargers or treatment works treating domestic sewage may be required to report electronically if specified by a particular permit.

b. The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving stream, and other required data elements as identified in Appendix A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030. All notices of intent shall be signed in accordance with 9VAC25-875-940.

c. General permits shall specify the deadlines for submitting notices of intent to be covered and the date or dates when a discharger is authorized to discharge under the permit.

d. General permits shall specify whether a discharger that has submitted a complete and timely notice of intent to be covered in accordance with the general permit and that is eligible for coverage under the permit is authorized to discharge in accordance with the permit either upon receipt of the notice of intent by the department after a waiting period specified in the general permit on a date specified in the general permit or upon receipt of notification of inclusion by the department. Coverage may be terminated or revoked in accordance with subdivision 3 of this subsection.

e. Stormwater discharges associated with small construction activity may, at the discretion of the department, be authorized to discharge under a general permit without submitting a notice of intent where the department finds that a notice of intent requirement would be inappropriate. In making such a finding, the department shall consider the (i) type of discharge, (ii) expected nature of the discharge, (iii) potential for toxic and conventional pollutants in the discharges, (iv) expected volume of the discharges, (v) other means of identifying discharges covered by the permit, and (vi) estimated number of discharges to be covered by the permit. The department

shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

f. The department may notify a discharger that it is covered by a general permit, even if the discharger has not submitted a notice of intent to be covered. A discharger so notified may request an individual permit under subdivision 3 c of this subsection.

3. Requiring an individual permit.

a. The department may require any discharger authorized by a general permit to apply for and obtain an individual permit. Any interested person may request the department to take action under this subdivision. Cases where an individual permit may be required include the following:

(1) The discharger is not in compliance with the conditions of the general permit;

(2) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

(3) Effluent limitation guidelines are promulgated for point sources covered by the general permit;

(4) A water quality management plan, established by the department pursuant to 9VAC25-720, containing requirements applicable to such point sources is approved;

(5) Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;

(6) The discharge is a significant contributor of pollutants. In making this determination, the department may consider the following factors:

(a) The location of the discharge with respect to surface waters;

(b) The size of the discharge;

(c) The quantity and nature of the pollutants discharged to surface waters; and

(d) Other relevant factors;

b. Permits required on a case-by-case basis.

(1) The department may determine, on a case-by-case basis, that certain stormwater discharges, and certain other facilities covered by general permits that do not generally require an individual permit may be required to obtain an individual permit because of their contributions to water pollution.

(2) Whenever the department decides that an individual permit is required under this subsection, except as provided in subdivision 3 b (3) of this subsection, the department shall notify the discharger in writing of that decision and the reasons for it and shall send an application form with the notice. The discharger must apply for a permit within 60 days of notice, unless

permission for a later date is granted by the department. The question whether the designation was proper will remain open for consideration during the public comment period for the draft permit and in any subsequent public hearing.

(3) Prior to a case-by-case determination that an individual permit is required for a stormwater discharge under this subsection, the department may require the discharger to submit a permit application or other information regarding the discharge under the State Water Control Law and § 308 of the CWA. In requiring such information, the department shall notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a permit under 9VAC25-875-950 A 1 within 60 days of notice or under 9VAC25-875-950 A 8 within 180 days of notice, unless permission for a later date is granted by the department. The question whether the initial designation was proper will remain open for consideration during the public comment period for the draft permit and in any subsequent public hearing.

c. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under 9VAC25-875-920 with reasons supporting the request. The request shall be processed under the applicable parts of this chapter. The request shall be granted by issuing of an individual permit if the reasons cited by the owner or operator are adequate to support the request.

d. When an individual permit is issued to an owner or operator otherwise subject to a general permit, the applicability of the general permit to the individual permit permittee is automatically terminated on the effective date of the individual permit.

e. A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

9VAC25-875-990. New sources and new discharges.

A. Criteria for new source determination.

1. Except as otherwise provided in an applicable new source performance standard, a source is a new source if the source meets the definition of new source in this chapter and

- a. The source is constructed at a site at which no other source is located;
- b. The source totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
- c. The source's processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the

department shall consider such factors as the extent to which the new facility is integrated with the existing plant and the extent to which the new facility is engaged in the same general type of activity as the existing source.

2. A source meeting the requirements of subdivision 1 a, b, or c of this subsection is a new source only if a new source performance standard is independently applicable to it. If there is no such independently applicable standard, the source is a new discharger.

3. Construction on a site at which an existing source is located results in a permit modification subject to 9VAC25-875-1230 rather than a new source (or a new discharger) if the construction does not create a new building, structure, facility, or installation meeting the criteria of subdivision 1 b or c of this subsection but otherwise alters, replaces, or adds to existing process or production equipment.

4. Construction of a new source has commenced if the owner or operator has:

a. Begun, or caused to begin as part of a continuous onsite construction program:

(1) Any placement, assembly, or installation of facilities or equipment; or

(2) Significant site preparation work, including clearing, excavation, or removal of existing buildings, structures, or facilities that is necessary for the placement, assembly, or installation of new source facilities or equipment; or

b. Entered into a binding contractual obligation for the purchase of facilities or equipment that are intended to be used in the new source's operation within a reasonable time. Options to purchase or contracts that can be terminated or modified without substantial loss and contracts for feasibility engineering, and design studies do not constitute a contractual obligation under this subdivision 4 b.

B. Effect of compliance with new source performance standards. The provisions of this subsection do not apply to existing sources that modify the existing sources' pollution control facilities or construct new pollution control facilities and achieve performance standards, but that are neither new sources nor new dischargers or otherwise do not meet the requirements of this subsection.

1. Except as provided in subdivision 2 of this subsection, any new discharger, the construction of which commenced after October 18, 1972, or new source that meets the applicable promulgated new source performance standards before the commencement of discharge may not be subject to any more stringent new source performance standards or to any more stringent technology-based standards under § 301(b)(2) of the CWA for the soonest ending of the following periods:

a. 10 years from the date that construction is completed;

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b. 10 years from the date the source begins to discharge process or other nonconstruction related wastewater; or

c. The period of depreciation or amortization of the facility for the purposes of § 167 or 169 (or both) of the Internal Revenue Code of 1954 (26 USC § 167 and 26 USC § 169, respectively).

2. The protection from more stringent standards of performance afforded by subdivision 1 of this subsection does not apply to:

a. Additional or more stringent permit conditions that are not technology based; for example, conditions based on water quality standards, or toxic effluent standards or prohibitions under the State Water Control Law and § 307(a) of the CWA; or

b. Additional permit conditions controlling toxic pollutants or hazardous substances that are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic pollutants or hazardous substances when control of these pollutants has been specifically identified as the method to control the toxic pollutants or hazardous substances.

3. When a separate VPDES or permit issued to a source with a protection period under subdivision 1 of this subsection will expire on or after the expiration of the protection period, that permit shall require the owner or operator of the source to comply with the requirements of § 301 of the CWA and any other then applicable requirements of the CWA and the State Water Control Law immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements may be allowed except when necessary to achieve compliance with requirements promulgated less than three years before the expiration of the protection period.

4. The owner or operator of a new source, a new discharger that commenced discharge after August 13, 1979, or a recommencing discharger shall install and have in operating condition and shall start up all pollution control equipment required to meet the conditions of its permits before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), the owner or operator must meet all permit conditions. The requirements of this subdivision do not apply if the owner or operator is issued a permit containing a compliance schedule under 9VAC25-875-1060 A 2.

5. After the effective date of new source performance standards, it shall be unlawful for any owner or operator of any new source to operate the source in violation of those standards applicable to the source.

Article 4 Permit Conditions

9VAC25-875-1000. Conditions applicable to all permits.

A. The following conditions apply to all permits. Additional conditions applicable to permits are in 9VAC25-875-1010. All conditions applicable to permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to this regulation must be given in the permit.

B. The permittee shall comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the CWA, except that noncompliance with certain provisions of the permit may constitute a violation of the State Water Control Law but not the CWA. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, modification, or denial of a permit renewal application.

The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the CWA for toxic pollutants within the time provided in the chapters that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

C. If the permittee wishes to continue an activity regulated by the permit after the expiration date of the permit, the permittee must apply for and obtain a new permit.

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

E. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of the permit that has a reasonable likelihood of adversely affecting human health or the environment.

F. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

G. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

H. Permits do not convey any property rights of any sort, or any exclusive privilege.

I. The permittee shall furnish to the department, within a reasonable time, any information that the department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. The department may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from the permittee's discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the Virginia Erosion and Stormwater Management Act. The permittee shall also furnish to the department upon request, copies of records required to be kept by the permit.

J. The permittee shall allow the director, the department, or an authorized representative (including an authorized contractor acting as a representative of the administrator), upon presentation of credentials and other documents as may be required by law, to:

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

K. Monitoring and records.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit, for a period of at least three years from the date of the sample, measurement, report, or application. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the department.
3. Records of monitoring information shall include:
 - a. The date, exact place, and time of sampling or measurements;
 - b. The individual who performed the sampling or measurements;

- c. The dates analyses were performed;
- d. The individual who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results of such analyses.

4. Monitoring results must be conducted according to test procedures approved under 40 CFR Part 136 or alternative EPA approved methods, unless other test procedures have been specified in the permit. Analyses performed according to test procedures approved under 40 CFR Part 136 shall be performed by an environmental laboratory certified under regulations adopted by the Department of General Services (1VAC30-45 or 1VAC30-46).

L. All applications, reports, or information submitted to the VESMP authority and department shall be signed and certified as required by 9VAC25-875-940.

M. Reporting requirements.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:
 - a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 9VAC25-875-990 A; or
 - b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in the permit.
2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.
3. Permits are not transferable to any person except in accordance with 9VAC25-875-1220.
4. Monitoring results shall be reported at the intervals specified in the permit.
 - a. Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the department. As of the start date in Table 1 of 9VAC25-31-1020, all reports and forms submitted in compliance with this subdivision shall be submitted electronically by the permittee to the department in compliance with this section and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-875-940, 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.
 - b. If the permittee monitors any pollutant specifically addressed by the permit more frequently than required by

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the permit using test procedures approved under 40 CFR Part 136 or as otherwise specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.

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

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

6. If any unusual or extraordinary discharge including a bypass or upset should occur from a facility and such discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of such discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with subdivision 7 a of this subsection. Unusual and extraordinary discharges include any discharge resulting from:

- a. Unusual spillage of materials resulting directly or indirectly from processing operations;
- b. Breakdown of processing or accessory equipment;
- c. Failure or taking out of service of the treatment plant or auxiliary facilities (such as sewer lines or wastewater pump stations); and
- d. Flooding or other acts of nature.

7. Twenty-four hour and five-day reporting.

a. The permittee shall report any noncompliance that may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A report in the format required by the department shall also be provided within five days of the time the permittee becomes aware of the circumstances. The five-day report shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(1) For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports must include the data described in subdivision 7 a of this subsection (with the exception of time of discovery), as well as the type of event (i.e., combined sewer overflows, sanitary sewer overflows, or

bypass events); type of sewer overflow structure (e.g., manhole, combine sewer overflow outfall); discharge volumes untreated by the treatment works treating domestic sewage; types of human health and environmental impacts of the sewer overflow event; and whether the noncompliance was related to wet weather.

(2) As of the start date in Table 1 of 9VAC25-31-1020, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this subdivision 7 shall be submitted electronically by the permittee to the department in compliance with this subdivision 7 and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-875-940, 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 electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this subdivision 7 by a particular permit.

(3) The director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this subdivision 7.

b. The following shall be reported within 24 hours under this subdivision:

(1) Any unanticipated bypass that exceeds any effluent limitation in the permit.

(2) Any upset that exceeds any effluent limitation in the permit.

(3) Violation of a maximum daily discharge limitation for any of the pollutants listed in the permit to be reported within 24 hours.

c. The department may waive the five-day report on a case-by-case basis for reports under this subdivision if the oral report has been received within 24 hours.

8. The permittee shall report all instances of noncompliance not reported under subdivisions 4, 5, 6, and 7 of this subsection, in the format required by the department, at the time the next monitoring reports are submitted. The reports shall contain the information listed in subdivision 7 of this subsection.

a. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports shall contain the information described in subdivision 7 a of this subsection and the applicable required data in Appendix A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030.

b. As of the start date in Table 1 of 9VAC25-31-1020, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in

compliance with this subdivision 8 shall be submitted electronically by the permittee to the department in compliance with this subdivision 8 and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-875-940, 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 electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit.

c. The director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section.

9. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the department, it shall promptly submit such facts or information.

10. The owner, operator, or the duly authorized representative of an VPDES-regulated entity is required to electronically submit the required information, as specified in Appendix A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030, to the department.

N. Bypass.

1. The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of subdivisions 2 and 3 of this subsection.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass. As of the start date in Table 1 of 9VAC25-31-1020, all notices submitted in compliance with this subdivision shall be submitted electronically by the permittee to the department in compliance with this subsection and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-875-940, 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.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in subdivision M 7

of this section. As of the start date in Table 1 of 9VAC25-31-1020, all notices submitted in compliance with this subdivision shall be submitted electronically by the permittee to the department in compliance with this subdivision and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-875-940, 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.

3. Prohibition of bypass.

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

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

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

(3) The permittee submitted notices as required under subdivision 2 of this subsection.

b. The department may approve an anticipated bypass, after considering its adverse effects, if the department determines that it will meet the three conditions listed in subdivision 3 a of this subsection.

O. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of subdivision 2 of this subsection are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

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

a. An upset occurred and that the permittee can identify the cause of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in subdivision M 7 b (2) of this section (24-hour notice); and

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d. The permittee complied with any remedial measures required under subsection E of this section.

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

9VAC25-875-1010. Additional conditions applicable to municipal separate storm sewer system permits.

In addition to those conditions set forth in 9VAC25-875-1000, the operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the department under 9VAC25-875-950 A 1 e must submit an annual report by a date specified in the permit for such system. As of the start date in Table 1 of 9VAC25-31-1020, all reports submitted in compliance with this section shall be submitted electronically by the owner, operator, or the duly authorized representative of the MS4 to the department in compliance with this section and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-875-940, 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, the owner, operator, or the duly authorized representative of the small MS4 may be required to report electronically if specified by a particular permit. The report shall include:

1. The status of implementing the components of the stormwater management program that are established as permit conditions;

2. Proposed changes to the stormwater management programs that are established as permit conditions. Such proposed changes shall be consistent with 9VAC25-875-950 C 2 d;

3. Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application;

4. A summary of data, including monitoring data, that is accumulated throughout the reporting year;

5. Annual expenditures and budget for year following each annual report;

6. A summary describing the number and nature of enforcement actions, inspections, and public education programs; and

7. Identification of water quality improvements or degradation.

9VAC25-875-1020. Establishing permit conditions.

A. In addition to conditions required in all permits, the department shall establish conditions, as required on a case-by-case basis, to provide for and ensure compliance with all applicable requirements of the Virginia Erosion and Stormwater Management Act, the State Water Control Law,

the CWA, and attendant regulations. These shall include conditions under 9VAC25-875-1050 (duration of permits), 9VAC25-875-1060 (schedules of compliance), 9VAC25-875-1030 (monitoring), electronic reporting requirements of 40 CFR Part 3, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.

B. 1. An applicable requirement is a state statutory or regulatory requirement that takes effect prior to final administrative disposition of a permit. An applicable requirement is also any requirement that takes effect prior to the modification or revocation and reissuance of a permit to the extent allowed in Article 6 (9VAC25-875-1210 et seq.) of this part.

2. New or reissued permits, and to the extent allowed under Article 6 of this part modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in 9VAC25-875-1030 and 9VAC25-875-1040.

C. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

9VAC25-875-1030. Establishing limitations, standards, and other permit conditions.

A. In addition to the conditions established under 9VAC25-875-1020 A, each permit shall include conditions meeting the following requirements when applicable.

1. Technology-based effluent limitations and standards based on effluent limitations and standards promulgated under § 301 of the CWA, on new source performance standards promulgated under § 306 of CWA, on case-by-case effluent limitations determined under § 402(a)(1) of CWA, or a combination of the three. For new sources or new dischargers, these technology-based limitations and standards are subject to the provisions of 9VAC25-875-990 B (protection period).

2. The department may authorize a discharger subject to technology-based effluent limitations guidelines and standards in a permit to forgo sampling of a pollutant found at 40 CFR Subchapter N if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. This waiver is good only for the term of the permit and is not available during the term of the first permit issued to a discharger. Any request for this waiver must be submitted when applying for a reissued permit or modification of a reissued permit. The request must demonstrate through sampling or other technical information, including information generated during an earlier permit term, that the

pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. Any grant of the monitoring waiver must be included in the permit as an express permit condition, and the reasons supporting the grant must be documented in the permit's fact sheet or statement of basis. This provision does not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards.

B. Other effluent limitations and standards under §§ 301, 302, 303, 307, 318, and 405 of the CWA. If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under § 307(a) of the CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the department shall institute proceedings under this chapter to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

C. Water quality standards and state requirements. Any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under §§ 301, 304, 306, 307, 318, and 405 of the CWA necessary to:

1. Achieve water quality standards established under the State Water Control Law and § 303 of the CWA, including state narrative criteria for water quality.

a. Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) that the department determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any Virginia water quality standard, including Virginia narrative criteria for water quality.

b. When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a Virginia water quality standard, the department shall use procedures that account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.

c. When the department determines, using the procedures in subdivision 1 b of this subsection, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a Virginia numeric criteria within a Virginia water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.

d. Except as provided in this subdivision, when the department determines, using the procedures in subdivision 1 b of this subsection, toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable Virginia water quality standard, the permit must contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the department demonstrates in the fact sheet or statement of basis of the permit, using the procedures in subdivision 1 b of this subsection, that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative Virginia water quality standards.

e. Where Virginia has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable Virginia water quality standard, the department must establish effluent limits using one or more of the following options:

(1) Establish effluent limits using a calculated numeric water quality criterion for the pollutant that the department demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed Virginia criterion, or an explicit policy or regulation interpreting Virginia's narrative water quality criterion, supplemented with other relevant information that may include EPA's Water Quality Standards Handbook, August 1994, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents;

(2) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under § 307(a) of the CWA, supplemented where necessary by other relevant information; or

(3) Establish effluent limitations on an indicator parameter for the pollutant of concern, provided:

(a) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;

(b) The fact sheet required by 9VAC25-875-1090 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern that are sufficient to attain and maintain applicable water quality standards;

(c) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

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(d) The permit contains a reopener clause allowing the department to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

f. When developing water quality-based effluent limits under this subdivision 1 the department shall ensure that:

(1) The level of water quality to be achieved by limits on point sources established under this subsection is derived from and complies with all applicable water quality standards; and

(2) Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by Virginia and approved by EPA pursuant to 40 CFR 130.7;

2. Attain or maintain a specified water quality through water quality related effluent limits established under the State Water Control Law and § 302 of the CWA;

3. Conform to the conditions of a Virginia Water Protection Permit (VWPP) issued under the State Water Control Law and § 401 of the CWA;

4. Conform to applicable water quality requirements under § 401(a)(2) of the CWA when the discharge affects a state other than Virginia;

5. Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under the State Water Control Law or regulations in accordance with § 301(b)(1)(C) of the CWA;

6. Ensure consistency with the requirements of a Water Quality Management Plan established by the State Water Control Board pursuant to 9VAC25-720 and approved by EPA under § 208(b) of the CWA;

7. Incorporate § 403(c) criteria under 40 CFR Part 125, Subpart M, for ocean discharges; or

8. Incorporate alternative effluent limitations or standards where warranted by fundamentally different factors, under 40 CFR Part 125, Subpart D.

D. Technology-based controls for toxic pollutants. Limitations established under subsection A, B, or C of this section, to control pollutants meeting the criteria listed in subdivision 1 of this subsection. Limitations will be established in accordance with subdivision 2 of this subsection. An explanation of the development of these limitations shall be included in the fact sheet.

1. Limitations must control all toxic pollutants that the department determines (based on information reported in a permit application or in a notification required by the permit or on other information) are or may be discharged at a level greater than the level that can be achieved by the technology-

based treatment requirements appropriate to the permittee; or

2. The requirement that the limitations control the pollutants meeting the criteria of subdivision 1 of this subsection will be satisfied by:

a. Limitations on those pollutants; or

b. Limitations on other pollutants that, in the judgment of the department, will provide treatment of the pollutants under subdivision 1 of this subsection to the levels required by the Virginia Erosion and Stormwater Management Act, the State Water Control Law, and 40 CFR Part 125, Subpart A.

E. A notification level that exceeds the notification level of 9VAC25-31-200, upon a petition from the permittee or on the department's initiative. This new notification level may not exceed the level that can be achieved by the technology-based treatment requirements appropriate to the permittee.

F. Twenty-four-hour reporting. Pollutants for which the permittee must report violations of maximum daily discharge limitations under 9VAC25-875-1000 M 7 b (3) (24-hour reporting) shall be listed in the permit. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

G. Durations for permits, as set forth in 9VAC25-875-1050.

H. Monitoring requirements.

1. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

2. Required monitoring including type, intervals, and frequency sufficient to yield data that are representative of the monitored activity, including, when appropriate, continuous monitoring;

3. Applicable reporting requirements based upon the impact of the regulated activity and as specified in 9VAC25-875-1000, subdivisions 5 through 8 of this subsection, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Reporting shall be no less frequent than specified in the regulations cited in this subdivision;

4. To ensure compliance with permit limitations, requirements to monitor:

a. The mass (or other measurement specified in the permit) for each pollutant limited in the permit;

b. The volume of effluent discharged from each outfall;

c. Other measurements as appropriate, including pollutants; frequency, rate of discharge, etc., for noncontinuous discharges; pollutants subject to notification requirements; or as determined to be

necessary on a case-by-case basis pursuant to the Virginia Erosion and Stormwater Management Act, the State Water Control Law, and § 405(d)(4) of the CWA;

d. According to test procedures approved under 40 CFR Part 136 for the analyses of pollutants having approved methods under that part, or alternative EPA approved methods, and according to a test procedure specified in the permit for pollutants with no approved methods; and

e. With analyses performed according to test procedures approved under 40 CFR Part 136 being performed by an environmental laboratory certified under regulations adopted by the Department of General Services (1VAC30-45 or 1VAC30-46).

5. Except as provided in subdivisions 7 and 8 of this subsection, requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year. All results shall be electronically reported in compliance with 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-875-940, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation;

6. Requirements to report monitoring results for stormwater discharges associated with industrial activity that are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year;

7. Requirements to report monitoring results for stormwater discharges (other than those addressed in subdivision 6 of this subsection) shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge must require:

a. The discharger to conduct an annual inspection of the facility site to identify areas contributing to a stormwater discharge and evaluate whether measures to reduce pollutant loading identified in a stormwater pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;

b. The discharger to maintain for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of noncompliance;

c. Such report and certification be signed in accordance with 9VAC25-875-940; and

8. Permits that do not require the submittal of monitoring result reports at least annually shall require that the permittee

report all instances of noncompliance not reported under 9VAC25-875-1000 M 1, 4, 5, 6, and 7 at least annually.

I. Best management practices to control or abate the discharge of pollutants when:

1. Authorized under § 402(p) of the CWA for the control of stormwater discharges;

2. Numeric effluent limitations are infeasible; or

3. The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the Virginia Erosion and Stormwater Management Act, the State Water Control Law, and the CWA.

J. Reissued permits.

1. In the case of effluent limitations established on the basis of § 402(a)(1)(B) of the CWA, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under § 304(b) of the CWA subsequent to the original issuance of such permit, to contain effluent limitations that are less stringent than the comparable effluent limitations in the previous permit. In the case of effluent limitations established on the basis of § 301(b)(1)(C) or § 303(d) or (e) of the CWA, a permit may not be renewed, reissued, or modified to contain effluent limitations that are less stringent than the comparable effluent limitations in the previous permit except in compliance with § 303(d)(4) of the CWA.

2. Exceptions. A permit with respect to which subdivision 1 of this subsection applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant if:

a. Material and substantial alterations or additions to the permitted facility occurred after permit issuance that justify the application of a less stringent effluent limitation;

b. (1) Information is available that was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and that would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

(2) The department determines that technical mistakes or mistaken interpretations of the State Water Control Law were made in issuing the permit under § 402(a)(1)(B) of the CWA;

c. A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

d. The permittee has received a permit modification under the Virginia Erosion and Stormwater Management Act, the State Water Control Law, and § 301(c), (g), (h), (i), (k), and (n), or 316(a) of the CWA; or

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e. The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

Subdivision 2 b of this subsection shall not apply to any revised wasteload allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumulative effect of such revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters, and such revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of the State Water Control Law or the CWA or for reasons otherwise unrelated to water quality.

3. In no event may a permit with respect to which subdivision 2 of this subsection applies be renewed, reissued, or modified to contain an effluent limitation that is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a Virginia water quality standard applicable to such waters.

K. Navigation. Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired in accordance with 9VAC25-875-1170.

L. Qualifying state, tribal, or local programs.

1. For stormwater discharges associated with small construction activity defined in 9VAC25-875-20, the department may include permit conditions that incorporate qualifying state, tribal, or local erosion and sediment control program requirements by reference. Where a qualifying state, tribal, or local program does not include one or more of the elements in this subdivision, then the department must include those elements as conditions in the permit. A qualifying state, tribal, or local erosion and sediment control program is one that includes:

a. Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

b. Requirements for construction site operators to control waste, such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste, at the

construction site that may cause adverse impacts to water quality;

c. Requirements for construction site operators to develop and implement a stormwater pollution prevention plan. A stormwater pollution prevention plan includes site descriptions; descriptions of appropriate control measures; copies of approved state, tribal, or local requirements; maintenance procedures; inspection procedures; and identification of nonstormwater discharges; and

d. Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.

2. For stormwater discharges from construction activity that does not meet the definition of a small construction activity, the department may include permit conditions that incorporate qualifying state, tribal, or local erosion and sediment control program requirements by reference. A qualifying state, tribal, or local erosion and sediment control program is one that includes the elements listed in subdivision 1 of this subsection and any additional requirements necessary to achieve the applicable technology-based standards of "best available technology" and "best conventional technology" based on the best professional judgment of the permit writer.

9VAC25-875-1040. Calculating permit conditions.

A. Permit effluent limitations, monitoring requirements, standards and prohibitions shall be established for each outfall or discharge point of the permitted facility, except as otherwise provided under 9VAC25-875-1030.

B. All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of total recoverable metal as defined in 40 CFR Part 136 unless:

1. An applicable effluent standard or limitation has been promulgated under the CWA and specifies the limitation for the metal in the dissolved or valent or total form; or

2. In establishing permit limitations on a case-by-case basis under 40 CFR 125.3, it is necessary to express the limitation on the metal in the dissolved or valent or total form to carry out the provisions of the CWA, Virginia Erosion and Stormwater Management Act, and the State Water Control Law; or

3. All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium).

C. Discharges that are not continuous, as defined in 9VAC25-875-850, shall be particularly described and limited, considering the following factors, as appropriate:

1. Frequency;

2. Total mass;

3. Maximum rate of discharge of pollutants during the discharge; and

4. Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure.

D. Mass limitations.

1. All pollutants limited in permits shall have limitations, standards, or prohibitions expressed in terms of mass except:

a. For pH, temperature, radiation, or other pollutants that cannot appropriately be expressed by mass;

b. When applicable standards and limitations are expressed in terms of other units of measurement; or

c. If in establishing technology-based permit limitations on a case-by-case basis, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation (for example, discharges of total suspended solids from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment.

2. Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations.

9VAC25-875-1050. Duration of permits.

A. Permits shall be effective for a fixed term not to exceed five years.

B. Except as provided in 9VAC25-875-890, the term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

C. The department may issue any permit for a duration that is less than the full allowable term under this section.

D. A permit may be issued to expire on or after the statutory deadline set forth in § 301(b)(2)(A), (C), and (E) of the CWA, if the permit includes effluent limitations to meet the requirements of § 301(b)(2)(A), (C), (D), (E), and (F) of the CWA, whether or not applicable effluent limitations guidelines have been promulgated or approved.

9VAC25-875-1060. Schedules of compliance.

A. The permit may, when appropriate, specify a schedule of compliance leading to compliance with the Virginia Erosion and Stormwater Management Act, the CWA, and regulations.

1. Any schedules of compliance under this section shall require compliance as soon as possible but not later than the applicable statutory deadline under the CWA.

2. The first permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three years before commencement

of the relevant discharge. For recommending dischargers, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before commencement of discharge.

3. Schedules of compliance may be established in permits for existing sources that are reissued or modified to contain new or more restrictive water quality-based effluent limitations. The schedule may allow a reasonable period of time, not to exceed the term of the permit, for the discharger to attain compliance with the water quality-based limitations.

4. Except as provided in subdivision B 1 b of this section, if a permit establishes a schedule of compliance that exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

a. The time between interim dates shall not exceed one year.

b. If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

5. The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the department in writing of its compliance or noncompliance with the interim or final requirements or submit progress reports if subdivision 4 b of this subsection is applicable.

B. A permit applicant or permittee may cease conducting regulated activities (by termination of direct discharge for sources) rather than continuing to operate and meet permit requirements as follows:

1. If the permittee decides to cease conducting regulated activities at a given time within the term of a permit that has already been issued:

a. The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

b. The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit;

2. If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination that will ensure timely compliance with applicable requirements no later than the statutory deadline;

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3. If the permittee is undecided whether to cease conducting regulated activities, the department may issue or modify a permit to contain two schedules as follows:

a. Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date that ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

b. One schedule shall lead to timely compliance with applicable requirements no later than the statutory deadline;

c. The second schedule shall lead to cessation of regulated activities by a date that will ensure timely compliance with applicable requirements no later than the statutory deadline; and

d. Each permit containing two schedules shall include a requirement that after the permittee has made a final decision under subdivision 3 a of this subsection, the permittee shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities and follow the schedule leading to termination if the decision is to cease conducting regulated activities; and

4. The permit applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the department, such as a resolution of the board of directors of a corporation.

Article 5

Public Involvement

9VAC25-875-1070. Draft permits.

A. Once an application for an individual permit is complete, the department shall tentatively decide whether to prepare a draft individual permit or to deny the application.

B. If the department tentatively decides to deny the individual permit application, the owner shall be advised of that decision and of the changes necessary to obtain approval. The owner may withdraw the application prior to department action. If the application is not withdrawn or modified to obtain the tentative approval to issue, the department shall provide public notice and opportunity for a public hearing prior to department action on the application.

C. If the department tentatively decides to issue a general permit, a draft general permit shall be prepared under subsection D of this section.

D. If the department decides to prepare a draft permit, the draft permit shall contain the following information:

1. All conditions under 9VAC25-875-1000 and 9VAC25-875-1020;

2. All compliance schedules under 9VAC25-875-1060;

3. All monitoring requirements under 9VAC25-875-1030; and

4. Effluent limitations, standards, prohibitions, and conditions under 9VAC25-875-1000, 9VAC25-875-1010, and 9VAC25-875-1030, and all variances that are to be included.

9VAC25-875-1080. Statement of basis.

A statement of basis shall be prepared for every draft permit for which a fact sheet under 9VAC25-875-1090 is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the permit applicant and, on request, to any other person.

9VAC25-875-1090. Fact sheet.

A. A fact sheet shall be prepared for every draft individual permit for a major facility or activity for every general permit, for every draft permit that incorporates a variance or requires an explanation under subsection B 8 of this section, and for every draft permit that the department finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The department shall send this fact sheet to the permit applicant and, on request, to any other person.

B. The fact sheet shall include, when applicable:

1. A brief description of the type of facility or activity that is the subject of the draft permit;

2. The type and quantity of wastes, fluids, or pollutants that are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;

3. A brief summary of the basis for the draft permit conditions, including references to applicable statutory or regulatory provisions;

4. Reasons why any requested variances or alternatives to required standards do or do not appear justified;

5. A description of the procedures for reaching a final decision on the draft permit, including:

a. The beginning and ending dates of the comment period for the draft permit and the address where comments will be received;

b. Procedures for requesting a public hearing and the nature of that hearing; and

c. Any other procedures by which the public may participate in the final decision;

6. Name, telephone number, and email address of a person to contact for additional information;

7. Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions or standards for sewage sludge use or disposal, including a citation

to the applicable effluent limitation guideline, performance standard, or standard for sewage sludge use or disposal and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed;

8. When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:

- a. Limitations to control toxic pollutants;
- b. Limitations on indicator pollutants;
- c. Technology-based limitations set on a case-by-case basis;
- d. Limitations to meet the criteria for permit issuance under 9VAC25-875-870; or
- e. Waivers from monitoring requirements granted under 9VAC25-875-1030 A; and

9. When appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application.

9VAC25-875-1100. Public notice of draft permit actions and public comment period.

A. Scope.

1. The department shall give public notice that the following actions have occurred:

- a. A draft permit has been prepared under 9VAC25-875-1070 D;
- b. A public hearing has been scheduled under 9VAC25-875-1120; or
- c. A new source determination has been made under 9VAC25-875-990.

2. No public notice is required when a request for an individual permit modification, revocation and reissuance, or termination is denied under 9VAC25-875-1210 B. Written notice of that denial shall be given to the requester and to the permittee. Public notice shall not be required for submission or approval of plans and specifications or conceptual engineering reports not required to be submitted as part of the application.

3. Public notices may describe more than one draft permit or draft permit actions.

B. Timing.

1. Public notice of the preparation of a draft permit required under subsection A of this section shall allow at least 30 days for public comment.

2. Public notice of a public hearing shall be given at least 30 days before the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.

C. Methods. Public notice of activities described in subdivision A 1 of this section shall be given by the following methods:

1. By mailing, either by electronic or postal delivery, a copy of a notice to the following persons (any person otherwise entitled to receive notice under this subdivision may waive the right to receive notice for any classes and categories of permits):

- a. The permit applicant (except for general permits when there is no permit applicant);
- b. Any other agency that the department knows has issued or is required to issue a VPDES permit;
- c. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, including any affected states (Indian Tribes);
- d. Any state agency responsible for plan development under § 208(b)(2) or (b)(4) or 303(e) of the CWA and the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service;
- e. Persons on a mailing list developed by:

- (1) Including those who request in writing to be on the list;
- (2) Soliciting persons for area lists from participants in past permit proceedings in that area; and
- (3) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press, and in such publications as EPA regional and state funded newsletters, environmental bulletins, or state law journals. The department may update the mailing list from time to time by requesting written indication of continued interest from those listed. The department may delete from the list the name of any person who fails to respond to such a request; and
- f. (1) Any unit of local government having jurisdiction over the area where the facility is proposed to be located; and
- (2) Each state agency having any authority under state law with respect to the construction or operation of such facility;

2. By publication once a week for two successive weeks in a newspaper of general circulation in the area affected by the discharge. The cost of public notice shall be paid by the owner; and

3. Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

D. Contents.

1. All public notices issued under this part shall contain the following minimum information:

- a. Name and address of the office processing the permit action for which notice is being given;

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b. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of draft general permits;

c. A brief description of the business conducted at the facility or activity described in the individual permit application or the draft permit, for general permits when there is no application;

d. Name, address, telephone number, and email address of a person from whom interested persons may obtain further information, including copies of the draft permit, statement of basis or fact sheet, and the application;

e. A brief description of the procedures for submitting comments and the time and place of any public hearing that will be held, including a statement of procedures to request a public hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final individual or general permit decision;

f. For an individual permit, a general description of the location of each existing or proposed discharge point and the name of the receiving water; and

g. Any additional information considered necessary or proper.

2. In addition to the general public notice described in subdivision 1 of this subsection, the public notice of a public hearing under 9VAC25-875-1120 shall contain the following information:

a. Reference to the date of previous public notices relating to the draft permit;

b. Date, time, and place of the public hearing;

c. A brief description of the nature and purpose of the public hearing, including the applicable rules and procedures; and

d. A concise statement of the issues raised by the persons requesting the public hearing.

E. In addition to the general public notice described in subdivision D 1 of this section, all persons identified in subdivisions C 1 a through 1 d of this section shall be mailed, either by electronic or postal delivery, a copy of the fact sheet or statement of basis, the individual permit application (if any), and the draft permit (if any).

9VAC25-875-1110. Public comments and requests for public hearings.

During the public comment period provided under 9VAC25-875-1100, any interested person may submit written comments on the draft permit and may request a public hearing, if no public hearing has already been scheduled. A request for a public hearing shall be in writing and shall meet the requirements of 9VAC25-875-1120 and 9VAC25-875-1130. All comments shall be considered in making the final decision and shall be answered as provided in 9VAC25-875-1160.

9VAC25-875-1120. Public hearings.

A. 1. Procedures for public hearings and permits before the department are those set forth in 9VAC25-875-1130.

2. Public notice of the public hearing shall be given as specified in 9VAC25-875-1100.

3. Any public hearing convened pursuant to this section shall be held in the geographical area of the proposed discharge, or in another appropriate area. Related groups of individual permit applications may be considered at any such public hearing.

B. Any person may submit oral or written statements and data concerning the draft individual permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required.

C. A recording or written transcript of the hearing shall be made available to the public.

9VAC25-875-1130. Criteria for requesting and granting a public hearing in a permit action.

A. During the public comment period on a permit action in those instances where a public hearing is not mandatory under state or federal law or regulation, interested persons may request a public hearing to contest the action or terms and conditions of the permit.

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

1. The name and postal mailing or email address of the requester;

2. The names and addresses of all persons for whom the requester is acting as a representative;

3. The reason for the request for a public hearing;

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

5. Where possible, specific references to the terms and the conditions of the permit in question, together with suggested revisions and alterations to those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the basic laws of the State Water Control Board.

C. Upon completion of the public comment period on a permit action, the director shall review all timely requests for public hearing filed during the comment period on the permit action and, within 30 calendar days following the expiration of the time period for the submission of requests, shall grant a public

hearing, unless the permittee or applicant agrees to a later date, if the director finds the following:

1. That there is a significant public interest in the issuance, denial, modification, or revocation of the permit in question as evidenced by receipt of a minimum of 25 individual requests for a public hearing;
2. That the requesters raise substantial disputed issues relevant to the issuance, denial, modification, or revocation of the permit in question; and
3. That the action requested by the interested party is not on its face inconsistent with or in violation of the basic laws of the State Water Control Board for a water permit action, federal law, or any regulation promulgated thereunder.

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

E. If the request for a public hearing is granted, the director shall:

1. Schedule the hearing at a time between 45 and 75 days after emailing or mailing of the notice of the decision to grant the public hearing; and
2. Cause or require the applicant to publish notice of a public hearing to be published once in a newspaper of general circulation in the city or county where the facility or operation that is the subject of the permit or permit application is located at least 30 days before the hearing date.

F. The public comment period shall remain open for 15 days after the close of the public hearing if required by § 62.1-44.15:01 of the Code of Virginia.

G. The director may at the director's discretion convene a public hearing in a permit action.

9VAC25-875-1140. Controversial permits.

Before rendering a final decision on a controversial permit, the department shall publish a summary of public comments received during the applicable public comment period and public hearing. After such publication, the department shall publish responses to the public comment summary and hold a public hearing to provide an opportunity for individuals who previously commented, either at a public hearing or in writing during the applicable public comment period, to respond to the department's public comment summary and response. No new information will be accepted at that time. In making its decision, the department shall consider (i) the verbal and written comments received during the comment period and the public hearing made part of the record, (ii) any commentary of the board, and (iii) the agency files.

9VAC25-875-1150. Controversial permits reporting.

At each regular meeting of the board, the department shall provide an overview and update regarding any controversial permits pending before the department that are relevant. Immediately after such presentation by the department, the board

shall have an opportunity to respond to the department's presentation and provide commentary regarding such pending permits.

9VAC25-875-1160. Response to comments.

A. At the time that a final individual or general permit is issued, the department shall issue a response to comments. This response shall:

1. Specify which provisions, if any, of the draft individual or general permit have been changed in the final individual or general permit decision, and the reasons for the change; and
2. Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any public hearing.

B. The response to comments shall be available to the public.

9VAC25-875-1170. Conditions requested by the Corps of Engineers and other government agencies.

A. If during the comment period for a draft permit, the district engineer advises the department in writing that anchorage and navigation of any of the waters of the United States would be substantially impaired by the granting of an individual or general permit, the individual or general permit shall be denied and the individual permit applicant so notified. If the district engineer advises the department that imposing specified conditions upon the individual or general permit is necessary to avoid any substantial impairment of anchorage or navigation, then the department shall include the specified conditions in the individual or general permit. Review or appeal of denial of an individual or general permit or of conditions specified by the district engineer shall be made through the applicable procedures of the U.S Army Corps of Engineers and may not be made through the procedures provided in this part. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the U.S Army Corps of Engineers, those conditions shall be considered stayed in the individual or general permit for the duration of that stay.

B. If during the comment period the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, or any other state or federal agency with jurisdiction over fish, wildlife, or public health advises the department in writing that the imposition of specified conditions upon the individual or general permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the department may include the specified conditions in the individual or general permit to the extent they are determined necessary to carry out the provisions of this regulation, the State Water Control Law, and the CWA.

C. In appropriate cases the department may consult with one or more of the agencies referred to in this section before issuing a draft permit and may reflect their views in the statement of basis, the fact sheet, or the draft permit.

9VAC25-875-1180. Decisions on variances.

A. The department may grant or deny requests for variances requested pursuant to 9VAC25-875-920 G 4, subject to EPA

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objection. Decisions on these variances shall be made according to the criteria of 40 CFR Part 125, Subpart H.

B. The department may deny, or forward to the regional administrator with a written concurrence, or submit to EPA without recommendation a completed request for:

1. A variance based on the economic capability of the individual permit applicant submitted pursuant to 9VAC25-875-920 G 2; or

2. A variance based on water quality related effluent limitations submitted pursuant to 9VAC25-875-920 G 3.

C. If EPA approves the variance, the department may prepare a draft individual permit incorporating the variance. Any public notice of a draft individual permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision.

D. The department may deny or forward to the administrator with a written concurrence a completed request for:

1. A variance based on the presence of fundamentally different factors from those on which an effluent limitations guideline was based, made according to the criteria and standards of 40 CFR Part 125, Subpart D; or

2. A variance based upon certain water quality factors submitted pursuant to 9VAC25-875-920 G 2.

E. If the administrator approves the variance, the department may prepare a draft individual permit incorporating the variance. Any public notice of a draft individual permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision.

9VAC25-875-1190. Appeals of variances.

When the department issues an individual permit on which EPA has made a variance decision, separate appeals of the individual permit and of the EPA variance decision are possible.

9VAC25-875-1200. Computation of time.

A. Any time period scheduled to begin on the occurrence of an act or event shall begin on the day after the act or event.

B. Any time period scheduled to begin before the occurrence of an act or event shall be computed so that the period ends on the day before the act or event.

C. If the final day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day.

D. Whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper upon the party or interested person by mail or by electronic or postal delivery, three days shall be added to the prescribed time.

Article 6

Transfer, Modification, Revocation and Reissuance, and Termination of Permits

9VAC25-875-1210. Modification, revocation and reissuance, or termination of permits.

A. Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the department's initiative. When the department receives any information (e.g., inspects the facility, receives information submitted by the permittee as required in the permit, receives a request for modification or revocation and reissuance, or conducts a review of the permit file) it may determine whether one or more of the causes listed in this section for modification or revocation and reissuance, or both exist. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in 9VAC25-875-1230 or 9VAC25-875-1250. All requests shall be in writing and shall contain facts or reasons supporting the request. If cause does not exist under these sections, the department shall not modify, revoke and reissue, or terminate the permit. If a permit modification satisfies the criteria for minor modifications, the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and other procedures in Article 5 (9VAC25-875-1070 et seq.) of this part followed.

B. If the department decides the request is not justified, the department shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or public hearings.

C. 1. If the department tentatively decides to modify or revoke and reissue a permit, the department shall prepare a draft permit incorporating the proposed changes. The department may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the department shall require the submission of a new application.

2. In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued and the permit is reissued for a new term. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

3. Minor modifications as defined in 9VAC25-875-1240 are not subject to the requirements of this section.

D. If the department tentatively decides to terminate a permit under 9VAC25-875-1250, where the permittee objects, the department shall do so in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

9VAC25-875-1220. Transfer of permits.

A. Except as provided in subsection B of this section, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the Virginia Erosion and Stormwater Management Act and the CWA.

B. Automatic transfers. As an alternative to transfers under subsection A of this section, any permit may be automatically transferred to a new permittee if:

1. The current permittee notifies the department at least 30 days in advance of the proposed transfer date in subdivision 2 of this subsection;

2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

3. The department does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. A modification under this subdivision may also be a minor modification. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in subdivision 2 of this subsection.

9VAC25-875-1230. Modification or revocation and reissuance of permits.

A. Causes for modification. The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees.

1. There are material and substantial alterations or additions to the permitted facility or activity that occurred after permit issuance that justify the application of permit conditions that are different or absent in the existing permit.

2. The department has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For general permits this cause includes any information indicating that cumulative effects on the environment are unacceptable. For new source or new discharger permits this cause shall include any significant information derived from effluent testing required on the permit application after issuance of the permit.

3. The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:

a. For promulgation of amended standards or regulations, when:

(1) The permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved, or promulgated water quality standards;

(2) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based or has approved a state action with regard to a water quality standard on which the permit condition was based; and

(3) A permittee requests modification in accordance with this chapter within 90 days after Federal Register notice of the action on which the request is based;

b. For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with this chapter within 90 days of judicial remand; or

c. For changes based upon modified state certifications of permits.

4. The department determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage, or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case may a compliance schedule be modified to extend beyond an applicable CWA statutory deadline.

5. When the permittee has filed a request for a variance pursuant to 9VAC25-875-920 G within the time specified in this chapter.

6. When required to incorporate an applicable § 307(a) of the CWA toxic effluent standard or prohibition.

7. When required by the reopener conditions in a permit that are established under 9VAC25-875-1030 B.

8. Upon failure to notify another state whose waters may be affected by a discharge.

9. When the level of discharge of any pollutant that is not limited in the permit exceeds the level that can be achieved by the technology-based treatment requirements appropriate to the permittee.

10. To establish a notification level as provided in 9VAC25-875-1030 E.

11. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.

12. When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations imposed under the State Water Control Law and § 402(a)(1) of the CWA and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually

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achieved but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline.

13. For a small MS4, to include an effluent limitation requiring implementation of a minimum control measure or measures as specified in 9VAC25-875-970 D 2 when:

a. The permit does not include such measures based upon the determination that another entity was responsible for implementation of the requirements; and

b. The other entity fails to implement measures that satisfy the requirements.

B. Causes for modification or revocation and reissuance. The following are causes to modify or, alternatively, revoke and reissue a permit:

1. Cause exists for termination under 9VAC25-875-1250, and the department determines that modification or revocation and reissuance is appropriate; or

2. The department has received notification of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

9VAC25-875-1240. Minor modifications of individual permits.

Upon the consent of the permittee, the department may modify an individual permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of Article 5 (9VAC25-875-1070 et seq.) of this part. Any individual permit modification not processed as a minor modification under this section must be made for cause and with draft permit and public notice. Minor modifications may only:

1. Correct typographical errors;

2. Require more frequent monitoring or reporting by the permittee;

3. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing individual permit and does not interfere with attainment of the final compliance date requirement;

4. Allow for a change in ownership or operational control of a facility where the department determines that no other change in the individual permit is necessary, provided that a written agreement containing a specific date for transfer of individual permit responsibility, coverage, and liability between the current and new individual permittees has been submitted to the department;

5. a. Change the construction schedule for a discharger that is a new source. No such change shall affect a discharger's

obligation to have all pollution control equipment installed and in operation prior to discharge; or

b. Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits; or

6. Require electronic reporting requirements (to replace paper reporting requirements) including those specified in 40 CFR Part 3 and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.

9VAC25-875-1250. Termination of permits.

A. The following are causes for terminating a permit during the permit's term or for denying an individual permit or coverage under a general permit renewal application after notice and opportunity for a hearing by the department.

1. The permittee has violated any regulation of the board or order of the department, any order of the VESMP authority, any provision of the State Water Control Law or this chapter, or any order of a court, where such violation results in the unreasonable degradation of properties, water quality, stream channels, and other natural resources, or the violation is representative of a pattern of serious or repeated violations that in the opinion of the department, demonstrates the permittee's disregard for or inability to comply with applicable laws, regulations, permit conditions, orders, rules, or requirements;

2. Noncompliance by the permittee with any condition of the permit;

3. The permittee's failure to disclose fully all relevant material facts, or the permittee's misrepresentation of any relevant material facts in applying for a permit or in any other report or document required under the State Water Control Law or this chapter;

4. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination;

5. A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge controlled by the permit;

6. The activity for which the permit was issued causes unreasonable degradation of properties, water quality, stream channels, and other natural resources; or

7. There exists a material change in the basis on which the permit was issued that requires either a temporary or a permanent reduction or elimination of any discharge or land-disturbing activity controlled by the permit necessary to prevent unreasonable degradation of properties, water quality, stream channels, and other natural resources.

B. The department shall follow the applicable procedures in this chapter in terminating any permit under this section, except that if the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW or a PVOTW (but not by land application or disposal into a well), the department may terminate the permit by notice to the permittee. Termination by notice shall be effective 30 days after notice is sent, unless the permittee objects within that time. If the permittee objects during that period, the department shall follow the applicable procedures for termination under 9VAC25-875-1210 D. Expedited permit termination procedures are not available to permittees that are subject to pending state or federal enforcement actions, including citizen suits brought under state or federal law. If requesting expedited permit termination procedures, a permittee must certify that it is not subject to any pending state or federal enforcement actions, including citizen suits brought under state or federal law.

C. Permittees that wish to terminate their permit must submit a notice of termination (NOT) to the department. If requesting expedited permit termination procedures, a permittee must certify in the NOT that it is not subject to any pending state or federal enforcement actions, including citizen suits brought under state or federal law. As of the start date in Table 1 of 9VAC25-31-1020, all NOTs submitted in compliance with this subsection shall be submitted electronically by the permittee to the department in compliance with this subsection and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-875-940, 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, the permittee may be required to report electronically if specified by a particular permit.

Article 7
Enforcement of Permits

9VAC25-875-1260. Enforcement.

A. The department may enforce the provisions of this chapter by:

1. Issuing directives in accordance with the State Water Control Law;
2. Issuing special orders in accordance with the State Water Control Law;
3. Issuing emergency special orders in accordance with the State Water Control Law;
4. Seeking injunction, mandamus, or other appropriate remedy as authorized by the State Water Control Law;
5. Seeking civil penalties under the State Water Control Law; or
6. Seeking remedies under the State Water Control Law or the CWA or under other laws, including the common law.

B. The department encourages citizen participation in all its activities, including enforcement. In particular:

1. The department will investigate citizen complaints and provide written response to all signed, written complaints from citizens concerning matters within the department's purview;

2. The department will not oppose intervention in any civil enforcement action when such intervention is authorized by statute or Supreme Court rule; and

3. At least 30 days prior to the final settlement of any civil enforcement action or the issuance of any consent special order, the department will publish public notice of such settlement or order in a newspaper of general circulation in the county, city, or town in which the discharge is located, and in the Virginia Register of Regulations. This notice will identify the owner, specify the enforcement action to be taken, and specify where a copy of the settlement or order can be obtained. A consent special order is a special order issued without a public hearing and with the written consent of the affected owner. For the purpose of this chapter, an emergency special order is not a consent special order. The department shall consider all comments received during the comment period before taking final action.

C. When a permit is amended solely to reflect a new owner, and the previous owner had been issued a consent special order that, at the time of permit amendment was still in full force and effect, a consent special order issued to the new owner does not have to go to public notice provided that:

1. The permit amendment does not have to go to public notice; and
2. The terms of the new consent order are the same as issued to the previous owner.

D. Notwithstanding subdivision B 3 of this subsection, a special order may be issued by agreement without further notice when a hearing has been scheduled to issue a special order to the affected owner, whether or not the hearing is actually held.

Article 8
Miscellaneous

9VAC25-875-1270. Transition.

Upon the effective date of this chapter the following will occur:

1. All applications received after the effective date of this chapter will be processed in accordance with these procedures.
2. Permits issued by the Soil and Water Conservation Board allowing the discharge of stormwater into surface waters from municipal separate storm sewer systems or land-disturbing activities that have not expired or been revoked or terminated before or on the program transfer date to the department shall continue to remain in effect until their specified expiration dates.

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9VAC25-875-1280. Operators shall comply with the electronic reporting requirements set forth in Part XI of 9VAC25-31.

Operators shall comply with the electronic reporting requirements set forth in Part XI of 9VAC25-31.

Part VIII Fees

9VAC25-875-1290. Purpose.

Sections 62.1-44.15:28 and 62.1-44.15:31 of the Code of Virginia authorize the establishment of a statewide fee schedule, including administrative charges for state agencies, for stormwater management for land-disturbing activities, and for municipal separate storm sewer systems. This part establishes the fee assessment and the collection and distribution systems for those fees. The fees shall be established for individual permits or coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities (permits for stormwater management for land-disturbing activities) to cover all costs associated with the implementation of a VESMP by a VESMP authority that has been approved by the department. Such fee attributes include the costs associated with plan review, registration statement review, permit issuance, state-coverage verification, inspections, reporting, database management, and compliance activities associated with the land-disturbing activities as well as for program oversight costs. Fees shall also be established for permit maintenance, modification, and transfer.

Fees collected pursuant to this part shall be in addition to any general fund appropriations made to the department or other supporting revenue from a VESMP; however, the fees shall be set at a level sufficient for the department and the VESMP authority to fully carry out their responsibilities under the VESMA, this chapter, local ordinances, or standards and specifications where applicable.

When establishing a VESMP, the VESMP authority shall assess the statewide fee schedule and shall have the authority to reduce or increase such fees, and to consolidate such fees with other program-related charges, but in no case shall such fee changes affect the amount established in 9VAC25-875-1400 as available to the department for program oversight responsibilities pursuant to § 62.1-44.15:28 A 9 of the Code of Virginia. Accordingly, should a VESMP authority demonstrate to the department its ability to fully and successfully implement a VESMP without a full implementation of the fees set out in this part, the department may authorize the administrative establishment of a lower fee for that program provided that such reduction shall not reduce the amount of fees due to the department for its program oversight and shall not affect the fee schedules set forth in this part.

A VESMP authority may establish greater fees than those base fees specified by this part should it be demonstrated to the department that such greater fees are necessary to properly administer the VESMP. Any fee increases established by the VESMP authority beyond those base fees established in this part

shall not be subject to the fee distribution formula set out in 9VAC25-875-1360. Nothing in this part shall prohibit a locality from establishing other local fees authorized by the Code of Virginia related to stormwater management within their jurisdictions.

A VESMP's portion of the fees shall be used solely to carry out the VESMP's responsibilities under the VESMA, this chapter, ordinances, or standards and specifications.

As part of its program oversight, the department shall periodically assess the revenue generated by both the VESMP authorities and the department to ensure that the fees have been appropriately set and the fees may be adjusted through periodic regulatory actions should significant deviations become apparent.

9VAC25-875-1300. Authority.

The authority for this part is §§ 62.1-44.15:28 and 62.1-44.15:31 of the Code of Virginia.

9VAC25-875-1310. Applicability.

A. This part applies to:

1. All persons seeking coverage of a MS4 under a new permit. The fee due shall be as specified under 9VAC25-875-1380.
2. All operators who request that an existing MS4 individual permit be modified, except as specifically exempt under 9VAC25-875-1320. The fee due shall be as specified under 9VAC25-875-1390.
3. All persons seeking coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities or a person seeking an Individual VPDES Permit for Discharges of Stormwater from Construction Activities. The fee due shall be as specified under 9VAC25-875-1400.
4. All permittees who request modifications to or transfers of their existing registration statement for coverage under a General VPDES Permit for Discharges of Stormwater from Construction Activities or of an Individual VPDES Permit for Discharges of Stormwater from Construction Activities. The fee due shall be as specified under 9VAC25-875-1410 in addition to any additional fees necessary pursuant to 9VAC25-875-1400 due to an increase in acreage.
5. Reinspection fees assessed by the department to recoup the costs associated with each visit to a land-disturbing project site that was necessary to check on the status of project site items noted to be in noncompliance and documented as such on a prior project inspection. The fee due shall be as specified under 9VAC25-875-1370.
6. Business transaction costs assessed associated with processing credit card payments.

B. Persons who are applicants for an individual municipal separate stormwater sewer system permit as a result of existing

permit revocation shall be considered an applicant for a new permit. The fee due shall be as specified under 9VAC25-875-1380.

Persons whose coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities has been revoked shall reapply for an Individual VPDES Permit for Discharges of Stormwater from Construction Activities. The fee due shall be as specified under 9VAC25-875-1400.

C. Permit maintenance fees may apply to each permit holder. The fee due shall be as specified under 9VAC25-875-1420.

9VAC25-875-1320. Exemptions.

A. No permit application fees will be assessed to:

1. Permittees who request minor modifications to permits as defined in 9VAC25-875-20 or other minor amendments at the discretion of the VESMP authority.
2. Permittees whose permits are modified or amended at the request of the VESMP authority or department. This does not include errors in the registration statement identified by the VESMP authority or department or errors related to the acreage of the site.

B. Permit modifications at the request of the permittee resulting in changes to stormwater management or ESM plans that require additional review by the VESMP authority shall not be exempt pursuant to this section and shall be subject to fees specified under 9VAC25-875-1410.

9VAC25-875-1330. Due dates for permits.

A. Requests for a permit, permit modification, or general permit coverage shall not be processed until the fees required pursuant to this part are paid in accordance with 9VAC25-875-1340.

B. Individual permit or general permit coverage maintenance fees shall be paid annually to the department or the VESMP authority, as applicable. No permit will be reissued or automatically continued without payment of the required fee. Individual permit or general permit coverage maintenance fees shall be applied until a notice of termination is effective.

Permit maintenance fees for MS4 individual permits or MS4 general permit coverages are due by October 1 of each year. Effective April 1, 2014, any operator whose permit or general permit coverage, including operators whose permits or general permit coverages have been administratively continued, is effective as of April 1 of any given year shall pay the permit maintenance fee or fees to the department or the VESMP authority by October 1 of that same year.

Permit maintenance fees for discharges of stormwater from construction activities pursuant to 9VAC25-875-1420 are due by April 1 of each year. After approval of a VESMP authority, including the department when acting in that capacity, any owner whose permit or general permit coverage authorizing discharges of stormwater from construction activities, including owners whose permits or general permit coverages have been administratively continued, is effective as of the effective date of

the VESMP authority shall pay the permit maintenance fee or fees to the department or the VESMP authority by April 1 of that same year.

9VAC25-875-1340. Method of payment.

A. Fees shall be collected utilizing, where practicable, an online payment system. Until such system is operational, fees, as applicable, shall be, at the discretion of the department, submitted electronically or be paid by check, draft, or postal money order payable to:

1. The Treasurer of Virginia for a MS4 individual or general permit or for a coverage issued by the department under the General VPDES Permit for Discharges of Stormwater from Construction Activities or Individual VPDES Permit for Discharges of Stormwater from Construction Activities and must be in United States currency, except that agencies and institutions of the Commonwealth of Virginia may submit interagency transfers for the amount of the fee. The department may provide a means to pay fees electronically. Fees not submitted electronically shall be sent to the Virginia Department of Environmental Quality.
2. The VESMP authority, for VESMP operational costs of the VESMP authority under the General VPDES Permit for Discharges of Stormwater from Construction Activities, and must be in United States currency.

B. When fees are collected electronically pursuant to this part through credit cards, business transaction costs associated with processing such payments may be additionally assessed.

C. Nothing in this part shall prohibit the department and a VESMP authority from entering into an agreement whereby the total fee to be paid by the applicant for coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities is payable to the VESMP authority, and the VESMP authority transmits the department's portion set forth in 9VAC25-875-1400 to the department on a schedule established by the department.

D. Required information for permits or permit coverage. All applicants, unless otherwise specified by the department, shall submit the following information along with the fee payment or utilize the department Permit Application Fee Form:

1. Applicant name, address, and daytime telephone number.
2. The name of the facility or activity and the facility or activity location.
3. The type of permit applied for.
4. Whether the application is for a new permit issuance, permit reissuance, permit maintenance, or permit modification.
5. The amount of fee submitted.
6. The existing permit number, if applicable.
7. Other information as required by the VESMP authority.

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9VAC25-875-1350. Incomplete and late payments.

All incomplete payments will be deemed as nonpayments. The department or the VESMP authority, as applicable, shall provide notification to the applicant of any incomplete payments.

Interest may be charged for late payments at the underpayment rate set forth in § 58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate.

A 10% late payment fee shall be charged to any delinquent (over 90 days past due) account.

The department and the VESMP authority are entitled to all remedies available under the Code of Virginia in collecting any past due amount.

9VAC25-875-1360. Deposit and use of fees.

A. All fees collected by the department pursuant to this chapter shall be deposited into the Virginia Stormwater Management Fund and shall be used and accounted for as specified in § 62.1-44.15:29 of the Code of Virginia. Fees collected by the department shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

B. All fees collected by a VESMP authority pursuant to this chapter shall be subject to accounting review and shall be used solely to carry out the VESMP authority's responsibilities pursuant to the VESMA, Article 3 (9VAC25-875-100 et seq.) of Part II (9VAC25-875-40 et seq.) and Part V (9VAC25-875-470 et seq.) of this chapter, local ordinances, or standards and specifications.

Pursuant to subdivision A 9 of § 62.1-44.15:28 of the Code of Virginia, whenever the department has authorized the administration of a VESMP by a VESMP authority, 28% of the total revenue generated by the statewide stormwater management fees collected in accordance with 9VAC25-875-1400 shall be remitted on a schedule determined by the department to the State Treasurer for deposit in the Virginia Stormwater Management Fund unless otherwise collected electronically. If the VESMP authority waives or reduces any fee due in accordance with 9VAC25-875-1400, the VESMP authority shall remit the 28% portion that would be due to the Virginia Stormwater Management Fund if such fee were charged in full. Any fee increases established by the VESMP authority beyond the base fees established in this part shall not be subject to the fee distribution formula.

9VAC25-875-1370. General.

The fees for individual permits, general permit coverage, permit or registration statement modification, or permit transfers are considered separate actions and shall be assessed a separate fee, as applicable.

9VAC25-875-1380. Fee schedules for municipal separate storm sewer system new permit issuance.

The following fee schedule applies to permit applications for issuance of a new individual municipal separate storm sewer system permit or coverage under a MS4 General Permit. All regulated MS4s that apply for joint coverage under an individual permit or general permit registration shall each pay the appropriate fees set out in the following table.

<u>Municipal Stormwater / MS4 Individual (Large and Medium)</u>	<u>\$16,000</u>
<u>Municipal Stormwater / MS4 Individual (Small)</u>	<u>\$8,000</u>
<u>Municipal Stormwater / MS4 General Permit (Small)</u>	<u>\$4,000</u>

9VAC25-875-1390. Fee schedules for major modification of MS4 individual permits requested by the operator.

The following fee schedule applies to applications for major modification of an individual MS4 permit requested by the permittee:

<u>Municipal Stormwater / MS4 Individual (Large and Medium)</u>	<u>\$5,000</u>
<u>Municipal Stormwater / MS4 Individual (Small)</u>	<u>\$2,500</u>

9VAC25-875-1400. Fees for individual permit or coverage under the General Permit of Discharges of Stormwater from Construction Activities.

The following total fees to be paid by an applicant apply to any operator seeking coverage under a General VPDES Permit for Discharges of Stormwater from Construction Activities or a state agency or federal entity that does not file standards and specifications or an individual permit issued by the department. On and after approval by the department of a VESMP authority for coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities, no more than 50% of the total fee to be paid by an applicant set out in this part shall be due at the time that a stormwater management plan or an initial stormwater management plan is submitted for review in accordance with 9VAC25-875-530. The remaining total fee balance to be paid by an applicant shall be due prior to the issuance of coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities.

When a site is purchased for development within a previously permitted common plan of development or sale, the applicant shall be subject to fees ("total fee to be paid by applicant" column) in accordance with the disturbed acreage of the applicant's site according to the following table.

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<u>Fee type</u>	<u>Total fee to be paid by applicant (includes both VESMP authority and department portions where applicable)</u>	<u>Department portion of "total fee to be paid by applicant" (based on 28% of total fee paid*)</u>
<u>Land-Disturbing Activity in a Chesapeake Bay Preservation Area (not subject to General Permit coverage; sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than one acre)</u>	<u>\$290</u>	<u>\$0</u>
<u>General / Stormwater Management - Small Construction Activity/Land-Disturbing Activity in a Chesapeake Bay Preservation Area (not subject to General Permit coverage)/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres)</u>	<u>\$209</u>	<u>\$0</u>
<u>General / Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre, except for single-family detached residential structures)</u>	<u>\$290</u>	<u>\$81</u>
<u>General / Stormwater Management - Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one acre and less than five acres)</u>	<u>\$2,700</u>	<u>\$756</u>
<u>General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)</u>	<u>\$3,400</u>	<u>\$952</u>
<u>General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)</u>	<u>\$4,500</u>	<u>\$1,260</u>
<u>General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)</u>	<u>\$6,100</u>	<u>\$1,708</u>
<u>General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 100 acres)</u>	<u>\$9,600</u>	<u>\$2,688</u>
<u>Individual VPDES Permit for Discharges of Stormwater from Construction Activities (This will be administered by the department)</u>	<u>\$15,000</u>	<u>\$15,000</u>
<u>*If the project is completely administered by the department such as may be the case for a state or federal project or projects covered by individual permits, the entire applicant fee shall be paid to the department.</u>		

The following fees apply to coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities issued by the department for a state agency or federal entity that has standards and specifications approved by the department.

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General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or common plans of development equal to or greater than five acres)	<u>\$750</u>
General / Stormwater Management - Phase II Land Clearing (Small Construction Activity - Sites or common plans of development equal to or greater than one acre and less than five acres)	<u>\$450</u>

9VAC25-875-1410. Fees for the modification or transfer of individual permits or of registration statements for the General VPDES Permit for Discharges of Stormwater from Construction Activities.

The following fees apply to modification or transfer of individual permits or of registration statements for the General VPDES Permit for Discharges of Stormwater from Construction Activities issued by the department. If the permit modifications result in changes to stormwater management plans that require additional review by the VESMP authority, such reviews shall be subject to the fees set out in this section. The fee assessed shall be based on the total disturbed acreage of the site. In addition to the permit modification fee, modifications resulting in an increase in total disturbed acreage shall pay the difference in the initial permit fee paid and the permit fee that would have applied for the total disturbed acreage in 9VAC25-875-1400. No modification or transfer fee shall be required until such department-approved programs exist. These fees shall only be effective when assessed by a VESMP authority, including the department when acting in that capacity, that has been approved by the department. No modification fee shall be required for the General VPDES Permit for Discharges of Stormwater from Construction Activities for a state agency or federal entity that is administering a project in accordance with approved standards and specifications but shall apply to all other state or federal agency projects.

General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre, except for single-family detached residential structures)	<u>\$20</u>
General / Stormwater Management – Small Construction Activity/Land-Disturbing Activity in a Chesapeake Bay Preservation Area (not subject to General Permit coverage)/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres where the locality is the VESMP authority)	<u>\$20</u>

General / Stormwater Management – Small Construction Activity/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres where the department is the VSMP authority)	<u>\$0</u>
General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one and less than five acres)	<u>\$200</u>
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)	<u>\$250</u>
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)	<u>\$300</u>
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)	<u>\$450</u>
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 100 acres)	<u>\$700</u>
Individual VPDES Permit for Discharges of Stormwater from Construction Activities	<u>\$5,000</u>

9VAC25-875-1420. Permit maintenance fees.

The following annual permit maintenance fees apply to each permit identified below, including expired permits that have been administratively continued. With respect to the General VPDES Permit for Discharges of Stormwater from Construction Activities, these fees shall apply until the permit coverage is terminated and shall only be effective when assessed by a VESMP authority, including the department when acting in that capacity that has been approved by the department. No maintenance fee shall be required for the

General VPDES Permit for Discharges of Stormwater from Construction Activities for a state agency or federal entity that is administering a project in accordance with approved standards and specifications but shall apply to all other state or federal agency projects. All regulated MS4s that are issued joint coverage under an individual permit or general permit registration shall each pay the appropriate fees set out in the following table:

<u>Municipal Stormwater / MS4 Individual (Large and Medium)</u>	<u>\$8,800</u>
<u>Municipal Stormwater / MS4 Individual (Small)</u>	<u>\$6,000</u>
<u>Municipal Stormwater / MS4 General Permit (Small)</u>	<u>\$3,000</u>
<u>Land-Disturbing Activity in a Chesapeake Bay Preservation Area (not subject to General Permit coverage; sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than one acre)</u>	<u>\$50</u>
<u>General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre, except for single-family detached residential structures)</u>	<u>\$50</u>
<u>General / Stormwater Management – Small Construction Activity/Land-Disturbing Activity in a Chesapeake Bay Preservation Area (not subject to General Permit coverage)/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres where the locality is the VESMP authority)</u>	<u>\$50</u>
<u>General / Stormwater Management – Small Construction Activity/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres where the department is the VSMP authority)</u>	<u>\$0</u>
<u>General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance equal to or greater than one acre and less than five acres)</u>	<u>\$400</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)</u>	<u>\$500</u>

<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)</u>	<u>\$650</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)</u>	<u>\$900</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater 100 acres)</u>	<u>\$1,400</u>
<u>Individual VPDES Permit for Discharges from Construction Activities</u>	<u>\$3,000</u>

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, General Assembly Building, 201 North Ninth Street, 4th Floor, Richmond, Virginia 23219.

FORMS (9VAC25-875)

[EPA Application Form 1 General Information NPDES Permitting Program \(rev. 3/2019\)](#)

[Virginia Department of Environmental Quality General VPDES Permit for Discharges of Stormwater from Construction Activities \(VAR10\) Registration Statement 2019](#)

DOCUMENTS INCORPORATED BY REFERENCE (9VAC25-875)

[Virginia Runoff Reduction Method: Instructions and Documentation, March 28, 2011](#)

[Virginia Erosion and Sediment Control Regulation Minimum Standard 19 in effect prior to July 1, 2014](#)

VA.R. Doc. No. R19-5787; Filed November 8, 2023, 1:05 p.m.



Regulations

TITLE 11. GAMING

VIRGINIA RACING COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The Virginia Racing Commission is claiming an exemption from the Administrative Process Act pursuant to subdivision B 21 of § 2.2-4002 of the Code of Virginia when promulgating regulations relating to the Virginia Breeders Fund created pursuant to § 59.1-372 of the Code of Virginia.

Title of Regulation: 11VAC10-130. Virginia Breeders Fund (amending 11VAC10-130-10).

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

Effective Date: January 1, 2024.

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

Summary:

The amendment changes the definition of "Virginia-bred Thoroughbred horse" to, beginning in 2024, include specific domicile characteristics for the dam of the Virginia-bred Thoroughbred foal.

11VAC10-130-10. Definitions.

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

"Breeding season" means a period of time beginning on February 1 and ending on August 1 of each year. For Standardbreds, the breeding season means a period of time beginning February 15 and ending on July 15 of each year.

"Registered" means the completion of the process of filing an application with the commission or its designee to satisfy the requirements for participation in the Virginia Breeders Fund.

"Stallion owner" means an owner or lessee of record of a stallion that covered mares in the Commonwealth of Virginia during the breeding season in which it sired a Virginia-bred horse.

"Virginia-bred Arabian horse" means a registered Arabian horse foaled in the Commonwealth of Virginia.

"Virginia Arabian horse breeder" means the owner or lessee of record of the mare at the time of foaling of a Virginia-bred Arabian horse.

"Virginia Arabian sire" means a registered Arabian stallion that covered mares only in the Commonwealth of Virginia during the breeding season in which it sired a Virginia-bred Arabian horse.

"Virginia-bred Quarter Horse" means a registered Quarter Horse foaled or conceived in the Commonwealth of Virginia.

"Virginia Quarter Horse breeder" means the owner or lessee of record of the mare at the time of conception of a Virginia-bred Quarter Horse.

"Virginia Quarter Horse sire" means a registered Quarter Horse stallion or registered Virginia Thoroughbred stallion that covered mares only in the Commonwealth of Virginia during the breeding season in which it sired a Virginia-bred Quarter Horse.

"Virginia resident" means a person legally required to file a resident income tax return with the Commonwealth of Virginia or a partnership, corporation, stable name or other entity that is solely owned by Virginia residents and owners legally required to file resident income tax returns with the Commonwealth.

"Virginia-bred Standardbred horse" means a registered Standardbred horse sired by a Virginia Standardbred sire, a registered Standardbred horse foaled in the Commonwealth of Virginia provided that the foal-producing mare is domiciled in the Commonwealth from July 15 through December 31 of the year in which the horse is foaled, or a registered Standardbred horse foaled in the Commonwealth provided that the foal-producing mare is bred back that same breeding season to a Virginia Standardbred sire with the following exceptions:

1. A foal of a mare that is solely owned by a Virginia resident at the time of conception; or
2. A foal of a mare purchased solely by a Virginia resident at a public auction.

"Virginia Standardbred horse breeder" means the owner or lessee of record of the mare at the time of conception of a Virginia-bred Standardbred horse.

"Virginia Standardbred sire" means a registered Standardbred stallion that stood only in the Commonwealth of Virginia during the breeding season in which it sired a Virginia-bred Standardbred horse. Shipment of semen for the breeding of mares outside the Commonwealth shall be permitted so long as any resulting foals meet the requirements of this chapter in all other respects.

"Virginia-bred Thoroughbred horse" means a registered Thoroughbred horse foaled in Virginia. Beginning with foals of 2024, the foal's dam must also domicile in Virginia from September 1 of the year of conception and reside in Virginia until the dam foals the following year.

"Virginia-sired Thoroughbred horse" means a registered Thoroughbred horse sired by a Virginia Thoroughbred sire, but not foaled in Virginia or not otherwise satisfying the requirements for a Virginia-bred Thoroughbred horse.

"Virginia Thoroughbred horse breeder" means the owner or lessee listed on The Jockey Club registration papers as the

owner or lessee of record of the mare at the time of foaling a Virginia-bred Thoroughbred horse.

"Virginia Thoroughbred sire" means a registered Thoroughbred stallion that covers mares, other than test mares, only in the Commonwealth during the breeding season in which it sires a Virginia-bred Thoroughbred horse, or only during that part of the breeding season after entering the Commonwealth.

VA.R. Doc. No. R24-7606; Filed November 1, 2023, 12:24 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

REAL ESTATE BOARD

Proposed Regulation

Title of Regulation: 18VAC135-20. Virginia Real Estate Board Licensing Regulations (amending 18VAC135-20-80, 18VAC135-20-120, 18VAC135-20-140, 18VAC135-20-370).

Statutory Authority: §§ 54.1-201 and 54.1-2105 of the Code of Virginia.

Public Hearing Information:

January 3, 2024 - 10 a.m. - Department of Professional and Occupational Regulation, Perimeter Center, 2nd Floor Conference Room, 9960 Mayland Drive, Richmond, Virginia 23233.

Public Comment Deadline: February 2, 2024.

Agency Contact: Anika Coleman, Executive Director, Real Estate Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (866) 826-8863, or email reboard@dpor.virginia.gov.

Basis: Section 54.1- 2105 of the Code of Virginia enumerates the legal authority for the Real Estate Board to administer the licensure program for real estate licensees. Further, § 54.1-113 of the Code of Virginia requires all regulatory boards of the Department of Professional and Occupational Regulation to establish fees adequate to support the costs of the board's operations and a proportionate share of the department's operations.

Purpose: The board must establish fees adequate to support the costs of the board operations and a proportionate share of the department's operations. Current fees do not provide adequate revenue for those costs. The Department of Professional and Occupational Regulation (DPOR) is funded entirely from revenue collected for license applications, renewal, examination fees, and other licensing fees and receives no general fund money. DPOR is self-supporting and must collect adequate revenue to support its mandated and approved activities and operations, which include the board's primary

mission to protect the safety and welfare of the citizens of the Commonwealth by prescribing requirements for minimal competencies, by prescribing standards of conduct and practice, and by imposing penalties for not complying with the regulations. Fee revenue collected on behalf of the various boards funds the department's authorized special revenue appropriation. The board has no other source of revenue from which to fund its operations.

Substance: The proposed amendments raise board fees based on projected revenues and expenses to meet the requirements of the applicable statutes while being the least burdensome to the regulant population.

Issues: The advantage of this amendment to the public is that the board will continue to be financially solvent. There are no disadvantages to the public or the Commonwealth in raising the board's fees as proposed.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 19. The analysis presented represents DPB's best estimate of these economic impacts.¹

Summary of the Proposed Amendments to Regulation. The Real Estate Board (board) proposes to increase the license application and renewal fees charged to brokers and salespersons, firms, branch offices, business entities, schools, and instructors so that projected revenues are sufficient to cover projected expenditures.

Background. Section 54.1-2105 of the Code of Virginia provides for licensure requirements for real estate brokers and salespersons and § 54.1-2106.1 of the Code of Virginia requires real estate firm licenses, business entity salesperson's licenses, and branch office licenses.² In addition, § 54.1-2105.02 authorizes of the Code of Virginia the board to regulate real estate schools and instructors, and requires board regulations to include a procedure for processing applications of educational institutions, real estate professional associations, or related entities, to provide continuing education courses.

In general, § 54.1-201 A 4 of the Code of Virginia imposes a duty on professional boards to "levy and collect fees for certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportional share of the expenses of the Department of Professional and Occupational Regulation (DPOR)." In addition, § 54.1-113 of the Code of Virginia, known as the Callahan Act, newly requires DPOR boards to distribute excess revenue to current regulants and reduce the fees when "unspent and unencumbered revenue exceeds \$100,000 or 20% of the total expenses allocated to the regulatory board for the past biennium, whichever is greater."³ The Callahan Act previously required DPOR boards, as well as those administered by the Department of Health

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Professions, to adjust fees in situations in which "expenses allocated to [the board] for the past biennium [are] more than ten percent greater or less than money collected on behalf of the board."

Lastly the Appropriation Act was amended in 2019 to require DPOR to hold funds in reserve to "offset the anticipated, future costs of restructuring its organization, including additional staffing needs and the replacement or upgrade of the Department's information technology systems requirements." The most recent version of this language appears in Item 369 of the 2022 Appropriation Act.⁴

DPOR reports that the board last increased fees in 2004 to comply with the Callahan Act requirements.⁵ DPOR reports

that all costs have increased in the interim, and that the number of licenses issued by this board fluctuates significantly in response to economic conditions in general and to real estate market conditions in particular.⁶ DPOR also noted that expenses have consistently exceeded revenue since 2012. Based on DPOR's projections for board revenues and expenditures at the current fee levels, the board indicates that its fees are no longer sufficient to cover expenses in accordance with applicable statute.

The proposed fee increases are expected to increase the board's revenues by approximately \$1,700,000 per year.⁷ The fee changes are summarized in the following table:

FEE TYPE	CURRENT FEE	NEW FEE	\$ CHANGE	PERCENTAGE CHANGE
APPLICATION FEES				
Broker license	\$190	\$220	\$30	15.79%
Salesperson license	\$150	\$185	\$35	23.33%
Firm license	\$250	\$300	\$50	20.00%
Branch office license	\$190	\$220	\$30	15.79%
Salesperson's or broker's license as a business entity	\$190	\$220	\$30	15.79%
Upgrade to broker	\$85	\$120	\$35	41.18%
Downgrade to salesperson	\$85	\$120	\$35	41.18%
Concurrent broker	\$140	\$185	\$45	32.14%
Activate or transfer application	\$60	\$90	\$30	50.00%
Proprietary school certificate	\$190	\$220	\$30	15.79%
Instructor certificate	\$190	\$220	\$30	15.79%
RENEWAL FEES				
Broker license	\$80	\$115	\$35	43.75%
Salesperson license	\$65	\$95	\$30	46.15%
Concurrent broker	\$80	\$115	\$35	43.75%
Firm license	\$160	\$215	\$55	34.38%
Branch office license	\$90	\$145	\$55	61.11%
Salesperson or broker's license as a business entity	\$90	\$145	\$55	61.11%
Proprietary school certificate	\$90	\$145	\$55	61.11%
Instructor certificate	\$75	\$120	\$45	60.00%
REINSTATEMENT FEES				

Broker license	\$120	\$180	\$60	50.00%
Salesperson license	\$100	\$145	\$45	45.00%
Concurrent broker	\$120	\$180	\$60	50.00%
Firm license	\$245	\$315	\$70	28.57%
Branch office license	\$135	\$220	\$85	62.96%
Proprietary school certificate	\$135	\$220	\$85	62.96%
Instructor certificate	\$110	\$180	\$70	63.63%

Estimated Benefits and Costs. DPOR reports that the Board had a balance of \$1,956,311 at the end of the 2020-2022 biennium.⁸ If fees remain unchanged, the board's balance is projected to be -\$127,000 (a deficit) at the end of the current biennium (2022-2024) and -\$2,996,000 at the end of the following biennium (2024-2026). DPOR projections indicate that the fee increases would bring in an additional \$1.7 million in annual revenue, and the board anticipates that the new fees would become effective in fiscal year 2024.⁹

The proposed changes would increase fees for real estate brokers, salespersons, and instructors, as well as firms, business entities, branch offices, and proprietary schools. Thus, individuals and businesses that are currently licensed, as well as individuals and businesses who seek licensure in the future, would incur additional costs. As detailed, individuals and businesses would face fees that would be 16% to 64% higher than they currently are.

Businesses and Other Entities Affected. DPOR reports that as of July 1, 2022, there were 11,400 brokers, 54,795 salespersons, 6,015 firms, 787 branches, 4,193 business entities, 210 proprietary schools, and 497 instructors, amounting to a total of 77,897 licenses.¹⁰ The proposed amendments would also affect new applicants for these professional designations. DPOR did not provide estimates for the number of new individuals and businesses seeking licensure each year, but noted that the number of licensees fluctuates significantly from year to year, and is sensitive to the overall volume of real estate activity taking place.

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. Because the proposal raises fees, an adverse impact is indicated.

Small Businesses¹² Affected.¹³

Types and Estimated Number of Small Businesses Affected. DPOR reports that most of the 6,015 firms and 4,193 business entities mentioned above are considered small businesses and would be affected by the higher fees. However, the Board does not collect information regarding the size of firms or business entities, and does not charge different fees to those that are small businesses and those that are not.

Costs and Other Effects. Firms and business entities that are small businesses would face increased application, renewal, and reinstatement fees, as detailed in the table.

Alternative Method that Minimizes Adverse Impact. If the board collected information on the size of the firm or business entity at the time of license application and renewal, they could charge different fees accordingly. This scenario may minimize adverse impact on small businesses, but larger businesses would have to pay higher fees to make up the difference, so that the board still receives adequate revenues. On the whole, the board cannot increase its revenues without increasing fees.

Localities¹⁴ Affected.¹⁵ Localities would not be directly affected by the proposed fee increases and local governments would not incur new costs.

Projected Impact on Employment. As mentioned previously, employment as a real estate broker or salesperson is largely driven by the level of activity in the real estate market. Considering the relatively robust real estate market in Virginia in the 2020-2022 biennium, the proposed fee increases are unlikely to impact employment.

Effects on the Use and Value of Private Property. Real estate firms, business entities, and schools are all privately owned and would face increased costs due to the higher fees. However, the potential increase in cost would not likely be large enough to substantively affect the actions and value of these private businesses. The proposed amendments do not affect real estate development costs as the fee increases are too small relative to overall real estate development costs to significantly impact builders' or developers' incentives.

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

² Firm licenses are for limited liability corporations, partnerships, and associations. A firm license requires every managing member or officer of a corporation who participates in the firm's brokerage business to have an active broker's license and for every employee or contractor who acts as a salesperson to hold a salesperson's or broker's license. There is no separate license for sole proprietorships as long as the proprietor holds a broker's license and does not operate the business under a fictitious name. Real estate teams, consisting of licensed brokers and/or salespersons, must obtain a business entity salesperson's license. Branch office licenses are required if any principal broker maintains more than one place of business.

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³ See <https://law.lis.virginia.gov/vacode/title54.1/chapter1/section54.1-113/> for the full requirements of the Act. The new requirements regarding unspent revenue took effect on July 1, 2022; these changes were made by Chapters 517 and 697 of the 2019 Acts of Assembly.

⁴ See <https://budget.lis.virginia.gov/item/2022/2/HB30/Chapter/1/369/>. Under Item 4-13.00 of the Appropriation Act, "the provisions of this act shall prevail over any conflicting provision of any other law, without regard to whether such other law is enacted before or after this act." Consequently, if a situation were to arise where the Appropriation Act conflicted with the new provisions of the Callahan Act, the language in the Appropriation Act would apply.

⁵ See <https://townhall.virginia.gov/ViewAction.cfm?actionid=1172>.

⁶ Email from DPOR dated August 26, 2022. DPOR noted that there were around 80,000 licensees in 2008 and only around 62,000 licensees in 2012.

⁷ Agency Background Document (ABD), page 6. See [https://townhall.virginia.gov/GetFile.cfm?File=91\5711\9705\AgencyState ment_DPOR_9705_v1.pdf](https://townhall.virginia.gov/GetFile.cfm?File=91\5711\9705\AgencyState%20ment_DPOR_9705_v1.pdf).

⁸ Email from DPOR dated August 26, 2022.

⁹ Based on the projected deficits, this increase would not be sufficient to trigger the new Callahan Act requirements to reduce fees or redistribute revenues to regulators.

¹⁰ ABD, page 6.

¹¹ Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

¹² Pursuant to § 2.2-4007.04, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

¹³ If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

¹⁴ "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹⁵ Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Real Estate Board concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The proposed amendments adjust license application, renewal, and reinstatement fees for real estate licenses and certificates to conform with the requirements of § 54.1-113 of the Code of Virginia.

18VAC135-20-80. Application fees.

A. All application fees for licenses are nonrefundable and the date of receipt by the board or its agent is the date that will be used to determine whether it is on time.

B. Application fees are as follows:

Salesperson by education and examination	\$150 <u>\$185</u>
Salesperson by reciprocity	\$150 <u>\$185</u>
Salesperson's or broker's license as a business entity	\$190 <u>\$220</u>
Broker by education and examination	\$190 <u>\$220</u>
Broker by reciprocity	\$190 <u>\$220</u>
Broker concurrent license	\$140 <u>\$185</u>
Firm license	\$250 <u>\$300</u>
Branch office license	\$190 <u>\$220</u>
Transfer application	\$60 <u>\$90</u>
Activate application	\$60 <u>\$90</u>
<u>Downgrade to salesperson</u>	<u>\$120</u>
<u>Upgrade to broker</u>	<u>\$120</u>

C. The fee for examination or reexamination is subject to contracted charges to the board by an outside vendor. These contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with these contracts.

18VAC135-20-120. Fees for renewal.

A. All fees for renewals are nonrefundable, and the date of receipt by the board or its agent is the date that will be used to determine whether it is on time.

B. Renewal fees are as follows:

Salesperson	\$65 <u>\$95</u>
Salesperson's or broker's license as a business entity	\$90 <u>\$145</u>
Broker	\$80 <u>\$115</u>
Concurrent broker	\$80 <u>\$115</u>
Firm	\$160 <u>\$215</u>
Branch office	\$90 <u>\$145</u>

18VAC135-20-140. Failure to renew; reinstatement required.

A. All applicants for reinstatement must meet all requirements set forth in 18VAC135-20-101. Applicants for

reinstatement who want to activate their license must have completed the continuing education requirement in order to reinstate and activate the license. Applicants for reinstatement of an inactive license are not required to complete the continuing education requirement for license reinstatement.

B. If the requirements for renewal of a license, including receipt of the fee by the board, are not completed by the licensee within 30 days of the expiration date noted on the license, a reinstatement fee is required as follows:

Salesperson	\$100 <u>\$145</u>
Salesperson's or broker's license as a business entity	\$135 <u>\$220</u>
Broker	\$120 <u>\$180</u>
Concurrent Broker	\$120 <u>\$180</u>
Firm	\$245 <u>\$315</u>
Branch Office	\$135 <u>\$220</u>

C. A license may be reinstated for up to one year following the expiration date with payment of the reinstatement fee. After one year, the license may not be reinstated under any circumstances and the applicant must meet all current educational and examination requirements and apply as a new applicant.

D. A licensee may not perform activities defined in §§ 54.1-2100 and 54.1-2101 of the Code of Virginia with an expired license. Any real estate activity conducted subsequent to the expiration date may constitute unlicensed activity and be subject to prosecution under Chapter 1 (§ 54.1-100 et seq.) of Title 54.1 of the Code of Virginia.

18VAC135-20-370. Fees.

A. The application fee for an original certificate for a proprietary school shall be ~~\$190~~ \$220.

B. The renewal fee for proprietary school certificates expiring every two years from the last day of the month in which they were issued shall be ~~\$90~~ \$145.

C. If the requirements for renewal of a proprietary school certificate, including receipt of the fee by the board, are not completed within 30 days of the expiration date noted on the certificate, a reinstatement fee of ~~\$135~~ \$220 is required. A certificate may be reinstated for up to one year following the expiration date with payment of the reinstatement fee. After one year, the certificate may not be reinstated under any circumstances and the applicant must meet all requirements and apply as a new applicant. If the renewal requirements are not completed within 30 days of the expiration date noted on the proprietary school approval, the proprietary school shall no longer offer board-approved courses.

D. The application for an original prelicense education instructor certificate shall be ~~\$190~~ \$220.

E. The renewal fee for a prelicense instructor certificate expiring every two years from the last day of the month in which it was issued shall be ~~\$75~~ \$120.

F. If the requirements for renewal of an instructor certificate, including receipt of the fee by the board, are not completed within 30 days of the expiration date on the certificate, a reinstatement fee of ~~\$110~~ \$180 is required. A certificate may be reinstated for up to one year following the expiration date with payment of the reinstatement fee. After one year, the certificate may not be reinstated under any circumstances and the applicant must meet all requirements and apply as a new applicant.

G. The board in its discretion may deny renewal of a certificate for the same reasons it may deny initial approval.

VA.R. Doc. No. R22-6767; Filed November 8, 2023, 3:55 p.m.



TITLE 19. PUBLIC SAFETY

DEPARTMENT OF STATE POLICE

Final Regulation

REGISTRAR'S NOTICE: The Department of State Police is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 6 of the Code of Virginia, which exempts agency action relating to customary military, naval, or police functions.

Title of Regulation: **19VAC30-40. Standards and Specifications for the Stickers or Decals Used by Cities, Counties and Towns in Lieu of License Plates (amending 19VAC30-40-20, 19VAC30-40-30; repealing 19VAC30-40-10).**

Statutory Authority: §§ 46.2-1052 and 52-8.4 of the Code of Virginia.

Effective Date: January 8, 2024.

Agency Contact: Major Ronald C. Maxey, Jr., Deputy Director, Bureau of Field Operations, Department of State Police, 7700 Midlothian Turnpike, North Chesterfield, VA 23235, telephone (804) 674-2014, FAX (804) 674-2936, or email ron.maxey@vsp.virginia.gov.

Summary:

In response to Executive Order 19 (2022) and Executive Directive One (2022), the amendments (i) repeal an unnecessary purpose statement and (ii) remove one optional provision and one explanatory provision regarding locality vehicle stickers.

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19VAC30-40-10. Purpose. (Repealed.)

The purpose of this standard is to establish specifications for the size and placement location of stickers or decals used by counties, cities, and towns in lieu of license plates.

19VAC30-40-20. Size.

The size of the sticker or decal shall not exceed three inches in height and three inches in length. ~~The shape of the sticker or decal is optional.~~

19VAC30-40-30. Placement.

The sticker or decal shall be placed at the bottom of the windshield ~~adjacent to~~ 1/4-inch from the right side edge of the official inspection sticker when viewed through the windshield from inside the vehicle. ~~The side edge adjacent to the official inspection sticker shall not be more than 1/4 inch from the edge of the official inspection sticker.~~ At the option of the motor vehicle's owner, the sticker or decal, provided it measures not more than two and one-half inches in width and four inches in length, may be placed in the blind spot behind the rear view mirror.

V.A.R. Doc. No. R24-7725; Filed November 8, 2023, 11:27 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Department of State Police is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 6 of the Code of Virginia, which exempts agency action relating to customary military, naval, or police functions.

Title of Regulation: 19VAC30-80. Regulations Relating to Specifications of the Description to Be Obtained by Pawnbrokers of Persons Pawning or Pledging Goods (amending 19VAC30-80-30, 19VAC30-80-40; repealing 19VAC30-80-10).

Statutory Authority: § 54.1-4009 of the Code of Virginia.

Effective Date: January 8, 2024.

Agency Contact: Captain Matthew T. Patterson, Criminal Justice Information Services Officer, Department of State Police, 7700 Midlothian Turnpike, North Chesterfield, VA 23235, telephone (804) 674-2023, or email matthew.patterson@vsp.virginia.gov.

Summary:

In response to Executive Order 19 (2022) and Executive Directive One (2022), the amendments (i) repeal the purpose statement of the regulation, as it is unnecessary; (ii) remove an explanatory provision stating expired credentials are not acceptable as identification by pawnbrokers; and (iii) consolidate the provisions for submitting reports.

19VAC30-80-10. Purpose. (Repealed.)

The purpose of this standard is to establish specifications of the description to be obtained by pawnbrokers of persons pawning or pledging goods and to specify the nature of the identifying credentials to be examined by a pawnbroker of a person pawning or pledging goods.

19VAC30-80-30. Identifying credentials.

The identifying credential of any person pawning or pledging goods to be examined by a pawnbroker shall be any valid nonexpired operator's license, ~~any valid~~ chauffeur's license, or ~~any valid~~ identification card issued by a governmental agency. The photograph, date of birth, and signature of the person attempting to pawn or pledge goods must be affixed on the ~~operator's license, chauffeur's license, or identification card in order~~ credential for it to qualify as an identifying credential. ~~No operator's license, chauffeur's license, or identification card shall be considered valid for the purpose of qualifying as an identifying credential if presented to a pawnbroker after its date of expiration.~~

19VAC30-80-40. Electronic submission of required reports.

All reports required to be maintained and submitted by a pawnbroker may be ~~maintained and submitted~~ accomplished in electronic format. All such electronic reports shall ~~include the information required by the Code of Virginia and the implementing regulations.~~ Such reports shall be maintained ~~and be~~ submitted in the form designated by the chief of police or other law-enforcement officer designated by the ~~local~~ attorney for the Commonwealth to receive such reports in the ~~county, city or town~~ jurisdiction where the pawnbroker business is conducted.

V.A.R. Doc. No. R24-7721; Filed November 8, 2023, 11:30 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Department of State Police is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 6 of the Code of Virginia, which exempts agency action relating to customary military, naval, or police functions.

Title of Regulation: 19VAC30-190. Regulations Relating to the Issuance of Nonresident Concealed Handgun Carry Permits (amending 19VAC30-190-20, 19VAC30-190-110).

Statutory Authority: § 18.2-308.06 of the Code of Virginia.

Effective Date: January 8, 2024.

Agency Contact: Captain Matthew T. Patterson, Criminal Justice Information Services Officer, Department of State Police, 7700 Midlothian Turnpike, North Chesterfield, VA 23235, telephone (804) 674-2023, or email matthew.patterson@vsp.virginia.gov.

Summary:

In response to Executive Order 19 (2022) and Executive Directive One (2022), the amendments (i) remove a requirement that the State Police send a brochure on Virginia Firearms Safety and Laws to individuals who request a Nonresident Concealed Handgun Carry Permit, and (ii) reword the physical address Nonresident Concealed Handgun Carry Permittees may use to notify the State Police of an address change.

19VAC30-190-20. How to apply.

Applicants may request an application package by contacting the Virginia State Police Firearms Transaction Center in writing at the below address or online at nonrespermit@vsp.virginia.gov.

All written requests must include the applicant's complete name and mailing address. A telephone number is also requested. Written requests shall be sent to:

Firearms Transaction Center
 Nonresident CHP Permits
 Criminal Justice Information Services Division
 Department of State Police
 P.O. Box 85141
 Richmond, VA 23285-5141

The application package will include a Concealed Handgun Permit Application, requirement and qualification information, a fingerprint card, ~~a brochure on Virginia Firearms Safety and Laws~~, a checklist, and a return envelope for the completed application.

19VAC30-190-110. Change of address.

Permit holders are requested to notify the Virginia State Police, Firearms Transaction Center (FTC) of changes of address. Notification may be made online at nonresidentpermit@vsp.virginia.gov, or in writing to ~~the FTC~~ at

Firearms Transaction Center
Nonresident CHP Permits
Criminal Justice Information Services Division
Department of State Police
 P.O. Box 85141,
 Richmond, VA 23285-5141

~~or online at nonrespermit@vsp.virginia.gov~~, and Requests must include the permit file number or a photocopy of the permit. A change of address card will be provided to the permit holder to be retained with the original permit.

VA.R. Doc. No. R24-7723; Filed November 8, 2023, 11:31 a.m.

TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Final Regulation

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

Titles of Regulations: **22VAC30-80. Auxiliary Grants Program (amending 22VAC30-80-10).**

22VAC30-110. Assessment in Assisted Living Facilities (amending 22VAC30-110-10).

Statutory Authority: §§ 51.5-131 and 51.5-160 of the Code of Virginia.

Effective Date: January 3, 2024.

Agency Contact: Charlotte Arbogast, Senior Policy Analyst, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Henrico, VA 23229, telephone (804) 662-7093, FAX (804) 662-7663, TDD (800) 464-9950, or email charlotte.arbogast@dars.virginia.gov.

Summary:

Chapters 148 and 149 of the 2023 Acts of Assembly amend the Code of Virginia to replace the words "handicap" and "handicapped" and similar terms with alternative terms appropriate in the statutory context, such as "disability" and "impairment." The amendments update the definition of "assisted living facility" in department regulations to comport with the new definition of that term found in § 63.2-100 of the Code of Virginia.

22VAC30-80-10. Definitions.

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

"Adult foster care" or "AFC" means a locally optional program that provides room and board, supervision, and special services to an individual who has a physical or mental health need. Adult foster care may be provided for up to three individuals by any one provider who is approved by the local department of social services.

"Assisted living care" means a level of service provided by an assisted living facility for individuals who may have physical or mental impairments and require at least moderate assistance with the activities of daily living. Included in this level of service are individuals who are dependent in behavior pattern

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(i.e., abusive, aggressive, disruptive) as documented on the Uniform Assessment Instrument.

"Assisted living facility" or "ALF" means any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, ~~or~~ infirm or ~~disabled~~ who have disabilities and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility serving individuals who are infirm or disabled persons who have disabilities between the ages of 18 and 21, or 22 if enrolled in an educational program for ~~the handicapped individuals with disabilities~~ pursuant to § 22.1-214 of the Code of Virginia, when such facility is licensed by the Virginia Department of Social Services as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia, but including any portion of the facility not so licensed; and (iv) any housing project for ~~persons~~ individuals who are 62 years of age or older or the disabled individuals with disabilities that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments, or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more adults who are aged, or infirm or disabled adults who have disabilities. Maintenance or care means the protection, general supervision and oversight of the physical and mental well-being of an individual who is aged, or infirm or disabled individual who has a disability.

"Authorized payee" means the individual who may be a court-appointed conservator or guardian, a person with a valid power of attorney, or an authorized representative with the documented authority to accept funds on behalf of the individual. An authorized payee for the auxiliary grant shall not be (i) the licensee or (ii) the owner of, employee of, or an entity hired by or contracted by the ALF or AFC home.

"Authorized representative" means the person representing or standing in place of the individual receiving the auxiliary grant for the conduct of the auxiliary grant recipient's affairs (i.e., personal or business interests). "Authorized representative" may include a guardian, conservator, attorney-in-fact under durable power of attorney, trustee, or other person expressly named in writing by the individual as his agent. An authorized representative shall not be (i) the licensee or (ii) the owner of, employee of, or an entity hired by or contracted by the ALF, AFC home, or a supportive housing provider unless the auxiliary grant recipient designates such a person to assist with

financial management of his personal needs allowance as a choice of last resort because there is no other authorized representative willing or available to serve in this capacity.

"Auxiliary Grants Program" or "AG" means a state and locally funded assistance program to supplement income of an individual receiving Supplemental Security Income (SSI) or adult who would be eligible for SSI except for excess income, who resides in an ALF, an AFC home, or a supportive housing setting with an established rate. The total number of individuals within the Commonwealth of Virginia eligible to receive AG in a supportive housing setting shall not exceed the number designated in the signed agreement between the department and the Social Security Administration.

"Certification" means an official approval as designated on the form provided by the department and prepared by an ALF or a supportive housing provider. Each ALF shall annually certify that it has properly managed the personal funds and personal needs allowances of individuals residing in the ALF and is in compliance with program regulations and appropriate licensing regulations. Each supportive housing provider shall annually certify that it is in compliance with this chapter.

"Department" means the Department for Aging and Rehabilitative Services.

"DBHDS" means the Department of Behavioral Health and Developmental Services.

"Established rate" means the rate as set forth in the appropriation act or as set forth to meet federal maintenance of effort requirements.

"Licensee" means any person, association, partnership, corporation, limited liability company, or governmental unit to whom a license to operate an ALF is issued in accordance with 22VAC40-73.

"Personal funds" means payments the individual receives, whether earned or unearned, including wages, pensions, Social Security benefits, and retirement benefits. "Personal funds" does not include the personal needs allowance.

"Personal needs allowance" means a portion of the AG payment that is reserved for meeting the individual's personal needs. The amount is established by the Virginia General Assembly.

"Personal toiletries" means hygiene items provided to the individual by the ALF or AFC home including deodorant, razor, shaving cream, shampoo, soap, toothbrush, and toothpaste.

"Provider" means an ALF that is licensed by the Virginia Department of Social Services or an AFC provider that is approved by a local department of social services or a supportive housing provider as defined in § 37.2-421.1 of the Code of Virginia.

"Provider agreement" means a written agreement that ALF and supportive housing providers must complete and submit to the department when requesting approval to admit individuals receiving AG.

"Qualified assessor" means an individual who is authorized by 22VAC30-110 to perform an assessment, reassessment, or change in level of care for an individual applying for AG or residing in an ALF or a supportive housing setting. For individuals receiving services from a community services board or behavioral health authority, a qualified assessor is an employee or designee of the community services board or behavioral health authority.

"Rate" means the established rate.

"Residential living care" means a level of service provided by an ALF for individuals who may have physical or mental impairments and require only minimal assistance with the activities of daily living. Included in this level of service are individuals who are dependent in medication administration as documented on the Uniform Assessment Instrument (UAI).

"Supportive housing" or "SH" means a residential setting with access to supportive services for an AG recipient in which tenancy as described in § 37.2-421.1 of the Code of Virginia is provided or facilitated by a provider licensed to provide mental health community support services, intensive community treatment, programs of assertive community treatment, supportive in-home services, or supervised living residential services that has entered into an agreement with the DBHDS pursuant to § 37.2-421.1 of the Code of Virginia.

"Third-party payment" means a payment made by a third party to an ALF, an AFC home, or supportive housing provider on behalf of an AG recipient for goods or services other than for food, shelter, or specific goods or services required to be provided by the ~~ALF~~, ALF, an AFC home, or a supportive housing provider as a condition of participation in the AG in accordance with 22VAC30-80-45.

"Uniform Assessment Instrument" or "UAI" means the department-designated assessment form. It is used to record assessment information for determining the level of service that is needed.

22VAC30-110-10. Definitions.

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

"Activities of daily living" or "ADLs" means bathing, dressing, toileting, transferring, bowel control, bladder control, and eating/feeding. An individual's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Administrator" means the licensee or person designated by the licensee who is responsible for the general administration

and management of an assisted living facility and who oversees the day-to-day operation of the facility, including compliance with all regulations for assisted living facilities.

"Assessment" means a standardized approach using common definitions to gather sufficient information about an individual applying to or residing in an assisted living facility to determine the need for appropriate level of care and services.

"Assisted living care" means a level of service provided by an assisted living facility to individuals who may have physical or mental impairments and require at least moderate assistance with the activities of daily living. Included in this level of service are individuals who are dependent in behavior pattern (i.e., abusive, aggressive, disruptive) as documented on the uniform assessment instrument.

"Assisted living facility" or "ALF" means any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, or infirm, or disabled who have disabilities and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility serving individuals who are infirm or disabled persons who have disabilities between the ages of 18 and 21 years, or 22 years if enrolled in an educational program for ~~the handicapped~~ individuals with disabilities pursuant to § 22.1-214 of the Code of Virginia, when such facility is licensed by the Department of Social Services as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia, but including any portion of the facility not so licensed; and (iv) any housing project for ~~persons~~ individuals who are 62 years of age or older or ~~the disabled~~ individuals with disabilities that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments, or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more adults who are aged, or infirm, or ~~disabled adults who have disabilities~~. Maintenance or care means the protection, general supervision, and oversight of the physical and mental well-being of an individual who is aged, or infirm, or disabled individual who has a disability.

"Auxiliary Grants Program" means a state and locally funded assistance program to supplement the income of an individual who is receiving Supplemental Security Income (SSI) or an individual who would be eligible for SSI except for excess

Regulations

income, and who resides in an ALF, an adult foster care home, or supportive housing setting with an established rate in the Appropriation Act. The total number of individuals within the Commonwealth of Virginia eligible to receive auxiliary grants in a supportive housing setting shall not exceed the number individuals designated in the Virginia law and the signed agreement between the department and the Social Security Administration.

"Case management" means multiple functions designed to link individuals to appropriate services. Case management may include a variety of common components, such as initial screening of need, comprehensive assessment of needs, development and implementation of a plan of care, service monitoring, and follow-up.

"Case management agency" means a public human service agency that employs a case manager or contracts for case management.

"Case manager" means an employee of a public human services agency who is qualified to perform assessments and to develop and coordinate plans of care.

"Department" or "DARS" means the Virginia Department for Aging and Rehabilitative Services.

"Department designated case management system" means the official state automated computer system that collects and maintains information on assessments conducted by employees of the local department who meet the definition of qualified assessor.

"Dependent" means the individual needs the assistance of another person or needs the assistance of another person and equipment or a device to safely complete an ADL or IADL. For medication administration, dependent means the individual needs to have medications administered or monitored by another person or professional staff. For behavior pattern, dependent means the individual's behavior is aggressive, abusive, or disruptive.

"Discharge" means the process that ends an individual's stay in the ALF.

"Emergency placement" means the temporary status of an individual in an ALF when the individual's health and safety would be jeopardized by denying entry into the facility until requirements for admission have been met.

"Face-to-face" means interacting with an individual in need of an assessment in a manner that enables the qualified assessor or case manager to observe the individual's behavior and ability to perform ADLs and IADLs.

"Facility" means an ALF.

"Independent physician" means a physician who is chosen by an individual residing in the ALF and who has no financial interest in the ALF, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the facility.

"Instrumental activities of daily living" or "IADLs" means for the purposes of this chapter, meal preparation, housekeeping, laundry, and money management. An individual's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Local department" means any local department of social services in the Commonwealth of Virginia.

"Maximum physical assistance" means that an individual has a rating of total dependence in four or more of the seven activities of daily living as documented on the uniform assessment instrument.

"Medication administration" means for purposes of this chapter, assessing the degree of assistance an individual requires to take medications in order to determine the individual's appropriate level of care.

"Minimal assistance" means dependency in only one ADL or dependency in one or more IADLs as documented on the uniform assessment instrument. Included in this level of services are individuals who are dependent in medication administration as documented on the UAI.

"Moderate assistance" means dependency in two or more ADLs as documented on the UAI.

"Private pay" means that an individual residing in an ALF is not eligible for the Auxiliary Grants Program.

"Prohibited conditions" means physical or mental health conditions or care needs as described in § 63.2-1805 of the Code of Virginia. An ALF shall not admit or allow the continued residence of an individual with a prohibited condition. Prohibited conditions include an individual who requires maximum physical assistance as documented on the uniform assessment instrument and meets nursing facility level of care criteria as defined in the State Plan for Medical Assistance. Unless the individual's independent physician determines otherwise, an individual who requires maximum physical assistance and meets nursing facility level of care criteria as defined on the State Plan for Medical Assistance shall not be admitted to or continue to reside in an ALF.

"Public human services agency" means an agency established or authorized by the General Assembly under Chapters 2 and 3 (§§ 63.2-200 et seq. and 63.2-300 et seq.) of Title 63.2, Chapter 14 (§ 51.5-116 et seq.) of Title 51.5, Chapters 1 and 5 (§§ 37.2-100 et seq. and 37.2-500 et seq.) of Title 37.2, or Article 5 (§ 32.1-30 et seq.) of Chapter 1 of Title 32.1, or hospitals operated by the state under Chapters 22 (§ 23.1-2200 et seq.) and 23 (§ 23.1-2300 et seq.) of Title 23.1 of the Code of Virginia and supported wholly or principally by public funds, including funds provided expressly for the purposes of case management.

"Public pay" means that an individual residing in an ALF is eligible for the Auxiliary Grants Program.

"Qualified assessor" means a person who is authorized to perform an assessment, reassessment, or change in level of care for an individual who is seeking admission to an ALF or who resides in an ALF. For public pay individuals, a qualified assessor is an employee of a public human services agency who is trained in the completion of the uniform assessment instrument and is authorized to approve placement for an individual who is seeking admission to or residing in an ALF. For private pay individuals, a qualified assessor is staff of the ALF trained in the completion of the uniform assessment instrument or an independent physician or a qualified assessor for public pay individuals.

"Reassessment" means an update of information on the UAI after the initial assessment. In addition to an annual reassessment, a reassessment shall be completed whenever there is a significant change in the individual's condition.

"Residential living care" means a level of service provided by an ALF for individuals who may have physical or mental impairments and require only minimal assistance. The definition of residential living care includes the services provided by the ALF to individuals who are assessed as capable of maintaining themselves in an independent living status.

"Significant change" means a change in an individual's condition that is expected to last longer than 30 days. It does not include short-term changes that resolve with or without intervention, a short-term acute illness or episodic event, or a well-established, predictive, cyclic pattern of clinical signs and symptoms associated with a previously diagnosed condition where an appropriate course of treatment is in progress.

"Targeted case management" means the provision of ongoing case management services by an employee of a public human services agency contracting with the Department of Medical Assistance Services to an individual who is receiving an auxiliary grant in an ALF who meets the criteria set forth in 12VAC30-50-470.

"Total dependence" means the individual is entirely unable to participate in the performance of an ADL.

"Uniform assessment instrument" or "UAI" means the department-designated assessment form. There is an alternate version of the uniform assessment instrument that may be used for individuals paying privately to reside in the ALF.

"Virginia Department of Medical Assistance Services" or "DMAS" means the single state agency designated to administer the Medical Assistance Services Program in Virginia.

VA.R. Doc. No. R24-7630; Filed November 1, 2023, 12:15 p.m.

GOVERNOR

EXECUTIVE ORDER NUMBER TWENTY-EIGHT (2023)

Parental Notification, Law Enforcement Collaboration, and Student Education to Prevent Student Overdoses

By virtue of the authority vested in me as Governor of the Commonwealth, I hereby issue this Executive Order directing the Superintendent of Public Instruction and the Virginia Department of Education to take immediate action regarding overdoses in Virginia's public schools.

Importance of Initiative

My Administration has been aggressively focused on fighting the fentanyl epidemic and reversing the disturbing trend of increasing overdoses of Virginians, especially among our youth, with our Right Help, Right Now initiative, One Pill Can Kill campaign, and Executive Order 26 (2023) Crushing the Fentanyl Epidemic: Strengthening Virginia's Interdiction and Enforcement Response to the Fentanyl Crisis.

In October 2023, there were nine documented cases of opioid-related drug overdoses involving students at Loudoun County Public Schools.¹ At least four of these incidents took place on school premises, three required the administration of naloxone, and in at least two instances, school personnel were required to perform life-saving CPR. These incidents reflect a broader issue, with more than 19 juvenile opioid overdoses in Loudoun County this year.

Transparency and community awareness are essential to ensuring the safety and well-being of Virginia's children. The Loudoun County Public School division reportedly waited more than 20 days to inform parents despite clear evidence of numerous incidents of overdose among the students.

Failure to promptly notify parents endangers the health and welfare of their children and limits parents' fundamental right to make decisions concerning the upbringing, education, and care of their children.

Directive

Accordingly, pursuant to the authority vested in me as the Chief Executive Officer of the Commonwealth, and pursuant to Article V of the Constitution and the laws of the Commonwealth including Code of Virginia § 1-240.1, I hereby order the Superintendent of Public Instruction and the Department of Education to:

1. Issue guidance requiring the notification of all parents within a school division through regular communication channels within 24 hours of a school-connected student overdose, while always ensuring protection of student privacy.
2. Issue guidance outlining close collaboration between local school divisions and state law enforcement to prevent student overdoses.

3. Provide information to local school divisions and parents about education programs for students to develop decision-making skills and prevent violations of Virginia law, including state and federal efforts such as the One Pill Can Kill campaign led by the First Lady of Virginia and the Attorney General and the Attorney General's Virginia Rules program.

Effective Date

This Executive Order shall be effective upon its signing and shall remain in force and effect unless amended or rescinded by a future executive order or directive. Given under my hand and under the Seal of the Commonwealth of Virginia, this 1st day of November, 2023.

/s/ Glenn Youngkin, Governor

¹ Minock, Nick. WJLA. "9 recent opioid-related overdoses connected to Loudoun County high school, officials say." <https://wjla.com/news/local/loudoun-county-eight-opioid-overdose-park-view-high-school-connected-narc-an-cpr-oxycodone-m30-juveniles-investigate-deadly-serious-similarities-details-information-lethal>

EXECUTIVE ORDER NUMBER TWENTY-NINE (2023) - Amended

Declaration of a State of Emergency Due to Wildfires, or the Potential Thereof, Throughout the Commonwealth of Virginia

Importance of the Issue

The Commonwealth of Virginia is experiencing multiple wildfires around the state due to extremely dry conditions and high winds, both of which are common during the ongoing fall fire season. These fires have and may continue to pose a significant threat to public health and safety. Specifically, two fires—the Quaker Run Fire in Madison County and the Tuggles Gap Fire in Patrick County—broke containment lines in recent days. As such, additional resources are needed to contain these fires and respond to additional fires as necessary.

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 and 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, and subject always to my continuing and ultimate authority and responsibility to act in such matters, 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 I misdemeanor.

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 \$ 10,000,000.00 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 \$5,000,000.00 for the Department of Military Affairs.
6. Activation of the Virginia National Guard to State Active Duty.

Effective Date of this Executive Order

This Amended Executive Order shall be effective November 6, 2023, and shall remain in full force and effect for 30 days pursuant to § 44-146.17 of the Code of Virginia, 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 9th day of November, 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, General Assembly Building, 201 North Ninth Street, 4th Floor, Richmond, Virginia 23219.

STATE BOARD OF HEALTH

Title of Document: [Guidance Memoranda and Policy 2019-01 Hardship Guidelines](#).

Public Comment Deadline: January 3, 2024.

Effective Date: January 4, 2024.

Agency Contact: Lance Gregory, Division Director, Office of Environmental Health, Virginia Department of Health, 109 Governor Street, 5th floor, Richmond, VA 23219, telephone (804) 864-7491, or email lance.gregory@vdh.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Document: [Durable Medical Equipment Manual, Chapter 4](#).

Public Comment Deadline: January 3, 2024.

Effective Date: January 4, 2024.

Agency Contact: Meredith Lee, Policy, Regulations, and Manuals Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, or email meredith.lee@dmas.virginia.gov.

BOARD OF MEDICINE

Titles of Documents: [Guidance Regarding Collaborative Practice Agreements](#).

[Prescriptive Authority in Virginia](#).

Public Comment Deadline: January 3, 2024.

Effective Date: January 4, 2024.

Agency Contact: Erin Barrett, Director of Legislative and Regulatory Affairs, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, Virginia 23233, telephone (804) 367-4688, or email erin.barrett@dhp.virginia.gov.

BOARD OF NURSING

Title of Document: [Prescriptive Authority in Virginia](#).

Public Comment Deadline: January 3, 2024.

Effective Date: January 4, 2024.

Agency Contact: Erin Barrett, Director of Legislative and Regulatory Affairs, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, Virginia 23233, telephone (804) 367-4688, or email erin.barrett@dhp.virginia.gov.

BOARD OF PHARMACY

Titles of Documents: [Categories of Facility Licensure](#).

[Compliance with United States Pharmacopeia Standards for Compounding](#).

[Delivery of Dispensed Drugs](#).

[Guidance Document for Physicians Dispensing Drugs](#).

[Guidance Regarding Collaborative Agreements](#).

[Guidance on Virginia Prescription Requirements](#).

[Naloxone or other Opioid Antagonist Protocols](#).

[Practitioner and Patient Relationship and the Prescribing of Drugs for Family or Self](#).

[Prescriptive Authority in Virginia](#).

Public Comment Deadline: January 3, 2024.

Effective Date: January 4, 2024.

Agency Contact: Erin Barrett, Director of Legislative and Regulatory Affairs, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, Virginia 23233, telephone (804) 367-4688, or email erin.barrett@dhp.virginia.gov.

GENERAL NOTICES

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Public Review Opportunity for Eligibility Draft

Draft transmittal #DMAS-29, the Virginia Medical Assistance Eligibility Manual, is available for review on the Department of Medical Assistance Services website at <https://www.dmas.virginia.gov/for-applicants/eligibility-guidance/transmittals/>.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mclellan@dmas.virginia.gov.

VIRGINIA DEPARTMENT OF PLANNING AND BUDGET

Commercial Activities List – Public Comments and Recommendations

Pursuant to § 2.2-1501.1 of the Code of Virginia, the Virginia Department of Planning and Budget (DPB) has updated the Commercial Activities List (CAL). The CAL is posted on the DPB website at <https://dpb.virginia.gov/forms/forms.cfm> as "Commercial Activities List - 2023."

Virginia Commercial Activities List for FY 2022 and FY 2023	
NIGP	NIGP Title
90608	Automation; Controls; Instrumentation - Architectural Services
90648	Historical Preservation
91013	Elevator Installation, Maintenance and Repair
91223	Construction, General (Backfill Services, Digging, Ditching, Road Grading, Rock Stabilization, etc.)
91265	Maintenance and Repair, Tennis or Sport Court
91316	Construction, Communication Equipment (Includes Antenna Towers)
91359	Construction and Upgrades, Wastewater Treatment Plant
91360	Construction, Water System/Plants, Main and Service Line
91427	Carpentry
91464	Plastering
91500	Communications and Media Related Services
91504	Advertising, Outdoor Billboard, etc.

91522	Communications Marketing Services
91806	Administrative Consulting
91807	Advertising Consulting
91815	Architectural Consulting
91819	Buildings, Structures and Components Consulting
91831	Construction Consulting
91873	Landscaping Consulting
91875	Management Consulting
91878	Medical Consulting
91885	Personnel/Employment Consulting (Human Resources)
91887	Purchasing Consulting (Including Specification Development)
91889	Real Estate or Land Consulting (Including Land Survey Consulting)
91891	Roofing Consultant
91892	Urban Planning Consulting
91895	Telecommunications Consulting
92000	Data Processing, Computer, Programming, and Software Services
92022	Data Preparation and Processing Services (Including Bates Coding)
92034	Media Conversion Services
92037	Networking Services (Including Installation, Security, and Maintenance)
92039	Processing System Services, Data (Not Otherwise Classified)
92040	Programming Services, Computer
92416	Course Development Services, Instructional or Training
92418	Educational Services, Alternative
92460	Not-For-Credit Classes, Seminars, Workshops, etc.
92474	Special Education
92480	Tutoring
92500	Engineering Services, Professional
92824	Buses, School and Mass Transit, Maintenance and Repair
93881	Scientific Equipment Maintenance and Repair

General Notices

93921	Computers, Data Processing Equipment and Accessories (Not Word Processing Equipment), Maintenance and Repair
94155	HVAC Systems Maintenance and Repair, Power Plant
94620	Auditing
94649	Financial Services (Not Otherwise Classified)

DPB is seeking written comments on the CAL and invites recommendations from the public regarding activities being performed by state agencies that might better be performed by the private sector.

Public comment period begins December 4, 2023, and ends January 3, 2024.

Include "CAL" in the subject of the email.

Contact Information: Cari Corr, Commercial Activities List, Virginia Department of Planning and Budget, 1111 East Broad Street, Richmond, VA 23219, telephone (804) 225-4549, or email cari.corr@dpb.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, General Assembly Building, 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 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.