



# VIRGINIA

## REGISTER OF REGULATIONS

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Virginia Code Commission

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

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# THE VIRGINIA REGISTER INFORMATION PAGE

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

## ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

## FAST-TRACK RULEMAKING PROCESS

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

## EMERGENCY REGULATIONS

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

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# PUBLICATION SCHEDULE AND DEADLINES

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

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## April 2024 through April 2025

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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 26, 2024 ( <b>Tuesday</b> )	December 16, 2024
41:10	December 11, 2024	December 30, 2024
41:11	December 23, 2024 ( <b>Monday</b> )	January 13, 2025
41:12	January 8, 2025	January 27, 2025
41:13	January 22, 2025	February 10, 2025
41:14	February 5, 2025	February 24, 2025
41:15	February 19, 2025	March 10, 2025
41:16	March 5, 2025	March 24, 2025
41:17	March 19, 2025	April 7, 2025
41:18	April 2, 2025	April 21, 2025

\*Filing deadlines are Wednesdays unless otherwise specified.

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# PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF PHYSICAL THERAPY

#### Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and small business impact review: **18VAC112-11, Public Participation Guidelines**. The review of this regulation will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether the regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins March 25, 2024, and ends April 15, 2024.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency.

Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Corie Tillman Wolf, Executive Director, Board of Physical Therapy, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4674, FAX (804) 527-4413, or email [ptboard@dhp.virginia.gov](mailto:ptboard@dhp.virginia.gov).

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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 1. ADMINISTRATION

### COMMISSION ON LOCAL GOVERNMENT

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Commission on Local Government intends to consider amending **1VAC50-20, Organization and Regulations of Procedure**. The purpose of the proposed action is to make a general review of the regulation in accordance with Executive Directive One (2022). The regulation governs the procedures and rules for proceedings, such as boundary line adjustments, annexation, and reversion, that come before the commission. The review will consider amending the regulation to remove overly burdensome or obsolete requirements.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 15.2-2903 of the Code of Virginia.

Public Comment Deadline: April 24, 2024.

Agency Contact: LeGrand Northcutt, Senior Policy Analyst, Department of Housing and Community Development, Main Street Center, 600 East Main Street, Richmond, VA 23219, telephone (804) 310-7151, FAX (804) 371-7090, or email [legrand.northcutt@dhcd.virginia.gov](mailto:legrand.northcutt@dhcd.virginia.gov).

VA.R. Doc. No. R24-7771; Filed February 29, 2024, 4:47 p.m.

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## TITLE 2. AGRICULTURE

### BOARD OF AGRICULTURE AND CONSUMER SERVICES

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to consider amending **2VAC5-680, Regulations Governing Licensing of Pesticide Businesses Operating under Authority of the Virginia Pesticide Control Act** and **2VAC5-685, Regulations Governing Pesticide Applicator Certification under Authority of Virginia Pesticide Control Act**. The purpose of the proposed action is to conform the regulations to the U.S. Environmental Protection Agency (EPA) 2017 Certification of Pesticide Applicators rule. This federal rule sets forth the minimum requirements for applicators who apply restricted use pesticides, including both commercial and private pesticide applicators. EPA's 2017 revisions to the federal rule were designed to enhance the competencies of pesticide applicators. The amendments are necessary for Virginia to retain its authority to certify pesticide applicators. The primary areas of

change include amending (i) applicator competency standards for certification and recertification; (ii) minimum age for certified applicators and persons working under the direct supervision of a certified applicator; (iii) specialized certification categories for applicators using specific application methods, such as fumigation and aerial application; and (iv) recordkeeping for pesticide applicators and pesticide businesses.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 3.2-3906 of the Code of Virginia.

Public Comment Deadline: April 24, 2024.

Agency Contact: Liza Fleeson Trossbach, Program Manager, Office of Pesticide Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-6559, FAX (804) 371-2283, TDD (800) 828-1120, or email [liza.fleeson@vdacs.virginia.gov](mailto:liza.fleeson@vdacs.virginia.gov).

VA.R. Doc. No. R24-7814; Filed March 1, 2024, 1:30 p.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### COMMON INTEREST COMMUNITY BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Common Interest Community Board intends to consider amending **18VAC48-30, Condominium 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 implements the requirements of the Virginia Condominium Act (§ 55.1-1900 et seq. of the Code of Virginia) regulating the offering and disposition of condominium units in Virginia. The regulation contains the requirements for registration of condominiums, including requirements for public offering statements and posting of required bonds or letters of credit. The regulation also provides for requirements for maintenance of a condominium registration, including filing and reporting requirements. 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) ensuring 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: § 54.1-2349 of the Code of Virginia.

Public Comment Deadline: April 24, 2024.

Agency Contact: Anika Coleman, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (866) 490-2723, or email [cic@dpor.virginia.gov](mailto:cic@dpor.virginia.gov).

VA.R. Doc. No. R24-7727; Filed March 6, 2024, 9:20 a.m.

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Common Interest Community Board intends to consider amending **18VAC48-45, Time-Share 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 implements the requirements of the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq. of the Code of Virginia) regulating the offering and disposition of time-shares in Virginia. 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) ensuring 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: §§ 54.1-2349 and 55.1-2247 of the Code of Virginia.

Public Comment Deadline: April 24, 2024.

Agency Contact: Anika Coleman, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (866) 490-2723, or email [cic@dpor.virginia.gov](mailto:cic@dpor.virginia.gov).

VA.R. Doc. No. R24-7728; Filed March 6, 2024, 9:22 a.m.

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# REGULATIONS

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

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## 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.

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## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### MARINE RESOURCES COMMISSION

#### Final Regulation

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

**Title of Regulation:** 4VAC20-980. **Pertaining to on-Shore Loading and Unloading of Shellfish from Condemned Areas (repealing 4VAC20-980-10 through 4VAC20-980-40).**

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

**Effective Date:** March 1, 2024.

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

#### Summary:

*The amendments repeal Pertaining to on-Shore Loading and Unloading of Shellfish from Condemned Areas (4VAC20-980) because regulatory requirements found in 4VAC20-980 are duplicated in other regulations, making 4VAC20-980 redundant and unnecessary.*

VA.R. Doc. No. R24-7800; Filed February 27, 2024, 12:41 p.m.

#### Final Regulation

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

**Title of Regulation:** 4VAC20-1200. **Pertaining to the Special Oyster Relay Season in the Rappahannock River (repealing 4VAC20-1200-10, 4VAC20-1200-20, 4VAC20-1200-30).**

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

**Effective Date:** March 1, 2024.

**Agency Contact:** Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road Building

96, Fort Monroe, VA 23651, telephone (757) 247-2248, FAX (757) 247-2002, or email [jennifer.farmer@mrc.virginia.gov](mailto:jennifer.farmer@mrc.virginia.gov).

#### Summary:

*The amendments repeal Pertaining to the Special Oyster Relay Season in the Rappahannock River (4VAC20-1200) because another regulatory chapter, Pertaining to Restrictions on Oyster Harvest (4VAC20-720), regulates the same activities, making 4VAC20-1200 redundant and unnecessary.*

VA.R. Doc. No. R24-7799; Filed February 27, 2024, 12:42 p.m.

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## TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

### FORENSIC SCIENCE BOARD

#### Fast-Track Regulation

**Title of Regulation:** 6VAC40-60. **DNA Data Bank Regulations (amending 6VAC40-60-10, 6VAC40-60-20, 6VAC40-60-30, 6VAC40-60-60).**

**Statutory Authority:** §§ 9.1-1110 and 19.2-310.5 of the Code of Virginia.

**Public Hearing Information:** No public hearing is currently scheduled.

**Public Comment Deadline:** April 24, 2024.

**Effective Date:** May 9, 2024.

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

**Basis:** The Forensic Science Board has the authority to promulgate DNA Data Bank regulations under §§ 9.1-1110 and 19.2-310.5 of the Code of Virginia.

**Purpose:** This regulatory action reduces the burden on law-enforcement agencies and others who request information from the DNA Data Bank while still protecting the security of Data Bank information, making requests more secure and more efficient by converting to the use of web forms for the requesting process.

**Rationale for Using Fast-Track Rulemaking Process:** This action reduces the burden on law-enforcement agencies and takes advantage of technological advances that permit an easier process with the appropriate procedural safeguards for



requesting DNA Data Bank information. The action should not be controversial.

**Substance:** The amendments (i) remove the definition of "subject"; (ii) remove the requirements that a requesting law-enforcement agency submit a written request on official letterhead to confirm whether an individual's DNA profile is in the DNA Data Bank and instead require the use of a web form for these requests; (iii) remove provisions that have remained unenforced by the Department of Forensic Science, thus updating provisions to reflect current department policy for a law-enforcement agency or a prosecutor to receive or request a copy of the Certificates of Analysis for DNA examinations; and (iv) make available a list of employee positions that require regular access to the Data Bank and samples as a regular function of the position, rather than posting the list on the department's website.

**Issues:** The public is not given access to the DNA Data Bank information. The advantages to the department and the law-enforcement agencies requesting such information are that the action reduces the burden of both making such a request and responding to such a request, improving security and efficiency. There are no disadvantages.

**Department of Planning and Budget's Economic Impact Analysis:**

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.<sup>1</sup>

Summary of the Proposed Amendments to Regulation. In response to Governor Youngkin's Executive Order No. 19 (2022),<sup>2</sup> the Forensic Science Board (board) proposes to (i) facilitate DNA Data Bank information requests from law-enforcement agencies through a secure online form rather than a written request on the official letterhead of the requesting law-enforcement agency; (ii) allow the Department of Forensic Science (DFS) to make available a list of employee positions that require regular access to the Data Bank as a regular function of their job upon request, rather than posting a list on the website; and (iii) repeal duplicative language setting out the procedures to receive or request a copy of the Certificates of Analysis for DNA examinations.

Background. Under the current regulation, law-enforcement agencies are required to submit a written request on the official letterhead of their agency in order to inquire from DFS whether a DNA sample is in the DNA Data Bank. The public is not given access to the DNA Data Bank information. In response to Executive Order 19 (2022), which encouraged the review of regulations with the focus on streamlining and reducing regulatory requirements and burdens, the board proposes to facilitate the DNA data bank requests from law-enforcement agencies through a secure online form rather than a written request on the requesting agency's official letterhead. In

addition, the board proposes to amend the requirement to make available a list of DFS employee positions that require regular access to the Data Bank as a regular function of their job on its website. Instead of making the list available online, the board proposes to provide the list upon request. Finally, the board proposes to delete language setting out the procedures to receive or request a copy of the Certificates of Analysis for DNA examinations because these procedures either duplicate processes already in place for requesting the results of analyses under DFS's current procedures or under § 9.1-1104 of the Code of Virginia.

Estimated Benefits and Costs. DFS estimates that handling DNA Data Bank check requests from law-enforcement agencies through a secure online form would entail approximately \$5,000 in one-time information technology costs to upgrade its website. This cost would be offset by ongoing savings in staff time as the process would be more efficient. These savings include \$246 per year in wages for DFS Data Bank analysts in responding to requests, \$86 per year in wages of Virginia State Police based on five such requests, and \$378 per year in wages of local law-enforcement agencies based on 20 such requests. Moreover, the proposed online platform would likely improve the speed of the requested checks as it would eliminate the time that would have been lost in the regular mail. The proposed switch from maintaining an online list of DFS employees with regular access to DNA Data Bank to providing the list upon request would eliminate the need for DFS to change its website any time the list is updated. As a number of website changes would not be necessary under the proposed changes, a small administrative savings is expected. As the list would be made available upon request, there does not seem to be a discernible cost or loss of access to the list. Finally, the repeal of duplicative information regarding the procedures to receive or request a copy of the Certificates of Analysis for DNA examinations would reduce the amount of regulatory text and make the regulation more readable.

Businesses and Other Entities Affected. The proposed changes primarily affect law-enforcement agencies that can request a DNA Data Bank check. Based on historical data, the Virginia State Police is expected to make five such requests and the local law-enforcement agencies are expected to make 20 such requests per year.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>3</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted, the proposal would repeal regulatory text that has no application currently or in the future. Thus, no adverse impact is indicated.

Small Businesses<sup>4</sup> Affected.<sup>5</sup> The proposed amendments do not appear to adversely affect small businesses.

Localities<sup>6</sup> Affected.<sup>7</sup> The proposed changes apply to all local law-enforcement agencies throughout the Commonwealth and

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# Regulations

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are expected to provide some savings in terms of staff time when making a request for a DNA Data Bank check. Thus, the proposal would neither introduce costs nor have a disproportionate impact on localities.

**Projected Impact on Employment.** The proposed changes are estimated to increase efficiency of DFS and law enforcement staff involved in about 25 DNA Data Bank check requests by 18.75 hours per year. Since the efficiency gains are rather small, it is unlikely that the proposed changes would have an impact on total employment.

**Effects on the Use and Value of Private Property.** No effects on the use and value of private property nor the real estate development costs are expected because the proposed changes mainly pertain to governmental entities.

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<sup>1</sup>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.

<sup>2</sup><https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/eo/EO-19-Development-and-Review-of-State-Agency-Regulations.pdf>.

<sup>3</sup>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.

<sup>4</sup>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."

<sup>5</sup>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.

<sup>6</sup>"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.

<sup>7</sup>Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

**Agency's Response to Economic Impact Analysis:** The Forensic Science Board concurs with the economic impact analysis prepared by the Department of Planning and Budget.

## Summary:

*In response to Executive Order No. 19 (2022), the amendments (i) facilitate DNA Data Bank information requests from law-enforcement agencies through a secure web form rather than a written request on the official letterhead of the requesting law-enforcement agency; (ii) allow the Department of Forensic Science (DFS) to make available upon request a list of employee positions that require regular access to the Data Bank as a regular function of the employee's job rather than posting the list on the DFS website; and (iii) repeal duplicative language setting out the procedures to receive or request a copy of the Certificates of Analysis for DNA examinations.*

## **6VAC40-60-10. Definitions.**

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

"CODIS" means the Combined DNA Index System.

"Department" means the Virginia Department of Forensic Science.

"DNA" means deoxyribonucleic acid.

"DNA data bank" means the Virginia State DNA Index System (SDIS) maintained by the department, which is a database of DNA profiles associated with the corresponding personally identifying information.

"DNA profile" means the results of DNA analysis of a sample of human biological evidence.

"Law-enforcement agency" means any federal, state, or local government law-enforcement organization.

~~"Subject" means the individual from whom a sample of human biological evidence has been obtained.~~

## **6VAC40-60-20. Request for information from a law-enforcement officer regarding whether an individual's DNA profile is in the DNA data bank.**

A. A request for information regarding whether an individual's DNA profile is in the DNA data bank shall be ~~in writing, addressed~~ submitted to the department's DNA data bank administrator, ~~and signed~~ by the requesting law-enforcement officer. ~~1. The request shall contain as much of the following information as is available to the requestor at the time of the request: the individual's full name, known aliases, assigned or claimed social security number, date of birth, race, gender, and state identification number. 2. Such requests shall be submitted via the online form available on the department's website. The request requesting law-enforcement officer shall state confirm~~ that the information is being obtained in furtherance of an official investigation of a specified criminal offense that occurred within the jurisdiction of the requesting law-enforcement agency.

~~B. The written request shall be on the official letterhead of the requesting officer's law enforcement agency and sent to the department's central laboratory at 700 North Fifth Street, Richmond, Virginia 23219, via United States mail or commercial mail delivery service, electronic transmission, or by facsimile.~~

~~C. In the alternative, the request may be made in person at the department's central laboratory at 700 North Fifth Street, Richmond, Virginia 23219. If not presented on the official letterhead of the requesting officer's law enforcement agency, the requesting officer shall reduce the request to writing consistent with subsection A of this section and certify his authority to request such information. Thereupon, the B. The identity of the requestor shall be verified by department personnel by inspection of the requestor's identification card and badge number identifying information. Department personnel shall (i) affirm in writing, below the signature of the requesting officer, that the officer's identification was verified; (ii) record the officer's badge number; and (iii) sign and date such verification maintain a record of the request and the verification of the requestor's identity pursuant to the department's record retention guidelines.~~

~~**6VAC40-60-30. Request for DNA data bank analysis information relating to specific Virginia forensic laboratory examinations involving the analysis and comparison of two or more samples.**~~

~~A. A duly authorized member of a law enforcement agency or private police department designated as a criminal justice agency by the Department of Criminal Justice Services as defined in § 9.1-101 of the Code of Virginia, attorneys for the Commonwealth, attorneys for the United States Department of Justice, or a duly authorized member of the Office of the Chief Medical Examiner may obtain information from the DNA data bank in connection with the submission of physical evidence for forensic laboratory examination. A request for such laboratory examination shall be submitted in writing on a form supplied by the department.~~

~~B. A request from an accused or his an accused individual's attorney shall be governed by the provisions of § 9.1-1104 of the Code of Virginia.~~

~~C. A request for information from the DNA data bank concerning the results of an analysis and comparison of the identification characteristics of human biological evidence shall be in writing, addressed to the department's DNA data bank administrator, and signed by the requestor.~~

~~1. The request shall contain as much of the following information as is available to the requestor at the time of the request: the subject's full name, known aliases, assigned or claimed social security number, date of birth, race, gender, and state identification number.~~

~~2. The request shall state that the information is being obtained in furtherance of an official investigation of a specified criminal offense that occurred within the jurisdiction of the requesting law enforcement agency.~~

~~3. The written request shall be on the official letterhead of the requestor's agency and sent to the department's central laboratory at 700 North Fifth Street, Richmond, Virginia 23219, via United States mail or commercial mail delivery service, or by facsimile.~~

~~4. In the alternative, the request may be made in person at the department's central laboratory at 700 North Fifth Street, Richmond, Virginia 23219. If not presented on the official letterhead of the requestor's agency, the requestor shall reduce the request to writing consistent with subsection A of this section and certify his authority to request such information. Thereupon, the identity of the requestor shall be verified by department personnel by inspection of the requestor's agency identification card. Department personnel shall (i) affirm in writing, below the signature of the requestor, that the requestor's identification was verified; (ii) record the requestor's agency identification number if applicable; and (iii) sign and date such verification.~~

~~**6VAC40-60-60. Department employee access to the DNA data bank.**~~

~~The department shall maintain a list of employee positions that require regular access to the DNA data bank and samples submitted as a necessary function of the job. This list shall be available online at the department's website upon request.~~

NOTICE: The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

FORMS (6VAC40-60)

DNA Data Bank, DNA Request Form for Law-Enforcement Agency, DFS (filed 3/2024)

VA.R. Doc. No. R24-7674; Filed March 6, 2024, 8:30 a.m.



**TITLE 9. ENVIRONMENT**

**STATE WATER CONTROL BOARD**

**Final Regulation**

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.) and Chapters 24 (§ 62.1-242 et seq.) and 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01 of the Code

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of Virginia; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action, forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03 of the Code of Virginia; and (iv) conducts at least one public hearing on the proposed general permit. The State Water Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** **9VAC25-880. General VPDES Permit for Discharges of Stormwater from Construction Activities (amending 9VAC25-880-1 through 9VAC25-880-70).**

**Statutory Authority:** § 62.1-44.15:25 of the Code of Virginia.

**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 [rebecca.rochet@deq.virginia.gov](mailto:rebecca.rochet@deq.virginia.gov).

**Background:** The General VPDES Permit for Discharges of Stormwater from Construction Activities (9VAC25-880) authorizes the discharge of stormwater from construction activities equal to or greater than one acre of land disturbance or less than one acre of land disturbance within a larger common plan of development or sale that results in one acre or more of land disturbance. This regulatory action is needed for existing and new construction activities to be covered under this Virginia Pollutant Discharge Elimination System (VPDES) general permit, which expires on June 30, 2024, and must be reissued in order to make coverage available for discharges of stormwater from construction activities after June 30, 2024.

**Summary:**

*This regulatory action authorizes discharges of stormwater from large and small construction activities, establishes the best management practices and control measures necessary to control such discharges, and updates the effective dates of the five-year general permit term to July 1, 2024, to June 30, 2029. The amendments update the reference to the Code of Federal Regulations to July 1, 2022, and update citations and references to be consistent with the new Virginia Erosion and Stormwater Management Regulation (9VAC25-875), effective July 1, 2024; change the term "board" to "department" throughout the regulation in response to Chapter 356 of the 2022 Acts of Assembly; clarify language in the regulation and general permit; update provisions to be consistent with other recently reissued VPDES general permits, including provisions for authorized nonstormwater discharges and a requirement to include a State Corporation Commission entity identification number when reporting; amend and add provisions to be*

*consistent with the 2022 U.S. Environmental Protection Agency Construction General Permit (effective February 17, 2022), such as (i) requiring the map of the construction site to identify locations of any construction support activities, including areas where polymers, flocculants, or other stormwater treatment chemicals are used or stored; (ii) clarifying how an erosion and sediment control plan shall be implemented to maximize stormwater infiltration, minimize soil compaction, and preserve topsoil; (iii) implementing new requirements for controlling construction dewatering discharges to impaired waters or exceptional waters; and (iv) specifying what an operator must do in the event that the same stormwater control requires repeated repair. Additional amendments (i) allow for reporting of support activities in a modified registration statement; (ii) change the timeline for submitting a completed registration statement to 90 days prior to the expiration date of the general permit; (iii) in compliance with § 62.1-44.15:26.1 of the Code of Virginia, change the timeline for termination of authorization to discharge to 90 days after receipt of notice of termination; and (iv) clarify that concrete wash water cannot be disposed of through infiltration or otherwise disposed of on the ground.*

*Changes to the proposed regulation (i) add language clarifying that construction activity of a single-family detached residential structure, within or outside a common plan of development or sale, is activity covered by the general permit; (ii) raise the acceptable nephelometric turbidity units and formazin turbidity units in turbidity benchmark measurement; and (iii) add a turbidity benchmark option 3 to the contents of the stormwater pollution prevention plan.*

**9VAC25-880-1. Definitions.**

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. For the purposes of this chapter, words and terms used in this chapter shall have the meanings that are defined in the Virginia Erosion and Stormwater Management Act (Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia), this chapter, and 9VAC25-870 the Virginia Erosion and Stormwater Management Regulation (9VAC25-875) [ 3 ] shall have those meanings unless the context clearly indicates otherwise, except as otherwise specified in this section. Terms not defined in the Act, this chapter, or 9VAC25-870 shall have the meaning attributed to them in the federal Clean Water Act (33 USC § 1251 et seq.) (CWA). For the purposes of this chapter:

"Board" means the State Water Control Board. When used outside the context of the promulgation of regulations, including regulations to establish general permits, "board" means the Department of Environmental Quality.

"Business day" means Monday through Friday excluding state holidays.

"Commencement of land disturbance" means the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities (e.g., stockpiling of fill material).

"Construction dewatering" means the act of draining or pumping stormwater or groundwater from building foundations, vaults, and trenches, or other similar points of accumulation, including from sediment basins or similar impoundments for maintenance or decommissioning purposes. Construction dewatering does not include temporary pumparounds associated with instream construction activities.

"Construction site" means the land or water area where any land-disturbing construction activity is physically located or conducted, including any adjacent land used or preserved in connection with the land-disturbing activity. The term "construction site" includes construction support activities located on-site or off-site.

"Construction support activity" means a construction-related activity that specifically supports construction and involves land disturbance or pollutant-generating activities of its own and can include activities associated with concrete or asphalt batch plants, equipment staging yards, materials storage areas, excavated material disposal areas, and borrow areas.

"Department" means the Department of Environmental Quality.

"Final stabilization" means that one of the following situations has occurred:

1. All ~~soil-disturbing~~ soil-disturbing activities at the construction site have been completed and a permanent vegetative cover has been established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved that is uniform (e.g., evenly distributed), [provides 75% or more vegetative cover with no significant bare areas, is] mature enough to survive, and will inhibit erosion.
2. For individual lots in residential construction, final stabilization can occur by either:
  - a. The homebuilder completing ~~final~~ [permanent] stabilization as specified in subdivision 1 of this definition; or
  - b. The homebuilder establishing temporary soil stabilization, including perimeter controls for an individual lot prior to occupation of the home by the homeowner, and providing written notification to the homeowner of the need for, and benefits of, ~~final~~ [permanent] stabilization as specified in subdivision 1 of this definition. The homebuilder shall maintain a copy of the written notification and a signed statement certifying that the information was provided to the homeowner in

accordance with the stormwater pollution prevention plan recordkeeping requirements as specified in Part II G 6 of 9VAC25-880-70.

3. For construction ~~projects~~ activities on land used for agricultural purposes, [~~final~~ permanent] stabilization may be accomplished by returning the disturbed ~~land~~ area to its preconstruction agricultural use. ~~Areas disturbed~~ Disturbed areas that were not previously used for agricultural activities, such as buffer strips immediately adjacent to surface waters, and areas that are not being returned to their preconstruction agricultural use shall meet the ~~final~~ [permanent] stabilization criteria specified in subdivision 1 or 2 of this definition.

"Immediately" means as soon as practicable, but no later than the end of the next business day, following the day when the land-disturbing construction activities have temporarily or permanently ceased. In the context of this general permit, "immediately" is used to define the deadline for initiating stabilization measures.

"Impaired waters" means surface waters identified as impaired on the ~~2016~~ 2022 § 305(b)/303(d) Water Quality Assessment Integrated Report.

"Infeasible" means not technologically possible or not economically practicable and achievable in light of best industry practices.

"Initiation of stabilization activities" means:

1. Prepping the soil for vegetative or nonvegetative stabilization;
2. Applying mulch or other nonvegetative product to the exposed area;
3. Seeding or planting the exposed area;
4. Starting any of the ~~above~~ activities listed in subdivision 1, 2, or 3 of this definition on a portion of the area to be stabilized, but not on the entire area; or
5. Finalizing arrangements to have the stabilization product fully installed in compliance with the applicable deadline for completing stabilization.

This list is not exhaustive.

"Measurable storm event" means a rainfall event producing 0.25 inches of rain or greater over 24 hours or snow melt from a snow event producing 3.25 inches or more of snow within a 24-hour period.

"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

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quality and quantity of stormwater discharges from the construction activity. On or after July 1, 2025, "qualified personnel" shall hold an unexpired [ ~~certificate of competence for Project~~ Dual Inspector certification issued by the department; an unexpired ] Inspector for Erosion and Sediment Control [ certification ] and an unexpired [ ~~certificate of competence for Project~~ ] Inspector for Stormwater Management [ certification ], both issued by the department [ ; ] a Construction General Permit Qualified Personnel Certificate [ ; issued by the department or the Virginia Department of Transportation; ] or an equivalent certification provided by EPA (currently titled Construction Inspection Training Course).

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

## **9VAC25-880-10. Purpose.**

This general permit regulation governs stormwater discharges from regulated construction activities. ~~For the purposes of this chapter, these discharges are defined as stormwater discharges associated with large construction activity, and stormwater discharges associated with small construction activity. Stormwater discharges associated with other types of industrial activity shall not have coverage under this general permit. This general permit covers only discharges activity, which includes large construction activity, small construction activity, or construction support activity, through a point source to surface waters or through a municipal or nonmunicipal separate storm sewer system to surface waters. Stormwater discharges associated with regulated industrial activity that originate from a construction activities site that [ have has ] been completed and [ where ] the site has undergone final stabilization are not authorized by this general permit.~~

## **9VAC25-880-15. Applicability of incorporated 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 ~~herein in this chapter~~, that regulation shall be as it exists and has been published in the July 1, ~~2018~~ 2022, update.

## **9VAC25-880-20. Effective date of general permit.**

This general permit is effective on July 1, ~~2019~~ 2024. The general permit will expire on June 30, ~~2024~~ 2029. This general permit is effective for any covered operator upon compliance with all provisions of 9VAC25-880-30.

## **9VAC25-880-30. Authorization to discharge.**

A. Any operator governed by this general permit is authorized to discharge to surface waters of the Commonwealth of Virginia provided that:

1. The operator submits a complete and accurate registration statement in accordance with 9VAC25-880-50, unless not required, and receives acceptance of the registration by the ~~board~~ department;
2. The operator submits ~~any all~~ permit fees, ~~unless not required including all outstanding permit maintenance fees,~~ in accordance with ~~9VAC25-870-700~~ 9VAC25-875-1290 et seq., ~~unless not required~~;
3. The operator complies with the applicable requirements of 9VAC25-880-70;
4. The operator obtains approval of:
  - a. An erosion and sediment control plan from the appropriate Virginia Erosion and Stormwater Management Program (VESMP) authority or Virginia Erosion and Sediment Control Program (VESCP) authority as authorized under the Erosion and Sediment Control Regulations (9VAC25-840), unless the operator receives from the VESCP authority an "agreement in lieu of a plan" as defined in ~~9VAC25-840-10~~ 9VAC25-875-20 and 9VAC25-875-210, respectively, or [ ~~prepares the an~~ ] erosion and sediment control plan in accordance with ~~annual~~ standards and specifications approved by the department; and
  - b. Except as specified in 9VAC25-880-70 Part II B 3 b, a stormwater management plan from the appropriate Virginia Stormwater Management Program (VSMP) VESMP authority as authorized under the VSMP Regulation (9VAC25-870), unless the operator receives from the ~~VSMP~~ VESMP authority an "agreement in lieu of a [ ~~stormwater management~~ ] plan" as defined in ~~9VAC25-870-10~~ 9VAC25-875-20 or [ ~~prepares the a~~ ] stormwater management plan in accordance with ~~annual~~ standards and specifications approved by the department; and
5. The ~~board~~ department has not notified the operator that the discharge is not eligible for coverage in accordance with subsection B of this section.
  - B. The ~~board~~ department will notify an operator that the discharge is not eligible for coverage under this general permit in the event of any of the following:
    1. The operator is required to obtain an individual permit in accordance with ~~9VAC25-870-410~~ 9VAC25-875-980 B;
    2. The operator is proposing discharges to surface waters specifically named in other board regulations that prohibit such discharges;
    3. The discharge causes, may reasonably be expected to cause, or contributes to a violation of water quality standards (9VAC25-260);

4. The discharge violates or would violate the antidegradation policy in the Water Quality Standards (9VAC25-260-30); or

5. The discharge is not consistent with the assumptions and requirements of an applicable TMDL approved prior to the term of this general permit.

C. This general permit also authorizes stormwater discharges from construction support activities (~~e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas~~) located on-site or off-site provided that:

1. The support activity is directly related to a construction activity site that is required to have general permit coverage for stormwater discharges of stormwater from construction activities;
2. The support activity is not a commercial operation, nor does it serve multiple unrelated construction ~~activities by different operators sites~~;
3. The support activity does not operate beyond the completion of the last construction activity it supports;
4. The support activity is ~~identified~~ reported in the registration statement at the time of general permit coverage or reported in a modified registration statement once the need for the support activity is known;
5. Appropriate control measures are identified in a stormwater pollution prevention plan and implemented to address the discharges from the support activity ~~areas~~; and
6. All applicable [ 7 ] state, federal, and local approvals are obtained for the support activity.

D. ~~Support activities located off site are not required to be covered under this general permit. Discharges of stormwater~~ Stormwater discharges from an off-site construction support activities activity may be authorized under another state or VPDES permit. Where stormwater discharges from an off-site construction support activities activity are not authorized under this general permit, the land area of the off-site construction support activity need shall not be included in determining the total land disturbance ~~acreage of the construction activity seeking general permit coverage area of [ development the construction site ]~~ and estimated area to be disturbed reported in the registration statement.

E. Discharges authorized by this general permit may be commingled with other sources of stormwater that are not required to be covered under a state permit, so long as the commingled discharge is in compliance with this general permit. Discharges authorized by a separate state or VPDES permit may be commingled with discharges authorized by this general permit so long as all such discharges comply with all applicable state and VPDES permit requirements.

F. Authorized nonstormwater discharges. The following nonstormwater discharges from construction activities are authorized by this general permit:

1. Discharges from emergency firefighting activities;
2. Fire hydrant flushings managed to avoid an instream impact;
3. Water used to wash vehicles or equipment ~~where, provided no~~ soaps, solvents, or detergents have not been are used and the wash water ~~has been is~~ filtered, settled, or similarly treated prior to discharge;
4. Water used to control dust that ~~has been is~~ filtered, settled, or similarly treated prior to discharge;
5. Potable water ~~source~~, including uncontaminated waterline flushings, managed in a manner to avoid an instream impact;
6. Routine external building wash down ~~where, provided no~~ soaps, solvents, or detergents have not been are used, external building surfaces do not contain hazardous substances, and the wash water ~~has been is~~ filtered, settled, or similarly treated prior to discharge;
7. Pavement wash water ~~where, provided~~ spills or leaks of toxic or hazardous materials have not occurred (or where, unless all spilled or leaked material has been is removed prior to washing); where soaps, solvents, or detergents have not been are not used; and ~~where the wash water has been is~~ filtered, settled, or similarly treated prior to discharge;
8. Uncontaminated air conditioning or compressor condensate;
9. Uncontaminated groundwater or spring water;
10. Foundation or footing drains ~~where, provided~~ flows are not contaminated with process materials such as solvents or contaminated groundwater;
11. Uncontaminated, excavation dewatering, including dewatering of trenches and excavations that ~~have been are~~ filtered, settled, or similarly treated prior to discharge; and
12. Landscape ~~irrigations~~ irrigation.

G. ~~Approval for coverage~~ Coverage under this general permit does not relieve any operator of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

H. Continuation of general permit coverage.

1. Permit coverage shall expire at the end of its term. However, expiring permit coverages are automatically continued if ~~the owner~~ an operator has submitted a complete registration statement at least ~~60~~ 90 days prior to the expiration date of the permit, or a later submittal date established by the ~~board, which cannot extend beyond the expiration date of the permit~~ department and has paid all past due general permit maintenance fees. The permittee is

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authorized to continue to discharge until such time as the ~~board~~ department either:

- a. Issues coverage to the operator under this general permit; or
  - b. Notifies the operator that the discharge is not eligible for coverage under this general permit.
2. When ~~the~~ an operator that was covered under the expiring or expired general permit has violated the conditions of that permit, the ~~board~~ department may choose to do any or all of the following:
- a. Initiate enforcement action based upon the general permit coverage that has been continued;
  - b. Issue a notice of intent to deny coverage under the reissued general permit. If the general permit coverage is denied, the operator would then be required to cease discharges authorized by the continued general permit coverage or be subject to enforcement action for operating without a state permit;
  - c. Issue an individual permit with appropriate conditions; or
  - d. Take other actions authorized by the ~~VSMP~~ Virginia Erosion and Stormwater Management Regulation (9VAC25-870) (9VAC25-875).

## **9VAC25-880-40. Delegation of authorities to state and local programs.**

A ~~board approved VSMP~~ department-approved VESMP authority is authorized to administer requirements of this general permit, including ~~but not limited to:~~ (i) registration statement acceptance, (ii) general permit fee collection, and (iii) stormwater management plan review and approval dependent upon conditions established as part of the ~~board~~ approval.

## **9VAC25-880-50. Registration statement.**

A. Deadlines for submitting registration statement. Any operator seeking coverage under this general permit, and that is required to submit a registration statement, shall submit a complete and accurate general VPDES permit registration statement in accordance with this section, which shall serve as a notice of intent for coverage under the general VPDES permit for discharges of stormwater from construction activities.

1. New construction activities.
  - a. Any operator proposing a new stormwater discharge from construction activities shall submit a complete and accurate registration statement to the ~~VSMP~~ VESMP authority prior to the commencement of land disturbance.
  - b. Any operator proposing a new stormwater discharge from construction activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human

health or the environment is authorized to discharge under this general permit, provided that:

- (1) The operator submits a complete and accurate registration statement to the ~~VSMP~~ VESMP authority no later than 30 days after ~~commencing~~ the commencement of land disturbance; and
  - (2) Documentation to substantiate the occurrence of the public emergency is provided with the registration statement.
- c. Any operator proposing a new stormwater discharge associated with a small construction activity involving the construction of a single-family detached residential structure, within or outside a common plan of development or sale, is authorized to discharge under this general permit and is not required to submit a registration statement. Any operator proposing a new stormwater discharge associated with the construction of a single-family detached residential structure, within or outside a common plan of development or sale, is not required to submit the department portion of the permit fee.

### 2. Existing construction activities.

a. Any operator who was authorized to discharge under the expiring or expired 2019 general permit and who intends to continue coverage under this general permit shall:

(1) Submit a complete and accurate registration statement to the ~~VSMP~~ VESMP authority at least ~~60~~ 90 days prior to the expiration date of the existing permit or a later submittal date established by the ~~board~~ department; and

(2) Update its stormwater pollution prevention plan to comply with the requirements of this general permit no later than 60 days after the date of coverage under this general permit.

b. Any operator with an existing stormwater discharge associated with a small construction activity involving the construction of a single-family detached residential structure, within or outside a common plan of development or sale, that intends to continue coverage under this general permit, is authorized to discharge under this general permit and is not required to submit a registration statement, provided that the operator updates its stormwater pollution prevention plan to comply with the requirements of this general permit no later than 60 days after the date of coverage under this general permit. Any operator with an existing stormwater discharge associated with the construction of a single-family detached residential structure, within or outside a common plan of development or sale, that intends to continue coverage under this general permit is not required to submit the department portion of the permit fee.

3. ~~For stormwater discharges from construction activities where the operator changes,~~ the Transfer of ownership. The new operator shall submit a complete and accurate registration statement or transfer of ownership agreement



form and any other documents ~~deemed necessary~~ required by the ~~VSMMP~~ VESMP authority to the ~~VSMMP~~ VESMP authority to ~~demonstrate transfer of ownership and long-term maintenance responsibilities for stormwater management facilities, as required, has occurred~~ prior to assuming operational control over construction site specifications or ~~commencing work on site~~ the commencement of land disturbance.

4. Late ~~notifications~~ submissions. Operators are not prohibited from submitting registration statements after ~~commencing the commencement of~~ land disturbance. When a late registration statement is submitted, authorization for discharges shall not occur until coverage under the general permit is issued. The ~~VSMMP~~ VESMP authority, department, ~~board,~~ and EPA reserve the right to take enforcement action for any unpermitted discharges that occur between the commencement of land disturbance and discharge authorization.

5. Late registration statements. Registration statements for existing facilities covered under subdivision A 2 a of this section will be accepted after the expiration date of this permit, but authorization to discharge will not be retroactive. The ~~VSMMP~~ VESMP authority, department, ~~board,~~ and EPA reserve the right to take enforcement action for any unpermitted discharges that occur after existing permit coverage expires and prior to coverage under this permit is approved.

B. Registration statement. The operator shall submit a complete and accurate registration statement to the ~~VSMMP~~ VESMP authority that contains the following information:

1. Name, contact, mailing address, telephone number, and email address if available of the construction activity operator. No more than one operator may receive coverage under each registration statement;

~~NOTE:~~ General permit coverage will be issued to this operator, and the certification in subdivision ~~17~~ 18 of this subsection shall be signed by the appropriate person associated with this operator as described in Part III K of 9VAC25-880-70.

2. State Corporation Commission entity identification number if the operator is required to obtain an entity identification number;

3. Name and physical location address of the construction activity, when available, to be covered under this general permit, including city or county, and latitude and longitude in decimal degrees (six digits - ten-thousandths place);

~~3.~~ 4. A legible site map (~~in an 8.5-inch by 11-inch format~~) showing the location of the existing or proposed land-disturbing activities for which the operator is seeking permit coverage, the limits of land disturbance, construction entrances, ~~on-site~~ construction support activities, and all

water bodies receiving stormwater discharges from the construction site;

~~4.~~ 5. If off-site construction support activities will be used, the name and physical location address, when available, of all off-site construction support activities, including city or county; latitude and longitude in decimal degrees (six digits - ten-thousandths place); and whether or not the off-site construction support activity will be covered under this general permit or a separate VPDES permit;

~~5.~~ 6. If excavated material (i.e., fill) will be transported off the construction site for disposal, the name and physical location address, when available, of all off-site excavated material disposal areas, including city or county; latitude and longitude in decimal degrees (six digits - ten-thousandths place); and the contents of the excavated material;

~~6.~~ 7. Status of the construction activity [ ~~÷ (i.e., ] federal, state, public, or private [ ]~~ ];

~~7.~~ 8. Nature of the construction activity (e.g., commercial, industrial, residential, agricultural, oil and gas, ~~etc.~~);

~~8.~~ 9. If stormwater management or erosion and sediment control plans for the construction activity have been approved by an entity with department approved ~~annual~~ standards and specifications, ~~the name of the entity with the department approved annual standards and specifications. A copy of the annual~~ a complete and accurate standard and specification entity form shall be submitted with the registration statement;

~~9. If the construction activity was previously authorized to discharge under the general permit effective July 1, 2014,~~ the ~~10. The~~ date of erosion and sediment control plan approval for the estimated area to be disturbed ~~by the construction activity~~ during this permit term for construction activities that were authorized to discharge under the expiring or expired 2019 general permit;

~~10. If the construction activity was previously authorized to discharge under the general permit effective July 1, 2014,~~ ~~whether~~ 11. If land disturbance has commenced for construction activities that were authorized to discharge under the expiring or expired 2019 general permit;

~~11.~~ 12. Name of the receiving waters and sixth order Hydrologic Unit Code (HUC);

~~12. If the discharge is through a municipal separate storm sewer system (MS4), the~~ 13. The name of the MS4 municipal separate storm sewer system (MS4) operator if the construction activity discharges to an MS4;

~~13.~~ 14. Estimated project construction activity start date and completion date;

~~14.~~ 15. Total land area of development the construction site and estimated area to be disturbed by the construction

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activity during ~~this~~ the 2024 general permit term (to the nearest one-hundredth of an acre);

~~15. Whether~~ 16. If the area to be disturbed by the construction activity is part of a larger common plan of development or sale;

~~16. 17.~~ If nutrient credits ~~are to be~~ will be used to ~~demonstrate compliance~~ comply with the water quality ~~technical design~~ criteria as allowed in 9VAC25-870-65 F requirements [ (9VAC25-875-590) (9VAC25-870-580) ], a letter of availability from an appropriate nutrient bank that nonpoint source nutrient credits are available; ~~17. A stormwater pollution prevention plan (SWPPP) shall be prepared in accordance with the requirements of the General VPDES Permit for Stormwater Discharges from Construction Activities prior to submitting the registration statement. By signing the registration statement, the operator certifies that the SWPPP has been prepared; and~~

18. The following certification: "I certify under penalty of law that I have read and understand this registration statement and that this document and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

C. A stormwater pollution prevention plan (SWPPP) shall be prepared in accordance with this general permit prior to submitting the registration statement. By signing the registration statement, the operator certifies that the SWPPP has been prepared.

D. The registration statement shall be signed in accordance with 9VAC25-880-70, Part III K of 9VAC25-880-70.

## **9VAC25-880-60. Termination of general permit coverage.**

A. Requirements. The operator of the construction activity shall submit a complete and accurate notice of termination, unless a registration statement was not required to be submitted in accordance with 9VAC25-880-50 A 1 c or A 2 b for [ a stormwater discharge associated with a small construction activity of a ] single-family detached residential [ structures structure, within or outside a common plan of development or sale ], to the ~~VSMP~~ VESMP authority after one or more of the following conditions have been met:

1. Necessary permanent control measures included in the SWPPP for the construction site are in place and functioning effectively and final stabilization has been achieved on all portions of the construction site for which the operator has

operational control. When applicable, long-term responsibility and maintenance requirements for permanent control measures shall be recorded in the local land records prior to the submission of a complete and accurate notice of termination, and the construction record drawing prepared;

2. Another operator has assumed control over all areas of the construction site that have not been finally stabilized and obtained coverage for the ongoing discharge;

3. Coverage under an alternative VPDES permit or state other applicable permit has been obtained; or

4. For individual lots in residential construction only, final stabilization as defined in 9VAC25-880-1 has been completed, including providing written notification to the homeowner and incorporating a copy of the notification and signed certification statement into the SWPPP, and the residence has been transferred to the homeowner.

B. Notice of termination due date and effective date.

1. The notice of termination shall be submitted no later than 30 days after one of the conditions in subsection A of this section is met.

2. Termination of authorization ~~to discharge for the conditions set forth in subdivision A 1 of this section~~ shall become effective upon notification from the department that the provisions of subdivision A 1 of this section have been met or ~~60~~ 90 days after submittal receipt of a complete and accurate notice of termination, whichever occurs first, unless otherwise notified by the VESMP authority or the department.

~~3. Authorization to discharge terminates at midnight on the date that the notice of termination is submitted for the conditions set forth in subdivisions A 2 through A 4 of this section unless otherwise notified by the VSMP authority or the department.~~

C. Notice of termination. The complete notice of termination shall contain the following information:

1. Name, contact, mailing address, telephone number, and email address, if available, of the construction activity operator;

2. Name and physical location address of the construction activity, when available, covered under this general permit, including city or county, and latitude and longitude in decimal degrees (six digits - ten-thousandths place);

3. The general permit registration number;

4. The basis for submission of the notice of termination, pursuant to subsection A of this section;

5. Where applicable, a list of the on-site and off-site permanent control measures (both structural and nonstructural) that were installed to comply with the stormwater management water quality and water quantity

technical criteria. For each permanent control measure that was installed, the following information shall be included:

- a. The type of permanent control measure installed and the date that it became functional as a permanent control measure;
  - b. The location of the permanent control measure, including city or county, and latitude and longitude in decimal degrees;
  - c. The receiving water to which the permanent control measures discharge; and
  - d. The number of total and impervious acres treated by the permanent control measures (to the nearest one-hundredth of an acre);
6. Where applicable, the following information related to participation in a regional stormwater management plan. For each regional stormwater management facility, the following information shall be included:
- a. The type of regional facility to which the site contributes;
  - b. The location of the regional facility, including city or county, and latitude and longitude in decimal degrees; and
  - c. The number of total and impervious site acres treated by the regional facility (to the nearest one-hundredth of an acre);
7. Where applicable, the following information related to perpetual nutrient credits that were acquired in accordance with § 62.1-44.15:35 of the Code of Virginia:
- a. The name of the nonpoint nutrient credit generating entity from which perpetual nutrient credits were acquired; and
  - b. The number of perpetual nutrient credits acquired (~~lbs.~~ pounds per acre per year).
8. A construction record drawing in a format as specified by the ~~VSMMP~~ VESMP authority for ~~permanent long-term~~ stormwater management facilities in accordance with ~~9VAC25-870-55 D~~ 9VAC25-875-535 appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan;
9. Where applicable, evidence that the signed Stormwater Management Maintenance Agreement has been recorded in an instrument within the local land records;
10. For individual lots in residential construction only when the homebuilder established temporary soil stabilization, a signed statement from the permittee that the new owner, if not the same as the permittee, has been notified of the final stabilization requirements; and
11. The following certification: "I certify under penalty of law that I have read and understand this notice of termination

and that this document and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

D. The notice of termination shall be signed in accordance with ~~9VAC25-880-70~~, Part III K of 9VAC25-880-70.

E. Termination by the ~~board~~ department. The ~~board~~ department may terminate coverage under this general permit during its term and require application for an individual permit or deny a general permit renewal application on its own initiative in accordance with the Virginia Erosion and Stormwater Management Act (Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia), this chapter, and the ~~VSMMP~~ Virginia Erosion and Stormwater Management Regulation, 9VAC25-870 9VAC25-875.

**9VAC25-880-70. General permit.**

Any operator whose registration statement is accepted by the ~~board~~ department will receive the following general permit and shall comply with the requirements contained ~~therein in this~~ general permit and be subject to all requirements of ~~9VAC25-870 9VAC25-875~~.

[ Any operator with a stormwater discharge associated with a small construction activity of a single-family detached residential structure, within or outside a common plan of development or sale, is authorized to discharge under the following general permit and shall comply with the requirements contained in this general permit and be subject to all requirements of 9VAC25-875. ]

General Permit No.: VAR10

Effective Date: July 1, ~~2019~~ 2024

Expiration Date: June 30, ~~2024~~ 2029

GENERAL VPDES PERMIT FOR DISCHARGES OF  
STORMWATER FROM CONSTRUCTION ACTIVITIES  
AUTHORIZATION TO DISCHARGE UNDER THE  
VIRGINIA EROSION AND STORMWATER  
MANAGEMENT PROGRAM AND THE VIRGINIA  
EROSION AND STORMWATER MANAGEMENT ACT

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the Virginia Erosion and Stormwater Management Act and regulations adopted pursuant thereto, operators of construction activities are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in State Water Control Board regulations that prohibit such discharges.

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The authorized discharge shall be in accordance with the registration statement filed with the Department of Environmental Quality, this cover page, Part I - Discharge Authorization and Special Conditions, Part II - Stormwater Pollution Prevention Plan, and Part III - Conditions Applicable to All VPDES Permits as set forth in this general permit.

[ For stormwater discharge associated with a small construction activity of a single-family detached residential structure, within or outside a common plan of development or sale, the authorized discharge shall be in accordance with this cover page, Part I - Discharge Authorization and Special Conditions, Part II - Stormwater Pollution Prevention Plan, and Part III - Conditions Applicable to All VPDES Permits as set forth in this general permit. ]

## Part I

### DISCHARGE AUTHORIZATION AND SPECIAL CONDITIONS

#### A. Coverage under this general permit.

1. During the period beginning with the date of coverage under this general permit and lasting until the general permit's expiration date, the operator is authorized to discharge stormwater from construction activities.

2. This general permit also authorizes stormwater discharges from construction support activities (~~e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas~~) located on-site or off-site provided that:

a. The support activity is directly related to the construction activity site that is required to have general permit coverage for discharges ~~of stormwater from construction activities~~;

b. The support activity is ~~not~~ neither a commercial operation; nor ~~does it serve~~ serves multiple unrelated construction ~~activities by different operators sites~~;

c. The support activity does not operate beyond the completion of the last construction activity it supports;

d. The support activity is identified in the registration statement at the time of general permit coverage or reported in a modified registration statement once the need for the support activity is known;

e. Appropriate control measures are identified in a stormwater pollution prevention plan and implemented to address the discharges from the support activity ~~areas~~; and

f. All applicable state, federal, and local approvals are obtained for the support activity.

#### B. Limitations on coverage.

1. Post-construction discharges. This general permit does not authorize stormwater discharges that originate from the construction site after construction activities have been completed and the construction site, including any

construction support activity ~~sites~~ covered under the general permit registration, has undergone final stabilization. Post-construction industrial stormwater discharges may need to be covered by a separate VPDES permit.

2. Discharges mixed with nonstormwater. This general permit does not authorize discharges that are mixed with sources of nonstormwater, other than those discharges that are identified in Part I E (Authorized nonstormwater discharges) and are in compliance with this general permit.

3. Discharges covered by another ~~state~~ permit. This general permit does not authorize discharges of stormwater from construction activities that ~~have been~~ are covered under an individual permit or required to obtain coverage under an alternative general permit.

4. Impaired waters and total maximum daily load (TMDL) limitation.

a. Nutrient and sediment impaired waters. Discharges of stormwater from construction activities to surface waters identified as impaired in the ~~2016~~ 2022 § 305(b)/303(d) Water Quality Assessment Integrated Report for Benthic Macroinvertebrates Bioassessments or for which a TMDL wasteload allocation has been established and approved prior to the term of this general permit for (i) sediment or a sediment-related parameter (i.e., total suspended solids or turbidity) or (ii) nutrients (i.e., nitrogen or phosphorus), including all surface waters within the Chesapeake Bay Watershed, are not eligible for coverage under this general permit unless the operator develops, implements, and maintains a stormwater pollution prevention plan (SWPPP) in accordance with Part II B 5 of this permit that minimizes the pollutants of concern and, when applicable, is consistent with the assumptions and requirements of the approved TMDL wasteload allocations and implements an inspection frequency consistent with Part II G 2 a.

b. Polychlorinated biphenyl (PCB) impaired waters. Discharges of stormwater from construction activities that include the demolition of any structure with at least 10,000 square feet of floor space built or renovated before January 1, 1980, to surface waters identified as impaired in the ~~2016~~ 2022 § 305(b)/303(d) Water Quality Assessment Integrated Report or for which a TMDL wasteload allocation has been established and approved prior to the term of this general permit for PCB are not eligible for coverage under this general permit unless the operator develops, implements, and maintains a SWPPP in accordance with Part II B 6 of this permit that minimizes the pollutants of concern and, when applicable, is consistent with the assumptions and requirements of the approved TMDL wasteload allocations; and implements an inspection frequency consistent with Part II G 2 a.

5. Exceptional waters limitation. Discharges of stormwater from construction activities not previously covered under the general permit effective on July 1, [ ~~2014~~ 2019 ], to

exceptional waters identified in 9VAC25-260-30 A 3 c are not eligible for coverage under this general permit unless the operator develops, implements, and maintains a SWPPP in accordance with Part II B 7 of this permit and implements an inspection frequency consistent with Part II G 2 a.

6. There shall be no discharge of floating solids or visible foam in other than trace amounts.

C. Commingled discharges. Discharges authorized by this general permit may be commingled with other sources of stormwater that are not required to be covered under a ~~state~~ permit, so long as the commingled discharge is in compliance with this general permit. Discharges authorized by a separate state or VPDES permit may be commingled with discharges authorized by this general permit so long as all such discharges comply with all applicable state and VPDES permit requirements.

D. Prohibition of nonstormwater discharges. Except as provided in [ ~~Parts Part~~ ] I A 2, [ ~~I~~ ] C, and [ ~~I~~ ] E, all discharges covered by this general permit shall be composed entirely of stormwater associated with construction activities. All other discharges, including the following are prohibited:

1. Wastewater from washout of concrete;
2. Wastewater from the washout ~~and~~ or 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;
4. Oils, toxic substances, or hazardous substances from spills or other releases; and
5. Soaps, solvents, or detergents used in equipment and vehicle washing.

E. Authorized nonstormwater discharges. The following nonstormwater discharges from construction activities are authorized by this general permit ~~when discharged in compliance with this general permit~~:

1. Discharges from emergency firefighting activities;
2. Fire hydrant flushings, managed to avoid an instream impact;
3. Waters used to wash vehicles or equipment ~~where,~~ provided no soaps, solvents, or detergents ~~have not been~~ are used and the wash water ~~has been~~ is filtered, settled, or similarly treated prior to discharge;
4. Water used to control dust that ~~has been~~ is filtered, settled, or similarly treated prior to discharge;
5. Potable water ~~sources~~, including uncontaminated waterline flushings, managed in a manner to avoid an instream impact;
6. Routine external building wash down ~~where~~ provided no soaps, solvents or detergents ~~have not been~~ are used,

external building surfaces do not contain hazardous substances, and the wash water ~~has been~~ is filtered, settled, or similarly treated prior to discharge;

7. Pavement wash waters ~~where,~~ provided spills or leaks of toxic or hazardous materials have not occurred (~~or~~ ~~where,~~ unless all spilled or leaked material has been removed prior to washing); ~~where~~ soaps, solvents, or detergents ~~have not been~~ are not used; and where the wash water ~~has been~~ is filtered, settled, or similarly treated prior to discharge;

8. Uncontaminated air conditioning or compressor condensate;

9. Uncontaminated ground water or spring water;

10. Foundation or footing drains ~~where,~~ provided flows are not contaminated with process materials such as solvents or contaminated groundwater;

11. Uncontaminated excavation dewatering, including dewatering of trenches and excavations that ~~have been~~ are filtered, settled, or similarly treated prior to discharge; and

12. Landscape irrigation.

F. Termination of general permit coverage.

1. The operator of the construction activity shall submit a notice of termination in accordance with 9VAC25-880-60, unless a registration statement was not required to be submitted in accordance with 9VAC25-880-50 A 1 c or A 2 b for single-family detached residential structures, to the ~~VSMP~~ Virginia Erosion and Stormwater Management (VESMP) authority after one or more of the following conditions have been met:

a. Necessary permanent control measures included in the SWPPP for the construction site are in place and functioning effectively and final stabilization has been achieved on all portions of the construction site for which the operator has operational control. When applicable, [ ~~long-term~~ long-term ] responsibility and maintenance requirements for permanent control measures shall be recorded in the local land records prior to the submission of a complete and accurate notice of termination and the construction record drawing prepared;

b. Another operator has assumed control over all areas of the construction site that have not been finally stabilized and obtained coverage for the ongoing discharge;

c. Coverage under an alternative VPDES permit or ~~state~~ other applicable permit has been obtained; or

d. For individual lots in residential construction only, final stabilization as defined in 9VAC25-880-1 has been completed, including providing written notification to the homeowner and incorporating a copy of the notification and signed certification statement into the SWPPP, and the residence has been transferred to the homeowner.

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2. The notice of termination shall be submitted no later than 30 days after one of the ~~above~~ conditions in subdivision 1 of this subsection is met.

3. Termination of authorization to discharge ~~for the conditions set forth in subdivision 1 a of this subsection~~ shall be effective upon notification from the department that the provisions of subdivision 1 a of this subsection have been met or ~~60~~ 90 days after submittal of a complete and accurate notice of termination in accordance with 9VAC25-880-60 C, whichever occurs first, unless otherwise notified by the VESMP or the department.

4. ~~Authorization to discharge terminates at midnight on the date that the notice of termination is submitted for the conditions set forth in subdivisions 1 b through 1 d of this subsection unless otherwise notified by the VSMP authority or department.~~

~~5.~~ 4. The notice of termination shall be signed in accordance with Part III K 1 and include the required certification in accordance with Part III K 4 of this general permit.

## G. Water quality protection.

1. The operator shall select, install, implement, and maintain control measures as identified in the SWPPP at the construction site that minimize pollutants in the discharge as necessary to ensure that the operator's discharge does not cause or contribute to an excursion above any applicable water quality standard.

2. If it is determined by the department that the operator's discharges are causing, have reasonable potential to cause, or are contributing to an excursion above any applicable water quality standard, the department, in consultation with the ~~VSMP~~ VESMP authority, may take appropriate enforcement action and require the operator to:

- a. Modify or implement additional control measures in accordance with Part II C to adequately address the identified water quality concerns;
- b. Submit valid and verifiable data and information that are representative of ambient conditions and indicate that the receiving water is attaining water quality standards; or
- c. Submit an individual permit application in accordance with ~~9VAC25-870-410~~ 9VAC25-875-980 B 3.

H. All written responses required under this ~~chapter~~ general permit shall include a signed certification consistent with Part III K.

## Part II

### STORMWATER POLLUTION PREVENTION PLAN

#### A. Stormwater pollution ~~prevent~~ prevention plan.

1. A stormwater pollution prevention plan (SWPPP) shall be developed prior to the submission of a registration statement and implemented for the construction activity, including any construction support activity, covered by this general permit.

[ For a small construction activity of a single-family detached residential structure, within or outside a common plan of development or sale, an SWPPP shall be developed and implemented prior to the initiation of the construction activity, including any construction support activity covered by this general permit.

2. ] SWPPPs shall be prepared in accordance with good engineering practices. Construction activities that are part of a larger common plan of development or sale and disturb less than one acre may utilize [ ~~a~~ an ] SWPPP template provided by the department and need not provide a separate stormwater management plan if one has been prepared and implemented for the larger common plan of development or sale.

[ ~~2.~~ 3. ] The SWPPP requirements of this general permit may be fulfilled by incorporating by reference other plans such as a spill prevention control and countermeasure (SPCC) plan developed for the construction site under § 311 of the federal Clean Water Act or best management practices (BMP) programs otherwise required for the facility construction site provided that the incorporated plan meets or exceeds the SWPPP requirements of Part II B. All plans incorporated by reference into the SWPPP become enforceable under this general permit. If a plan incorporated by reference does not contain all of the required elements of the SWPPP, the operator shall develop the missing elements and include them in the SWPPP.

[ ~~3.~~ 4. ] Any operator that was authorized to discharge under the general permit effective July 1, [ ~~2014~~ 2019 ], and that intends to continue coverage under this general permit, shall update its stormwater pollution prevention plan to comply with the requirements of this general permit no later than 60 days after the date of coverage under this general permit.

#### B. Contents. The SWPPP shall include the following items:

##### 1. General information.

- a. A signed copy of the registration statement, if required, for coverage under ~~the this general VPDES permit for discharges of stormwater from construction activities;~~
- b. Upon receipt, a copy of the notice of coverage under ~~the this general VPDES permit for discharges of stormwater from construction activities~~ (i.e., notice of coverage letter);
- c. Upon receipt, a copy of the general VPDES permit for discharges of stormwater from construction activities;
- d. A narrative description of the nature of the construction activity, including the function of the project (e.g., low density residential, shopping mall, highway, etc.);
- e. A legible map of the construction site plan identifying:  
(1) Directions of stormwater flow Existing and proposed drainage patterns on the construction site and approximate

slopes ~~anticipated~~ before and after major grading activities;

(2) Limits of clearing and grading (i.e., land disturbance) including steep slopes and natural buffers around surface waters that will ~~not be disturbed~~ remain undisturbed;

(3) Locations of major structural and nonstructural control measures, including sediment basins and traps, perimeter dikes and diversions, sediment barriers, and other measures intended to filter, settle, or similarly treat sediment; that will be installed between disturbed areas and the undisturbed vegetated areas in order to increase sediment removal and maximize stormwater infiltration;

(4) Locations of surface waters;

(5) Locations where concentrated stormwater is discharged;

(6) Locations of any construction support activities, including (i) areas where equipment and vehicle washing, wheel wash water, and other wash water is to occur; (ii) storage areas for chemicals such as acids, fuels, fertilizers, and other lawn care chemicals; (iii) concrete wash out areas; (iv) vehicle fueling and maintenance areas; (v) sanitary waste facilities, including those temporarily placed on the construction site; ~~and~~ (vi) construction waste storage; and (vii) areas where polymers, flocculants, or other stormwater treatment chemicals will be used or stored; and

(7) When applicable, the location of the on-site rain gauge or the methodology established in consultation with the ~~VSMP~~ VESMP authority used to identify measurable storm events for inspection as allowed by Part II G 2 a (1) (ii) or 2 b (2).

2. Erosion and sediment control plan [ for the construction activity authorized by this general permit ].

a. An erosion and sediment control plan designed and approved in accordance with the Virginia Erosion and ~~Sediment Control Stormwater Management~~ Regulations (~~9VAC25-840~~) (9VAC25-875), an "agreement in lieu of a plan" as defined in ~~9VAC25-840-10 from the VESCP authority~~ 9VAC25-875-20, or an erosion and sediment control plan prepared in accordance with ~~annual~~ department-approved standards and specifications ~~approved by the department~~.

b. All erosion and sediment control plans shall include a statement describing the maintenance responsibilities required for the erosion and sediment controls used.

c. An approved erosion and sediment control plan, "agreement in lieu of a plan," or erosion and sediment control plan prepared in accordance with department-approved ~~annual~~ standards and specifications; shall be implemented to:

(1) Control the volume and velocity of stormwater runoff within the construction site to minimize soil erosion;

(2) Control stormwater discharges, including 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 the construction activity;

(4) Minimize the disturbance of steep slopes;

(5) Minimize sediment discharges from the construction site in a manner that addresses (i) the amount, frequency, intensity, and duration of precipitation; (ii) the nature of resulting stormwater runoff; and (iii) soil characteristics, including the range of soil particle sizes present on the construction 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 infiltration would be inadvisable due to the underlying geology (e.g., karst topography) and groundwater contamination concerns or infeasible due to site conditions~~;

(7) Minimize soil compaction ~~and, unless infeasible, preserve topsoil. Minimizing soil compaction is not required where the intended function of a specific area of the construction site dictates that it be compacted~~;

(8) Unless infeasible, preserve topsoil. Preserving topsoil is not required where the intended function of a specific area of the construction site dictates that the topsoil be disturbed or removed;

(9) Ensure the initiation of stabilization activities, ~~as defined in 9VAC25-880-1~~, of disturbed areas occurs immediately whenever any clearing, grading, excavating, or other land-disturbing activities have permanently ceased on any portion of the construction site, or temporarily ceased on any portion of the construction site and will not resume for a period exceeding 14 days; and

~~(9)~~ (10) Utilize outlet structures that withdraw stormwater from the surface (i.e., above the permanent pool or wet storage water surface elevation), unless infeasible, when discharging from sediment basins or sediment traps.

3. Stormwater management plan [ for the construction activity authorized by this general permit ].

a. Except for those projects identified in Part II B 3 b, a stormwater management plan approved ~~by the VSMP authority as authorized under~~ in accordance with the Virginia Erosion and Stormwater Management Program (VSMP) Regulation (9VAC25-870), (9VAC25-875) or an "agreement in lieu of a ~~stormwater management~~ plan" as defined in ~~9VAC25-870-10 from the VSMP authority~~, 9VAC25-875-20 or a stormwater management plan prepared in accordance with ~~annual~~ department-approved standards and specifications ~~approved by the department~~.

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b. For any operator meeting the conditions of ~~9VAC25-870-47~~ 9VAC25-875-480 B of the ~~VSMMP regulation~~ Virginia Erosion and Stormwater Management Regulation, an approved stormwater management plan is not required. In lieu of an approved stormwater management plan, the SWPPP shall include a description of, and all necessary calculations supporting, all post-construction stormwater management measures that will be installed prior to the completion of the construction process to control pollutants in stormwater discharges after construction operations have been completed. Structural measures should be placed on upland soils to the degree possible. Such measures must be designed and installed in accordance with applicable VESCP authority, ~~VSMMP~~ VESMP authority, state, and federal requirements, and any necessary permits must be obtained.

4. Pollution prevention plan [ for the construction activity authorized by this general permit ]. A pollution prevention plan that addresses potential pollutant-generating activities that may reasonably be expected to affect the quality of stormwater discharges from the construction activity, including any support activity. The pollution prevention plan shall:

- a. Identify the potential pollutant-generating activities and the pollutant that is expected to be exposed to stormwater;
- b. Describe the location where the potential pollutant-generating activities will occur, or if identified on the site plan, reference the site plan;
- c. Identify all nonstormwater discharges, as authorized in Part I E of this general permit, that are or will be commingled with stormwater discharges from the construction activity, including any applicable support activity;
- d. Identify the person responsible for implementing the pollution prevention ~~practice~~ practices for each pollutant-generating activity (if other than the person listed as the qualified personnel);
- e. Describe the pollution prevention practices and procedures that will be implemented to:
  - (1) Prevent and respond to leaks, spills, and other releases, including (i) procedures for expeditiously stopping, containing, and cleaning up spills, leaks, and other releases; and (ii) procedures for reporting leaks, spills, and other releases in accordance with Part III G;
  - (2) Prevent the discharge of spilled and leaked fuels and chemicals from vehicle fueling and maintenance activities (e.g., providing secondary containment such as spill berms, decks, spill containment pallets, providing cover where appropriate, and having spill kits readily available);
  - (3) Prevent the discharge of soaps, solvents, detergents, and wash water from construction materials, including the clean-up of stucco, paint, form release oils, and curing compounds (e.g., providing (i) cover (e.g., plastic sheeting

or temporary roofs) to prevent contact with stormwater; (ii) collection and proper disposal in a manner to prevent contact with stormwater; and (iii) a similarly effective means designed to prevent discharge of these pollutants);

(4) Minimize the discharge of pollutants from vehicle and equipment washing, wheel wash water, and other types of washing (e.g., locating activities away from surface waters and ~~stormwater storm drain inlets or conveyance and constructed or natural site drainage features~~ and directing wash waters to sediment basins or traps, using filtration devices such as filter bags or sand filters, or using similarly effective controls);

(5) Direct concrete wash water into a leak-proof container or leak-proof settling basin. ~~The container or basin shall be~~ designed so that no overflows can occur due to inadequate sizing or precipitation. Hardened concrete wastes shall be removed and disposed of in a manner consistent with the handling of other construction wastes. Liquid concrete wastes shall be removed and disposed of in a manner consistent with the handling of other construction wash waters and shall not be discharged to surface waters, disposed of through infiltration, or otherwise disposed of on the ground;

(6) Minimize the discharge of pollutants from storage, handling, and disposal of construction products, materials, and wastes, including (i) building products such as asphalt sealants, copper flashing, roofing materials, adhesives, and concrete admixtures; (ii) pesticides, herbicides, insecticides, fertilizers, and landscape materials; and (iii) construction and domestic wastes such as packaging materials, scrap construction materials, masonry products, timber, pipe and electrical cuttings, plastics, Styrofoam, concrete, and other trash or building materials;

(7) Prevent the discharge of fuels, oils, and other petroleum products, hazardous or toxic wastes, waste concrete, and sanitary wastes;

(8) Address any other discharge from the potential pollutant-generating activities not addressed ~~above~~ in this subdivision 4; and

(9) Minimize the exposure of waste materials to precipitation by closing or covering waste containers during precipitation events and at the end of the business day, or implementing other similarly effective practices. Minimization of exposure is not required in cases where the exposure to precipitation will not result in a discharge of pollutants; and

f. Describe procedures for providing pollution prevention awareness of all applicable wastes, including any wash water, disposal practices, and applicable disposal locations of such wastes, to personnel in order to comply with the conditions of this general permit. The operator shall implement the procedures described in the SWPPP.



5. SWPPP requirements for discharges to nutrient and sediment impaired waters. For discharges to surface waters (i) identified as impaired in the ~~2016~~ 2022 § 305(b)/303(d) Water Quality Assessment Integrated Report for Benthic Macroinvertebrates Bioassessments or (ii) with an applicable TMDL wasteload allocation established and approved prior to the term of this general permit for sediment ~~for~~ or a sediment-related parameter (i.e., total suspended solids or turbidity) or nutrients (i.e., nitrogen or phosphorus), including all surface waters within the Chesapeake Bay Watershed, the operator shall:

- a. Identify the impaired waters, approved TMDLs, and pollutants of concern in the SWPPP; and
- b. Provide ~~clear direction~~ documentation in the SWPPP that:

- (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 construction site;
- (2) Nutrients shall be applied in accordance with manufacturer's recommendations or an approved nutrient management plan and shall not be applied during rainfall events; and
- (3) A modified inspection schedule shall be implemented in accordance with Part II G 2 a.

6. SWPPP requirements for discharges to polychlorinated biphenyl (PCB) impaired waters. For discharges from construction activities that include the demolition of any structure with at least 10,000 square feet of floor space built or renovated before January 1, 1980, to surface waters (i) identified as impaired in the ~~2016~~ 2022 § 305(b)/303(d) Water Quality Assessment Integrated Report or (ii) with an applicable TMDL wasteload allocation established and approved prior to the term of this general permit for PCB, the operator shall:

- a. Identify the impaired waters, approved TMDLs, and pollutant of concern in the SWPPP;
- b. Implement the approved erosion and sediment control plan in accordance with Part II B 2;
- c. Dispose of waste materials in compliance with applicable state, federal, and local requirements; and
- d. Implement a modified inspection schedule in accordance with Part II G 2 a.

7. SWPPP requirements for discharges to exceptional waters. For discharges to surface waters identified in 9VAC25-260-30 A 3 c as an exceptional water, the operator shall:

- a. Identify the exceptional surface waters in the SWPPP; and
- b. Provide ~~clear direction~~ documentation in the SWPPP that:

- (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 construction site;
- (2) Nutrients shall be applied in accordance with manufacturer's recommendations or an approved nutrient management plan and shall not be applied during rainfall events; and
- (3) A modified inspection schedule shall be implemented in accordance with Part II G 2 a.

8. SWPPP requirements for construction dewatering discharges to sediment impaired waters or exceptional waters. Dewatering discharges of uncontaminated stormwater or groundwater from footers or foundations of a single-family detached residential structure are exempt from the requirements of this subdivision 8, provided that such discharges are not discharged directly to surface waters. For construction dewatering discharges to surface waters (i) identified as impaired in the 2022 § 305(b)/303(d) Water Quality Assessment Integrated Report for Benthic Macroinvertebrates Bioassessments; (ii) with an applicable TMDL wasteload allocation established and approved prior to the term of this general permit for sediment or a sediment-related parameter (i.e., total suspended solids or turbidity), including all surface waters within the Chesapeake Bay Watershed; or (iii) identified in 9VAC25-260-30 A 3 c as an exceptional water, the operator shall undertake one of the following methods for controlling and documenting construction dewatering discharges:

- a. Turbidity benchmark option 1:
  - (1) Identify the location of all construction dewatering discharges in the SWPPP;
  - (2) Select, install, implement, and maintain control measures at each dewatering location that minimize pollutants, including suspended solids, in construction dewatering discharges prior to discharging into a stormwater conveyance system or surface water; and
  - (3) Provide documentation in the SWPPP that:
    - (a) Sample frequency. At least one grab sample shall be collected from each construction dewatering discharge when the first discharge at that location occurs, daily thereafter until the dewatering discharge stops, and after any installation of new controls or routine maintenance activity of existing controls. An upstream grab sample shall be collected from the receiving stream;
    - (b) Sample timing. Grab samples of the construction dewatering discharge shall be collected during the first 15 minutes of the construction dewatering discharge and daily thereafter until the dewatering discharge stops. Upstream grab samples of the receiving stream shall be collected within 15 minutes of the corresponding construction dewatering discharge sample;

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(c) Sample location. Grab samples shall be collected after the construction dewatering water has been filtered, settled, or similarly treated and prior to its discharge into a stormwater conveyance system or surface water;

(d) Test methods. Grab samples taken as required by this subdivision 8 shall be measured using a turbidity meter that reports results in nephelometric turbidity units (NTUs) or formazin turbidity units (FTUs), and [ ~~conduct~~ ] a turbidity meter calibration verification [ shall be conducted ] prior to each day's use, consistent with manufacturer recommendations;

(e) Visual monitoring. All dewatering discharges shall be visually monitored for changes in the characterization of effluent discharge;

(f) Corrective action. If (i) any turbidity measurement of the construction dewatering discharge exceeds the upstream grab sample of the receiving stream by more than [ ~~40 50~~ ] NTUs/FTUs or (ii) visual monitoring indicates a change in the characterization of effluent discharge, corrective action shall be taken in accordance with Part II H 2 of this general permit; and

(g) Recordkeeping. Turbidity monitoring information (i.e., location, date, sample collection time, and turbidity measurement) and any necessary corrective actions taken shall be recorded in the SWPPP; or

## b. Turbidity benchmark option 2:

(1) Identify the location of all construction dewatering discharges in the SWPPP;

(2) Select, install, implement, and maintain control measures at each dewatering location that minimize pollutants, including suspended solids, in construction dewatering discharges prior to discharging into a stormwater conveyance system or surface water; and

(3) Provide documentation in the SWPPP that:

(a) Sample frequency. At least one grab sample shall be collected from each construction dewatering discharge when the first discharge at that location occurs, daily thereafter until the dewatering discharge stops, and after any installation of new controls or routine maintenance activity of existing controls. Grab samples shall be tested to confirm a turbidity measurement of equal to or less than [ ~~50 150~~ ] NTUs/FTUs from the construction dewatering discharge;

(b) Sample timing. Grab samples of the construction dewatering discharge shall be collected during the first 15 minutes of the construction dewatering discharge and daily thereafter until the dewatering discharge stops;

(c) Sample location. Grab samples shall be collected after the construction dewatering water has been filtered, settled, or similarly treated and prior to its discharge into a stormwater conveyance system or surface water;

(d) Test methods. Grab samples taken as required by this subdivision 8 shall be measured using a turbidity meter that reports results in nephelometric turbidity units (NTUs) or formazin turbidity unit (FTUs), and [ ~~conduct~~ ] a turbidity meter calibration verification [ shall be conducted ] prior to each day's use, consistent with manufacturer recommendations;

(e) Visual monitoring. All dewatering discharges shall be visually monitored for changes in the characterization of effluent discharge;

(f) Corrective action. If (i) any turbidity measurement of the construction dewatering discharge exceeds [ ~~50 150~~ ] NTUs/FTUs or (ii) visual monitoring indicates a change in the characterization of effluent discharge, corrective action shall be taken in accordance with Part II H 2 of this general permit; and

(g) Recordkeeping. Turbidity monitoring information (i.e., location, date, sample collection time, and turbidity measurement) and any necessary corrective actions taken shall be recorded in the SWPPP [ ~~;~~ or

## c. Turbidity benchmark option 3:

(1) Identify the location of all construction dewatering discharges in the SWPPP;

(2) Select, install, implement, and maintain control measures at each dewatering location that minimize pollutants, including suspended solids, in construction dewatering discharges prior to discharging into a stormwater conveyance system or surface water; and

(3) Provide documentation in the SWPPP that:

(a) Sample frequency. At least one grab sample shall be collected from each construction dewatering discharge when the first discharge at that location occurs, daily thereafter until the dewatering discharge stops, and after any installation of new controls or routine maintenance activity of existing controls. Grab samples shall be tested to confirm a turbidity measurement of equal to or less than 50 NTUs/FTUs, based on a weekly average, from the construction dewatering discharge;

(b) Sample timing. Grab samples of the construction dewatering discharge shall be collected during the first 15 minutes of the construction dewatering discharge and daily thereafter until the dewatering discharge stops;

(c) Sample location. Grab samples shall be collected after the construction dewatering water has been filtered, settled, or similarly treated and prior to its discharge into a stormwater conveyance system or surface water;

(d) Test methods. Grab samples taken as required by this subdivision 8 shall be measured using a turbidity meter that reports results in NTUs or FTUs, and a turbidity meter calibration verification shall be conducted prior to each day's use, consistent with manufacturer recommendations;

(e) Visual monitoring. All dewatering discharges shall be visually monitored for changes in the characterization of effluent discharge;

(f) Corrective action. If (i) the weekly average of the turbidity measurements of the construction dewatering discharge exceeds 50 NTUs/FTUs or (ii) visual monitoring indicates a change in the characterization of effluent discharge, corrective action shall be taken in accordance with Part II H 2. The weekly average is the sum of all turbidity samples taken during a monitoring week (starting on Monday and ending on Sunday) divided by the number of samples measures during that week; and

(g) Recordkeeping. Turbidity monitoring information (i.e., location, date, sample collection time, and turbidity measurement) and any necessary corrective actions taken shall be recorded in the SWPPP.

d. Request for alternative benchmark threshold:

(1) At any time prior to or during coverage under this permit, a request may be submitted to the department to approve a benchmark that is higher than turbidity benchmark options 1, 2, and 3 if information is available demonstrating the higher number is the same as the receiving water's water quality standard for turbidity. To request approval of an alternate benchmark, the operator must submit the following to the department:

(a) The current turbidity water quality standard that applies to the receiving water; and

(b) Information on the natural or background turbidity level to determine the specific standard for the receiving water, including available data that can be used to establish the natural turbidity levels of the receiving water.

(2) The department will notify the operator of its decision on whether to approve the requested alternate benchmark within 30 days. Until the department approves an alternate benchmark, the operator is required to use the option 1, option 2, or option 3 turbidity benchmark and take any required corrective actions if an exceedance occurs. ]

9. Identification of qualified personnel. The name, [ ~~phone~~ telephone ] number, and qualifications of the qualified personnel conducting inspections required by this general permit.

~~9. Delegation of authority~~ 10. Duly authorized representatives. The SWPPP shall include the names of individuals or positions ~~with delegated authority, in accordance with Part III K,~~ duly authorized to sign inspection reports or modify the SWPPP on behalf of the operator. Any authorization shall be signed and dated in accordance with Part III K 2 and shall include the required certification in accordance with Part III K 4.

~~10- 11. SWPPP signature and certification.~~ The SWPPP shall be signed and dated in accordance with Part III K 2 of this

general permit and shall include the required certification in accordance with Part III K 4 of this general permit.

C. SWPPP amendments, modification, and updates.

1. The operator shall amend the SWPPP whenever there is a change in the design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to surface waters and that has not been previously addressed in the SWPPP.

2. The SWPPP shall be amended if, during inspections or investigations by the operator's qualified personnel, or by local, state, or federal officials, it is determined that the existing control measures are ineffective in minimizing pollutants in discharges from the construction activity. Revisions to the SWPPP shall include additional or modified control measures designed and implemented to correct problems identified. If approval by the VESCP authority, ~~VSM~~ VESMP authority, or department is necessary for the control measure, revisions to the SWPPP shall be completed no later than ~~seven calendar~~ five business days following approval. Implementation of these additional or modified control measures shall be accomplished as described in Part II H.

3. The SWPPP shall clearly identify the contractors that will implement and maintain each control measure identified in the SWPPP. The SWPPP shall be amended to identify any new contractor that will implement and maintain a control measure.

4. The operator shall update the SWPPP as soon as possible but no later than ~~seven~~ five business days following any modification to its implementation. All modifications or updates to the SWPPP shall be noted and shall include the following items:

a. A record of dates when:

- (1) Major grading activities occur;
- (2) Construction activities temporarily or permanently cease on a portion of the construction site; and
- (3) Stabilization measures are initiated;

b. Documentation of replaced or modified controls where periodic inspections or other information have indicated that the controls have been used inappropriately or incorrectly and were modified;

c. Areas that have reached final stabilization and where no further SWPPP or inspection requirements apply;

d. All properties that are no longer under the legal control of the operator and the dates on which the operator no longer had legal control over each property;

e. The date of any prohibited discharges, the discharge volume released, and what actions were taken to minimize the impact of the release;

f. Measures taken to prevent the reoccurrence of any prohibited discharge; and

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g. Measures taken to address any evidence identified as a result of an inspection required under Part II G.

5. Amendments, modifications, or updates to the SWPPP shall be signed in accordance with Part III K 2 and shall include the required certification in accordance with Part III K 4.

D. Public notification. Upon commencement of ~~land disturbance~~ construction activities, the operator shall post ~~conspicuously~~ a copy of the notice of coverage letter at a publicly accessible location near the main entrance of the construction ~~activity~~ site. For linear projects, the operator shall post a copy of the notice of coverage letter at a publicly accessible location near an active part of the construction ~~project~~ site (e.g., where a pipeline crosses a public road). The copy of the notice of coverage letter shall be visible such that it can be readily viewed from a public right-of-way. The operator shall maintain the posted information until termination of general permit coverage as specified in Part I F.

E. SWPPP availability.

1. Operators with day-to-day operational control over SWPPP implementation shall have a copy of the SWPPP available at a central location on-site for use by those identified as having responsibilities under the SWPPP whenever they are on the construction site.

2. The operator shall make the SWPPP and all amendments, modifications, and updates available upon request to the department, the ~~VSM~~ VESMP authority, the EPA, the VESCP authority, local government officials, or the operator of a municipal separate storm sewer system receiving discharges from the construction activity. If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the SWPPP's location shall be posted near the main entrance of the construction site.

3. The operator shall make the SWPPP available for public review in an electronic format or in hard copy. Information for public access to the SWPPP shall be posted and maintained in accordance with Part II D. If not provided electronically, public access to the SWPPP may be arranged upon request at a time and at a publicly accessible location convenient to the operator or ~~his~~ the operator's designee but shall be no less than once per month and shall be during normal business hours. Information not required to be contained within the SWPPP by this general permit is not required to be released.

F. SWPPP implementation. The operator shall implement the SWPPP and subsequent amendments, modifications, and updates from commencement of land disturbance until termination of general permit coverage as specified in Part I F.

1. All control measures shall be properly maintained in effective operating condition in accordance with good

engineering practices and, where applicable, manufacturer specifications.

2. If a site inspection required by Part II G identifies a control measure that is not operating effectively or needs routine maintenance, corrective actions or routine maintenance shall be completed as soon as practicable, but no later than ~~seven~~ five business days after discovery or a longer period as established by the ~~VSM~~ VESMP authority, to maintain the continued effectiveness of the control measures.

~~2.~~ 3. If the operator must make the same repairs more than two times to the same control at the same location, even if the fix can be completed by the close of the next business day, the operator shall either:

a. Complete work to fix any subsequent repeat occurrences of this same problem under the corrective action procedures in Part II H, including keeping any records of the condition and how it was corrected under Part II C; or

b. Document in the inspection report under Part II G why the specific reoccurrence of this same problem should still be addressed as a routine maintenance fix.

4. If site inspections required by Part II G identify an existing control measure that needs to be modified or if an additional or alternative control measure is necessary for any reason, implementation shall be completed prior to the next anticipated measurable storm event. If implementation prior to the next anticipated measurable storm event is impracticable, then additional or alternative control measures shall be implemented as soon as practicable, but no later than ~~seven~~ five business days after discovery or a longer period as established by the ~~VSM~~ VESMP authority.

G. SWPPP Inspections.

1. Personnel responsible for on-site and off-site inspections. Inspections required by this general permit shall be conducted by the qualified personnel identified by the operator in the SWPPP. The operator is responsible for ensuring that the qualified personnel conduct the inspection. Qualified personnel may be a person on the operator's staff or a third party hired to conduct such inspections.

2. Inspection schedule.

a. For construction activities that discharge to a surface water identified in Part II B 5 and B 6 as impaired or having an approved TMDL or Part II B 7 as exceptional, the following inspection schedule requirements apply:

(1) Inspections shall be conducted at a frequency of (i) at least once every four business days or (ii) at least once every five business days and no later than 24 hours following a measurable storm event. In the event that a measurable storm event occurs when there are more than

24 hours between business days, the inspection shall be conducted on the next business day; and

(2) Representative inspections as authorized in Part II G 2 d shall not be allowed.

b. Except as specified in Part II G 2 a, inspections shall be conducted at a frequency of:

(1) At least once every five business days; or

(2) At least once every 10 business days and no later than 24 hours following a measurable storm event. In the event that a measurable storm event occurs when there are more than 24 hours between business days, the inspection shall be conducted on the next business day.

(a) A storm event that produces 0.25 inches or more of rain within a 24-hour period on the first day of the storm and continues to produce 0.25 inches or more of rain on subsequent days. The operator is required to conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the last day of the storm that produces 0.25 inches or more of rain.

(b) A discharge caused by snowmelt [ from a snow event producing 3.25 inches or more of snow within a 24-hour period ]. The operator is required to conduct one inspection once the discharge of snowmelt occurs. Additional inspections are only required if, following the discharge from the first snowmelt, there is a discharge from a separate storm event.

c. Where areas have been temporarily stabilized or ~~land-disturbing construction~~ activities will be suspended due to continuous frozen ground conditions and stormwater discharges are unlikely, the inspection frequency described in Part II G 2 a and 2 b may be reduced to once per month. If weather conditions (such as above freezing temperatures or rain or snow events) make discharges likely, the operator shall immediately resume the regular inspection frequency.

d. Except as prohibited in Part II G 2 a (2), representative inspections may be utilized for utility line installation, pipeline construction, or other similar linear construction activities provided that:

(1) Temporary or permanent soil stabilization has been installed and vehicle access may compromise the temporary or permanent soil stabilization and potentially cause additional land disturbance increasing the potential for erosion;

(2) Inspections occur on the same frequency as other construction activities;

(3) Control measures are inspected along the construction site 0.25 miles above and below each access point (i.e., where a roadway, undisturbed right-of-way, or other similar feature intersects the construction activity and access does not compromise temporary or permanent soil stabilization); and

(4) Inspection locations are provided in the inspection report required by Part II G.

e. If adverse weather causes the safety of the inspection personnel to be in jeopardy, the inspection may be delayed until the next business day on which it is safe to perform the inspection. Any time inspections are delayed due to adverse weather conditions, evidence of the adverse weather conditions shall be included in the SWPPP with the dates of occurrence.

3. Inspection requirements. ~~a.~~ As part of the inspection, the qualified personnel shall at a minimum:

~~(1)~~ a. Record the date and time of the inspection and, when applicable, the date and rainfall or snowfall amount of the last measurable storm event;

~~(2)~~ b. Record the information and a description of any discharges occurring at the time of the inspection or evidence of discharges occurring prior to the inspection;

~~(3)~~ c. Record any ~~land-disturbing construction~~ activities that have occurred outside of the approved erosion and sediment control plan;

~~(4)~~ d. Inspect all stormwater discharge locations at the construction site. If a stormwater discharge is occurring during the inspection, observe and document the visual quality and characteristics of the discharge, including color; odor; floating, settled, or suspended solids; foam; oil sheen; and other indicators of stormwater pollutants;

e. Inspect all construction dewatering discharge locations at the construction site, if applicable. If a construction dewatering discharge is occurring during the inspection, observe and document the visual quality and the characteristics of the discharge, including color; odor; floating, settled, or suspended solids; foam; oil sheen; and other indicators of pollutants;

f. Inspect the following for installation in accordance with the approved erosion and sediment control plan, identification of any maintenance needs, and evaluation of effectiveness in minimizing sediment discharge, including whether the control has been inappropriately or incorrectly used:

~~(a)~~ (1) All perimeter erosion and sediment controls, such as silt fence;

~~(b)~~ (2) Soil stockpiles, when applicable, and borrow areas for stabilization or sediment trapping measures;

~~(c)~~ (3) Completed earthen structures, such as dams, dikes, ditches, and diversions for stabilization and effective impoundment or flow control;

~~(d)~~ (4) Cut and fill slopes;

~~(e)~~ (5) Sediment basins and traps, sediment barriers, and other measures installed to control sediment discharge from stormwater;

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~~(6)~~ (6) Temporary or permanent channels, flumes, or other slope drain structures installed to convey concentrated runoff down cut and fill slopes;

~~(7)~~ (7) Storm inlets that have been made operational to ensure that sediment laden stormwater does not enter without first being filtered or similarly treated; and

~~(8)~~ (8) Construction vehicle access routes that intersect or access paved or public roads for minimizing sediment tracking;

~~(g)~~ g. Inspect areas that have reached final grade or that will remain dormant for more than 14 days to ensure:

~~(1)~~ (1) Initiation of stabilization activities have occurred immediately, as defined in 9VAC25-880-1; and

~~(2)~~ (2) Stabilization activities have been completed within seven days of reaching grade or stopping work;

~~(h)~~ h. Inspect for evidence that the approved erosion and sediment control plan, "agreement in lieu of a plan," or erosion and sediment control plan prepared in accordance with department-approved ~~annual~~ standards and specifications has not been properly implemented. This includes:

~~(1)~~ (1) Concentrated flows of stormwater in conveyances such as rills, rivulets, or channels that have not been filtered, settled, or similarly treated prior to discharge, or evidence thereof;

~~(2)~~ (2) Sediment laden or turbid flows of stormwater that have not been filtered or settled to remove sediments prior to discharge;

~~(3)~~ (3) Sediment deposition in areas that drain to unprotected stormwater inlets or catch basins that discharge to surface waters. Inlets and catch basins with failing sediment controls due to improper installation, lack of maintenance, or inadequate design are considered unprotected;

~~(4)~~ (4) Sediment deposition on any property (including public and private streets) outside of the construction activity covered by this general permit;

~~(5)~~ (5) Required stabilization has not been initiated or completed or is not effective on portions of the construction site;

~~(6)~~ (6) Sediment basins without adequate wet or dry storage volume or sediment basins that allow the discharge of stormwater from below the surface of the wet storage portion of the basin;

~~(7)~~ (7) Sediment traps without adequate wet or dry storage or sediment traps that allow the discharge of stormwater from below the surface of the wet storage portion of the trap; and

~~(8)~~ (8) Land disturbance or sediment deposition outside of the approved area to be disturbed;

~~(i)~~ i. Inspect pollutant generating activities identified in the pollution prevention plan for the proper

implementation, maintenance, and effectiveness of the procedures and practices;

~~(j)~~ j. Identify and report any pollutant generating activities not identified in the pollution prevention plan; and

~~(k)~~ k. Identify and document the presence of any evidence of the discharge of pollutants prohibited by this general permit.

4. Inspection report. Each inspection report shall include the following items:

a. The date and time of the inspection and, when applicable, the date and rainfall or snowfall amount of the last measurable storm event;

b. Summarized findings of the inspection;

c. The locations, visual quality, and characteristics of all stormwater discharges, when occurring;

d. The locations, visual quality, and characteristics of all construction dewatering discharges, if applicable;

e. The locations of prohibited discharges;

~~f.~~ f. The locations of control measures that require routine maintenance;

e. g. The locations of control measures that failed to operate as designed or proved inadequate or inappropriate for a particular location;

f. h. The locations where any evidence identified under Part II G 3 a-~~(6)~~ h exists;

g. i. The locations where any additional control measure is needed;

~~h.~~ j. A list of corrective actions required (including any changes to the SWPPP that are necessary) as a result of the inspection or to maintain permit compliance;

~~i.~~ k. Documentation of any corrective actions required from a previous inspection that have not been implemented;

l. Any incidents of noncompliance. If none, the report shall contain a certification that the construction activity is in compliance with the SWPPP and this general permit;

m. The required certification in accordance with Part III K 4 of this general permit; and

~~j.~~ n. The date and signature of the qualified personnel and the operator or its duly authorized representative in accordance with Part III K 2 of this general permit.

5. The inspection report shall be included into the SWPPP no later than four business days after the inspection is complete.

6. The inspection report and any actions taken in accordance with Part II shall be retained by the operator as part of the SWPPP for at least three years from the date that general permit coverage expires or is terminated. ~~The inspection report shall identify any incidents of noncompliance. Where an inspection report does not identify any incidents of~~

noncompliance, the report shall contain a certification that the construction activity is in compliance with the SWPPP and this general permit. The report shall be signed in accordance with Part III K of this general permit.

H. Corrective actions.

1. [ ~~The~~ Except as required in Part II H 2, the ] operator shall implement the corrective actions identified as a result of an inspection as soon as practicable but no later than ~~seven~~ five business days after discovery or a longer period as approved by the ~~VSM~~ VESMP authority. If approval of a corrective action by a regulatory authority (e.g., ~~VSM~~ VESMP authority, VESCP authority, or the department) is necessary, additional control measures shall be implemented to minimize pollutants in stormwater discharges until such approvals can be obtained.

2. When [ ~~using turbidity benchmark option 1,~~ any turbidity measurement of the construction dewatering discharge exceeds the selected benchmark option or visual monitoring indicates a change in the characteristics of effluent discharge, as outlined in Part II B 8, ] the operator shall [ ~~implement corrective actions when any construction dewatering discharge turbidity measurement exceeds the upstream grab sample of the receiving stream by 50 NTUs/FTUs or where visual monitoring indicates a change in the characteristics of effluent discharge. The operator shall~~ ]:

- a. [ ~~Cease~~ Immediately cease ] the construction dewatering discharge at the location that exceeds [ ~~upstream grab sample~~ the turbidity benchmark ] or where visual monitoring indicates a change in the characterization of effluent discharge;
- b. Determine whether the construction dewatering controls are operating effectively or need routine maintenance or if an additional or alternate control measure is necessary; and
- c. Make any necessary adjustments, additions, repairs, or replacements to the construction dewatering controls.

Once these corrective action steps are completed and any necessary adjustments, additions, repairs, or replacements are made, the operator may resume its construction dewatering discharge and shall sample for turbidity within 15 minutes of the construction dewatering discharge commencing. [ ~~3. When using turbidity benchmark option 2, the operator shall implement corrective actions when any construction dewatering discharge turbidity measurement exceeds 50 NTUs/FTUs or visual monitoring of any construction dewatering control measure indicates a change in the characterization of effluent discharge or a need for adjustments, additions, repairs, or replacements to control measures. The operator shall: a. Cease the construction dewatering discharge at the location where visual monitoring indicates a change in the characterization of effluent discharge or a need for adjustments, additions,~~

~~repairs, or replacements to control measures; b. Determine whether the construction dewatering controls are operating effectively, need routine maintenance, or need replacement or if an additional or alternate control measure is necessary; and c. Make any necessary adjustments, additions, repairs, or replacements to the construction dewatering controls. Once these corrective action steps are completed and any necessary adjustments, additions, repairs, or replacements are made, the operator may resume its construction dewatering discharge and shall sample for turbidity within 15 minutes of the construction dewatering discharge commencing. No additional corrective action items are required beyond recording the results in the SWPPP ].~~

[ ~~4.3.~~ ] The operator may be required to remove accumulated sediment deposits located outside of the construction activity site covered by this general permit as soon as practicable in order to minimize environmental impacts.

[ ~~5.4.~~ ] The operator shall notify the ~~VSM~~ VESMP authority and the department as well as obtain all applicable federal, state, and local authorizations, approvals, and permits prior to the removal of sediments accumulated in surface waters including wetlands.

Part III

CONDITIONS APPLICABLE TO ALL VPDES PERMITS

NOTE: Discharge monitoring is not required for this general permit. If the operator chooses to monitor stormwater discharges or control measures, the operator shall comply with the requirements of subsections Part III A, B, and C, as appropriate.

A. Monitoring.

- 1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitoring activity.
- 2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this general 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).
- 3. The operator shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

B. Records.

- 1. Monitoring records and reports shall include:
  - a. The date, exact place, and time of sampling or measurements;

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- b. The individuals who performed the sampling or measurements;
- c. The dates and times analyses were performed;
- d. The individuals who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results of such analyses.

2. The operator shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this general permit, and records of all data used to complete the registration statement for this general permit, for a period of at least three years from the date of the sample, measurement, report, or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the operator, or as requested by the ~~board~~ department.

## C. Reporting monitoring results.

1. The operator shall update the SWPPP to include the results of the monitoring as may be performed in accordance with this general permit, unless another reporting schedule is specified elsewhere in this general permit.
2. Monitoring results shall be reported on a discharge monitoring report (DMR); on forms provided, approved, or specified by the department; or in any format provided that the date, location, parameter, method, and result of the monitoring activity are included.
3. If the operator monitors any pollutant specifically addressed by this general permit more frequently than required by this general permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this general permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.
4. Calculations for all limitations ~~which that~~ require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this general permit.

D. Duty to provide information. The operator shall furnish, within a reasonable time, any information ~~which that~~ the ~~board~~ department may request to determine whether cause exists for terminating this general permit coverage or to determine compliance with this general permit. The ~~board~~, department, EPA, or ~~VSMP~~ VESMP authority may require the operator to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from ~~his~~ the operator's discharge on the quality of surface waters, or such other information as may be necessary to accomplish the purposes of the [ CWA Clean

Water Act ] and the Virginia Erosion and Stormwater Management Act. The operator shall also furnish to the ~~board~~, department, EPA, or ~~VSMP~~ VESMP authority, upon request, copies of records required to be kept by this general permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this general permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized stormwater discharges. Pursuant to § 62.1-44.5 of the Code of Virginia, except in compliance with a state permit issued by the department, it shall be unlawful to cause a stormwater discharge from a construction activity.

G. Reports of unauthorized discharges. Any operator who discharges or causes or allows a discharge of sewage, industrial waste, other wastes ~~or~~, any noxious or deleterious substance ~~or~~, a hazardous substance, or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117, 40 CFR Part 302, or § 62.1-44.34:19 of the Code of Virginia that occurs during a 24-hour period into or upon surface waters or ~~who that~~ discharges or causes or allows a discharge that may reasonably be expected to enter surface waters; shall notify the ~~Department of Environmental Quality department and the~~ VESMP authority of the discharge immediately upon discovery of the discharge, but in no case later than within 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department and the ~~VSMP~~ VESMP authority within five calendar days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate, and prevent a recurrence of the present discharge or any future discharges not authorized by this general permit.

Discharges reportable to the department and the ~~VSMP~~ VESMP authority under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge, including a "bypass" or "upset," as defined in this general permit, should occur from a facility construction site and the discharge enters or could be



expected to enter surface waters, the operator shall promptly notify, in no case later than within 24 hours, the department and the ~~VSMP~~ VESMP authority ~~by telephone~~ after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The operator shall reduce the report to writing and shall submit it to the department and the ~~VSMP~~ VESMP authority within five calendar days of discovery of the discharge in accordance with Part III I 2. Unusual and extraordinary discharges include any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service of some or all of the facilities; and
4. Flooding or other acts of nature.

I. Reports of noncompliance. The operator shall report any noncompliance ~~which that~~ may adversely affect surface state waters or may endanger public health.

1. ~~An oral~~ A report to the department and the ~~VSMP~~ VESMP authority shall be provided within 24 hours from the time the operator becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under this ~~subdivision~~ subsection:
  - a. Any unanticipated bypass; and
  - b. Any upset that causes a discharge to surface waters.
2. A written report shall be submitted within five days and shall contain:
  - a. A description of the noncompliance and its cause;
  - b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
  - c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The department may waive the written report on a case-by-case basis for reports of noncompliance under Part III I if the oral report has been received within 24 hours and no adverse impact on surface waters has been reported.

3. The operator shall report all instances of noncompliance not reported under Part III I 1 or 2 in writing as part of the SWPPP. The reports shall contain the information listed in Part III I 2.

**NOTE:** ~~4.~~ The immediate (within 24 hours) reports required in Part III G, H, and I ~~shall may~~ be made to the department and the ~~VSMP~~ VESMP authority. Reports may be made by telephone, [ ~~or~~ ] email, or online at [ ~~https://www.deq.virginia.gov/get-involved/pollution-response~~ https://www.deq.virginia.gov/our-programs/pollution-response ]. For

reports outside normal working hours, leaving a recorded message shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

~~4.~~ 5. Where the operator becomes aware of a failure to submit any relevant facts, or submittal of incorrect information in any report, including a registration statement, to the department or the ~~VSMP~~ VESMP authority, the operator shall promptly submit such facts or correct information.

J. Notice of planned changes.

1. The operator shall give notice to the department and the ~~VSMP~~ VESMP authority as soon as possible of any planned physical alterations or additions to the permitted facility or activity. Notice is required only when:

- a. The operator plans an alteration or addition to any building, structure, facility, or installation that may meet one of the criteria for determining whether a facility is a new source in ~~9VAC25-870-420~~ 9VAC25-875-990; or
- b. The operator plans an alteration or addition that would significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in this general permit; ~~or.~~

2. The operator shall give advance notice to the department and ~~VSMP~~ VESMP authority of any planned changes in the permitted facility or activity, ~~which that~~ may result in noncompliance with state permit requirements.

3. The operator may continue construction activities based on the information provided in the original registration statement and SWPPP but must wait until the review period has ended before commencing or continuing construction activities on any portion of the construction site that would be affected by any of the planned changes or modifications. [ Any operator that chooses to proceed with unapproved construction activities while plans are being reviewed is proceeding at its own risk and subject to compliance actions if the plan is determined to be inadequate. ]

K. Signatory requirements.

1. Registration statement and notice of termination. All registration statements and notices of termination shall be signed as follows:

- a. For a corporation: by a responsible corporate officer. For the purpose of this chapter, 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,

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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 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 ~~state~~ permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

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

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this chapter, a principal executive officer of a public agency includes (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports and other information. All reports required by this general permit, including SWPPPs, and other information requested by ~~the board~~ or the department shall be signed by a person described in Part III K 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part III K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the operator. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and

c. The signed and dated written authorization is included in the SWPPP. A copy shall be provided to the department and ~~VSM~~ VESMP authority, if requested.

3. Changes to authorization. If an authorization under Part III K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the construction activity, a new authorization satisfying the requirements of Part III K 2 shall be submitted to the ~~VSM~~ VESMP authority as the administering entity for the ~~board~~ department prior to or together with any reports or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Part III K 1 or 2 shall make the following certification:

"I certify under penalty of law that I have read and understand this document and that this document and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The operator shall comply with all conditions of this general permit. Any ~~state permit~~ noncompliance with this general permit constitutes a violation of the Virginia Erosion and Stormwater Management Act and the Clean Water Act, except that noncompliance with certain provisions of this general permit may constitute a violation of the Virginia Erosion and Stormwater Management Act but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for ~~state~~ permit coverage, termination, revocation, and reissuance, or modification of permit coverage; or denial of a ~~state~~ permit renewal application.

The operator shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this general permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the operator wishes to continue an activity regulated by this general permit after the expiration date of this general permit, the operator shall submit a new registration statement at least ~~60~~ 90 days before the expiration date of the existing general permit, unless permission for a later date has been granted by the ~~board~~ department. The ~~board~~ department shall not grant permission for registration statements to be submitted later than the expiration date of the existing general permit.

N. Effect of a ~~state~~ permit. This general permit ~~does not convey~~ neither conveys any property rights in either real or personal property or any exclusive privileges; nor ~~does it authorize~~ authorizes any injury to private property or invasion of personal rights, or any infringement of federal, state, or local law or regulations.

O. State law. Nothing in this general permit shall be construed to preclude the institution of any legal action under, or relieve the operator from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean Water Act. Except as provided in general permit conditions on "bypassing" (under Part III U) and "upset" (under Part III V), nothing in this general permit shall be construed to relieve the operator from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this general permit shall be construed to preclude the institution of any legal action or relieve the operator from any responsibilities, liabilities, or penalties to which the operator is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law or § 311 of the Clean Water Act.

Q. Proper operation and maintenance. The operator shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances), which are installed or used by the operator to achieve compliance with the conditions of this general permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems, which are installed by the operator only when the operation is necessary to achieve compliance with the conditions of this general permit.

R. Disposal of solids or sludges. Solids, sludges, or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering surface waters and in compliance with all applicable state and federal laws and regulations.

S. Duty to mitigate. The operator shall take all steps to minimize or prevent any discharge in violation of this general permit that has a reasonable likelihood of adversely affecting human health or the environment.

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

U. Bypass.

1. "Bypass," as defined in ~~9VAC25-870-10~~ 9VAC25-875-850, means the intentional diversion of waste streams from any portion of a treatment facility. The operator may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of Part III U 2 and U 3.

2. Notice.

- a. Anticipated bypass. If the operator knows in advance of the need for a bypass, the operator shall submit prior notice to the department, if possible at least 10 days before the date of the bypass.
- b. Unanticipated bypass. The operator shall submit notice of an unanticipated bypass as required in Part III I.

3. Prohibition of bypass.

a. Except as provided in Part III U 1, bypass is prohibited, and the ~~board or~~ department may take enforcement action against an operator for bypass unless:

- (1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage. 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;
- (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 operator submitted notices as required under Part III U 2.

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 Part III U 3 a.

V. Upset.

1. An "upset," as defined in ~~9VAC25-870-10~~ 9VAC25-875-850, means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based ~~state~~ permit effluent limitations because of factors beyond the reasonable control of the operator. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

2. An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based ~~state~~ permit effluent limitations if the requirements of Part III V 4 3 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

~~3. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.~~

4. 3. An operator who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence that:

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- a. An upset occurred and that the operator can identify the cause of the upset;
- b. The permitted facility was at the time being properly operated;
- c. The operator submitted notice of the upset as required in Part III I; and
- d. The operator complied with any remedial measures required under Part III S.

5. 4. In any enforcement proceeding, the operator seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The operator shall allow the department ~~as the board's designee, the VSMP~~ VESMP authority, EPA, or an authorized representative of either entity (including an authorized contractor), upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the operator's premises where a regulated facility or activity is located or conducted; or where records shall be kept under the conditions of this general permit;
2. Have access to and copy, at reasonable times, any records that shall be kept under the conditions of this general permit;
3. Inspect and photograph at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this general permit; and
4. Sample or monitor at reasonable times, for the purposes of ensuring state permit compliance or as otherwise authorized by the Clean Water Act or the Virginia Erosion and Stormwater Management Act, any substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained [~~herein in this general permit~~] shall make an inspection unreasonable during an emergency.

X. ~~State permit~~ Permit actions. ~~State permit~~ Permit coverage may be modified, revoked and reissued, or terminated for cause. The filing of a request by the operator for a state permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any state permit condition.

Y. Transfer of state permit coverage.

1. ~~State permits~~ Permits are not transferable to any person except after notice to the department. Except as provided in Part III Y 2, a state permit may be transferred by the operator to a new operator only if the state permit has been modified or revoked and reissued, or a minor modification made, to identify the new operator and incorporate such other requirements as may be necessary under the Virginia Erosion and Stormwater Management Act and the Clean Water Act.

2. As an alternative to transfers under Part III Y 1, this state permit may be automatically transferred to a new operator if:

- a. The current operator notifies the department at least 30 days in advance of the proposed transfer of the title to the facility or property;
- b. The notice includes a written agreement between the existing and new operators containing a specific date for transfer of state permit responsibility, coverage, and liability between them; and
- c. The department does not notify the existing operator and the proposed new operator of its intent to modify or revoke and reissue the state permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part III Y 2 b.

3. For ongoing construction activity involving a change of operator, the new operator shall accept and maintain the existing SWPPP, or prepare and implement a new SWPPP prior to taking over operations at the construction site.

Z. Severability. The provisions of this general permit are severable, and if any provision of this general permit or the application of any provision of this state permit to any circumstance, is held invalid, the application of such provision to other circumstances and the remainder of this general permit shall not be affected thereby.

VA.R. Doc. No. R22-7057; Filed March 6, 2024, 9:27 a.m.

## TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

### STATE CORPORATION COMMISSION

#### Final Regulation

**REGISTRAR'S NOTICE:** The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **10VAC5-60. Consumer Finance Companies (amending 10VAC5-60-60).**

Statutory Authority: §§ 6.2-1535 and 12.1-13 of the Code of Virginia.

Effective Date: April 1, 2024.

Agency Contact: Dustin Physioc, Deputy Commissioner, Bureau of Financial Institutions, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 786-0831, FAX (804) 371-9416, or email [dustin.physioc@scc.virginia.gov](mailto:dustin.physioc@scc.virginia.gov).

**Summary:**

*The amendments realign the schedule of annual fees to be paid by all licensed consumer finance companies to defray the costs of examination, supervision, and regulation with the costs incurred by the Bureau of Financial Institutions and reduce the total amount of annual fees paid by licensees that are based on net loans receivable, other licensee assets, and the total assets of affiliates that conduct business in any of the licensee's authorized offices.*

AT RICHMOND, FEBRUARY 22, 2024  
 COMMONWEALTH OF VIRGINIA, ex rel.  
 STATE CORPORATION COMMISSION  
 CASE NO. BFI-2024-00001  
 Ex Parte: In the Matter of Adopting  
 Amendments to the Regulation  
 Governing Annual Fees Paid by  
 Consumer Finance Companies

**ORDER ADOPTING A REGULATION**

On January 9, 2024, the State Corporation Commission ("Commission") entered an Order to Take Notice of a proposal by the Bureau of Financial Institutions ("Bureau") to amend 10VAC5-60-60 of the Commission's rules governing consumer finance companies, 10VAC5-60-5 et seq., which prescribes the schedule of annual fees that are required to be paid by licensees under Chapter 15 of Title 6.2 of the Code of Virginia ("licensees"). The Bureau has asserted that the proposed amendments are designed to realign the schedule with the Bureau's costs of examination, supervision, and regulation of licensees, and reduce the total amount of annual fees paid by licensees.

The Order to Take Notice and proposed amended regulation were posted on the Commission's website, sent to all licensees and other interested persons, and published in the Virginia Register of Regulations on January 29, 2024. The Order to Take Notice invited all interested persons to participate and required that any comments or requests for a hearing on the proposed amended regulation be submitted in writing on or before February 9, 2024. The Commission did not receive any comments or requests for a hearing.

NOW THE COMMISSION, having considered this matter, finds that the proposed amended regulation should be adopted with an effective date of April 1, 2024.

Accordingly, IT IS ORDERED THAT:

- (1) The proposed amended regulation, as attached hereto, is adopted effective April 1, 2024.
- (2) This Order and the attached regulation shall be made available on the Commission's website: [scc.virginia.gov/pages/Case-Information](http://scc.virginia.gov/pages/Case-Information).
- (3) The Commission's Office of General Counsel shall provide a copy of this Order and the amended regulation to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.
- (4) This case is dismissed.

Commissioner James C. Dimitri participated in this matter.

A COPY of this Order and the attached regulation shall be sent by the Clerk of the Commission to the Commission's Office of General Counsel and to the Commissioner of Financial Institutions, who shall send by e-mail or U.S. mail a copy of this Order, along with the attached regulation, to all licensed consumer finance companies and such other interested persons as he may designate.

**10VAC5-60-60. Schedule prescribing annual fees paid for examination, supervision, and regulation of consumer finance companies.**

Pursuant to § 6.2-1532 of the Code of Virginia, the commission sets the following schedule ~~sets the~~ of annual fees to be paid ~~annually~~ by licensees under the Act to defray the costs of examination, supervision, and regulation of licensees by the bureau.

~~Minimum~~ Each licensee shall be assessed a minimum annual fee ~~—\$300 per~~ of \$150 plus \$150 for each office ~~open January 1 of the current~~ where the licensee was authorized to engage in business under the Act as of December 31 of the calendar year preceding the date of the assessment. For example, the minimum annual fee due June 1, 2025, for a licensee [ ~~who that~~ ] maintained a single authorized office as of December 31, 2024, would be \$300 (\$150 flat fee + \$150 office fee) and the minimum annual fee due June 1, 2025, for a licensee who maintained three authorized offices as of December 31, 2024, would be \$600 (\$150 flat fee + \$450 office fee).

In addition to the minimum fee, each licensee shall be assessed the following fee based on total assets fees:

SCHEDULE	
Total Assets	Fee
Over \$300,000 — \$750,000	\$.85 per \$1,000 or fraction thereof
\$750,000 — \$2,000,000	\$.70 per \$1,000 or fraction thereof
Over \$2,000,000	\$.55 per \$1,000 or fraction thereof

The annual fee for each licensee will be computed on the basis of its total assets combined with the total assets of its affiliates conducting business in any of its authorized offices as of the close of business December 31 of the preceding calendar year.

Fee for net loans receivable:

Net Loans Receivable**	This Amount	Plus	Loans Receivable Exceeding
Under \$300,000	\$0	0	\$0
\$300,000 - \$750,000	\$0	.00085	\$300,000

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<u>\$750,000 - \$2 million</u>	<u>\$382.50</u>	<u>.00070</u>	<u>x</u>	<u>\$750,000</u>
<u>\$2 million - \$5 million</u>	<u>\$1,257.50</u>	<u>.00055</u>	<u>x</u>	<u>\$2 million</u>
<u>Over \$5 million</u>	<u>\$2,907.50</u>	<u>.00040</u>	<u>x</u>	<u>\$5 million</u>

Fee for other licensee assets (total assets of licensee minus net loans receivable):

<u>Other Licensee Assets**</u>	<u>This Amount</u>	<u>Plus</u>		<u>Assets Exceeding</u>
<u>Under \$300,000</u>	<u>\$0</u>	<u>0</u>	<u>x</u>	<u>\$0</u>
<u>\$300,000 - \$750,000</u>	<u>\$0</u>	<u>.00011</u>	<u>x</u>	<u>\$300,000</u>
<u>\$750,000 - \$2 million</u>	<u>\$50</u>	<u>.00004</u>	<u>x</u>	<u>\$750,000</u>
<u>\$2 million - \$5 million</u>	<u>\$100</u>	<u>.00003</u>	<u>x</u>	<u>\$2 million</u>
<u>Over \$5 million</u>	<u>\$200</u>	<u>0</u>	<u>x</u>	<u>\$5 million</u>

Fee for total assets of affiliates that conduct business in any of the licensee's authorized offices:

<u>Affiliate Assets**</u>	<u>This Amount</u>	<u>Plus</u>		<u>Assets Exceeding</u>
<u>Under \$300,000</u>	<u>\$0</u>	<u>0</u>	<u>x</u>	<u>\$0</u>
<u>\$300,000 - \$750,000</u>	<u>\$0</u>	<u>.00022</u>	<u>x</u>	<u>\$300,000</u>
<u>\$750,000 - \$2 million</u>	<u>\$100</u>	<u>.00012</u>	<u>x</u>	<u>\$750,000</u>
<u>\$2 million - \$5 million</u>	<u>\$250</u>	<u>.00008</u>	<u>x</u>	<u>\$2 million</u>
<u>Over \$5 million</u>	<u>\$500</u>	<u>0</u>	<u>x</u>	<u>\$5 million</u>

\*\*The amounts of such total assets Net Loans Receivable, Other Licensee Assets, and Affiliate Assets will be derived obtained from the annual reports that § 6.2-1534 of the Code of Virginia requires licensees to file with the bureau on or before the first day of April of each year. Accordingly, fees will be calculated based on Net Loans Receivable, Other Licensee Assets, and Affiliate Assets as of December 31 of the calendar year preceding the date of the assessment. For purposes of this section, "Net Loans Receivable" means the total outstanding principal balance of all loans made under the Act.

In accordance with § 6.2-1532 of the Code of Virginia, annual fees for any given calendar year will be assessed on or before

May 1 of that year and must be paid on or before June 1 of that year.

Notwithstanding any provision of this section, if a licensee was not licensed under the Act as of December 31 of the calendar year preceding the date of the assessment, the annual fee shall be \$0.

Fees prescribed and assessed pursuant to this schedule are apart from and do not include the reimbursement for costs authorized by subsection C of § 6.2-1533 of the Code of Virginia.

Sample Annual Fee Calculation:

	<u>LICENSEE DATA</u>	<u>FEE</u>
<u>Authorized Offices Maintained</u>	<u>10</u>	<u>\$1,650</u>
<u>Net Loans Receivable</u>	<u>\$15 million</u>	<u>\$6,907.50</u>
<u>Other Licensee Assets</u>	<u>\$35 million</u>	<u>\$200</u>
<u>Affiliate Assets</u>	<u>\$4.5 million</u>	<u>\$450</u>
<u>TOTAL ANNUAL FEE</u>		<u>\$9,207.50</u>

VA.R. Doc. No. R24-7789; Filed February 22, 2024, 3:30 p.m.

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF MEDICINE

#### Forms

REGISTRAR'S NOTICE: Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

Titles of Regulations: 18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic.

18VAC85-40. Regulations Governing the Practice of Respiratory Therapists.

18VAC85-50. Regulations Governing the Practice of Physician Assistants.

18VAC85-80. Regulations Governing the Practice of Occupational Therapy.

**18VAC85-101. Regulations Governing the Practice of Radiologic Technology.**

**18VAC85-110. Regulations Governing the Practice of Licensed Acupuncturists.**

**18VAC85-120. Regulations Governing the Licensure of Athletic Trainers.**

**18VAC85-130. Regulations Governing the Practice of Licensed Midwives.**

**18VAC85-140. Regulations Governing the Practice of Polysomnographic Technologists.**

**18VAC85-150. Regulations Governing the Practice of Behavior Analysis.**

**18VAC85-160. Regulations Governing the Licensure of Surgical Assistants and Certification of Surgical Technologists.**

**18VAC85-170. Regulations Governing the Practice of Genetic Counselors.**

Agency Contact: Erin Barrett, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email [erin.barrett@dhp.virginia.gov](mailto:erin.barrett@dhp.virginia.gov).

FORMS (18VAC85-20)

~~Application to Practice Medicine, Osteopathic Medicine, Chiropractic, and Podiatry, online application available at <https://www.license.dhp.virginia.gov/apply/>~~

~~Application to Practice Medicine, by endorsement, online application at <https://www.license.dhp.virginia.gov/apply/>~~

[Instructions for Completing an Application to Practice Medicine in Virginia for Graduates of Allopathic Medical Schools and Osteopathic Medical Schools \(rev. 12/2017\)](#)

[Instructions for Completing an Application to Practice Chiropractic in Virginia \(rev. 12/2017\)](#)

[Instructions for Completing an Application for Licensure by Endorsement \(rev. 8/2020\)](#)

[Instructions for Completing Podiatric Medicine Application \(rev. 12/2017\)](#)

~~Form B, Activity Questionnaire (rev. 7/2017)~~

[Form A, Intern/Resident, Memorandum from Associate Dean of Graduate Medical Education or Program Director \(rev. 8/2007\)](#)

[Form B, Intern/Resident Certificate of Professional Education \(rev. 8/2007\)](#)

[Form G, Intern Resident, Request for Status Report of ECFMG Certification \(eff. 8/2007\)](#)

[Intern/Resident, Transfer Request \(rev. 6/2016\)](#)

[Instructions for Completing an Application for a Limited License to Foreign Medical Graduates Pursuant to § 54.1-2936 \(rev. 8/2007\)](#)

[Application for a Limited License to Foreign Medical Graduates Pursuant to 54.1-2936 \(rev. 8/2007\)](#)

[Form A, MD Reinstatement, Claims History Sheet \(rev. 9/2009\)](#)

~~Reinstatement of a Podiatry License—Please contact Pam Smith for licensure package at (804) 367-4570 or [pam.smith@dhp.virginia.gov](mailto:pam.smith@dhp.virginia.gov)~~

[MD/DO Reinstatement Instructions and Application for MD and DO licenses in EXPIRED status for more than two years ONLY \(rev. 8/2020\)](#)

[Instructions for Reinstatement of a Chiropractic Licensure Application \(rev. 4/2018\)](#)

[Application for Registration for Volunteer Practice \(rev. 8/2015\)](#)

[Sponsor Certification for Volunteer Registration \(rev. 3/2018\)](#)

[Application for Restricted Volunteer License \(rev. 12/2007\)](#)

[License Verification Request \(rev. 2/2024\)](#)

FORMS (18VAC85-40)

[Instructions for Completing an Application to Practice as a Respiratory Therapist Therapy in Virginia \(rev. 5/2022\)](#)

~~Form B Supplemental Form (rev. 9/2018)~~

[Application for Registration for Volunteer Practice \(8/2015\)](#)

[Sponsor Certification for Volunteer Registration \(rev. 3/2018\)](#)

[Application for Restricted Volunteer License \(rev. 8/2015\)](#)

[Continued Competency Activity and Assessment Form \(rev. 4/2000\)](#)

[Application to Reactivate an Inactive License for a Respiratory Therapist \(rev. 5/2019\)](#)

[Instructions and Application for Reinstatement of a Respiratory Therapist License \(4/2018\)](#)

[License Verification Request \(rev. 2/2024\)](#)

FORMS (18VAC85-50)

~~Application for a License to Practice as a Physician Assistant, by endorsement or examination, online form available at: <https://www.license.dhp.virginia.gov/apply/>~~

[Instructions for Completing an Application to Practice as a Physician Assistant in Virginia \(rev. 11/2017\)](#)

~~Form B, Employment History (rev. 7/2017)~~

~~Form B, Supplemental Form (rev. 9/2018)~~

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# Regulations

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[ARRT Fluoroscopy Examination Application for a Physician Assistant \(rev. 2/2014\)](#)

[Physician Assistant Authorization to Use Fluoroscopy \(rev. 1/2014\)](#)

[Practice Agreement as a Physician Assistant \(PA\) \(rev. 10/2019\)](#)

[Application for Registration for Volunteer Practice \(rev. 8/2015\)](#)

[Sponsor Certification for Volunteer Registration \(rev. 3/2018\)](#)

[Application for Restricted Volunteer License \(rev. 8/2015\)](#)

[License Verification Request \(rev. 2/2024\)](#)

FORMS (18VAC85-80)

~~Applications for a License to Practice Occupational Therapy or as an Occupational Therapy Assistant, available online at <https://www.license.dhp.virginia.gov/apply/>~~

[Instructions for Completing an Application to Practice as an Occupational Therapist/Occupational Therapy Assistant in Virginia \(rev. 12/2017\)](#)

~~Supplemental Form to Form B (rev. 9/2018)~~

[Instructions and Application for Reinstatement of a License to Practice as an Occupational Therapist/Occupational Therapy Assistant \(rev. 4/2018\)](#)

[Application to Reactivate an Inactive License for an Occupational Therapist Assistant Pursuant to Virginia Regulations 18VAC85-80-72 \(rev. 5/2019\)](#)

[Application to Reactivate an Inactive License for an Occupational Therapist Pursuant to Virginia Regulations 18VAC85-80-72 \(rev. 1/2018\)](#)

[Supervised Occupational Therapy Services \(lapse between two to six years\) \(rev. 5/2017\)](#)

[Supervised Occupational Therapy Services \(lapse six years or more\) \(rev. 5/2017\)](#)

[Continued Competency Activity and Assessment Form \(rev. 4/2000\)](#)

[Application for Restricted Volunteer License \(rev. 8/2015\)](#)

[Application for Registration for Volunteer Practice \(rev. 8/2015\)](#)

[Sponsor Certification for Volunteer Registration \(rev. 3/2018\)](#)

[License Verification Request \(rev. 2/2024\)](#)

FORMS (18VAC85-101)

~~Application to Practice as a Radiologic Technologist, Limited Radiologic Technologist, or Radiologist Assistant, online~~

~~application available at <https://www.license.dhp.virginia.gov/apply/>~~

[Instructions for Completing an Application to Practice as a Radiologic Technologist in Virginia \(rev. 12/2017\)](#)

[Instructions for Completing an Application to Practice as a Limited Radiologic Technologist in Virginia \(rev. 12/2017\)](#)

[Instructions for Completing an Application to Practice as a Radiologist Assistant in Virginia \(rev. 12/2017\)](#)

~~Form B, Activity Questionnaire (rev. 7/2017)~~

~~Supplemental Form to Form B (rev. 9/2018)~~

[Form C, Radiologic Technologist/Radiologist Assistant, Clearance from Other States \(rev. 11/2010\)](#)

~~Form B, Certificate of Professional Education (rev. 8/2007)~~

[Instructions and Application for Reinstatement of a License to Practice as a Radiologic Technologist/Limited Radiologic Technologist \(rev. 12/2019\)](#)

[Application for Registration for Volunteer Practice \(rev. 8/2015\)](#)

[Sponsor Certification for Volunteer Registration \(rev. 7/2018\)](#)

[Continued Competency Activity and Assessment Form \(eff. 7/2008\).](#)

[License Verification Request \(rev. 2/2024\)](#)

FORMS (18VAC85-110)

[Instructions for Completing an Application to Practice as an Acupuncturist in Virginia \(rev. 3/2017\)](#)

[Form A, Claims History \(rev. 11/2010\)](#)

~~Form B, Employment History (rev. 7/2017)~~

[Form C, Clearance from Other State Boards \(rev. 11/2010\)](#)

[Form L, ~~Certification~~ Certificate of Professional Education \(rev. 8/2007\)](#)

[Verification of NCCAOM Certification \(rev. 3/2008\)](#)

[Recommendation for Examination by a Physician \(rev. 11/2006\)](#)

[License Verification Request \(rev. 2/2024\)](#)

[Application for Registration for Volunteer Practice \(rev. 8/2015\)](#)

[Sponsor Certification for Volunteer Registration \(rev. 3/2018\)](#)

[Instructions and Application for Reinstatement of an Acupuncture Licensure \(rev. 4/2018\)](#)

[Application to Reactivate an Inactive License for a Licensed Acupuncturist \(rev. 1/2018\)](#)



## FORMS (18VAC85-120)

~~Application for a License to Practice as an Athletic Trainer, online form available at [https://www.dhp.virginia.gov/medicine/medicine\\_forms.htm](https://www.dhp.virginia.gov/medicine/medicine_forms.htm)~~

[Instructions for Completing an Athletic Trainer Licensure Application \(12/2017\)](#)

~~Form B Supplemental Form (rev. 9/2018)~~

[Application for Registration for Volunteer Practice \(rev. 8/2015\)](#)

[Sponsor Certification for Volunteer Registration \(rev. 3/2018\)](#)

[Instructions and Application for Reinstatement of an Athletic Trainer Licensure \(rev. 4/2018\)](#)

[Certificate of Professional Education \(rev. 8/2007\)](#)

[License Verification Request \(rev. 2/2024\)](#)

## FORMS (18VAC85-130)

[Instructions for Completing a Licensed Midwife Application \(rev. 3/2017\)](#)

[Form A, Claims History \(rev. 11/2010\)](#)

~~Form B, Activity Questionnaire (rev. 7/2017)~~

[Form B Supplemental Form \(rev. 9/2018\)](#)

[Form C, Jurisdiction Clearance \(rev. 11/2010\)](#)

[Instructions and Application for Reinstatement of a License to Practice as a Certified Professional Midwife \(CPM\) \(rev. 4/2018\)](#)

[Application to Reactivate an Inactive License for a Licensed Midwife \(rev. 5/2019\)](#)

[License Verification Request \(rev. 2/2024\)](#)

## FORMS (18VAC85-140)

~~Application to Practice as a Polysomnographic Technologist in Virginia, online application at <https://www.license.dhp.virginia.gov/apply/>~~

[Instructions for Completing an Application to Practice as a Polysomnographic Technologist in Virginia \(rev. 12/2017\)](#)

~~Form B, Employment Activity (rev. 7/2017)~~

~~Form B Supplemental Form (rev. 09/2018)~~

[Form C, Verification Form \(rev. 8/2013\)](#)

[Application to Reactivate an Inactive License for a Polysomnographic Technologist \(rev. 10/2018\)](#)

[License Verification Request \(rev. 2/2024\)](#)

## FORMS (18VAC85-150)

~~Application to Practice as a Behavior Analyst or Assistant Behavior Analyst, online form available at [https://www.dhp.virginia.gov/medicine/medicine\\_forms.htm](https://www.dhp.virginia.gov/medicine/medicine_forms.htm)~~

[Instructions for Completing an Application to Practice as a Board Certified Behavior Analyst/Assistant Behavior Analyst in Virginia \(rev. 12/2017\)](#)

~~Form B Supplemental Form (rev. 9/2018)~~

[Instructions and Application for Reinstatement of a Behavior Analyst or Assistant Behavior Analyst Licensure \(rev. 4/2018\)](#)

[Application to Reactivate an Inactive License for a Behavior Analyst or Assistant Behavior Analyst \(rev. 1/2018\)](#)

[License Verification Request \(rev. 2/2024\)](#)

## FORMS (18VAC85-160)

[Instructions for Completing an Application to Practice as a Licensed Surgical Assistant \(rev. 10/2020\)](#)

[Instructions for Completing an Application to Practice as a Certified Surgical Technologist \(rev. 5/2022\)](#)

[License Verification Request \(rev. 2/2024\)](#)

## FORMS (18VAC85-170)

~~Instructions for Completing an Application to Practice as a Genetic Counselor, available online at [https://www.dhp.virginia.gov/medicine/medicine\\_forms.htm#Genetic](https://www.dhp.virginia.gov/medicine/medicine_forms.htm#Genetic)~~

[Instructions for Completing an Application to Practice Genetic Counseling in Virginia \(rev. 12/2017\)](#)

[Instructions for Completing an Application for a Temporary License to Practice in "Active Candidate Status" to Practice Genetic Counseling in Virginia \(rev. 6/2017\)](#)

~~Form B, Employment History (rev. 7/2017)~~

~~Form B Supplemental Form (rev. 9/2018)~~

[Continued Competency Activity and Assessment Form \(eff. 6/2017\)](#)

[Genetic Counselor Reinstatement Instructions and Application \(eff. 2/2023\)](#)

[License Verification Request \(rev. 2/2024\)](#)

VA.R. Doc. No. R24-7816; Filed March 5, 2024, 9:47 a.m.



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# Regulations

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## TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

### STATE CORPORATION COMMISSION

#### Final Regulation

**REGISTRAR'S NOTICE:** The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

**Title of Regulation:** 20VAC5-309. Rules for Enforcement of the Underground Utility Damage Prevention Act (amending 20VAC5-309-15 through 20VAC5-309-60, 20VAC5-309-90, 20VAC5-309-110, 20VAC5-309-120, 20VAC5-309-150, 20VAC5-309-165, 20VAC5-309-180, 20VAC5-309-190, 20VAC5-309-200; adding 20VAC5-309-210, 20VAC5-309-215).

**Statutory Authority:** §§ 12.1-13 and 56-265.30 of the Code of Virginia.

**Effective Date:** April 1, 2024.

**Agency Contact:** William Henry Harrison IV, Associate General Counsel, Office of General Counsel, Public Utility Regulation, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9228, or email [william.harrison@scc.virginia.gov](mailto:william.harrison@scc.virginia.gov).

**Summary:**

*Pursuant to Chapters 299 and 300 of the 2023 Acts of Assembly, the amendments align Rules for Enforcement of the Underground Utility Damage Prevention Act (20VAC5-309) with statutory changes, including (i) updating and adding new definitions; (ii) clarifying the commission's inspection authority; and (iii) requiring that, in the event of an unintended release of hazardous gas or liquid, an excavator must remain on site, at a safe distance, until such time as emergency response personnel arrive to the site.*

AT RICHMOND, MARCH 4, 2024

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. URS-2023-00251

Ex Parte: In the matter concerning a rulemaking proceeding to revise the Commission's Rules for Enforcement of the Virginia Underground Utility Damage Prevention Act, 20VAC5-309-10 et seq.

#### ORDER ADOPTING REGULATIONS

Virginia Code ("Code") § 56-265.30 directs the State Corporation Commission ("Commission") to enforce the

provisions of Chapter 10.3 of Title 56, the Virginia Underground Utility Damage Prevention Act ("Act"), and provides for the Commission's promulgation of rules or regulations necessary to implement the Commission's authority. The Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act ("Rules") are set forth in Chapter 309 of Title 20 of the Virginia Administrative Code.<sup>1</sup> During its 2023 Session, the Virginia General Assembly passed Senate Bill 1145 and House Bill 2132 amending, among other things, procedural due process and Commission authority as set forth by the Act, effective July 1, 2023. The Commission's Division of Utility and Railroad Safety ("Division") has indicated that changes to the Commission's authority and due process requirements render it in the public interest to enact amendments to the Rules.

On September 12, 2023, the Commission entered an Order for Notice and Comment ("Procedural Order") which, among other things, directed that notice of the Proposed Rules be given to interested persons and that such interested persons and the Commission Staff ("Staff") be provided an opportunity to file written comments on, propose modifications or supplements to, or request a hearing on the Proposed Rules. The Procedural Order directed the Staff to respond to any comments, proposals, or requests for hearing, and to provide a copy of the Procedural Order to the Registrar of Regulations for publication in the Virginia Register of Regulations.<sup>2</sup>

Kentucky Utilities Company d/b/a Old Dominion Power Company, Virginia Utility Protection Service, Inc., American Petroleum Institute, The Williams Companies, Inc., and Shentel filed comments in this proceeding.

On February 2, 2024, Staff filed its comments ("Staff Comments") which made further modification to the Proposed Rules based on comments provided by interested parties.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that the proposed amendments to the Rules clarify the Rules and should be adopted as modified by the Staff Comments. The Rules we adopt herein contain modifications to those that were first proposed by the Staff and published in the Virginia Register of Regulations on October 9, 2023. The Staff asserts in its Comments that the Commission's Advisory Committee continues its support of these modifications to the Rules.

Accordingly, IT IS ORDERED THAT:

(1) The Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act, 20VAC5-309-10 et seq., are amended as shown in Attachment A to this Order and shall become effective as of April 1, 2024.

(2) A copy of these regulations as set out in Attachment A of this Order Adopting Regulations shall be forwarded to the Registrar of Regulations for publication in the Virginia Register of Regulations.

(3) This case is dismissed.

Commissioner James C. Dimitri participated in this matter.

A COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 E. Main Street, First Floor, Tyler Building, Richmond, Virginia 23219. A copy shall also be sent to the Commission's Office of General Counsel and Division Utility and Railroad Safety.

<sup>1</sup>20VAC5-309-10 et seq.

<sup>2</sup>The Procedural Order and the proposed regulation were published in the October 9, 2023, issue of the Virginia Register of Regulations.

**20VAC5-309-15. Definitions.**

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

"Act" means the Underground Utility Damage Prevention Act (Chapter 10.3 (§ 56-265.14 et seq.) of Title 56 of the Code of Virginia).

"Clear evidence" as used in § 56-265.24 C of the Code of Virginia shall include, ~~but is not limited to,~~ visual evidence of an unmarked utility line, knowledge of the presence of a utility line, or faded marks from previous marking of a utility line.

"Division" means the State Corporation Commission's Division of Utility and Railroad Safety.

"GPS" means global positioning system.

"Installation records of a utility line" means maps, drawings, [ ~~diagram~~ diagrams ], sketches, or any other depictions or descriptions of an underground utility line that reflect the location at the time of installation in a reasonably accurate manner.

"Locate" or "marking" means an operator's or ~~its~~ an operator's contract locator's markings of an underground utility line.

"Parcel" means land description that records the boundaries of [ ~~privately owned~~ ] property, including the entire property without regards to easements.

[ "Person" means any individual, operator, firm, joint venture, partnership, corporation, association, municipality, or other political subdivision, governmental unit, department, or agency and includes any trustee, receiver, assignee, or personal representative thereof. ]

"Serious impact on public health" means any condition involving a water or sewer utility line that creates, or may create, a danger to the health and [ ~~well-being~~ well-being ] of the public.

**20VAC5-309-20. Report of probable violations.**

Any person, as defined in § 56-265.15 of the Code of Virginia, may report probable violations of Chapter 10.3 of Title 56 to the State Corporation Commission, Division of

Utility and Railroad Safety (division). The reports of probable violations may be submitted to the division in writing, by phone, ~~fax, e-mail~~ or email, or in person. All written reports of probable violations shall include the information requested on SCC Form DPA-1, if available. All probable violations shall be reported to the division within 30 days of a person becoming aware of the circumstances constituting the probable violations.

**20VAC5-309-30. Commission staff investigation of probable violations.**

Upon receipt of a report of a probable violation, the State Corporation Commission staff ("staff") shall conduct an investigation to examine all the relevant facts regarding the reported probable violation. The investigation may include, among other things, records verification, informal meetings, teleconferences, and photo-documentation. Responses to reports of probable violations may be provided to the division in writing, by phone, ~~fax, e-mail~~ or email, or in person. Upon completion of the investigation, the staff shall review its findings and recommendations with the Advisory Committee established in accordance with § 56-265.31 of the ~~Act~~ Code of Virginia.

**20VAC5-309-40. Advisory Committee review of probable violations.**

A. The Advisory Committee (committee), established by the State Corporation Commission (commission), shall meet on a periodic basis to review probable violations of the Act, this chapter, and the commission staff's (staff) findings and recommendations relative to such violations. Upon determination of either the staff or the committee that a violation may have occurred, and that an enforcement action is required, the staff shall take one or more of the following actions:

1. Issue a warning letter to the person alleged to have committed the violation ( ~~respondent~~ defendant);
2. Issue an information letter to a county, city, or town alleged to have committed the violation;
3. Enter settlement negotiations with the ~~respondent~~ defendant. Upon reaching agreement on settlement terms, the division shall present the proposed settlement to the commission for final acceptance or rejection; or
4. Request the issuance of a "Rule to Show Cause" order pursuant to 5VAC5-20-90 of the commission's Rules of Practice and Procedure.

B. In the event that the staff but not the committee recommends enforcement action against a probable violator, ~~notwithstanding 20VAC5-309-40~~ notwithstanding subdivision A 3 of this section, the staff may not pursue a settlement with the probable violator absent the initiation of a rule to show cause. As part of its request for a rule to show cause, staff shall report to the commission the committee's

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# Regulations

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recommendations and reason [ ~~or reasons~~ ] for the committee's recommendations.

C. As soon as practicable after its establishment, the committee shall develop and implement a set of bylaws. These bylaws shall delineate the committee's practice and procedures relative to performing the duties assigned by the commission, including the review of probable violations of the Act and this chapter.

D. If deemed necessary, the committee shall establish one or more subcommittees of experts in the operations covered by the Act. These subcommittees shall assist the committee in performing its assigned duties.

## **20VAC5-309-50. Commission action.**

A. The State Corporation Commission (commission) may accept or reject a proposed settlement to resolve probable violations of the Act and this chapter. If the commission rejects a proposed settlement, a public hearing will be scheduled to receive evidence and take appropriate enforcement action as provided by the commission's Rules of Practice and Procedure (~~5VAC5-20-10 et seq.~~) (5VAC5-20).

B. If the commission finds, after a hearing, that a violation has occurred or is continuing, it may issue a remedial order. The remedial order may direct the party ~~or parties~~ to take any action [ ~~which that~~ ] is consistent with such party's ~~or parties'~~ obligations under the Act, including the payment of a civil penalty as provided by § 56-265.32 of the Code of Virginia. A remedial order issued by the commission under this section shall be effective upon issuance, in accordance with its terms, unless stayed, suspended, modified, or rescinded.

C. If the commission finds that a violation has occurred or is continuing and presents an immediate potential danger to life, health, property, or essential public service, the commission may issue a temporary injunction and schedule a hearing and require the respondent to show cause why it should not be enjoined on account of the alleged violation ~~or violations~~ of the Act and this chapter.

## **20VAC5-309-60. Civil penalties Sanctions.**

A. The State Corporation Commission (commission) may, by judgment entered after a hearing on notice duly served on any person not less than 30 days before the date of the hearing, enjoin or impose sanctions not inconsistent with Chapter 3 (§ 12.1-12 et seq.) of Title 12.1 and § 56-265.32 of the Code of Virginia if it is proved that the person violated any of the provisions of this chapter as a result of a failure to exercise reasonable care. Any proceeding or civil penalty undertaken pursuant to this section shall not prevent nor preempt the right of any party to obtain civil damages for personal injury or property damage in private causes of action. This subsection shall not authorize the commission to impose civil penalties on any county, city, town, or other political subdivision. However, the commission shall inform the counties, cities, towns, and

other political subdivisions of reports of alleged violations involving the locality or political subdivision and, at the request of the locality or political subdivision, suggest corrective action.

B. In determining the amount of any civil penalty included in a settlement, the nature, circumstances, and gravity of the violation; the degree of the ~~respondent's~~ defendant's culpability; the ~~respondent's~~ defendant's history of prior offenses; and such other factors as may be appropriate shall be considered.

~~B. C.~~ The ~~respondent~~ defendant shall pay a civil penalty that has been assessed or compromised by submitting to the division a certified check made payable to the Treasurer of Virginia in the correct amount. All such penalties shall be deposited in the Underground Utility Damage Prevention Special Fund ~~and shall be used for administering the regulatory program authorized by the Act. Any excess funds shall be used for public awareness programs established pursuant to subsection B of § 56-265.16:1 of the Code of Virginia.~~

## **20VAC5-309-90. Emergency excavation or demolition.**

A. No person shall serve an emergency ~~notice on the notification center~~ locate request unless the work to be performed is in response to an "emergency," as the term is defined in § 56-265.15 of the Code of Virginia.

B. When excavation or demolition is required during an emergency as defined in § 56-265.15 of the Code of Virginia, all reasonable precautions shall be taken to protect underground utility lines that may be located at the site of the excavation. These precautions shall include, ~~but are not limited to,~~ the following:

1. Dispatched personnel or crews responding to the emergency shall notify the notification center ~~and request by requesting~~ an emergency locate of the underground utility lines at the earliest reasonable opportunity;
2. After arriving at the site, the person responding to the emergency shall determine the need for immediate action;
3. If immediate action is required, all reasonable precautions shall be taken to protect the underground utility lines. These actions shall include, ~~but are not limited to,~~ the following:
  - a. Conduct a thorough site assessment to determine the location of underground utility lines;
  - b. Locate the underground utility lines with acceptable equipment, if possible;
  - c. Hand dig around the underground utility lines;
  - d. Directly notify the utility line operators, if necessary; and
  - e. If prudent, the excavator shall wait for marking of the excavation area by operators having utility lines in the excavation area.

**20VAC5-309-110. General marking requirements.**

A. All markings shall be suitable for their intended purpose for a period of 15 working days beginning at 7 a.m. on the next working day following ~~notice by the excavator to the notification center~~ a locate request or the scheduled excavation date.

B. Markings shall be made at sufficient intervals to clearly indicate the approximate horizontal location and direction of the underground utility line. However, the distance between any two marks indicating the same utility line shall not exceed 20 feet. Site conditions or directional changes of the underground utility line shall be considered to determine the need for shorter distance between marks.

C. Markings of underground utility lines shall be by means of stakes, paint, flags, or combination thereof. The terrain, site conditions, and the type and extent of the proposed excavation shall be considered to determine the most suitable means to mark underground utility lines.

D. Paint marks shall be approximately ~~8~~ eight to 10 inches in length and one to two inches in width except when "spot" marking is necessary.

E. A minimum of three separate marks shall be made for each underground utility line marking.

F. Valve box covers that are at grade and visible shall be marked in response to a locate request with the appropriate color in accordance with the Act.

G. If in the process of marking an underground utility line, a customer-owned underground utility line of the same type is discovered, the operator or its contract locator shall make a reasonable effort to contact the excavator or the customer to advise of the presence of the line.

H. Where the proposed excavation crosses an underground utility line, markings shall be at intervals that clearly define the route of the underground line.

I. All markings shall extend [    ] if practical, a reasonable distance beyond the boundaries of the specific location of the proposed work as detailed on the ~~ticket~~ locate request.

J. If the use of line marking is considered damaging to property (driveways, landscaping, historic locations to the extent boundaries are known), "spot" marking or other suitable marking methods shall be used.

K. Markings shall be valid for an excavation site for 15 working days beginning at 7 a.m. on the next working day following ~~notice to the notification center~~ the locate request or the scheduled excavation date by the excavator or until one of the following events occurs:

1. The markings become faded, illegible, or destroyed; or
2. If the markings were placed in response to an emergency and the emergency condition has ceased to exist.

L. Where permitted by the operator's records, all utility lines of the same type in the same trench owned by the same operator shall be marked individually or by a single mark. If a single mark is used, the number of the utility lines shall be indicated at every other mark.

M. Operators or their contract locators shall use all information necessary to mark their facilities accurately.

N. Markings of an underground ~~pipeline~~ utility line greater than 12 inches in nominal outside dimension shall be marked with line markings indicating the approximate outer dimensions of the utility line and include the size in inches at every other mark.

O. Duct structures and conduit systems shall be marked with line markings indicating the approximate outer dimensions of the duct structure or conduit system and a solid closed circle over the approximate center of the duct structure or conduit system.

P. In areas where marks would be destroyed, such as high traffic areas, gravel areas, or dirt areas, or where surface conditions are such that the placement of marks directly over the utility line is not possible, offset markings shall be used. The offset marks shall be placed on a permanent surface, which is not likely to be destroyed. Offset marks shall include a line marking placed parallel to the underground utility line and an arrow, pointing in the direction of the utility line, with the distance in feet and inches to the location of the utility line shown on the right side of the arrow and size, material type, and the operator's letter designation information on the left side of the arrow. When possible, offset marks shall be used in conjunction with locate marks placed in accordance with the Act.

Q. The assigned letter designations for each operator to be used in conjunction with markings of underground utility lines shall be the same as those assigned by the notification center certified for a geographic area, subject to the review of the same and approval of such designations ~~in writing~~ by the ~~advisory~~ Advisory Committee (committee). Such approved designations by the ~~advisory~~ committee shall be deemed final unless appealed to the State Corporation Commission (commission) within 30 days of the ~~advisory~~ committee's written evidence of approval. Operators wishing to appeal the letter designations assigned in accordance with this section may file an appropriate formal pleading with the commission seeking review of the assigned letter designation within 30 days of the issuance of the written approval of the ~~advisory~~ committee.

R. The symbols for marking of underground utility lines in compliance with § 56-265.19 F (ii) of the ~~Act~~ Code of Virginia shall be the same as those placed in response to a ~~notice of proposed excavation or demolition~~ locate request.

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# Regulations

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## 20VAC5-309-120. Notification of clear evidence.

No person shall serve a ~~notice on the notification center~~ locate request regarding clear evidence of the presence of an unmarked utility line pursuant to § 56-265.24 C of the Code of Virginia unless (i) the excavator has previously ~~notified the notification center of the proposed excavation~~ submitted a locate request pursuant to § 56-265.17 A of the Code of Virginia, (ii) the excavator has complied with the requirements of 20VAC5-309-180, and (iii) the excavator has observed clear evidence of the presence of an unmarked utility line in the area of the proposed excavation.

## 20VAC5-309-150. Requirement for trenchless excavation.

A. Any person conducting trenchless excavation shall take all reasonable steps necessary to protect and support underground utility lines. Except as provided in subsection B of this section, these steps shall include the following:

1. The excavator [ ~~should~~ shall ] verify that all utility lines in the area are marked by reviewing the positive response system and comparing [ ~~them~~ the positive responses, as defined in § 56-265.15 of the Code of Virginia, ] to the marks on site;
2. The excavator shall ensure that bore equipment stakes are installed at a safe distance from marked utility lines;
3. When grounding rods are used, the excavator shall ensure that they are installed at a safe distance (at least 24 inches plus the width of the utility line, if known) away from the marked or staked location of utility lines;
4. The excavator shall ensure sufficient clearance is maintained between the bore path and any underground utility lines during pullback;
5. The excavator shall give special consideration to water and sewer systems within the area that cannot be located accurately;
6. Unless prohibited by other laws, ordinances, regulations, or rules of governmental and regulatory authorities having jurisdiction, the excavator shall expose all utility lines that will be in the bore path by hand digging to establish the underground utility line's location prior to commencing bore. For a parallel type bore, unless prohibited by other laws, ordinances, regulations, or rules of governmental and regulatory authorities having jurisdiction, the excavator shall expose the utility line by hand digging at reasonable distances along the bore path;
7. The excavator shall ensure the drill head locating device is functioning properly and within its specification prior to commencing the bore;
8. The excavator shall visually check the drill head as it passes through potholes, entrances, and exit pits; and

9. If the depth indicated by the locating device is lower than the bottom of the pothole or pit, the excavator shall cease boring until the hole or pit can be hand excavated further to maintain a visual inspection of the drill head.

B. Notwithstanding the requirements of subdivision A 6 of this section, any person conducting trenchless excavation crossing any gravity fed sewer main or combination storm/sanitary sewer system utility lines need not expose such utility lines by hand digging if, in addition to meeting the other applicable requirements set forth in subsection A of this section, the following steps are taken:

1. Prior to commencing a trenchless excavation project, the excavator shall receive documentation from the utility line operator (such as, but not limited to, documentation through the permitting process) documenting that the operator has been notified of the proposed trenchless excavation and that trenchless excavation will be used to cross its underground utility line. The scope of a trenchless excavation project shall not exceed the scope of a single notice of excavation;
2. Prior to commencing the boring process, the excavator shall determine (i) the depth of the utility line through appropriate locating technology and (ii) the diameter and condition of the utility line using a sewer system camera with video recording capability;
3. The excavator shall ensure that a clearance of at least three feet is maintained between the bore path and the utility line;
4. After the trenchless excavation project has been completed, the excavator or a qualified contractor shall use a closed circuit sewer system video camera to determine the condition of the utility line and ensure that no cross bore or other damage has occurred;
5. The excavator or qualified contractor shall immediately notify the utility line operator of any damage found; and
6. After the bore has been completed, the excavator or qualified contractor shall make all video documentation available to the utility line operator and the division upon request. Such video documentation shall be maintained and made available for 12 months from the time of the notice of excavation.

C. The provisions of subsection B of this section shall apply only to gravity fed sewer mains or combination storm/sanitary systems that are considered "utility lines" as that term is defined in § 56-265.15 of the ~~Aet~~ Code of Virginia.

## 20VAC5-309-165. Operator's responsibilities for abandoned utility lines.

A. Upon receipt of an additional ~~notice to the notification center~~ locate request pursuant to § 56-265.24 C of the Code of Virginia, if the operator determines that an abandoned utility line exists, the operator shall provide the status of the utility line to the excavator within 27 hours, excluding Saturdays,

Sundays, and legal holidays, from the time the excavator makes the ~~additional notice to the notification center~~ locate request. The excavator and operator may negotiate a mutually agreeable time period in excess of 27 hours for the operator to provide such information to the excavator if site conditions prohibit the operator from making such a determination or extraordinary or exigent circumstances exist, as defined in § 56-265.15 of the Code of Virginia. If the site conditions prohibit the operator from making such a determination or extraordinary or exigent circumstances exist, the operator shall directly notify the person who proposes to excavate or demolish and shall, in addition, notify that person of the date and time when the status of the utility line will be determined. The deferral to determine the status of the utility line shall be no longer than 96 hours from 7 a.m. on the next working day following the excavator's additional ~~notice to the notification center~~ locate request.

B. The operator shall record and maintain the location information of the abandoned utility line as determined by the operator. Such records need not include abandoned underground electric, telecommunications, cable television, water, and sewer lines connected to a single family dwelling unit.

#### **20VAC5-309-180. Excavator site inspection.**

Prior to excavation, excavators shall verify they are at the correct location ~~and~~; shall verify locate markings with the positive response system; and, to the best of their ability, check for unmarked utility lines. If unmarked utility lines are identified, the excavator shall comply with the requirements of § 56-265.24 C of the Code of Virginia.

#### **20VAC5-309-190. Delineating specific location of a proposed excavation or demolition.**

A. Any person, as defined in § 56-265.15 of the Code of Virginia, ~~providing notice of a proposed excavation or demolition~~ submitting a locate request shall clearly describe the limits of the proposed excavation or demolition with sufficient detail to enable the operators to ascertain the location of the proposed excavation. The specific location of the proposed excavation or demolition may include, ~~but is not limited to~~:

1. GPS coordinates taken at a single point where work is planned or GPS coordinates taken to delineate a line, multi-segment line, or polygon. When providing a single point, line, or multi-segment line, the person providing notice shall include an area measured in feet from the coordinates that describe the work area. If a polygon is used, the proposed work area shall be inside the polygon. GPS nomenclatures used for providing coordinates to the notification center shall be as approved by the advisory committee.

2. White lining to delineate the area where excavation will take place. For single point excavation, the area shall be marked using dots, dashes, or white flags to show the

operators the area of excavation. If utility markings are desired outside a white lined area, the excavator shall provide clear instructions, to include the distance in feet outside the white lined area, to the notification center. For continuous excavations, such as trenching and boring, the excavator shall mark the center line of excavation by the use of dots or dashes. The excavation width, in feet, shall be indicated on either side of the center line in legible figures or noted in the marking instructions given to the notification center.

3. White lining performed by electronic means using aerial imagery. White lining performed by electronic means shall follow the same requirements as listed in subdivision 2 of this subsection.

4. A reference to the two nearest intersecting streets, if available, or driving directions.

B. In the event that a proposed excavation or demolition is planned at a single address at which there is no more than one structure, the area of proposed excavation or demolition may, if geographically feasible, be described by dividing the parcel or property into four quadrants from the perspective of facing the front of the property using the center of the structure as the center point of the four quadrants. If no structure exists on the property, the center of the parcel or property will be used as the center point of the four quadrants. These four quadrants shall be referred to as Front Left, Front Right, Rear Left, and Rear Right. If the proposed area consists only of Front Left and Front Right quadrants, the term "Front" shall be sufficient. If the proposed area of excavation consists only of Rear Left and Rear Right quadrants, the term "Rear" shall be sufficient. If the proposed area of excavation consists only of Front Left and Rear Left quadrants, the term "Left Side" shall be sufficient. If the proposed area of excavation consists only of Front Right and Rear Right quadrants, the term "Right Side" shall be sufficient. If the proposed area of excavation includes three out of the four quadrants, the entire property may be used for the proposed excavation or demolition.

C. If the ~~notice of proposed excavation or demolition~~ locate request does not contain specific location information, the notification center shall suspend the issuance of the ~~notice~~ locate request until specific location information is obtained, except in the case of excavations or demolitions performed during an emergency, as defined in § 56-265.15 of the Code of Virginia. The notification center shall issue the emergency notices with as much information as is available to it.

D. The area covered under each locate request shall not exceed 1/3 of a mile. [ A parcel Locate requests with areas of proposed excavation located on parcels ] defined within the existing notification center mapping data [ ~~that has~~ and having ] one or more sides that is 1/3 of a mile or longer [  ] shall not automatically exceed the area covered by a single locate request.

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# Regulations

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## **20VAC5-309-200. Reporting damage by calling 911.**

In the event that damage to an underground utility line results in the escape of any flammable, toxic, hazardous, or corrosive gas or liquid, the excavator shall, in addition to complying with §§ 56-265.24 D and E of the Code of Virginia, promptly report the damage to the appropriate authorities by calling the 911 or official emergency telephone number if 911 service is unavailable for any reason. The excavator shall remain at or near the site of the damage, at a safe distance from the escape of any flammable, toxic, hazardous, or corrosive gas or liquid and shall make contact with the utility line operator upon arrival on site.

## **20VAC5-309-210. Provision of access to facilities and records.**

Upon presenting appropriate credential, agents of the division responsible for determining compliance with the Act or compliance with 49 USC § 60101 et seq. or regulations or orders issued thereunder shall be provided access to relevant excavation or demolitions sites, incident or accident sites, facilities, or infrastructure to determine compliance or jurisdiction upon request.

If agents of the division responsible for determining compliance with the Act or compliance with 49 USC § 60101 et seq. or regulations or orders issued thereunder inspect or investigate an accident or incident involving facilities jurisdictional to the commission authority, the operator or owner of those facilities shall make available to the representative records and information that pertain to the event, including procedures, records, and test results.

## **20VAC5-309-215. Enforcement of § 56-265.24:1 of the Code of Virginia.**

Enforcement of § 56-265.24:1 of the Code of Virginia shall reside with the circuit court of competent jurisdiction, unless such court declines to exercise its authority.

VA.R. Doc. No. R24-7673; Filed March 4, 2024, 11:34 a.m.



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# GUIDANCE DOCUMENTS

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## 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, Fourth Floor, Richmond, Virginia 23219.

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Document: [Temporary Detention Orders Supplement](#).

Public Comment Deadline: April 24, 2024.

Effective Date: April 25, 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](mailto:meredith.lee@dmas.virginia.gov).

### DEPARTMENT OF TAXATION

Title of Document: [Guidelines for the Retroactive Taxable Year 2021 Pass-through Entity Tax](#).

Public Comment Deadline: April 24, 2024.

Effective Date: April 25, 2024.

Agency Contact: James Ford, Senior Tax Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261-7185, telephone (804) 786-4055, or email [james.ford@tax.virginia.gov](mailto:james.ford@tax.virginia.gov).

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# GENERAL NOTICES

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## STATE BOARD OF EDUCATION

### Revisions to the 2017 Computer Science Standards of Learning

The Virginia Board of Education will hold public hearings on the proposed revised Computer Sciences Standards of Learning. The Standards of Learning identify the essential content, processes, and skills for grade levels and subject courses.

The most current information about the revision process, as well as public hearing dates and locations, is available at [Review and Revision of the 2017 Computer Science Standards of Learning](#).

For additional information about the proposed revised Computer Science Standards of Learning, contact Keisha Tennessee by email at [vdoe.computerscience@doe.virginia.gov](mailto:vdoe.computerscience@doe.virginia.gov).

Contact Information: Keisha Tennessee, Computer Science Coordinator, Department of Education, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 750-8161, or email [vdoe.computerscience@doe.virginia.gov](mailto:vdoe.computerscience@doe.virginia.gov).

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Public Meeting and Opportunity for Public Comment for a Cleanup Study of the Roanoke River, Tinker Creek, and Wolf Creek in the City of Roanoke and Roanoke County

The Department of Environmental Quality (DEQ) will introduce the community to the process used in Virginia to improve stream water quality and invite the public to participate in the study by attending community engagement meetings or through a total maximum daily load (TMDL) advisory group (TAG). DEQ will also present results from a benthic stressor analysis, a preliminary study to determine probable causes for the impairment to aquatic life.

Cleanup study location: The cleanup study addresses the following impaired stream segments. The study area totals 19.53 river miles in the City of Roanoke and Roanoke County and includes three watersheds: Roanoke River (from Niagara Dam downstream to the mouth of Back Creek), Tinker Creek (from the confluence of Buffalo Creek downstream to the Roanoke River), and Wolf Creek.

TAG: DEQ invites public comment on the establishment of a TAG to assist in development of this cleanup study. A TAG is a standing group of interested parties established by the department for the purpose of advising the department during development of the cleanup study. Any member of the public may attend and observe proceedings. However, only group members who have been invited by the department to serve on

the TAG may actively participate in the group's discussions. Persons requesting the department use a TAG and those interested in participating should notify the DEQ contact person by the end of the comment period and provide their name, address, telephone number, email address, and organization being represented (if any). If DEQ convenes a TAG, all individuals who wish to participate on the TAG will be considered on a case-by-case basis. TAG members will be expected to attend all TAG meetings. Notification of the composition of the panel will be sent to all individuals who request participation.

If DEQ receives no requests to establish a TAG, the department will not establish a standing group but will still solicit public feedback by conducting community engagement meetings during cleanup study development. At these community meetings, which are open to the public and at which any person may participate, DEQ will present its progress on the cleanup study and solicit feedback from those present.

Public meeting: The first public meeting on the development of the cleanup study will be held at Department of Environmental Quality, Blue Ridge Regional Office, 901 Russell Drive, Salem, VA 24153, Training Room on April 10, 2024, at 5:30 p.m. In the event of inclement weather, the meeting will be held on April 17, 2024, at the same time and location.

Public comment period: April 10, 2024, to May 10, 2024.

How to comment: DEQ accepts written comments by email or postal mail. All comments must be received by DEQ during the comment period. Submittals must include the name, organization represented (if any), mailing address, and telephone number of the commenter or requestor.

For public comments, document requests, and additional information, contact the DEQ staff member listed.

Contact Information: Aerin Doughty, Department of Environmental Quality, Blue Ridge Regional Office, 901 Russell Drive, Salem, VA 24153, telephone (540) 988-3684, or email [aerin.doughty@deq.virginia.gov](mailto:aerin.doughty@deq.virginia.gov).

### Public Meeting and Opportunity for Public Comment for a Cleanup Study of Greendale Creek and Unnamed Tributary to Fleenor Branch in Washington County

Purpose of notice: The Department of Environmental Quality (DEQ) seeks public comment on the development of a cleanup study, also known as a total maximum daily load (TMDL) report, for Greendale Creek and Unnamed Tributary to Fleenor Branch in Washington County. These streams are listed as impaired waters and require a cleanup study since monitoring data indicates that the waters do not meet Virginia's water quality standards for aquatic life (benthic macroinvertebrates). Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of

the State Water Control Law requires DEQ to develop cleanup studies to address pollutants responsible for causing waters to be on Virginia's § 303(d) list of impaired waters. A component of a cleanup study is the wasteload allocation (WLA); therefore, this notice is provided pursuant to § 2.2-4006 A 14 of the Administrative Process Act for any future adoption of the WLA into the Water Quality Management Planning Regulation (9VAC25-720) after completion of the study. The adoption of the WLA may require new or additional requirements for entities holding a Virginia Pollutant Discharge Elimination System (VPDES) permit in the Greendale Creek or Unnamed Tributary to Fleenor Branch watersheds.

At the meeting, DEQ will introduce the community to the process used in Virginia to improve stream water quality and invite the public to participate in the study by attending community engagement meetings or through a TMDL advisory group (TAG). The meeting will consist of a presentation followed by a question-and-answer session.

The cleanup study addresses the following impaired stream segments: Greendale Creek is in Washington County and flows approximately 5.03 miles in length. The creek begins at its headwaters and continues to the confluence of the North Fork of the Holston River. The Unnamed Tributary to Fleenor Branch is in Washington County and flows approximately 0.85 miles in length. The tributary begins at its headwaters and continues to its confluence with Fleenor Branch.

**TAG:** DEQ invites public comment on the establishment of a TAG to assist in development of this cleanup study. A TAG is a standing group of interested parties established by the department for the purpose of advising the department during development of the cleanup study. Any member of the public may attend and observe proceedings. However, only group members who have been invited by the department to serve on the TAG may actively participate in the group's discussions. Persons requesting the department use a TAG and those interested in participating should notify the DEQ contact person by the end of the comment period and provide their name, address, telephone number, email address, and organization being represented (if any). If DEQ convenes a TAG, all individuals who wish to participate on the TAG will be considered on a case-by-case basis. TAG members will be expected to attend all TAG meetings. Notification of the composition of the panel will be sent to all individuals who request participation.

If DEQ receives no requests to establish a TAG, the department will not establish a standing group but will still solicit public feedback by conducting community engagement meetings during cleanup study development. At these community meetings, which are open to the public and at which any person may participate, DEQ will present its progress on the cleanup study and solicit feedback from those present.

**Public meeting:** The first public meeting on the development of the cleanup study will be held at Greendale Elementary School, 13092 McGuffie Road, Abingdon, VA 24210. The meeting will be held on April 2, 2024, at 6 p.m. Please follow the signage that will be located at the front entrance. In the event of inclement weather, the meeting will be held on April 9, 2024, at the same time and location.

**Public comment period:** April 2, 2024, to May 2, 2024.

**How to comment:** DEQ accepts written comments by email or postal mail. All comments must be received by DEQ during the comment period. Submittals must include the name, organization represented (if any), mailing address, and telephone number of the commenter or requestor.

For public comments, document requests, and additional information, contact the DEQ staff member listed.

**Contact Information:** Landon Jenkins, DEQ Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, telephone (276) 608-8643, or email [landon.jenkins@deq.virginia.gov](mailto:landon.jenkins@deq.virginia.gov).

### **Public Comment Opportunity for Amendment of Water Quality Management Planning Regulation**

**Notice of action:** The State Water Control Board is considering an amendment to the regulation on water quality management planning, in accordance with the Department of Environmental Quality (DEQ) public participation procedures for water quality management planning. A regulation is a general rule that affects people's rights or conduct and is adopted by a state agency.

**Purpose of notice:** The board is seeking comments through DEQ on a proposed amendment to the state's Water Quality Management Planning Regulation (9VAC25-720) to adopt 10 total maximum daily load (TMDL) wasteload allocations.

**Public comment period:** March 25, 2024, to April 24, 2024.

**Description of proposed action:** DEQ staff will propose amendments to the state's Water Quality Management Planning Regulation for the James River Basin (9VAC25-720-60 A) and the Rappahannock River Basin (9VAC25-720-70 A). Statutory authority for promulgating these amendments can be found in subdivision 10 of § 62.1-44.15 of the Code of Virginia.

Staff intends to recommend that the board adopt 10 TMDL wasteload allocations as part of the state's Water Quality Management Planning Regulation in accordance with §§ 2.2-4006 A 4 c and B of the Code of Virginia.

The 10 TMDL wasteload allocations were developed in accordance with federal regulations (40 CFR 130.7) and are exempt from the provisions of Article II of the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). The wasteload allocations were subject to the TMDL

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## Errata

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public participation process contained in DEQ's public participation procedures for water quality management planning. The public comment process provides the affected stakeholders an opportunity for public appeal of the TMDLs.

As of July 1, 2014, TMDL wasteload allocations can receive State Water Control Board approval prior to the Environmental Protection Agency (EPA) approval due to exceptions outlined in § 2.2-4006 A 14 of the Code of Virginia. EPA has preliminarily reviewed the two TMDL reports in this public notice for required TMDL elements; however, they remain in draft form awaiting State Water Control Board approval.

Affected waterbodies and localities for the 10 new TMDL wasteload allocations:

James River Basin (9VAC25-720-60 A): TMDL report is titled "Benthic TMDL Development for Bailey Creek, Nuttree Branch, Oldtown Creek, Proctors Creek, Rohoic Creek, and Swift Creek Watersheds Located in Chesterfield, Dinwiddie, and Prince George Counties and Cities of Hopewell, Colonial Heights, and Petersburg." This TMDL report proposes sediment reductions for Bailey Creek, Nuttree Branch, Oldtown Creek, Proctors Creek, Rohoic Creek, and Swift Creek and provides sediment wasteload allocation of 424,000 pounds per year, 303,000 pounds per year, 253,000 pounds per year, 573,000 pounds per year, 377,000 pounds per year, and 2,870,000 pounds per year, respectively. This TMDL report also proposes phosphorous reductions for Oldtown Creek, Rohoic Creek, and Swift Creek and provides phosphorus wasteload allocation of 404 pounds per year, 426 pounds per year, and 3,145 pounds per year, respectively.

Rappahannock River Basin (9VAC25-720-70 A): TMDL report is titled "Total Maximum Daily Load Development for Mountain Run, Culpeper County, Virginia." This TMDL report proposes polychlorinated biphenyls (PCB) reductions for Mountain Run and provides a PCB wasteload allocation of 2,775 milligrams per year.

How to comment: DEQ accepts written comments by email or postal mail. All comments must be received by DEQ during the comment period. All written comments must include the full name, address, and telephone number of the person commenting.

How a decision is made: After comments have been considered, the board will make the final decision. Citizens who submit statements during the comment period may address the board members during the board meeting at which a final decision is made on the proposal.

To review documents: The TMDL reports and the proposed regulatory amendments are available on the DEQ website at <https://www.deq.virginia.gov/our-programs/water/water-quality/tmdl-development/draft-tmdls> and by contacting the DEQ representative listed. The electronic copies are in PDF format and may be read online or downloaded.

For public comments, document requests, and additional information, contact the DEQ staff member listed.

Contact Information: Anthony Cario, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 814-7774, or email [anthony.cario@deq.virginia.gov](mailto:anthony.cario@deq.virginia.gov).

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

#### Opportunity to Review Virginia Medical Assistance Eligibility Manual Draft

A draft transmittal of DMAS-29, the Virginia Medical Assistance Eligibility Manual, is available at <https://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](mailto:emily.mclellan@dmas.virginia.gov).

### VIRGINIA CODE COMMISSION

#### Notice to State Agencies

Contact Information: Mailing Address: Virginia Code Commission, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, VA 23219; Telephone: (804) 698-1810; Email: [varegs@dls.virginia.gov](mailto: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.

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# Errata

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## STATE WATER CONTROL BOARD

Title of Regulation: **9VAC25-260. Water Quality Standards.**

Publication: 40:14 VA.R. 1121 February 26, 2024.

Correction to Notice of Intended Regulatory Action:

Page 1121, line 21, after "the agency" remove "does not intend" and replace with "intends"

VA.R. Doc. No. R24-10; Filed March 8, 2024, 9:03 a.m.

Title of Regulation: **9VAC25-610. Groundwater Withdrawal Regulations.**

Publication: 40:14 VA.R. 1167-1229 February 26, 2024.

Correction to Final Regulation:

Page 1190, 9VAC25-610-130 F 1, line 5, after "2023,"

Unstrike "~~update~~"

Strike "and 82 FR 40836 (August 28, 2017)"

VA.R. Doc. No. R24-7077; Filed March 8, 2024, 9:20 a.m.

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# Errata

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