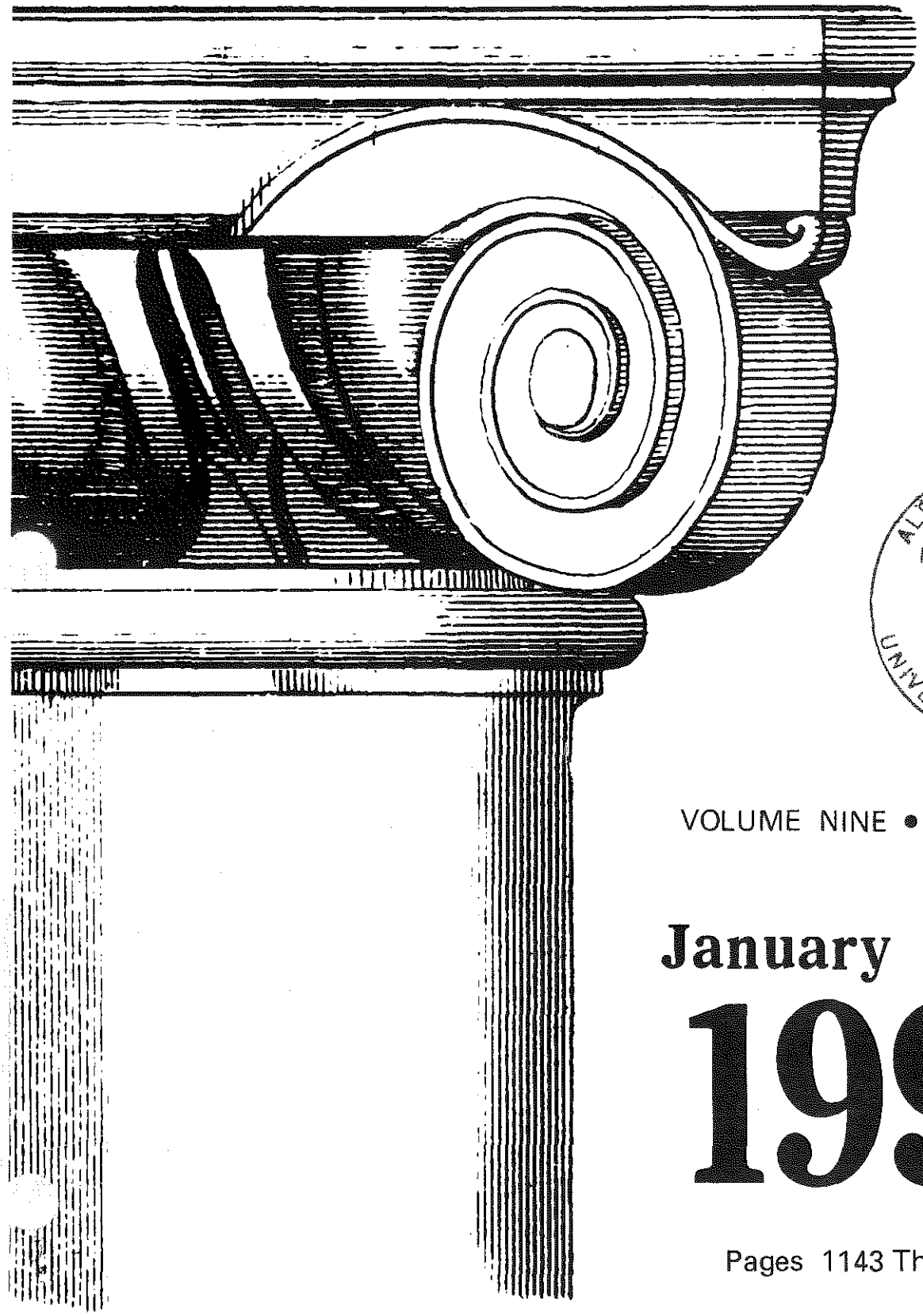
THE VIRGINIA REGISTER

OF REGULATIONS



VOLUME NINE • ISSUE EIGHT

January 11, 1993

1993

Pages 1143 Through 1396

VIRGINIA REGISTER

The *Virginia Register* is an official state publication issued every other week throughout the year. Indexes are published quarterly, and the last index of the year is cumulative.

The *Virginia Register* has several functions. The full text of all regulations, both as proposed and as finally adopted or changed by amendment are required by law to be published in the *Virginia Register of Regulations.*

In addition, the *Virginia Register* is a source of other information about state government, including all Emergency Regulations issued by the Governor, and Executive Orders, the Virginia Tax Bulletin issued periodically by the Department of Taxation, and notices of all public hearings and open meetings of state agencies.

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

An agency wishing to adopt, amend, or repeal regulations must first publish in the Virginia Register a notice of proposed action; a basis, purpose, impact and summary statement; a notice giving the public an opportunity to comment on the proposal, and the text of the proposed regulations.

Under the provisions of the Administrative Process Act, the Registrar has the right to publish a summary, rather than the full text, of a regulation which is considered to be too lengthy. In such case, the full text of the regulation will be available for public inspection at the office of the Registrar and at the office of the promulgating agency.

Following publication of the proposal in the *Virginia Register,* sixty days must elapse before the agency may take action on the proposal.

During this time, the Governor and the General Assembly will review the proposed regulations. The Governor will transmit his comments on the regulations to the Registrar and the agency and such comments will be published in the *Virginia Register.*

Upon receipt of the Governor's comment on a proposed regulation, the agency (i) may adopt the proposed regulation, if the Governor has no objection to the regulation; (ii) may modify and adopt the proposed regulation after considering and incorporating the Governor's suggestions, or (iii) may adopt the regulation without changes despite the Governor's recommendations for change.

The appropriate standing committee of each branch of the General Assembly may meet during the promulgation or final adoption process and file an objection with the *Virginia Registrar* and the promulgating agency. The objection will be published in the *Virginia Register.* Within twenty-one days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative Committee, and the Governor

When final action is taken, the promulgating agency must again publish the text of the regulation, as adopted, highlighting and explaining any substantial changes in the final regulation. A thirty-day final adoption period will commence upon publication in the *Virginia Register.*

The Governor will review the final regulation during this time and if he objects, forward his objection to the Registrar and the agency. His objection will be published in the *Virginia Register.* If the Governor finds that changes made to the proposed regulation are substantial, he may suspend the regulatory process for thirty days and require the agency to solicit additional public comment on the substantial changes.

A regulation becomes effective at the conclusion of this thirty-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 twenty-one day extension period; or (ii) the Governor exercises his authority to suspend the regulatory process for solicitation of additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified which date shall be after the expiration of the period for which the Governor has suspended the regulatory process.

Proposed action on regulations may be withdrawn by the promulgating agency at any time before the regulation becomes final.

EMERGENCY REGULATIONS

If an agency determines that an emergency situation exists, it then requests the Governor to issue an emergency regulation. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited in time and cannot exceed a twelve-months duration. The emergency regulations will be published as quickly as possible in the *Virginia Register.*

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures (See "Adoption, Amendment, and Repeal of Regulations," above). If the agency does not choose 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 of Chapter 1.1:1 (§§ 9-6.14:6 through 9-6.14:9) 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. **1:3 VA.R. 75-77 November 12, 1984** refers to Volume 1, Issue 3, pages 75 through 77 of the Virginia Register issued on November 12, 1984.

"The Virginia Register of Regulations" (USPS-001831) is published bi-weekly, except four times in January, April, July and October for $100 per year by the Virginia Code Commission, General Assembly Building, Capitol Square, Richmond, Virginia 23219. Telephone (804) 786-3591. Second-Class Postage Rates Paid at Richmond, Virginia. **POSTMASTER:** Send address changes to the Virginia Register of Regulations, 910 Capitol Street, 2nd Floor, Richmond, Virginia 23219.

The Virginia Register of Regulations is published pursuant to Article 7 of Chapter 1.1:1 (§ 9-6.14:2 et seq.) of the Code of Virginia. Individual copies are available for $4 each from the Registrar of Regulations.

VIRGINIA REGISTER OF REGULATIONS

PUBLICATION DEADLINES AND SCHEDULES

July 1992 through September 1993

MATERIAL SUBMITTED BY Noon Wednesday	PUBLICATION DATE
Volume 8 - 1992	
June 24	July 13
July 8	July 27
July 22	Aug. 10
Aug. 5	Aug. 24
Aug. 19	Sept. 7
Sept. 2	Sept. 21
Final Index - Volume 8	
Volume 9 - 1992-93	
Sept. 16	Oct. 5
Sept. 30	Oct. 19
Oct. 14	Nov. 2
Oct. 28	Nov. 16
Nov. 11	Nov. 30
Nov. 25	Dec. 14
Dec. 9	Dec. 28
Index 1 - Volume 9	
Dec. 23	Jan. 11, 1993
Jan. 6	Jan 25
Jan. 20	Feb. 8
Feb. 3	Feb. 22
Feb. 17	Mar. 8
Mar. 3	Mar. 22
Mar. 17	Apr. 5
Index 2 - Volume 9	
Mar. 31	Apr. 19
Apr. 14	May 3
Apr. 28	May 17
May 12	May 31
May 26	June 14
June 9	June 28
Index 3 - Volume 9	
Jun. 23	July 12
July 7	July 26
July 21	Aug. 9
Aug. 4	Aug. 23
Aug. 18	Sept. 6
Sept. 1	Sept. 20
Final Index - Volume 9	

TABLE OF CONTENTS

NOTICES OF INTENDED REGULATORY ACTION

PROPOSED REGULATIONS

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

STATE WATER CONTROL BOARD

FINAL REGULATIONS

BOARD OF HISTORIC RESOURCES

DEPARTMENT OF HISTORIC RESOURCES

DEPARTMENT OF STATE POLICE

STATE WATER CONTROL BOARD

STATE CORPORATION COMMISSION

ADMINISTRATIVE LETTERS

FINAL REGULATIONS

STATE LOTTERY DEPARTMENT

DIRECTOR'S ORDERS

PROPOSED REGULATIONS

GOVERNOR

EXECUTIVE ORDERS

Table of Contents

Table of Contents

CHRONOLOGICAL LIST

Table of Contents

Symbol Key †
† Indicates entries since last publication of the Virginia Register

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Agriculture and Consumer Services intends to consider amending regulations entitled: **VR 115-04-01. Rules and Regulations Relating to the Endangered Plant and Insect Species Act.** The purpose of the proposed action is to (i) review the regulation for effectiveness and continued need; (ii) consider listing seven rare plant species as endangered and two rare insect species as threatened; (iii) change one plant species listing from endangered to threatened; and (iv) remove one plant species from the endangered list under the Virginia Employment Plant and Insect Species Act.

List endangered:

Aeschynomene virginica	Sensitive joint-vetch
Cardamine micranthera	Small-anthered bittercress
Clematis addisonii	Addison's leatherflower
Clematis vitacaulis	Millboro leatherflower
Echinacea laevigata	Smooth coneflower
Rudbeckia heliopsides	Sun-facing coneflower
Trifolium sp. 1	Leo's Clover

List threatened:

Cicindela dorsalis dorsalis	Northeastern beach tiger bettle
Tetragoneuria spinosa	Swamp Skimmer

Change listing from endangered to threatened:

Betula uber	Virginia round-leaf birch

Remove from endangered list:

Bacopa stragula	Mat forming water hyssop

Statutory authority: § 3.1-1025 of the Code of Virginia.

Written comments may be submitted until February 17, 1993.

Contact: John R. Tate, Endangered Species Coordinator, P.O. Box 1163, 1100 Bank Street, Room 703, Richmond, VA 23209, telephone (804) 786-3515.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Agriculture and Consumer Services intends to consider amending regulations entitled: **VR 115-04-12. Regulations for the Enforcement of the Virginia Gasoline and Motor Fuels Law.** The purpose of the proposed action is to review the regulation for effectiveness and continued need. Such review is necessary in the areas of labeling of dispensers, disclosure of information when petroleum products are transferred and specifications related to environmental requirements.

Statutory Authority: §§ 59.1-153 and 59.1-156 of the Code of Virginia.

Written comments may be submitted until January 29, 1993.

Contact: J. Alan Rogers, Program Manager, Department of Agriculture and Consumer Services, Office of Weights and Measures, 1100 Bank St., P.O. Box 1163, Richmond, VA 23209, telephone (804) 786-2476.

STATE AIR POLLUTION CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Air Pollution Control Board intends to consider amending regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision GG).** The purpose of the proposed action is to establish an emission standard that will require the owners of municipal waste combustor (MWC) facilities to limit emissions of organics (such as dioxins/furans), metals (such as particulate matter), and acid gases (such as sulfur dioxide and hydrogen chloride) to a specified level necessary to protect public health and welfare.

A public meeting will be held by the department in Room D of the Monroe Building, 101 North 14th Street, Richmond, Virginia, at 10 a.m. on February 2, 1993, to discuss the intended action. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

Needs and issues involved: MWC emissions are a "designated" pollutant under Section 111(d) of the Clean Air Act. Designated pollutants are pollutants which are not included on a list published under Section 108(a) of the Act ("criteria" pollutants), or Section 112(b)(1)(A)

("hazardous" pollutants), but for which standards of performance for new sources have been established under Section 111(b). When the U.S. Environmental Protection Agency (EPA) establishes a new source performance standard, states are required to develop standards for existing facilities based on EPA emission guidelines. Designated pollutant controls are critical for two reasons. First, only a limited number of air pollutants potentially harmful to human health are regulated at the federal level. Second, health risks from small exposures to designated air pollutants can be high, depending on the substances involved.

EPA has determined that MWC facilities should be regulated under Section 111 (New Source Performance Standards) of the Clean Air Act because:

1. MWC emissions may be reasonably anticipated to contribute to the endangerment of public health and welfare.

2. The range of health and welfare effects and the range and uncertainties of estimated cancer risks do not warrant listing MWC emissions as a hazardous pollutant under Section 112 of the Act.

3. Section 112 of the Act could not be used to address particular constituents or subgroups of emissions (such as hydrogen chloride).

4. Section 111(d) of the Act would permit a more thorough evaluation of existing MWCs at the state level than would be feasible in a general rulemaking at the federal level.

Currently, over 160 municipal waste combustor (MWC) facilities operate throughout the United States, 10 of which are located in Virginia. An MWC is a combustion unit that burns more than 50% municipal solid waste; most MWC facilities have at least two, and often as many as four MWC units. Municipal solid waste includes household, institutional, municipal, and some industrial waste, as well as refuse-derived fuel. As a result of municipal solid waste combustion, many substances of concern are emitted to the atmosphere: organics (including dioxins and furans), metals (including particulate matter), and acid gases (including sulfur dioxide and hydrogen chloride). This mixture is considered a composite pollutant, MWC emissions. The reduction of emissions in accordance with the guidelines will reduce dioxins/furans from existing MWCs by over 90% and metal emissions (except mercury, which would be less) by 97%. An overall 73% reduction would be realized in acid gas emissions.

Failure to develop an adequate program to control MWC emissions will have adverse impacts on public health and welfare. For example:

1. Dioxins and furans are among the most toxic chemicals known. Excessive exposure to dioxin, for example, can cause severe dermatological, cardiovascular, respiratory, pancreatic, and urinary disorders; dioxins and furans are also suspected carcinogens.

2. Particulate emissions can absorb heavy metals and organics and lodge in human lungs, acting as irritants and causing chronic health problems. Additionally, visibility deteriorates, due to haze, with increases of particulate matter emissions. This directly affects national parks, where clear visibility is at a premium.

3. In addition to causing eye and respiratory irritation, sulfur dioxide and hydrogen chloride also aggravate asthma and other chronic lung diseases. They may enhance the toxic effects of heavy metals. Acid gases also contribute to the development of acid rain, which has serious adverse effects on wildlife, vegetation, and property.

Regulatory alternatives:

1. Amend the regulations to satisfy the provisions of the Act and associated EPA regulations and policies.

2. Make alternative regulatory changes to those required by the Act, either one or more of the alternatives identified below:

a. Revise the regulations to include requirements more stringent than those required by the Act.

b. Revise the regulations to include requirement less stringent than the Act. or perhaps other suggested alternatives.

3. Take no action to amend the regulations.

Regulatory constraints: The 1990 Clean Air Act Amendments added a new Section 129 to the Act that applies to solid waste incinerators, including municipal waste combustors (MWCs), medical waste incinerators, and industrial waste incinerators. Section 129 of the Act and its associated standards were promulgated because EPA determined that incinerator emissions cause or contribute significantly to air pollution which may reasonably be expected to endanger public health and welfare. The intended effect of the standards and guidelines is to form a basis for state action to develop state regulations controlling MWC emissions to the level achievable by the best demonstrated system of continuous emission reduction, considering costs, non-air quality health and environmental impacts, and energy requirements.

Section 129 of the Act directs that the standards and guidelines for MWCs be broadened, and provides the schedule for this activity. First, Section 129 directs EPA to promulgate these standards and guidelines for individual MWC units with a larger than 250 tpd capacity. Second, Section 129 requires EPA to review and revise these promulgated standards and guidelines within one year, to be fully consistent with Section 129. This will result in

number of additions to the standards and guidelines, including the addition of numerical emission limits for mercury, cadmium, and lead emissions. Third, Section 129 directs that standards and guidelines, fully consistent with Section 129, be promulgated for MWCs with a less than 250 tpd capacity within two years.

Regulating MWC emissions for new sources under Section 111(b) of the Act (New Source Performance Standards) establishes MWC emissions as a designated pollutant, and requires the EPA to promulgate guidelines under Section 111(d) for states to use in developing regulations to control pollutants from existing MWCs. Emissions guidelines for existing MWCs that began construction on or before December 20, 1989, have been promulgated under Sections 111(d) and 129 of the Act. In order for Sections 111 and 129 to be effected, the specific guidelines are promulgated in the Code of Federal Regulations (CFR) (subpart Ca 40 CFR Part 60). State regulations must be at least as stringent as the guidelines.

The guidelines subcategorize the population of existing MWCs into two size categories relative to air emission levels: very large (existing MWC units larger than 250 tpd capacity that are located at MWC facilities with an aggregate capacity to combust more than 1,100 tpd of municipal solid waste); and large (existing MWC units larger than 250 tpd capacity that are located at MWC facilities with an aggregate capacity to combust more than 250 tpd of municipal solid waste, but less than or equal to 1,100 tpd of municipal solid waste).

MWC emissions are subcategorized as organic, metal, and acid gas emissions. The guidelines establish emission limits for organic emissions (measured as dioxins and furans), metal emissions (measured as particulate matter), and acid gas emissions (measured as sulfur dioxide and hydrogen chloride).

The guideline limits require emission reductions from existing MWCs larger than 250 tpd capacity in two ways. First, proper combustion of municipal solid waste is required for all MWCs. Second, the guidelines limit the composite pollutant, MWC emissions, through specific maximum emission levels for organic, metal, and acid gas emissions. Compliance testing specifications and a good combustion practice requirement are also included.

Tentative determinations: It has been tentatively determined that to meet the minimum requirements of the Act (as described in the regulatory constraints section), the following standards would have to be added to the regulations:

Emission Type	Guidelines	
	Large (less than or equal to) 1,100 tpd)	Very Large (greater than 1,000 tpd)
Organics	50 gr/Bdscf (100 for RDF stokers and mixed fuels)	24 gr/Bdscf
Metals	0.030 gr/dscf of PM and 10% opacity	.015 gr/dscf of PM and 10% opacity
Acid Gases		
HCl	50% reduction or 25 ppmv	90% reduction or 30 ppmv
SO2	50% reduction or 30 ppmv	70% reduction or 30 ppmv

gr/Bdscf = grams per billion dry standard cubic feet

RDF = refuse-derived fuel

PM = particulate matter

HCl = hydrogen chloride

SO2 = sulfur dioxide

ppmv = parts per million volume

Applicable statutory provisions:

1. State. The legal basis for the regulation is § 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia).

2. Federal.

a. The legal basis for the regulation is Section 110 of the Federal Clean Air Act (42 USC 7401 et seq., 91 Stat 685).

b. The regulatory basis for the regulation is Subpart L and Section 51.281 of 40 CFR Part 51.

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

Written comments may be submitted until February 2, 1993 to Director of Program Development, Department of Air Pollution Control, P.O. Box 10089, Richmond, Virginia 23240.

Contact: Karen G. Sabasteanski, Policy Analyst, Department of Air Pollution Control, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-1624.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Air Pollution Control Board intends to consider amending regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision LL).** The purpose of the proposed action is to amend the regulations to provide the latest edition of referenced documents and to incorporate newly promulgated federal New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP).

A public meeting will be held by the department in Room D of the Monroe Building, 101 North Fourteenth Street,

Richmond, Virginia, at 10 a.m. on February 3, 1993, to discuss the intended action. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

Needs and issues involved: The amendments are needed because the regulations must be current and timely which means that documents incorporated must be the most recent edition. The board must incorporate the newly promulgated NSPS and NESHAP in order for the department to obtain authority from the U.S. Environmental Protection Agency (EPA) to enforce these standards. The issue is whether the regulations should specify the most current edition of those documents incorporated by reference and whether the department should obtain delegation of authority to enforce the newly promulgated federal standards.

Regulatory alternatives: The regulatory alternative is not to adopt the intended regulatory amendments and continue using references that are outdated and not to incorporate the additional federal standards and, thus, allow the enforcement of these standards by EPA.

Regulatory constraints: None.

Applicable statutory provisions:

1. State. The legal basis for the regulation is § 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia).

2. Federal.

a. The legal basis for the regulation is Section 110 of the Federal Clean Air Act (42 USC 7401 et seq., 91 Stat 685).

b. The regulatory basis for the regulation is Subpart L and Section 51.281 of 40 CFR Part 51.

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

Written comments may be submitted until February 3, 1993, to Director of Program Development, Department of Air Pollution Control, P. O. Box 10089, Richmond, Virginia 23240.

Contact: Karen G. Sabasteanski, Policy Analyst, Department of Air Pollution Control, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-1624.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Air Pollution Control Board intends to consider amending regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision MM).** The purpose of the proposed action is to amend the regulation to make it conform to the federal requirements for prevention of significant deterioration new source review programs.

A public meeting will be held by the department in Room D of the Monroe Building, 101 North Fourteenth Street, Richmond, Virginia, at 10 a.m. on February 4, 1993, to discuss the intended action. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

Needs and issues involved: The primary goals of the Clean Air Act are the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) and the prevention of significant deterioration (PSD) of air quality in areas cleaner than the NAAQS.

The NAAQS, developed and promulgated by the U.S. Environmental Protection Agency (EPA), establish the maximum limits of pollutants that are permitted in the outside ambient air. EPA requires that each state submit a plan (called a State Implementation Plan or SIP), including any laws and regulations necessary to enforce the plan, showing how the air pollution concentrations will be reduced to levels at or below these standards (i.e., attainment). Once the pollution levels are within the standards, the plan must also demonstrate how the state will maintain the air pollution concentrations at the reduced levels (i.e., maintenance). The Virginia State Implementation Plan was submitted to EPA in early 1972. Many revisions (mostly regulation revisions) to the plan have been made since the original submittal in 1972. Generally, the plan is revised, as needed, based upon changes in the Federal Clean Air Act and its requirements.

A state implementation plan is the key to the air quality programs. The Clean Air Act is specific concerning the elements required for an acceptable SIP. No state is required to prepare such a plan; but if it does not, or EPA does not approve a submitted plan, then EPA itself is empowered to take the necessary actions to attain and maintain the air quality standards.

A SIP revision for PSD is designed to protect air quality in areas where the air is cleaner than required by the NAAQS. The PSD program has three classifications for defining the level of allowable degradation. Class I is the most stringent classification, allowing for little additional pollution, while Class III allows the most. All of Virginia is classified at the moderate level, Class II, with the exception of two Class I federal lands.

PSD's primary control strategy is New Source Review. Prior to the construction or expansion of industrial facilities, a permit must be obtained that demonstrates that a facility will not emit pollutants in sufficient quantity to make a significant contribution to the deterioration of air quality or to violate the NAAQS.

In 1972, EPA declared all state plans to control air

pollution inadequate because they did not provide for prevention of significant deterioration of air quality. EPA issued its own PSD regulations in 1974, which provided for three area classifications which would allow for three different levels of degradation, and required that new or modified major sources obtain a permit from EPA to construct. By 1978, EPA updated its PSD regulations, which then underwent considerable revision and controversy.

Because the federal PSD regulations were frequently in litigation and it was difficult to develop stable plans, most states, including Virginia, opted to accept a federal implementation plan (FIP) in lieu of a SIP. EPA promulgated a FIP but, due to limited enforcement resources, allowed states to enforce it under a delegated program approach. Since that time, the program has stabilized, and the states have gained considerable experience in carrying out the program. Currently, 30 states operate under an approved SIP: 13 under full delegation and 6 under partial delegation.

Currently, Virginia has not submitted a SIP for PSD but operates under an EPA promulgated PSD plan. EPA's plan, which consists of New Source Review, has been delegated to the State Air Pollution Control Board. To implement the EPA plan the board currently has New Source Review regulations (contained in § 120-08-02 of VR 120-01) for a PSD program that are, in substance, the same as EPA's regulations. Virginia now wishes to abandon the delegated approach and submit a SIP revision giving the state full PSD authority. The board has taken the first step by approving an overall SIP revision and directing the department to submit the SIP revision to EPA. However, prior to including New Source Review regulations as part of the SIP revision, the board must make several changes, mainly procedural in nature, to make the regulations acceptable to EPA.

Regulatory alternatives:

1. Amend the regulations to satisfy the provisions of the Clean Air Act and associated EPA regulations and policies.

2. Make alternative regulatory changes to those required by the Act.

3. Take no action to amend the regulations and continue to operate under the federal implementation plan.

Regulatory constraints: A key strategy for managing the growth of new emissions is the permit program for new and modified stationary sources. The program is mandated by the Clean Air Act and requires that owners obtain a permit from the agency prior to the construction of a new industrial or commercial facility or the expansion of an existing one. Program requirements differ according to the facility's potential to emit a specified amount of a specific pollutant and the air quality status of the various areas within the state where the facility is or will be located. Requirements for facilities considered to be major due to their potential to emit a specified pollutant are more stringent than for less polluting facilities. Requirements for major facilities located or locating in nonattainment areas are considerably more stringent than for PSD areas. Permits issued in nonattainment areas require the facility owner to apply control technology that meets the lowest achievable emission rate and to obtain emission reductions from existing sources in the area such that the reductions offset the increases from the proposed facility by a ratio greater than one for the emissions contributing to the nonattainment situation. Permits issued in PSD areas require the facility owner to employ control technology that is the best available and, in some cases, to monitor ambient air quality at the site where the facility will be located to determine ambient air background levels of the pollutants to be emitted. Through the implementation of a new and modified source permit program, emission increases from new and expanding stationary sources can be managed so that affected areas can attain and maintain the air quality standards and accommodate growth.

Under the PSD permit program, certain information is required as part of the application, as follows:

(1) an assessment of existing air quality, which requires one year of measurement data;

(2) a description of the technology to be used to control emissions from the facility, which must be the best available control technology; and

(3) an assessment of the impact of emissions from the facility on existing air quality, using complex mathematical models.

Development by the applicant and review and analysis by the state of this information is an extensive process. Prior to granting the permit, there must be a preconstruction review of projected pollution emission increases expected from the construction of a new industrial facility or the expansion of an existing industrial facility so as to insure that the emission increases are held to a minimum. The review consists of four phases.

The first phase of review is to determine if the proposed new or modified facility will be subject to the program. Only major industrial facilities are affected and the regulations provide specific definitions that identify these particular facilities.

The second phase of review is to determine if the facility will be equipped with the best available control technology (BACT) to reduce its emissions in light of economic, environmental, and energy factors. BACT must be used on all pollutants that will be emitted in significant amounts.

The third phase of review is to determine if the emissions from the proposed new or modified facility will cause a violation of any air quality standard or the special

incremental standards developed for the PSD program. The determination is made after an air quality impact analysis using current modeling techniques.

The final phase of review is to determine the impact of associated sources of pollution, such as commercial and other industrial development, resulting from the entry of the new facility into the area. This phase also requires an analysis of the impact of the increased emissions from the new or modified facility on impairment of visibility and the possible damage to soils and vegetation.

Applicable statutory provisions:

1. State. The legal basis for the regulation is § 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia).

2. Federal.

a. The legal basis for the regulation is Section 110 of the Federal Clean Air Act (42 USC 7401 et seq., 91 Stat 685).

b. The regulatory basis for the regulation is Subpart L and Section 51.281 of 40 CFR Part 51.

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

Written comments may be submitted until February 4, 1993, to Director of Program Development, Department of Air Pollution Control, P.O. Box 10089, Richmond, Virginia 23240.

Contact: Karen G. Sabasteanski, Policy Analyst, Department of Air Pollution Control, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-1624.

BOARD OF COMMERCE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Commerce intends to consider repealing regulations entitled: **VR 190-02-1. Agency Rules of Practice for Hearing Officers.** The purpose of the proposed action is to repeal the current rules of practice to eliminate confusion, duplication or inconsistency with the statutes incorporated in the Administrative Process Act (APA.)

Statutory Authority: § 54.1-310 of the Code of Virginia.

Written comments may be submitted until January 13, 1993, to Bonnie S. Salzman, Director, Department of Commerce, 3600 West Broad Street, Richmond, Virginia 23230.

Contact: Peggy McCrerey, Regulatory Programs Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2194.

DEPARTMENT OF EDUCATION (STATE BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Education intends to consider amending regulations entitled: **VR 270-01-0014. Regulations Governing Management of the Student's Scholastic Records.** The purpose of the proposed action is to amend the regulations to incorporate changes required by the U.S. Department of Education, Virginia's Literacy Testing Passport Program and other requested changes.

Statutory Authority: §§ 22.1-16, 22.1-287.1, and 22.1-289 of the Code of Virginia.

Written comments may be submitted until January 13, 1993.

Contact: Robin L. Hegner, Policy Analyst, Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2816.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Education intends to consider repealing regulations entitled: **VR 270-01-0037. Regulations Governing Public School Building Construction.** The purpose of the proposed action is to repeal the existing regulations because new standards for the erection of or addition to public school buildings are being promulgated.

Statutory Authority: § 22.1-138 of the Code of Virginia.

Written comments may be submitted until March 3, 1993.

Contact: David L. Boddy, Director of Facilities, Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2035.

VDH VIRGINIA DEPARTMENT OF HEALTH
Protecting You and Your Environment

DEPARTMENT OF HEALTH (STATE BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to repeal regulations entitled: **Rules and Regulations Governing the Maternal and Neonatal**

High-Risk Hospitalization Program. The purpose of the proposed action is to repeal the Rules and Regulations Governing the Maternal and Neonatal High-Risk Hospitalization Program. Appropriations for the program ended in FY 88.

Statutory Authority: § 32.1-12 of the Code of Virginia.

Written comments may be submitted until January 15, 1993.

Contact: Rosanne Kolesar, Health Programs Analyst, Department of Health, 1500 E. Main St., Room 213, Richmond, VA 23219, telephone (804) 786-4891.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to repeal regulations entitled: **VR 355-25-01. Rules and Regulations for the Reporting of Chemical Substances Manufactured or Used in Manufacturing.** The purpose of the proposed action is to repeal the Rules and Regulations for the Reporting of Chemical Substances Manufactured or Used in Manufacturing. These regulations are no longer needed as the 1992 General Assembly passed legislation eliminating the statutory requirements for reporting of toxic substances and the maintenance of the Toxic Substances Chemical Inventory.

Statutory Authority: § 32.1-12 of the Code of Virginia.

Written comments may be submitted until January 15, 1993.

Contact: Rosanne Kolesar, Health Programs Analyst, Department of Health, 1500 E. Main St., Room 213, Richmond, VA 23219, telephone (804) 786-4891.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with agency's public participation guidelines that the Board of Medical Assistance Services intends to consider promulgating regulations entitled: **Selective Contracting of Inpatient Hospital Services.** The purpose of the proposed action is to provide hospital inpatient services to Medicaid recipients in the Tidewater Virginia area through contracting hospitals.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Written comments may be submitted until January 11, 1993, to Kathryn Kotula, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, 600 E. Broad St., Department of Medical Assistance Services, Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **VR 460-03-4.1940:1. Nursing Home Payment System.** The purpose of the proposed action is to modify the Nursing Home Payment System in four ways: (i) extend time frames for DMAS to reach an interim settlement for filed cost reports; (ii) modify time frames for provider appeals from calendar days to business days; (iii) require submission of audited financial statements; and (iv) technical corrections.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Written comments may be submitted until January 25, 1993, to Richard Weinstein, Manager, Division of Cost Settlement and Audit, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider promulgating regulations entitled: **VR 460-10-2400. Financial Eligibility Requirements for Aged, Blind, and Disabled Individuals; VR 460-10-2450. Financial Eligibility Requirements for Qualified Medicare Beneficiaries; and VR 460-10-2700. Financial Eligibility Requirements for Long-Term Care Recipients.** The purpose of the proposed action is to establish the methodology and standards for determining financial eligibility for Medicaid for the specified groups of applicants.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Written comments may be submitted until February 8, 1993, to Roberta Jonas, Policy and Research Division, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

BOARD OF MEDICINE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medicine intends to consider amending regulations entitled: **VR 465-02-1. Regulations Governing the Practice of Medicine, Oseopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture.** The purpose of the proposed regulation is to delete the commentary statement following § 2.2 A 3 d (6). The present language is ambiguous and lacks statutory authority.

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

Written comments may be submitted until January 15, 1993, to Hilary H. Connor, M.D., Executive Director, Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, Virginia 23230-1717.

Contact: Eugenia K. Dorson, Deputy Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medicine intends to consider amending regulations entitled: **VR 465-03-1. Regulations Governing the Practice of Physical Therapy.** The purpose of the proposed regulation is to amend § 9.1 to establish a fee to be retained by the board when an applicant withdraws their application.

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

Written comments may be submitted until January 15, 1993, to Hilary H. Connor, M.D., Executive Director, Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, Virginia 23230-1717.

Contact: Eugenia K. Dorson, Deputy Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923.

BOARD OF NURSING

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Nursing intends to consider amending regulations entitled **VR 495-01-1. Board of Nursing Regulations.** The purpose of the proposed action is to conduct a biennial review of existing regulations as to cost of compliance and propose amendments which may result from the review. Included in the review are requests from (i) the Board of Education to reconsider certification and program approval of Nurse Aide Education Programs in the public schools, and (ii) Tidewater Tech for recognition of the Career College Association as an accrediting agency in § 2.2 A 2 of the regulations.

A public hearing to receive oral comments on the existing regulations will be held on January 27, 1993, at 1:30 p.m. at the Department of Health Professions, Conference Room, 6606 W. Broad Street, Richmond, VA.

Statutory Authority: §§ 54.1-2400 and 54.1-3005 of the Code of Virginia.

Written comments may be submitted until January 27, 1993 at 5 p.m.

Contact: Corinne F. Dorsey, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9909.

BOARD OF NURSING HOME ADMINISTRATORS

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Nursing Home Administrators intends to consider amending regulations entitled: **VR 500-02-2:1. Regulations of the Board of Nursing Home Administrators.** The purpose of the proposed action is to incorporate emergency regulations that became effective November 4, 1992, which increased fees and amended the continuing education requirements.

Statutory Authority: §§ 54.1-2400 and 54.1-3100 through 54.1-3103 of the Code of Virginia.

Written comments may be submitted until February 12, 1993.

Contact: Meredyth P. Partridge, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9111.

BOARD OF PSYCHOLOGY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Psychology intends to consider amending regulations entitled: **VR 565-01-2. Regulations Governing the Practice of Psychology.** The purpose of the proposed action is to adjust fees, in accordance with § 54.1-113 of the Code of Virginia, to assure revenue is sufficient to cover board expenses.

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

Written comments may be submitted until January 28, 1993.

Contact: Evelyn B. Brown, Executive Director, or Jane Ballard, Administrative Assistant, Board of Psychology,

6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9913.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Social Services intends to consider promulgating regulations entitled: **Foster Care - Collection of Child Support.** The purpose of the proposed action is to promulgate regulations governing the collection of child support from parents of children entering foster care. These regulations will pertain to children whose foster care expenses are paid from state and local funds, as well as children whose expenses are paid from federal and state funds.

Statutory Authority: § 63.1-25 of the Code of Virginia and item 378 B 4 of the 1992 Appropriations Act.

Written comments may be submitted until February 12, 1993, to Rick Pond, 8007 Discovery Drive, Richmond, Virginia 23229-8699.

Contact: Peggy Friedenberg, Policy Analyst, Virginia Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Social Services intends to consider amending regulations entitled: **VR 615-45-1. Policy Regarding Child Protective Services Central Registry Information.** The purpose of the proposed action is to eliminate the finding of reason to suspect as one of the possible dispositions for child abuse/neglect investigations, and to establish preponderance of evidence as the level of evidence required to make a founded disposition in a child abuse/neglect investigation.

Statutory Authority: § 63.1-25 and Chapter 12.1 (§ 63.1-248.1 et seq.) of Title 63.1 of the Code of Virginia.

Written comments may be submitted until February 12, 1993, to Janine Tondrowski, Department of Social Services, 8007 Discovery Drive, Richmond, Virginia 23229.

Contact: Margaret Friedenberg, Legislative Analyst, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229, telephone (804) 662-9217.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Social Services intends to consider promulgating regulations entitled: **VR 615-45-5. Procedures for Investigating Child Abuse and Neglect Complaints Against Employees of Local School Boards.** The purpose of the proposed action is to promulgate regulations which govern the investigation of child abuse and neglect complaints against employees of local school boards.

Statutory Authority: § 63.1-25 and Chapter 12.1 (§ 63.1-248.1 et seq.) of Title 63.1 of the Code of Virginia.

Written comments may be submitted until February 12, 1993, to Janine Tondrowski, Department of Social Services, 8007 Discovery Drive, Richmond, Virginia 23229.

Contact: Margaret Friedenberg, Legislative Analyst, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229, telephone (804) 662-9217.

BOARD OF VETERINARY MEDICINE

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Veterinary Medicine intends to consider amending regulations entitled: **VR 645-01-1. Regulations Governing the Practice of Veterinary Medicine.** The purpose of the proposed action is to respond to the requirement for biennial regulatory review in keeping with § 1.2 D of the regulations and to propose to adjust fees for the annual renewal for active and inactive veterinarians and veterinary technicians.

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

Written comments may be submitted until February 15, 1993, to Terri Behr, Board of Veterinary Medicine, 6606 West Broad Street, 4th Floor, Richmond, Virginia 23230.

Contact: Elizabeth A. Carter, Executive Director, Board of Veterinary Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9942.

DEPARTMENT OF WASTE MANAGEMENT (VIRGINIA WASTE MANAGEMENT BOARD)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Waste Management Board intends to consider amending regulations entitled: **VR 672-10-1. Hazardous Waste Management Regulations.** The purpose of the proposed action is to incorporate changes to federal rules as related to wood preserving and drip pads to assure consistency and maintain equivalency between the Virginia program and the federal hazardous waste management program.

Statutory Authority: § 10.1-1402 (11) of the Code of Virginia.

Written comments may be submitted until January 14, 1993.

Contact: William F. Gilley, Environmental Regulation Consultant, Department of Waste Management, 101 N. 14th St., 11th Floor, Monroe Bldg., Richmond, VA 23219, telephone (804) 225-2966.

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Waste Management Facility Operators intends to consider promulgating regulations entitled: **VR 674-01-01. Public Participation Guidelines for Waste Management Facility Operators Board.** The purpose of the proposed action is to establish public participation guidelines for the Waste Management Facility Operators Board.

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

Written comments may be submitted until January 29, 1993.

Contact: Nelle P. Hotchkiss, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595.

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider repealing regulations entitled: **VR 680-14-01. Permit Regulation.** The proposed regulatory action is to consider repealing the Permit Regulation. The adoption of a new VPDES Permit Regulation will make the VPDES program conform in style and content to the federal program regulations. The VPA Permit Regulation will be separated from the VPDES permitting program in order to recognize the distinction between this wholly state run VPA program and the federal/state NPDES/VPDES permit program.

Basis and statutory authority: The basis for these regulations is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(10) authorizes the State Water Control Board to adopt such regulations as it deems necessary to enforce the general water quality management program.

Need: The repeal of this regulation is being considered in order to eliminate any confusion and duplication of regulations which may result from the concurrent incorporation of the intent and purpose of the Permit Regulation into a Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (VR 680-14-01:1) and a Virginia Pollution Abatement (VPA) Permit Regulation (VR 680-14-21).

Estimated impact: The repeal of VR 680-14-01 would have no impact on the regulated community nor the environment as the purpose and scope of the regulation are being transferred into the VPDES Permit Regulation and the VPA Permit Regulation.

Alternatives: One alternative to the proposed repeal is to continue to administer the VPDES and VPA permit programs under the current regulation (VR 680-14-01).

Comments: The board seeks oral and written comments from interested persons on the proposed regulatory action and on the costs and benefits of the stated alternatives. To be considered, written comments should be directed to Ms. Doneva Dalton, Hearing Reporter, at the address below and must be received by 4 p.m. on Friday, February 12, 1993.

In addition, the board will hold public meetings at 2 p.m. on Wednesday, January 27, 1993, at the Prince William County Board of Supervisors Room, 1 County Complex, McCourt Building, 4850 Davis Ford Road, Prince William; at 2 p.m. on Thursday, January 28, 1993, at the Harrisonburg City Council Chambers, Municipal Building, 345 S. Main Street, Harrisonburg; at 2 p.m. on Tuesday, February 2, 1993, at the James City County Board of Supervisors Room, Building C, 101C Mounts Bay Road, Williamsburg; and at 2 p.m. on Thursday, February 4, 1993, at the Multi-Purpose Room, Municipal Office, 150 E. Monroe Street, Wytheville, to receive views and comments and to answer questions of the public.

Accessibility to persons with disabilities: The meetings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Dalton at the address below or by telephone at (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than January 11, 1993.

Applicable laws and regulations: State Water Control Law, Clean Water Act, Permit Regulation (VR 680-14-01).

Statutory Authority: § 62.1-44.15 (10) of the Code of Virginia.

Written comments may be submitted until 4 p.m., February 12, 1993, to Doneva Dalton, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Richard Ayers, Office of Water Resources Management, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5059.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider promulgating regulations entitled: **VR 680-14-01:1. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.** The proposed regulatory action is to consider adoption of a new regulation. This regulation will govern point source discharges of pollutants to surface waters within the boundaries of the Commonwealth of Virginia. These discharges are currently regulated under the VPDES permit program and the Permit Regulation (VR 680-14-01). The adoption of the proposed regulation will replace the VPDES portion of the existing Permit Regulation and it will make the VPDES program conform to the federal NPDES regulation. This action is being done concurrent with the repeal of VR 680-14-01.

Basis and authority: The basis for this regulation is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(7) authorizes the board to adopt rules governing the procedures of the board with respect to the issuance of permits. Further, § 62.1-44.15(10) authorizes the State Water Control Board to adopt such regulations as it deems necessary to enforce the general water quality management program; § 62.1-44.15(14) authorizes the board to establish requirements for the treatment of sewage, industrial wastes and other wastes; and §§ 62.1-44.16, 62.1-44.17, 62.1-44.18 and 62.1-44.19 authorize the board to regulate discharges of sewage, industrial wastes and other wastes.

Section 402 of the Clean Water Act (33 USC 1251 et seq.) authorizes states to administer the National Pollutant Discharge Elimination System permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. VR 680-14-01:1 will be the specific regulation governing this authorization.

Need: Any point source discharge of pollutants to surface waters is subject to regulation under a Virginia Pollutant Discharge Elimination System (VPDES) permit. The VPDES regulation will delineate the procedures and requirements to be followed in connection with VPDES permits issued by the board pursuant to the Clean Water Act and the State Water Control Law. In order to retain the authority to administer the VPDES permit program, the board must adopt regulations which are consistent with the federal program regulations. The current Permit Regulation (VR 680-14-01) does not reflect the latest revisions to the federal regulations and must be replaced.

Estimated impact: This regulation will impact all of the approximately 2,800 Virginia Pollutant Discharge Elimination System permittees in that the governing regulation will be replaced with an updated version. There will be no added costs to the permittees beyond those required under the existing regulation because the program operations will not change significantly from one to the other.

Alternatives: One alternative to the proposed regulation is to modify the existing Permit Regulation, rather than adopting a separate regulation for VPDES permits. Another alternative is to take no action and to continue to administer the VPDES permit program under the current regulation which is not up to date with changes in the federal regulations.

Comments: The board seeks oral and written comments from interested persons on the intended regulatory action and on the costs and benefits of the states alternatives or other alternatives. Written comments should be directed to Ms. Doneva Dalton, Hearing Reporter, at the address below and must be received by 4 p.m. on Friday, February 12, 1993.

In addition, the board will hold public meetings at 2 p.m. on Wednesday, January 27, 1993, at the Prince William County Board of Supervisors Room, 1 County Complex, McCourt Building, 4850 Davis Ford Road, Prince William; at 2 p.m. on Thursday, January 28, 1993, at the Harrisonburg City Council Chambers, Municipal Building, 345 S. Main Street, Harrisonburg; at 2 p.m. on Tuesday, February 2, 1993, at the James City County Board of Supervisors Room, Building C, 101C Mounts Bay Road, Williamsburg; and at 2 p.m. on Thursday, February 4, 1993, at the Multi-Purpose Room, Municipal Office, 150 E. Monroe Street, Wytheville, to receive views and comments and to answer questions of the public.

Accessibility to persons with disabilities: The meetings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton at the address below or by telephone at (804) 527-5162 or TDD ((804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, January 11, 1993.

Applicable laws and regulations: State Water Control Law, Clean Water Act.

Statutory Authority: § 62.1-44.15 (10) of the Code of Virginia.

Written comments may be submitted until 4 p.m., February 12, 1993, to Doneva Dalton, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Richard Ayers, Office of Water Resources Management, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5059.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidlines that the State Water Control Board intends to consider repealing regulations entitled: **VR 680-14-03. Toxics Management Regulation.** The proposed regulatory action is to consider repealing the Toxics Management Regulation. This action is being

proposed in order to eliminate any confusion and duplication of regulations which may result from the concurrent adoption of a VPDES Permit Regulation (VR 680-14-01:1).

Basis and statutory authority: The basis for this regulation is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(10) authorizes the State Water Control Board to adopt such regulations as it deems necessary to enforce the general water quality management program, and § 62.1-44.21 authorizes the State Water Control Board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters.

Need: Repeal of the Toxics Management Regulation is necessary since the board intends to consider adoption of a VPDES Permit Regulation which will include language on the evaluation of effluent toxicity and the mechanisms for control of toxicity through chemical specific and whole effluent toxicity limitations.

Estimated impact: The repeal of this regulation would have no impact on the regulated community nor the environment as the intent and purpose of the regulation will be included in the new VPDES Permit Regulation. There should be no additional economic impact as a result of this action.

Comments: The board seeks oral and written comments from interested persons on the intended regulatory action and on the costs and benefits of the stated alternatives or other alternatives. Written comments should be directed to Ms Doneva Dalton at the address below and must be received by 4 p.m. on Friday, February 12, 1993.

In addition, the board will hold public meetings at 2 p.m. on Wednesday, January 27, 1993, at the Prince William County Board of Supervisors Room, 1 County Complex, McCourt Building, 4850 Davis Ford Road, Prince William; at 2 p.m. on Thursday, January 28, 1993, at the Harrisonburg City Council Chambers, Municipal Building, 345 S. Main Street, Harrisonburg; at 2 p.m. on Tuesday, February 2, 1993, at the James City County Board of Supervisors Room, Building C, 101C Mounts Bay Road, Williamsburg; and at 2 p.m. on Thursday, February 4, 1993, at the Multi-Purpose Room, Municipal Office, 150 E. Main Street, Wytheville.

Accessibility to persons with disabilities: The meetings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton at the address below or by telephone at (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, January 11, 1993.

Applicable laws and regulations: State Water Control Law, Clean Water Act, Permit Regulation (VR 680-14-01), Toxics Management Regulation (VR 680-14-03).

Statutory Authority: § 62.1-44.15 (10) of the Code of Virginia.

Written comments may be submitted until 4 p.m., February 12, 1993, to Doneva Dalton, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Richard Ayers, Office of Water Resources Management, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5059.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider promulgating regulations entitled: **VR 680-14-16. General Permit Regulation for Storm Water Discharges from Heavy Manufacturing.** The purpose of this proposed regulatory action is to adopt a general permit for storm water discharges from heavy manufacturing facilities. Heavy manufacturing facilities are defined as facilities classified as Standard Industrial Classification (SIC) 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, and 373 (Office of Management and Budget SIC Manual, 1987).

The basis for these regulations is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(5) authorizes the board to issue permits for the discharge of treated sewage, industrial wastes or other wastes into or adjacent to state waters and § 62.1-44.15(7) authorizes the board to adopt rules governing the procedures of the board with respect to the issuance of permits. Further, § 62.1-44.15(10) authorizes the State Water Control Board to adopt such regulations as it deems necessary to enforce the general water quality management program; § 62.1-44.15(14) authorizes the board to establish requirements for the treatment of sewage, industrial wastes and other wastes; § 62.1-44.20 provides that agents of the board may have the right of entry to public or private property for the purpose of obtaining information or conducting necessary surveys or investigations; and § 62.1-44.21 authorizes the State Water Control Board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters.

Section 402 of the Clean Water Act (33 USC 1251 et seq.) authorizes states to administer the NPDES permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. This Memorandum of Understanding was modified on May 20, 1991, to authorize the Commonwealth to administer a General VPDES Permit Program.

Need: Most storm water runoff is discharged through conveyances, such as separate storm sewers, ditches, channels, pipes, etc., which are considered point sources under the Clean Water Act, and subject to regulation through the NPDES permit program. On November 16,

1990, EPA published the final NPDES Permit Application Regulations for Storm Water Discharges (55 FR 47990). This federal regulation established permit application requirements for certain municipal and industrial storm water discharges. Eleven categories of industrial activity were defined in the federal regulation including heavy manufacturing facilities. Any facility covered by the federal regulation that discharges storm water through a point source to surface waters is required to file a storm water permit application.

Intent: The intent of this general permit regulation is to establish standard language for control of storm water discharges through the development of Storm Water Pollution Prevention Plans and to set minimum monitoring and reporting requirements. A site-specific Storm Water Pollution Prevention Plan will be required to be developed by the permittee for each individual facility covered by this general permit. Facilities will be required to implement the provisions of the plan as a condition of the permit.

The Storm Water Pollution Prevention Plan will identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the industrial activity at the facility, and shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with the industrial activity.

Monitoring and reporting requirements will be established based upon the pollution potential of the storm water discharges from the industrial activity. Monitoring reports will assist in evaluating the effectiveness of pollution prevention measures and provide information to identify water quality impacts and support future permitting activities.

Estimated impact: Adoption of these regulations will allow for the streamlining of the permit process as it relates to the covered categories of discharges. Coverage under the general permit would reduce the paper work and expense of obtaining a permit for the owners and operators in this category. It will also reduce the time currently required to obtain coverage under the VPDES permitting system. The staff estimates that there are approximately 1,250 facilities in this category of discharger that may be required to apply for storm water permits. The board believes it would be impossible at this time to develop and issue individual permits in a timely manner to all applicants.

The board recognizes the need for storm water general permits to ease the burden on the regulated community and to facilitate the issuance of storm water permits. Issuance of general permits would improve the administrative efficiency of the board's permitting program and allow staff resources to be concentrated on developing individual permits for those facilities which have more potential for impacting water quality in Virginia.

Alternatives: There are two alternatives to comply with the federal requirements to permit storm water discharges from heavy manufacturing facilities. One is to issue an individual VPDES permit to each of the estimated 1,250 heavy manufacturing facilities. The other is to adopt a general VPDES permit to cover this category of discharger.

Comments: The board seeks oral and written comments from interested persons on the intended regulatory action and on the costs and benefits of the stated alternatives or other alternatives.

Public meetings: The board will hold public meetings at 2 p.m., or as soon thereafter as possible, on Thursday, February 4, 1993, at the Roanoke County Administration Center, Community Room, 3738 Brambleton Avenue, S.W., Roanoke; at 2 p.m., or as soon thereafter as possible, on Monday, February 8, 1993, at the James City County Board of Supervisors Room, Building C, 101C Mounts Bay Road, Williamsburg; and at 2 p.m., or as soon thereafter as possible, on Wednesday, February 10, 1993, in the Board Room at the State Water Control Board's office, Innsbrook Corporate Center, 4900 Cox Road, Glen Allen, to receive views and comments and to answer questions of the public.

Accessibility to persons with disabilities: The meetings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Lori Jackson at the address below or by telephone at (804) 527-5163 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Jackson no later than Monday, January 11, 1993.

Applicable laws and regulations: State Water Control Law; Clean Water Act; Permit Regulation (VR 680-14-01); NPDES Permit Application Regulations for Storm Water Discharges; NPDES Application Deadlines, General Permit Requirements and Reporting Requirements for Storm Water Discharges Associated With Industrial Activity (57 FR 11394); and NPDES General Permits for Storm Water Discharges.

Statutory Authority: § 62.1-44.15 (10) of the Code of Virginia.

Written comments may be submitted until 4 p.m., February 16, 1993, to Lori Jackson, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Cathy Boatwright, Office of Water Resources Management, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5316.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider promulgating regulations entitled: **VR 680-14-17. General Permit Regulation for Storm**

Water Discharges from Light Manufacturing. The purpose of this proposed regulatory action is to adopt a general permit for storm water discharges from light manufacturing facilities. Light manufacturing facilities are defined as facilities classified as Standard Industrial Classification (SIC) 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221-25 (Office of Management and Budget SIC Manual, 1987).

Basis and statutory authority: The basis for these regulations is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(5) authorizes the board to issue permits for the discharge of treated sewage, industrial wastes or other wastes into or adjacent to state waters and § 62.1-44.15(7) authorizes the board to adopt rules governing the procedures of the board with respect to the issuance of permits. Further, § 62.1-44.15(10) authorizes the State Water Control Board to adopt such regulations as it deems necessary to enforce the general water quality management program; § 62.1-44.15(14) authorizes the board to establish requirements for the treatment of sewage, industrial wastes and other wastes; § 62.1-44.20 provides that agents of the board may have the right of entry to public or private property for the purpose of obtaining information or conducting necessary surveys or investigations; and § 62.1-44.21 authorizes the State Water Control Board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters.

Section 402 of the Clean Water Act (33 USC 1251 et seq.) authorizes states to administer the NPDES permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. This Memorandum of Understanding was modified on May 20, 1991, to authorize the Commonwealth to administer a General VPDES Permit Program.

Need: Most storm water runoff is discharged through conveyances, such as separate storm sewers, ditches, channels, pipes, etc., which are considered point sources under the Clean Water Act, and subject to regulation through the NPDES permit program. On November 16, 1990, EPA published the final NPDES Permit Application Regulations for Storm Water Discharges (55 FR 47990). This federal regulation established permit application requirements for certain municipal and industrial storm water discharges. Eleven categories of industrial activity were defined in the federal regulation including light manufacturing facilities. Any facility covered by the federal regulation that discharges storm water through a point source to surface waters is required to file a storm water permit application.

Intent: The intent of this general permit regulation is to establish standard language for control of storm water discharges through the development of Storm Water Pollution Prevention Plans and to set minimum monitoring and reporting requirements. A site-specific Storm Water Pollution Prevention Plan will be required to be developed by the permittee for each individual facility covered by this general permit. Facilities will be required to implement the provisions of the plan as a condition of the permit.

The Storm Water Pollution Prevention Plan will identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the industrial activity at the facility, and shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with the industrial activity.

Monitoring and reporting requirements will be established based upon the pollution potential of the storm water discharges from the industrial activity. Monitoring reports will assist in evaluating the effectiveness of pollution prevention measures and provide information to identify water quality impacts and support future permitting activities.

Estimated impact: Adoption of these regulations will allow for the streamlining of the permit process as it relates to the covered categories of discharges. Coverage under the general permit would reduce the paper work and expense of obtaining a permit for the owners and operators in this category. It will also reduce the time currently required to obtain coverage under the VPDES permitting system. The staff estimates that there are approximately 3,650 facilities in this category of discharger that may be required to apply for storm water permits. The board believes it would be impossible at this time to develop and issue individual permits in a timely manner to all applicants.

The board recognizes the need for storm water general permits to ease the burden on the regulated community and to facilitate the issuance of storm water permits. Issuance of general permits would improve the administrative efficiency of the board's permitting program and allow staff resources to be concentrated on developing individual permits for those facilities which have more potential for impacting water quality in Virginia.

Alternatives: There are two alternatives to comply with the federal requirements to permit storm water discharges from light manufacturing facilities. One is to issue an individual VPDES permit to each of the estimated 3,650 light manufacturing facilities. The other is to adopt a general VPDES permit to cover this category of discharger.

Comments: The board seeks oral and written comments from interested persons on the intended regulatory action and on the costs and benefits of the stated alternatives or other alternatives.

Public meetings: The board will hold public meetings at 2 p.m., or as soon thereafter as possible, on Thursday, February 4, 1993, at the Roanoke County Administration Center, Community Room, 3738 Brambleton Avenue, S.W.,

Roanoke; at 2 p.m., or as soon thereafter as possible, on Monday, February 8, 1993, at the James City County Board of Supervisors Room, Building C, 101C Mounts Bay Road, Williamsburg; and at 2 p.m., or as soon thereafter as possible, on Wednesday, February 10, 1993, in the Board Room at the State Water Control Board's office, Innsbrook Corporate Center, 4900 Cox Road, Glen Allen, to receive views and comments and to answer questions of the public.

Accessibility to persons with disabilities: The meetings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Lori Jackson at the address below or by telephone at (804) 527-5163 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Jackson no later than Monday, January 11, 1993.

Applicable laws and regulations: State Water Control Law; Clean Water Act; Permit Regulation (VR 680-14-01); NPDES Permit Application Regulations for Storm Water Discharges; NPDES Application Deadlines, General Permit Requirements and Reporting Requirements for Storm Water Discharges Associated With Industrial Activity (57 FR 11394); and, NPDES General Permits for Storm Water Discharges Associated With Industrial Activity (57 FR 41236).

Statutory Authority: § 62.1-44-15 (10) of the Code of Virginia.

Written comments may be submitted until 4 p.m., February 16, 1993, to Lori Jackson, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Cathy Boatwright, Office of Water Resources Management, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5316.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider promulgating regulations entitled: **VR 680-14-18. General Permit Regulation for Storm Water Discharges from Transportation Facilities, Landfills, Land Application Sites and Open Dumps, Materials Recycling Facilities, and Steam Electric Power Generating Facilities.** The purpose of this proposed regulatory action is to adopt a general permit for storm water discharges from the facilities defined as follows: (1) transportation facilities classified as Standard Industrial Classification (SIC) 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations (Office of Management and Budget SIC Manual, 1987); (2) landfills, land application sites, and open dumps that receive or have received any industrial wastes including those that are subject to regulation under Subtitle D of RCRA (42 USC 6901 et seq.); (3) facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as SIC 5015 and 5093; and, (4) steam electric power generating facilities, including coal handling sites.

Basis and statutory authority: The basis for these regulations is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(5) authorizes the board to issue permits for the discharge of treated sewage, industrial wastes or other wastes into or adjacent to state waters and § 62.1-44.15(7) authorizes the board to adopt rules governing the procedures of the board with respect to the issuance of permits. Further, § 62.1-44.15(10) authorizes the State Water Control Board to adopt such regulations as it deems necessary to enforce the general water quality management program; § 62.1-44.15(14) authorizes the board to establish requirements for the treatment of sewage, industrial wastes and other wastes; § 62.1-44.20 provides that agents of the board may have the right of entry to public or private property for the purpose of obtaining information or conducting necessary surveys or investigations; and § 62.1-44.21 authorizes the State Water Control Board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters.

Section 402 of the Clean Water Act (33 USC 1251 et seq.) authorizes states to administer the NPDES permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. This Memorandum of Understanding was modified on May 20, 1991, to authorize the Commonwealth to administer a General VPDES Permit Program.

Need: Most storm water runoff is discharged through conveyances, such as separate storm sewers, ditches, channels, pipes, etc., which are considered point sources under the Clean Water Act, and subject to regulation through the NPDES permit program. On November 16, 1990, EPA published the final NPDES Permit Application Regulations for Storm Water Discharges (55 FR 47990). This federal regulation established permit application requirements for certain municipal and industrial storm water discharges. Eleven categories of industrial activity were defined in the federal regulation including transportation facilities; landfills, land application sites and open dumps; materials recycling facilities; and steam electric power generating facilities. Any facility covered by the federal regulation that discharges storm water through a point source to surface waters is required to file a storm water permit application.

Intent: The intent of this general permit regulation is to establish standard language for control of storm water discharges through the development of Storm Water Pollution Prevention Plans and to set minimum monitoring and reporting requirements. A site-specific Storm Water Pollution Prevention Plan will be required to be developed by the permittee for each individual facility covered by

this general permit. Facilities will be required to implement the provisions of the plan as a condition of the permit.

The Storm Water Pollution Prevention Plan will identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the industrial activity at the facility, and shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with the industrial activity.

Monitoring and reporting requirements will be established based upon the pollution potential of the storm water discharges from the industrial activity. Monitoring reports will assist in evaluating the effectiveness of pollution prevention measures and provide information to identify water quality impacts and support future permitting activities.

Estimated impact: Adoption of these regulations will allow for the streamlining of the permit process as it relates to the covered categories of discharges. Coverage under the general permit would reduce the paper work and expense of obtaining a permit for the owners and operators in this category. It will also reduce the time currently required to obtain coverage under the VPDES permitting system. The staff estimates that there are approximately 1,500 facilities in this category of discharger that may be required to apply for storm water permits. The board believes it would be impossible at this time to develop and issue individual permits in a timely manner to all applicants.

The board recognizes the need for storm water general permits to ease the burden on the regulated community and to facilitate the issuance of storm water permits. Issuance of general permits would improve the administrative efficiency of the board's permitting program and allow staff resources to be concentrated on developing individual permits for those facilities which have more potential for impacting water quality in Virginia.

Alternatives: There are two alternatives to comply with the federal requirements to permit storm water discharges from the facilities in this category. One is to issue an individual VPDES permit to each of the estimated 1500 facilities in this category. The other is to adopt a general VPDES permit to cover this category of discharger.

Comments: The board seeks oral and written comments from interested persons on the intended regulatory action and on the costs and benefits of the stated alternatives or other alternatives.

Public meetings: The board will hold public meetings at 2 p.m., or as soon thereafter as possible, on Thursday, February 4, 1993, at the Roanoke County Administration Center, Community Room, 3738 Brambleton Avenue, S.W., Roanoke; at 2 p.m., or as soon thereafter as possible, on Monday, February 8, 1993, at the James City County Board of Supervisors Room, Building C, 101C Mounts Bay Road, Williamsburg; and at 2 p.m., or as soon thereafter as possible, on Wednesday, February 10, 1993, in the Board Room at the State Water Control Board's office, Innsbrook Corporate Center, 4900 Cox Road, Glen Allen, to receive views and comments and to answer questions of the public.

Accessibility to persons with disabilities: The meetings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Lori Jackson at the address below or by telephone at (804) 527-5163 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Jackson no later than Monday, January 11, 1993.

Applicable laws and regulations: State Water Control Law; Clean Water Act; Permit Regulation (VR 680-14-01); NPDES Permit Application Regulations for Storm Water Discharges; NPDES Application Deadlines, General Permit Requirements and Reporting Requirements for Storm Water Discharges Associated With Industrial Activity (57 FR 11394); and, NPDES General Permits for Storm Water Discharges Associated With Industrial Activity (57 FR 41236).

Statutory Authority: § 62.1-44.15 (10) of the Code of Virginia.

Written comments may be submitted until 4 p.m., February 16, 1993, to Lori Jackson, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Cathy Boatwright, Office of Water Resources Management, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5316.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider promulgating regulations entitled: **VR 680-14-19. General Permit Regulations for Storm Water Discharges from Construction Sites.** The purpose of this proposed regulatory action is to adopt a general permit for storm water discharges from construction sites that are defined as follows: construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale.

Basis and statutory authority: The basis for these regulations is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(5) authorizes the board to issue permits for the discharge of treated sewage, industrial wastes or other wastes into or adjacent to state waters and § 62.1-44.15(7) authorizes the board to adopt rules governing the procedures of the board with respect to the issuance of permits. Further, § 62.1-44.15(10) authorizes the State Water Control Board to adopt such regulations as it

deems necessary to enforce the general water quality management program; § 62.1-44.15(14) authorizes the board to establish requirements for the treatment of sewage, industrial wastes and other wastes; § 62.1-44.20 provides that agents of the board may have the right of entry to public or private property for the purpose of obtaining information or conducting necessary surveys or investigations; and § 62.1-44.21 authorizes the State Water Control Board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters.

Section 402 of the Clean Water Act (33 USC 1251 et seq) authorizes states to administer the NPDES permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. This Memorandum of Understanding was modified on May 20, 1991, to authorize the Commonwealth to administer a General VPDES Permit Program.

Need: Most storm water runoff is discharged through conveyances, such as separate storm sewers, ditches, channels, pipes, etc., which are considered point sources under the Clean Water Act, and subject to regulation through the NPDES permit program. On November 16, 1990, EPA published the final NPDES Permit Application Regulations for Storm Water Discharges (55 FR 47990). This federal regulation established permit application requirements for certain municipal and industrial storm water discharges. Eleven categories of industrial activity were defined in the federal regulation including construction sites. Any facility covered by the federal regulation that discharges storm water through a point source to surface waters is required to file a storm water permit application.

Intent: The intent of this general permit regulation is to establish standard language for control of storm water discharges through the development of Storm Water Pollution Prevention Plans and to set minimum monitoring and reporting requirements. A site-specific Storm Water Pollution Prevention Plan will be required to be developed by the permittee for each construction site covered by this general permit. Owners/operators will be required to implement the provisions of the plan as a condition of the permit.

The Storm Water Pollution Prevention Plan will identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the construction activity at the site, and shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with the construction activity.

Monitoring and reporting requirements will be established based upon the pollution potential of the storm water discharges from the construction activity. Monitoring reports will assist in evaluating the effectiveness of pollution prevention measures and provide information to identify water quality impacts and support future permitting activities.

Estimated impact: Adoption of these regulations will allow for the streamlining of the permit process as it relates to construction activity permits. Coverage under the general permit would reduce the paper work required to obtain a permit for the owners/operators at construction sites. It will also reduce the time currently required to obtain coverage under the VPDES permitting system. The staff estimates that there are between 5,000 to 10,000 construction sites that may be required to apply for storm water permits. The board believes it would be impossible at this time to develop and issue individual permits in a timely manner to all applicants.

The board recognizes the need for storm water general permits to ease the burden on the regulated community and to facilitate the issuance of storm water permits. Issuance of general permits would improve the administrative efficiency of the board's permitting program and allow staff resources to be concentrated on developing individual permits for those facilities which have more potential for impacting water quality in Virginia.

Alternatives: There are two alternatives to comply with the federal requirements to permit storm water discharges. One is to issue an individual VPDES permit to each of the estimated 5,000 to 10,000 construction sites. The other is to adopt a general VPDES permit to cover this category of discharger.

Comments: The board seeks oral and written comments from interested persons on the intended regulatory action and on the costs and benefits of the stated alternatives or other alternatives.

Public meetings: The board will hold public meetings at 2 p.m., or as soon thereafter as possible, on Thursday, February 4, 1993, at the Roanoke County Administration Center, Community Room, 3738 Brambleton Avenue, S.W., Roanoke; at 2 p.m., or as soon thereafter as possible, on Monday, February 8, 1993, at the James City County Board of Supervisors Room, Building C, 101C Mounts Bay Road, Williamsburg; and at 2 p.m., or as soon thereafter as possible, on Wednesday, February 10, 1993, in the Board Room at the State Water Control Board's office, Innsbrook Corporate Center, 4900 Cox Road, Glen Allen, to receive views and comments and to answer questions of the public.

Accessibility to persons with disabilities: The meetings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Lori Jackson at the address below or by telephone at (804) 527-5163 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Jackson no later than Monday, January 11, 1993.

Applicable laws and regulations: State Water Control Law;

Clean Water Act; Permit Regulation (VR 680-14-01); NPDES Permit Application Regulations for Storm Water Discharges; NPDES Application Deadlines, General Permit Requirements and Reporting Requirements for Storm Water Discharges Associated With Industrial Activity (57 FR 11394); and, NPDES General Permits for Storm Water Discharges Associated With Industrial Activity (57 FR 41236).

Statutory Authority: § 62.1-44-15 (10) of the Code of Virginia.

Written comments may be submitted until 4 p.m., February 16, 1993, to Lori Jackson, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Cathy Boatwright, Office of Water Resources Management, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5316.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider promulgating regulations entitled: **VR 680-14-20. General Virginia Pollutant Discharge Elimination System Permit Regulation for Nonmetallic Mineral Mining.** General permits may be issued for categories of dischargers that: involve the same or similar types of operations, discharge the same or similar types of wastes, require the same effluent limitations or operating conditions, and require the same or similar monitoring. The purpose of this proposed regulatory action is to adopt a general permit for the category of industrial waste discharges associated with establishments primarily engaged in mining or quarrying, developing mines or exploring for nonmetallic minerals, except fuels. The intent of this proposed general permit regulation is to establish standard language for the limitations and monitoring requirements necessary to regulate this category of discharges under the VPDES permit program. As with an individual VPDES permit, the effluent limits in the general permit will be set to protect the quality of the waters receiving the discharge. No discharge would be covered by the General Permit unless the local governing body has certified that the facility complies with all applicable zoning and planning ordinances.

Basis and statutory authority: The basis for these regulations is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(5) authorizes the board to issue permits for the discharge of treated sewage, industrial wastes or other waste into or adjacent to state waters and § 62.1-44.15(7) authorizes the board to adopt rules governing the procedures of the board with respect to the issuance of permits. Further, § 62.1-44.15(10) authorizes the State Water Control Board to adopt such regulations as it deems necessary to enforce the general water quality management program; § 62.1-44.15(14) authorizes the board to establish requirements for the treatment of sewage, industrial wastes and other wastes; § 62.1-44.20 provides that agents of the board may have the right of entry to public or private property for the purpose of obtaining information or conducting necessary surveys or investigations; and § 62.1-44.21 authorizes the State Water Control Board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters.

Section 402 of the Clean Water Act (33 USC 1251 et seq.) authorizes states to administer the NPDES permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. This Memorandum of Understanding was modified on May 20, 1991, to authorize the Commonwealth to administer a General VPDES Permit Program.

Need: This proposed regulatory action is needed in order to establish appropriate and necessary permitting of industrial waste discharges associated with establishments primarily engaged in mining or quarrying, developing mines or exploring for nonmetallic minerals, except fuels.

Intent: The intent of this proposed general permit regulation is to establish standard language for the limitations and monitoring requirements necessary to regulate this category of discharges under the VPDES permit program. As with an individual VPDES permit, the effluent limits in the general permit will be set to protect the quality of the waters receiving the discharge. No discharge would be covered by the General Permit unless the local governing body has certified that the facility complies with all applicable zoning and planning ordinances.

Estimated impact: There are approximately 90 establishments currently permitted under the individual VPDES permit program which may qualify for this proposed general permit. Adoption of these regulations will allow for the streamlining of the permit process as it relates to the covered categories of discharges. Coverage under the general permit would reduce the paper work, time and expense of obtaining a permit for the owners and operators in this category. Adoption of the proposed regulations would also reduce the manpower needed by the Water Control Board for permitting these discharges.

Alternatives: There are two alternatives for compliance with federal and state requirements to permit industrial waste discharges associated with establishments primarily engaged in mining or quarrying, developing mines or exploring for nonmetallic minerals, except fuels. One is the issuance of an individual VPDES permit to each establishment. The other is to adopt and issue a general VPDES permit to cover this category of discharger.

Comments: The board seeks oral and written comments from interested persons on the intended regulatory action and on the costs and benefits of the stated alternatives.

Public meetings: The board will hold a public meeting at

2 p.m. on Friday, January 29, 1993, in the Board Room, State Water Control Board's offices, Innsbrook Corporate Center, 4900 Cox Road, Glen Allen, to receive views and comments and to answer questions of the public.

Accessibility to persons with disabilities: The meeting is being held at a public facility believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Jackson at the address below or by telephone at (804) 527-5163 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Jackson no later than Monday, January 11, 1993.

Applicable laws and regulations: State Water Control Law, Clean Water Act, Permit Regulation (VR 680-14-01).

Statutory Authority: § 62.1-44.15 (10) of the Code of Virginia.

Written comments may be submitted until 4 p.m., February 5, 1993, to Lori Jackson, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Richard Ayers, Office of Water Resources Management, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5059.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider promulgating regulations entitled: **VR 680-14-21. Virginia Pollution Abatement Permit Regulation.** The proposed regulatory action is to consider adoption of a new regulation. This regulation will govern sources of pollutants within the boundaries of the Commonwealth of Virginia that are not point source discharges to surface waters. These types of pollutant management activities are currently regulated under the VPA permit program and the Permit Regulation (VR 680-14-01). The VPA permit program is being separated from the Permit Regulation in order to recognize the distinction between this wholly state run permit program and the federal/state NPDES/VPDES permit program. This action is being done concurrent with the repeal of VR 680-14-01.

Basis and statutory authority: The basis for this regulation is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(7) authorizes the board to adopt rules governing the procedures of the board with respect to the issuance of permits. Further, § 62.1-44.15(10) authorizes the State Water Control Board to adopt such regulations as it deems necessary to enforce the general water quality management program; § 62.1-44.15(14) authorizes the board to establish requirements for the treatment of sewage, industrial wastes and other wastes; and §§ 62.1-44.16, 62.1-44.17, 62.1-44.18 and 62.1-44.19 authorize the board to regulate discharges of sewage, industrial wastes and other wastes.

Need: Any pollutant management activity which does not result in a point source discharge to surface waters may be required to obtain a VPA permit in order to ensure that the activity does not alter the physical, chemical or biological properties of state waters. VPA permits may be utilized to authorize the land application of sewage, sludge or industrial waste or the complete reuse and recycle of wastewater. The VPA regulation will delineate the procedures and requirements to be followed in connection with VPA permits issued by the board pursuant to the State Water Control Law.

Estimated impact: This regulation will impact all of the approximately 1,500 holders of Virginia Pollution Abatement permits. However, there should not be a significant difference in the regulation of these permits or the costs incurred by permittees under the new regulation compared to the previous Permit Regulation (VR 680-14-01).

Alternatives: One alternative to the proposed regulation is to modify the existing Permit Regulation, rather than adopting a separate regulation for VPA permits. Another alternative is take no action and to continue to administer the VPA permit program under the current regulation.

Comments: The board seeks oral and written comments from interested persons on the intended regulatory action and on the costs and benefits of the stated alternatives or other alternatives. Written comments should be directed to Ms. Doneva Dalton at the address below and must be received by 4 p.m. on Monday, February 12, 1993.

In addition, the board will hold public meetings at 2 p.m. on Wednesday, January 27, 1993, at the Prince William County Board of Supervisors Room, 1 County Complex, McCourt Building, 4850 Davis Ford Road, Prince William; at 2 p.m. on Thursday, January 28, 1993, at the Harrisonburg City Council Chambers, Municipal Building, 345 South Main Street, Harrisonburg; at 2 p.m. on Tuesday, February 2, 1993, at the James City County Board of Supervisors Room, Building C, 101C Mounts Bay Road, Williamsburg; and at 2 p.m. on Thursday, February 4, 1993, at the Multi-Purpose Room, Municipal Office, 150 East Monroe Street, Wytheville, Virginia.

Accessibility to persons with disabilities: The meetings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Dalton at the address below or by telephone at (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than January 11, 1993.

Applicable laws and regulations: State Water Control Law.

Statutory Authority: § 62.1-44.15 (10) of the Code of Virginia.

Written comments may be submitted until 4 p.m.,

February 12, 1993, to Doneva Dalton, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Richard Ayers, Office of Water Resources Management, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5059.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Waterworks and Wastewater Works Operators intends to consider amending regulations entitled: **VR 675-01-02. Board for Waterworks and Wastewater Works Operators Regulations.** The purpose of the proposed action is to solicit public comment on all existing regulations as to their effectiveness, efficiency, clarity, necessity, and cost of compliance in accordance with the Public Participation Guidelines.

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

Written comments may be submitted until February 10, 1993.

Contact: Geralde W. Morgan, Board Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

For information concerning Proposed Regulations, see information page.

Symbol Key
Roman type indicates existing text of regulations. *Italic type* indicates proposed new text. Language which has been stricken indicates proposed text for deletion.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

REGISTRAR'S NOTICE: Due to its length, the proposed regulation filed by the Department of Agriculture and Consumer Services is not being published. However, in accordance with § 9-6.14:22 of the Code of Virginia, the summary is being published in lieu of the full text. The full text of the regulation is available for public inspection at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, 910 Capitol Street, Richmond, Virginia 23219 and at the Department of Agriculture and Consumer Services, Washington Building, 1100 Bank Street, Richmond, Virginia 23219.

Title of Regulation: **VR 115-05-01. ~~Rules and~~ Regulations Governing ~~The Production, Processing and Sale of~~ Grade "A" ~~Pasteurized Market~~ Milk ~~and Grade "A" Pasteurized Market Milk Products and Certain Milk Products~~ .**

Statutory Authority: § 3.1-530.1 of the Code of Virginia.

Public Hearing Date: May 19, 1993 - 2 p.m.
Written comments may be submitted through March 15, 1993.
(See Calendar of Events section for additional information)

Summary:

The proposed regulation will continue certain authority contained in the existing regulation governing the production, processing, and sale of Grade "A" pasteurized milk and Grade "A" pasteurized milk products and certain milk products.

The purpose of the present regulatory action is to review the regulation for effectiveness and continued need. The proposed regulation has been drafted to include provisions of the existing regulation and to enhance its effectiveness. In addition, certain new provisions have been established which affect milk plants, receiving stations, transfer stations, producers and industry laboratories specifying: drug screening requirements of Grade "A" raw milk for pasteurization prior to processing; minimum penalties for violation of the drug residue requirements; new standards for temperature, somatic cell counts and cryoscope test; requirements to receive and retain a permit; sanitation requirements for Grade "A" raw milk for pasteurization; and sanitation requirements for Grade "A" pasteurized milk.

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

Title of Regulation: **VR 370-01-001. Rules and Regulations of the Virginia Health Services Cost Review Council.**

Statutory Authority: § 9-158, 9-160, and 9-164 of the Code of Virginia.

NOTICE: The Virginia Health Services Cost Review Council is **WITHDRAWING** the amendments to VR 370-01-001 Rules and Regulations of the Virginia Health Services Cost Review Council proposed in 8:26 VA.R. 4560-4563 September 21, 1992. The proposed amendments involve a proposed change to the definition of "charity care"; however, the council's regulations for its new methodology will now deal with the issue of how "charity care" should be defined.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

Title of Regulation: **VR 380-03-02. Virginia Work-Study Program Regulations (REPEALED).**

Title of Regulation: **VR 380-03-02:1. Virginia Work-Study Program Regulations.**

Statutory Authority: § 23-38.70 of the Code of Virginia.

Public Hearing Date: March 18, 1993 - 1 p.m.
Written comments may be submitted through March 12, 1993.
(See Calendar of Events section for additional information)

Summary:

Section 23-38.70 of the Code of Virginia authorizes the Council of Higher Education to develop regulations and procedures for the operation of the Virginia Work-Study Program (VWSP). The proposed VWSP regulations, if adopted, will replace the existing regulations which are outdated and, in places, ambiguous. The major provisions are institutional application procedures, distribution of funds, student eligibility, restrictions on student placement and compensation, and responsibilities of involved parties.

VR 380-03-02:1. Virginia Work-Study Program Regulations.

PART I.
DEFINITIONS.

§ 1.1. Definitions.

The following words and terms, when used in these regulations, will have the following meaning, unless the context clearly indicates otherwise:

"Accredited" means an institution which holds either candidacy status or full membership in an accrediting association recognized by the United States Department of Education or an institution approved to confer degrees pursuant to the provisions of §§ 23-265 through 23-276 of the Code of Virginia.

"Applicant" means any student who completed an approved application for need-based aid and filed the application by the closing date established by the participating institution at which the student will enroll.

"Bona-fide domiciliary resident of Virginia" means a student who is determined by the council or by a participating state-supported institution to meet the definition of a domiciliary resident of Virginia eligible for in-state tuition rates, as specified under § 23-7.4 of the Code of Virginia.

"Cost of attendance" means the sum of tuition, fees, room, board, books and supplies, and other education related expenses, as determined by an institution for purposes of calculating a student's financial need and awarding federal campus-based student aid funds.

"Council" means the State Council of Higher Education for Virginia.

"Eligible course of study" means a curriculum of courses in a degree-granting program at the undergraduate, graduate, or first professional level which requires at least one academic year (30 semester hours or its equivalent) to complete. Courses of study which provide religious training or theological education are not eligible courses of study under the Virginia Work-Study Program. Normally, programs in the 39.xxxx series, as classified in the National Education Center for Educational are not eligible programs.

"Eligible employer" means a public or private, nonprofit organization authorized to operate within the Commonwealth of Virginia whose principal mission is to provide assistance (see definition of "public service") which principally benefits residents of Virginia. Religious or political organizations which otherwise meet this definition are not eligible employers under the program.

"Eligible postsecondary institution" means any accredited, degree-granting institution of higher education whose principal campus is located in Virginia and any business, trade, or technical school which is accredited by a national or regional accrediting agency for postsecondary institutions recognized by the U.S. Secretary of Education and which is certified to operate in the Commonwealth by the Board of Education pursuant to Chapter 16 (§ 22.1-319 et seq.) of Title 22.1 of the Code of Virginia. Institution whose primary purpose is to provide religious training or theological education are not eligible to participate in the program.

"Expected Family Contribution" (EFC) means the amount a student and his family is expected to contribute toward the cost of college attendance. A student's EFC will be determined by the institution using a method of needs analysis approved by the council. The institution may exercise professional judgment to adjust the student's EFC, as permitted under federal law, based on factors which affect the family's ability to pay.

"Financial need" means any positive difference between a student's Cost of Attendance and the student's Expected Family Contribution (EFC), as determined by a participating institution using a nationally-accepted method of needs analysis approved by the council.

"Fiscal year" means the period extending from July 1 to June 30.

"Off-campus position" means a position with an eligible employer other than the participating postsecondary education institution at which the student is enrolled. When an institution or a third party public or private nonprofit agency (e.g., Virginia State University's Virginia Program) agrees under contract with an eligible off-campus employer to act as the payroll agent, and the institution or the third party agency receives total reimbursement of th nonstate share of student wages and fringe benefits fro the employer, the student will be deemed to be employed off campus.

"On-campus position" means a position with a public or private nonprofit participating institution at which the student is enrolled.

"Part-time study" means enrollment for at least six credit hours per semester or its equivalent. The total hours counted will not include courses taken for audit, but may include required developmental or remedial courses and other elective courses which normally are not counted toward a certificate, diploma, or degree at the participating institution.

"Participating institution" means any eligible postsecondary institution which is approved to receive state funds to match student wages under the Virginia Work-Study Program.

"Program" means the Virginia Work-Study Program (VWSP).

"Political organization" means any person or other entity whose primary purpose is to advocate the election of a candidate to public office or the passage of specific legislation.

"Public service job" means a job that provide

assistance that directly benefits or meets the needs of a particular group of citizens in the fields of education (elementary, secondary, and postsecondary), health, recreation, social services and human services.

"Religious organization" means a church or any entity controlled by a church or whose primary purpose is provision of sectarian services.

PART II.
INSTITUTIONAL PARTICIPATION IN THE PROGRAM.

§ 2.1. Application procedures.

To participate in the program, an institution shall file an application with the council before an annually established closing date. The application must be on a form approved by the council and contain the information needed by the council to determine the allocation of its available funds.

PART III.
DISTRIBUTION OF FUNDS AMONG PARTICIPATING INSTITUTIONS.

§ 3.1. Allocation method.

Distribution of program funds is based on an allocation method based on the council's calculation of financial aid need at all institutions. Each participating institution shall receive a proportional share of total program funds based on its share of total need. The institution's allocation shall be its share or the amount requested in its application, whichever is less. Failure to expend the previous year's allocation may result in reduced funding for the following year as provided hereinafter.

§ 3.2. State matching funds.

A. The Commonwealth's share of a student's compensation will be determined annually. Off-campus positions will receive a higher percentage of state matching funds than on-campus positions.

B. Without reducing student compensation, off-campus employers may agree to pay higher contributions than normally would result if state matching funds were provided at the maximum permitted level. State funds conserved under this approach may be used by the institution to fund additional student employment.

§ 3.3. Reallocation of unused funds; penalties for failure to release unused funds for mid-year reallocation.

A. Procedures for the mid-year reallocation of funds.

By no later than March 15 of each fiscal year, a participating institution shall file with the council a Spring Funds Usage Report. The institution will specify the amount of state funds, if any, it will not use by year's end. The institution will authorize the release of those funds so that the council may reallocate the funds to other participating institutions.

B. Requests for additional funds.

Institutions which meet their approved job development objectives and have awarded all of their state matching funds may request additional funds, should such funds become available.

C. Failure to expend funds.

An institution which returns a significant amount of unused funds at the end of the fiscal year, as determined by the council, may receive an allocation reduced by that amount the following year.

§ 3.4. Use of funds.

An institution shall establish and maintain financial records that accurately reflect all program transactions as they occur. The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity. Program funds shall be deposited in a noninterest bearing account established and maintained exclusively for that purpose. Funds may only be disbursed to student accounts receivable or to the council. All unused funds must be returned to the council no later than the end of the fiscal year.

Funds received by the institution under the program may be used only to pay awards to students. The funds are held in trust by the institution for the intended student beneficiaries and may not be used for any other purpose.

Any income realized, or to be realized, on program investment income will revert to the Commonwealth of Virginia. Funds, the foregoing notwithstanding, are the property of the Commonwealth of Virginia.

PART IV.
STUDENT ELIGIBILITY AND SELECTION OF AWARD RECIPIENTS.

§ 4.1. Eligibility criteria.

In order to be eligible for employment under the program an applicant will:

1. Be enrolled for at least part-time study as an undergraduate, graduate, or first-professional student in an eligible course of study at a participating institution;

2. Be a bona-fide domiciliary resident of Virginia eligible for in-state tuition rates as defined in § 23-7.4 of the Code of Virginia;

3. Be maintaining satisfactory academic progress;

4. Be pursuing a degree in a field other than religious training or theological education;

5. Meet the eligible employer's job requirements; and

6. Demonstrate sufficient financial need and be capable of benefiting from the work experience.

§ 4.2. Criteria for determining financial need and individual awards.

An institution shall determine a student's financial need using a nationally-accepted method of needs analysis approved by the council. An award under the program will be set by the institution so that the student's total financial aid, including the program award, will not exceed the student's need.

§ 4.3. Priorities in placing students.

A. Although the program assists financially needy students, the relative financial need of qualified students may be a secondary consideration when placing students in public service jobs under the program. Preference for the jobs may go to those students best qualified, as determined by the institutions and the prospective employers, to fill the eligible jobs, especially when the jobs also complement the students' educational or career interests.

B. Students employed under the program may be placed in on- and off-campus positions that meet the definition of a public service job, as determined by the financial aid officer, and that provide the student with tangible educational or career benefits. State funds shall not be used to supplant federal College Work-Study Program funds.

PART V.
RESTRICTIONS ON STUDENT PLACEMENT AND COMPENSATION.

§ 5.1. Displacement of employees.

State work-study students shall not displace employed workers or impair existing contracts for services. Accordingly, a student employed under the program will not be placed in a position which has been occupied by a permanent employee during the current or preceding fiscal year, as determined by the employer in consultation with the financial aid officer.

§ 5.2. Rate of compensation.

Work-study positions will receive compensation equal to the salary of a comparable position at a comparable level, as determined by the participating institution after consultation with the employer and any other appropriate sources of information. Under no circumstances will a work-study student be compensated at a rate higher than the rate paid to permanent employees with comparable experience.

§ 5.3. Employer share of student compensation.

The employer shall pay its share of wages, as determined by the financial aid officer, plus the costs of any employee benefits, including all payments due as an employer's contribution under the state workers' compensation laws, federal social security laws, and other applicable laws.

§ 5.4. Academic credit.

A student may receive academic credit for experience gained through the program, as determined by a participating institution in consultation with the employer.

§ 5.5. Maximum hours worked.

A student's total employment under the program cannot exceed 20 hours per week when classes are in session and cannot exceed 40 hours per week when classes are not in session.

§ 5.6. Concurrent employment.

A student employed under the program shall not be employed concurrently by the federal College Work-Study Program or any other institutional student employment program so that total employment exceeds 20 hours per week when classes are in session or 40 hours per week when classes are not in session.

§ 5.7. Political or religious employment.

Students under the program shall not be employed by any political or religious organization.

§ 5.8. Employment during nonenrollment periods.

A student may be employed under the program during the summer or other vacation period or the full-time work period of a cooperative education program. To be eligible for this employment, a student must have been enrolled at least half time in the prior term and be preregistered or sign an "intent to enroll" form as at least a half-time student in the following term. The institution must keep a written record in its files showing the student has been accepted for enrollment in the upcoming session.

PART VI.
ADMINISTRATION.

§ 6.1. Responsibility of the council.

The council is authorized to enter into agreements with eligible postsecondary institutions for the development of student jobs and the reimbursement of employers for the Commonwealth's share of students' compensation.

The council shall issue such information sheets it deems

necessary and appropriate for administration of the program. The information sheets shall include, but not be limited to, guidelines to establish priority positions, employer share of wages, and application procedures.

§ 6.2 Responsibility of participating institutions.

Participating institutions, under agreement with the council, may:

1. Enter into contracts with eligible employers for employment of students under the program. Such agreements shall be written to ensure employer compliance with the rules and regulations governing the program.

2. Assist in the determination of student eligibility and, in cooperation with eligible employers, arrange for placement of students, ensuring that the placements are consistent with the educational and career interests of the students, wherever possible, and that the students are sufficiently prepared to succeed in the positions in which they are placed.

3. Arrange for payment of the Commonwealth's share of a student's compensation.

§ 6.3. Employer responsibilities.

A. Before it may participate in the program, an eligible employer shall enter into contract with a postsecondary institution, thereby certifying the employer's eligibility to participate and a willingness to comply with program requirements.

B. Certification of payment to students shall be made in accordance with accounting procedures specified in the institution-employer contracts.

§ 6.4. Reports.

Participating institutions shall supply reports to the council which will include, but not be limited to, information describing the student and employer populations served, the awards received, and the public services rendered through student employment under the program.

§ 6.5. Agreement to participate.

As a requirement of participating in the program, each institution shall certify that it meets the definition of eligible institution and acknowledge responsibility to administer the program according to prescribed rules and regulations.

§ 6.6. Program reviews.

The council periodically will review institutional administrative practices to determine institutional compliance with prescribed rules and regulations. If a review determines that an institution, or an off-campus employer participating in the program under contract with the institution, has failed to comply with regulations and guidelines, the council may suspend or terminate its future participation in the program. In all instances, the council will require an institution to recover and refund to the council any state funds which were expended improperly.

STATE WATER CONTROL BOARD

Title of Regulation: **VR 680-13-01. Rules of the Board and Standards for Water Wells. (REPEALED)**

Statutory Authority: § 62.1-44.92 (Repealed) of the Code of Virginia.

Public Hearing Dates:
February 22, 1993 - 7 p.m.
February 23, 1993 - 7 p.m.
February 24, 1993 - 7 p.m.
Written comments may be submitted through March 15, 1993.
(See Calendar of Events section for additional information)

Summary:

On June 10, 1974, the State Water Control Board adopted the regulation entitled Rules of the Board and Standards for Water Wells to implement the legislative requirements of the Ground Water Act of 1973. The 1992 session of the Virginia General Assembly repealed the Ground Water Act of 1973 and enacted the Ground Water Management Act of 1992. The State Water Control Board is concurrently repealing the Rules of the Board and Standards for Water Wells and promulgating regulations to implement the Ground Water Management Act of 1992 (VR 680-13-07 Ground Water Withdrawal Regulations).

* * * * * * * * *

Title of Regulation: **VR 680-13-03. Petroleum Underground Storage Tank Financial Responsibility Requirements.**

Statutory Authority: §§ 62.1-44.34:10, 62.1-44.34:11, 62.1-44.34:12 and 62.1-44.15(10) of the Code of Virginia.

Public Hearing Dates:
February 9, 1993 - 2 p.m.
February 10, 1993 - 2 p.m.
February 12, 1993 - 3 p.m.
February 18, 1993 - 7 p.m.
February 23, 1993 - 2 p.m.
Written comments may be submitted through March 15, 1993.
(See Calendar of Events section for additional information)

Summary:

The federal financial responsibility requirements for petroleum underground storage tanks (USTs) require owners or operators of petroleum USTs to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage. The federal regulation requires a demonstration of $1 million per occurrence and an annual aggregate of $1 or $2 million. This proposed amendment to the Petroleum Underground Storage Tank Financial Responsibility Requirements (VR 680-13-03) would continue to allow the State Water Control Board to administer the federal program in Virginia and establishes requirements for demonstration of financial responsibility in accordance with recent changes in Article 10 of the State Water Control Law. This proposed amendment in conjunction with the proposed Virginia Petroleum Storage Tank Fund Requirements (VR 680-13-06) regulation will enable regulated UST owners and operators to meet federal requirements for demonstration of financial responsibility.

These proposed amendments to the Petroleum Underground Storage Tank Financial Responsibility Requirements (VR 680-13-03) regulation would incorporate for UST owners, operators and vendors, the sliding scale for financial responsibility established by the 1992 General Assembly. The sliding scale is determined by the total gallons of petroleum pumped on an annual basis into all petroleum USTs owned and operated by a person in Virginia.

As in the current regulation, financial responsibility assurance can be shown using insurance, self-insurance, surety bonds, letters of credit, guarantees, insurance pools, trust funds, and state funds. One proposed amendment creates an additional optional simplified test for self-insurance to be used in lieu of the federal test.

In addition, the proposed amendments establish a revised compliance date for owners, operators and petroleum storage tank vendors, and deletes requirements for the Virginia Underground Petroleum Storage Tank Fund which will be reestablished under the proposed Virginia Petroleum Storage Tank Fund regulation.

The State Water Control Board would administer the program. Owners, operators or vendors will be required to use their financial responsibility assurance mechanisms in the event of an UST release.

VR 680-13-03. Petroleum Underground Storage Tank Financial Responsibility Requirements.

§ 1. Definitions.

The following words and terms, when used in this regulation, shall have the following meaning, unless the context clearly indicates otherwise:

"Accidental release" means any sudden or nonsudden release of petroleum from an underground storage tank that results in a need for corrective action and/or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator or petroleum storage tank vendor.

"Annual basis" means the financial reporting year immediately preceding the year for which the owner or operator is demonstrating financial responsibility.

"Board" means the State Water Control Board.

"Bodily injury" means the death or injury of any person incident to an accidental release from a petroleum underground storage tank; but not including any death, disablement, or injuries covered by worker's compensation, disability benefits or unemployment compensation law or other similar law. Bodily injury may include payment of medical, hospital, surgical, and funeral expenses arising out of the death or injury of any person. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

"Controlling interest" means direct ownership of at least 50% of the voting stock of another entity.

"Corrective action" means all actions necessary to abate, contain and ~~cleanup~~ *clean up* a release from an underground storage tank, to mitigate the public health or environmental threat from such releases and to rehabilitate state waters in accordance with Parts V and VI of VR 680-13-02 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements Regulation). *This term includes the provision of an alternate water supply and actions necessary to abate, contain and clean up a release from an underground storage tank conducted on the property of a third party who is neither the owner nor the operator of the leaking underground storage tank.* The term does not include those actions normally associated with closure or change in service as set out in Part VII of VR 680-13-02 or the replacement of an underground storage tank.

"Department of Waste Management" means the Virginia Department of Waste Management which has jurisdiction over the proper handling and disposal of solid and hazardous wastes in the Commonwealth of Virginia.

"Financial reporting year" means the latest consecutive 12-month period for which any of the following reports used to support a financial test is prepared: (i) a 10-K report submitted to the U.S. Securities and Exchange Commission (SEC); (ii) an annual report of tangible net worth submitted to Dun and Bradstreet; (iii) annual reports submitted to the Energy Information Administration or the Rural Electrification Administration; or (iv) a year-end financial statement authorized under § 6 B or § 6 C of this regulation. "Financial reporting year" may thus comprise a fiscal or calendar year period.

"Legal defense cost" is any expense that an owner or operator, or petroleum storage tank vendor, or provider of financial assurance incurs in defending against claims or actions brought (i) by the federal government or the board to require corrective action or to recover the costs of corrective action, or to collect civil penalties under federal or state law or to assert any claim on behalf of the Virginia ~~Underground~~ Petroleum Storage Tank Fund; (ii) by or on behalf of a third party for bodily injury or property damage caused by an accidental release; or (iii) by any person to enforce the terms of a financial assurance mechanism.

"Local government entity" means a municipality, county, town, commission, *separately chartered and operated special districts,* school boards ~~or~~ , political subdivision of a state : , *or other special purpose governments which provide essential services.*

"Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank.

Note: This definition is intended to assist in the understanding of this regulation and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."

"Operator" means any person in control of, or having responsibility for, the daily operation of the UST system.

"Owner" means:

1. In the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and

2. In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

"Owner or operator," when the owner or operator are separate parties, refers to the party that is obtaining or has obtained financial assurances.

"Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.

"Petroleum" means petroleum, including crude oil or any fraction thereof, that is liquid at standard conditions of temperature and pressure (60°F and 14.7 pounds per square inch absolute).

"Petroleum marketing facilities" includes all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

"Petroleum marketing firms" means all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.

"Petroleum pumped" means either the amount pumped into or the amount pumped out of a petroleum underground storage tank.

"Petroleum storage tank vendor" means a person who manufactures, sells, installs, or services an underground petroleum storage tank, its connective piping and associated equipment.

"Property damage" means the loss or destruction of, or damage to, the property of any third party including any loss, damage or expense incident to an accidental release from a petroleum underground storage tank. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

"Provider of financial assurance" means an entity that provides financial assurance to an owner, operator or petroleum storage tank vendor of an underground storage tank through one of the mechanisms listed in §§ 6 through 12, including a guarantor, insurer, group self-insurance pool, surety, or issuer of a letter of credit.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an UST into ground water, surface water *or upon lands,* ~~or~~ subsurface soils *, or storm drain systems .*

"Substantial business relationship" means the extent of a business relationship necessary under Virginia law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator or petroleum storage tank vendor.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

"Termination" under Appendix III and Appendix IV means only those changes that could result in a gap in

coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

"Underground storage tank" or *"UST"* means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground. This term does not include any:

1. Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

2. Tank used for storing heating oil for consumption on the premises where stored, except for tanks having a capacity of more than 5,000 gallons and used for storing heating oil;

3. Septic tank;

4. Pipeline facility (including gathering lines) regulated under:

a. The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671 et seq.), or

b. The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001 et seq.), or

c. Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in subdivision 4 a or 4 b of this definition;

5. Surface impoundment, pit, pond, or lagoon;

6. Stormwater or wastewater collection system;

7. Flow-through process tank;

8. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

9. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor. The term "underground storage tank" or "UST" does not include any pipes connected to any tank which is described in subdivisions 1 through 9 of this definition.

"UST system" or *"tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.*

"VR 680-13-02" means the Underground Storage Tanks; Technical Standards and Corrective Action Requirements Regulation promulgated by the board.

"VR 680-13-06" means the Virginia Petroleum Storage Tank Fund Regulation promulgated by the board.

§ 2. Applicability.

A. This regulation applies to owners and operators of all petroleum ~~underground storage tank (UST)~~ *UST* systems regulated under VR 680-13-02 ~~(Underground Storage Tanks; Technical Standards and Corrective Action Requirements Regulation)~~ and petroleum storage tank vendors except as otherwise provided in this section.

~~B. Owners and operators of petroleum UST systems and petroleum storage tank vendors are subject to these requirements if they are in operation on or after the date for compliance established in § 3.~~

~~C.~~ *B.* State and federal government entities whose debts and liabilities are the debts and liabilities of the Commonwealth of Virginia or the United States have the requisite financial strength and stability to fulfill their financial assurance requirements and are relieved of the requirements to further demonstrate an ability to provide financial responsibility under this regulation.

~~D.~~ *C.* The requirements of this regulation do not apply to owners and operators of any UST system described in § 1.2 B or C of VR 680-13-02.

~~E.~~ *D.* If the owner and operator of a petroleum underground storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in event of noncompliance. ~~Regardless of which party complies, the date set for compliance at a particular facility is determined by the characteristics of the owner as set forth in § 3.~~

§ 3. Compliance dates.

~~Owners of petroleum underground storage tanks and petroleum storage tank vendors are required to comply with the requirements of this regulation by the following dates:~~

~~1. All petroleum marketing firms owning 1,000 or more USTs and all other UST owners that report a tangible net worth of $20 million or more to the SEC, Dun and Bradstreet, the Energy Information Administration, or the Rural Electrification Administration; January 24, 1989.~~

~~2. All petroleum marketing firms owning 100,000 USTs; October 26, 1988.~~

~~3. All petroleum marketing firms owning 13-99 USTs at more than one facility; April 26, 1990.~~

~~4. All petroleum UST owners not described in subdivisions 1 through 3 of this section, including all local government entities; October 26, 1990.~~

~~5. All petroleum storage tank vendors; October 26, 1990.~~

Owners and operators of petroleum UST systems and petroleum storage tank vendors are subject to these requirements if they are in operation on or after July 1, 1992.

§ 4. Amount and scope of ~~required~~ financial responsibility *requirement* .

A. Owners or operators of petroleum underground storage tanks and petroleum storage tank vendors must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in ~~at least~~ the following per occurrence *and annual aggregate* amounts:

~~1. $50,000 for corrective action;~~

~~2. $150,000 for compensating third parties for bodily injury and property damage.~~

~~B. Owners or operators of petroleum underground storage tanks and petroleum storage tank vendors must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amount: $200,000.~~

1. Owners and operators with 600,000 gallons or less of petroleum pumped on an annual basis for all underground storage tanks owned or operated, $5,000 per occurrence for taking corrective action and $15,000 per occurrence for compensating third parties, with an annual aggregate of $20,000;

2. Owners and operators with between 600,001 to 1,200,000 gallons of petroleum pumped on an annual basis for all underground storage tanks owned or operated, $10,000 per occurrence for taking corrective action and $30,000 per occurence for compensating third parties, with an annual aggregate of $40,000;

3. Owners and operators with between 1,200,001 to 1,800,000 gallons of petroleum pumped on an annual basis for all underground storage tanks owned or operated, $20,000 per occurrence for taking corrective action and $60,000 per occurrence for compensating third parties, with an annual aggregate of $80,000;

4. Owners and operators with between 1,800,001 to 2,400,000 gallons of petroleum pumped on an annual basis for all underground storage tanks owned or operated, $30,000 per occurrence for taking corrective action and $120,000 per occurrence for compensating third parties, with an annual aggregate of $150,000;

5. Owners and operators with in excess of 2,400,000 gallons of petroleum pumped on an annual basis for all underground storage tanks owned or operated, $50,000 per occurrence for taking corrective action and $150,000 per occurrence for compensating third parties, with an annual aggregate of $200,000;

6. Petroleum storage tank vendors and other owners and operators, $50,000 per occurrence for taking corrective action and $150,000 per occurrence for compensating third parties, with an annual aggregate of $200,000.

B. Owners and operators of petroleum underground storage tanks must determine the applicable financial responsibility requirement on an annual basis for all petroleum underground storage tanks owned or operated in Virginia as required by subdivision B 1 or B 2 of this section.

1. If the owner and operator is the same person, the applicable financial responsibility requirement shall be determined by calculating the total number of gallons of petroleum pumped on an annual basis for all underground storage tanks owned and operated by that person.

2. If the owner and operator are more than one person, each person shall calculate their total number of gallons of petroleum pumped on an annual basis for all underground storage tanks owned and operated. The applicable financial responsibility requirement shall be determined by using the gallonage of the person with the greatest number of gallons of petroleum pumped on an annual basis.

C. Owners or operators which demonstrate financial responsibility must maintain copies of those records on which the determination is based. The following documents may be used for purposes of demonstrating financial responsibility by owners or operators to support a financial responsibility requirement determination:

1. Copies of invoices from petroleum suppliers which indicate the gallons of petroleum pumped into all underground storage tanks on an annual basis.

2. Copies of disposal or recycling receipts which indicate the gallons of petroleum pumped out of all underground storage tanks on an annual basis.

3. Letters from petroleum suppliers, disposal or recycling firms on the supplier's, disposer's, or recycler's letterhead, and signed by the appropriate financial officer, which indicate the gallons of petroleum pumped into or out of all the owner's or

operator's underground storage tanks on an annual basis.

4. Any other from of documentation which the board may deem to be acceptable evidence to support the financial responsibility requirement determination.

~~C.~~ *D.* For the purposes of ~~subsections B and F~~ *subsection A* only, "a petroleum underground storage tank" means a single containment unit and does not mean combinations of single containment units.

~~D.~~ *E.* ~~Except as provided in subsection E,~~ If the owner or operator or petroleum storage tank vendor uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:

1. Taking corrective action;

2. Compensating third parties for bodily injury and property damage caused by sudden accidental releases; or

3. Compensating third parties for bodily injury and property damage caused by nonsudden accidental releases, the amount of *per occurrence and annual aggregate* assurance provided by each mechanism or combination of mechanisms must be in the full amount specified in ~~subsections~~ *subsection* A ~~and B~~ of this section.

~~E. If an owner or operator or petroleum storage tank vendor uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum underground storage tanks, the annual aggregate required shall be $200,000.~~

~~F. If assurance is being demonstrated by a combination of mechanisms, the owner or operator or petroleum storage tank vendor shall demonstrate financial responsibility in the appropriate amount specified in § 4 B of annual aggregate assurance, by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or Guarantee) to provide assurance.~~

~~G.~~ *F.* The amounts of assurance required under this section exclude legal defense costs.

~~H.~~ *G.* The required per occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner ~~or~~ , operator ~~and~~ *or* petroleum storage tank vendor.

§ 5. Allowable mechanisms and combinations of mechanisms.

A. Subject to the limitations of subsection B of this section, an owner or operator or petroleum storage tank vendor may use any one or combination of the mechanisms listed in §§ 6 through 12 to demonstrate financial responsibility under this regulation for one or more underground storage tanks.

B. An owner or operator or petroleum storage tank vendor may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this regulation, the financial statements of the owner or operator or petroleum storage tank vendor are not consolidated with the financial statements of the guarantor.

§ 6. Financial test of self-insurance.

A. An owner or operator, petroleum storage tank vendor, and/or guarantor, may satisfy the requirements of § 4 by passing a financial test as specified in this section. To pass the financial test of self-insurance, the owner or operator or petroleum storage tank vendor, and/or guarantor must meet the requirements of subsections B or C, and D of this section based on year-end financial statements for the latest completed ~~fiscal~~ *financial reporting* year.

B.1. The owner or operator, petroleum storage tank vendor, and/or guarantor must have a tangible net worth at least equal to the total of the applicable aggregate amount required by § 4 ~~B~~ *A* for which a financial test is used to demonstrate financial responsibility.

2. The owner or operator, petroleum storage tank vendor, and/or guarantor must also have a tangible net worth at least equal to the total applicable aggregate amount required for demonstration of financial responsibility for operators of facilities and vessels in accordance with § 62.1-44.34:16 of the Code of Virginia for which a financial test for self-insurance is used.

~~2.~~ *3.* The owner or operator, petroleum storage tank vendor, and/or guarantor must also have a tangible net worth of at least 10 times:

a. The sum of the corrective action cost estimates, the current closure and postclosure care cost estimates, and amount of liability coverage for which a financial test for self-insurance is used in each state of business operations to demonstrate financial responsibility to the EPA under 40 CFR §§ 264.101(b), 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147, to another state implementing agency under a state program authorized by EPA under 40 CFR Part 271 or the Department of Waste Management under VR 672-10-1 §§ 10.5 L, 10.7 C, 10.7 E, 9.7 C, 9.7 E, 10.7 G, 9.7 G (Virginia Hazardous Waste Management Regulations); and

b. The sum of current plugging and abandonment cost estimates for which a financial test for self-insurance is used in each state of business operations to demonstrate financial responsibility to EPA under 40 CFR § 144.63 or to a state

implementing agency under a state program authorized by EPA under 40 CFR Part 145.

~~3.~~ *4.* The owner and operator or petroleum storage tank vendor and/or guarantor must comply with subdivision a or b below:

a.(1) The ~~fiscal~~ *financial reporting* year-end financial statements of the owner or operator or petroleum storage tank vendor and/or guarantor must be examined by an independent certified public accountant and be accompanied by the accountants report of the examination; and

(2) The ~~firms~~ *financial reporting* year-end financial statements *of the owner or operator or petroleum sotrage tank vendor, and/or guarantor* cannot include an adverse auditors opinion, a disclaimer of opinion, or a "going concern" qualification.

b.(1)(a) File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration; or

(b) Report annually the firms tangible net worth *of the owner or operator or petroleum storage tank vendor, and/or guarantor* to Dun and Bradstreet, and Dun and Bradstreet must have assigned ~~the firm~~ a financial strength rating ~~of at least BB ($200,000 to $200,000); and~~ *which at least equals the amount of financial responsibility required by the owner or operator in § 4.*

A. The required Dun and Bradstreet ratings are as follows:

Annual Aggregate Requirement	*Dun and Bradstreet Rating*
$20,000	*EE ($20,000 to $34,999)*
$40,000	*DC ($50,000 to $74,999)*
$80,000	*CB ($125,000 to $199,999)*
$150,000	*BB ($200,000 to $299,999)*
$200,000	*BB ($200,000 to $299,999);*

and

(2) The ~~firms~~ *financial reporting* year-end financial statements *of the owner or operator or petroleum storage tank vendor, and/or guarantor* , if, independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

~~4.~~ *5.* The owner or operator or petroleum storage tank vendor and/or guarantor must have a letter signed by the chief financial officer worded identically as specified in Appendix I/Alternative I *or Appendix XI* .

C.1. The owner or operator or petroleum storage tank vendor and/or guarantor must have a tangible net worth at least equal to the total of the applicable aggregate amount required by § 4 ~~B~~ *A* for which a financial test is used to demonstrate financial responsibility.

2. The owner or operator or petroleum storage tank vendor and/or guarantor must also:

a. Meet the financial test requirements for self-insurance of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage in each state of business operations to the EPA under 40 CFR §§ 264.101(b), 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147, to another state implementing agency under a state program authorized by EPA under 40 CFR Part 271 or the Department of Waste Management under VR 672-10-1 §§ 10.5 L, 10.7 C, 10.7 E, 9.7 C, 9.7 E, 10.7 G, 9.7 G (Virginia Hazardous Waste Management Regulations); and

b. Meet the financial test requirements for self-insurance of current plugging and abandonment cost estimates in each state of business operations to EPA under 40 CFR § 144.63 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 145.

3. The ~~fiscal~~ *financial reporting* year-end financial statements of the owner or operator or petroleum storage tank vendor and/or guarantor must be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.

4. The ~~firms~~ *financial reporting* year-end financial statements *of the owner or operator or petroleum storage tank vendor, and/or guarantor* cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

5. If the financial statements of the owner or operator or petroleum storage tank vendor and/or guarantor are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration or the Rural Electrification Administration, the owner or operator or petroleum storage tank vendor and/or guarantor must obtain a special report by an independent certified public accountant stating that:

a. ~~He~~ *The accountant* has compared the data that the letter from the chief financial officer specified as having been derived from the latest *financial reporting* year-end financial statements of the owner or operator or petroleum storage tank vendor and/or guarantor with the amounts in such financial statements; and

b. In connection with that comparison, no matters came to ~~his~~ *the accountant's* attention which caused

him to believe that the specified data should be adjusted.

6. The owner or operator or petroleum storage tank vendor and/or guarantor must have a letter signed by the chief financial officer, worded identically as specified in Appendix I/Alternative II.

D. To ~~demonstrate that it meets~~ *meet* the financial *demonstration* test under subsection B or C of this section, the chief financial officer of the owner or operator, petroleum storage tank vendor and/or guarantor must sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded identically as specified in Appendix I with the appropriate Alternative ~~I or II~~ *or Appendix XI* , except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.

E. If an owner or operator or petroleum storage tank vendor using the test to provide financial assurance finds that he no longer meets the requirements of the financial test based on the *financial reporting* year-end financial statements, the owner or operator or petroleum storage tank vendor must obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

F. The board may require reports of financial condition at any time from the owner or operator, petroleum storage tank vendor and/or guarantor. If the board finds, on the basis of such reports or other information, that the owner or operator, petroleum storage tank vendor and/or guarantor no longer meets the financial test requirements of § 6 B or C and D, the owner or operator or petroleum storage tank vendor must obtain alternate coverage within 30 days after notification of such a finding.

G. If the owner or operator or petroleum storage tank vendor fails to obtain alternate assurance within 150 days of finding that he no longer meets the requirements of the financial test based on the *financial reporting* year-end financial statements, or within 30 days of notification by the board that he or she no longer meets the requirements of the financial test, the owner or operator or petroleum storage tank vendor must notify the board of such failure within 10 days.

§ 7. Guarantee.

A. An owner or operator or petroleum storage tank vendor may satisfy the requirements of § 4 by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be:

1. A firm that:

a. Possesses a controlling interest in the owner or operator or petroleum storage tank vendor;

b. Possesses a controlling interest in a firm described under subdivision A 1a of this section; or

c. Is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator or petroleum storage tank vendor; or

2. A firm engaged in a substantial business relationship with the owner or operator or petroleum storage tank vendor and issuing the guarantee as an act incident to that business relationship.

B. Within 120 days of the close of each financial reporting year the guarantor must demonstrate that it meets the financial test criteria of § 6 B or C and D based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in Appendix I *or Appendix XI* and must deliver the letter to the owner or operator or petroleum storage tank vendor. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator or petroleum storage tank vendor. If the board notifies the guarantor that he no longer meets the requirements of the financial test of § 6 B or C and D, the guarantor must notify the owner or operator or petroleum storage tank vendor within 10 days of receiving such notification from the board. In both cases, the guarantee will terminate no less than 120 days after the date the owner or operator or petroleum storage tank vendor receives the notification, as evidenced by the return receipt. The owner or operator or petroleum storage tank vendor must obtain alternate coverage as specified in § 19 C.

C. The guarantee must be worded identically as specified in Appendix II, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

D. An owner or operator or petroleum storage tank vendor who uses a guarantee to satisfy the requirements of § 4 must establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the board under § 17. This standby trust fund must meet the requirements specified in § 12.

§ 8. Insurance and group self-insurance pool coverage.

A.1. An owner or operator or petroleum storage tank vendor may satisfy the requirements of § 4 by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or group self-insurance pool.

2. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

3. Group self-insurance pools must comply with ~~Virginia Code~~ § 62.1-44.34:12 *of the Code of Virginia* and the State Corporation Commission Bureau of Insurance Regulation No. 33.

B. Each insurance policy must be amended by an endorsement worded in no respect less favorable than the coverage as specified in Appendix III, or evidenced by a certificate of insurance worded identically as specified in Appendix IV, except that instructions in brackets must be replaced with the relevant information and the brackets deleted.

C. Each insurance policy must be issued by an insurer or a group self-insurance pool that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or approved surplus lines insurer in the Commonwealth of Virginia.

D. Each insurance policy shall provide first dollar coverage. The insurer or group self-insurance pool shall be liable for the payment of all amounts within any deductible applicable to the policy to the provider of corrective action or damaged third party, as provided in this regulation, with a right of reimbursement by the insured for any such payment made by the insurer or group. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in §§ 6 through 11.

§ 9. Surety bond.

A. An owner or operator or petroleum storage tank vendor may satisfy the requirements of § 4 by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond must be licensed to operate as a surety in the Commonwealth of Virginia and be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

B. The surety bond must be worded identically as specified in Appendix V, except that instructions in brackets must be replaced with the relevant information and the brackets deleted.

C. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator or petroleum storage tank vendor fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.

D. The owner or operator or petroleum storage tank vendor who uses a surety bond to satisfy the requirements of § 4 must establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the board under § 17. This standby trust fund must meet the requirements specified in § 12.

§ 10. Letter of credit.

A. An owner or operator or petroleum storage tank vendor may satisfy the requirements of § 4 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution must be an entity that has the authority to issue letters of credit in the Commonwealth of Virginia and whose letter-of-credit operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The letter of credit must be worded identically as specified in Appendix VI, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

C. An owner or operator or petroleum storage tank vendor who uses a letter of credit to satisfy the requirements of § 4 must also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the board will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the board under § 17. This standby trust fund must meet the requirements specified in § 12.

D. The letter of credit must be irrevocable with a term specified by the issuing institution. The letter of credit must provide that credit will be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the owner or operator or petroleum storage tank vendor by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the 120 days will begin on the date when the owner or operator or petroleum storage tank vendor receives the notice, as evidenced by the return receipt.

§ 11. Trust fund.

A. An owner or operator or petroleum storage tank vendor may satisfy the requirements of § 4 by establishing an irrevocable trust fund that conforms to the requirements of this section. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The trust fund shall be irrevocable and shall continue until terminated at the written direction of the grantor and the trustee, or by the trustee and the ~~State Water Control~~ board, if the grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final trust

administration expenses, shall be delivered to the owner or operator or petroleum storage tank vendor. The wording of the trust agreement must be identical to the wording specified in Appendix VII, and must be accompanied by a formal certification of acknowledgment as specified in Appendix VIII.

C. The irrevocable trust fund, when established, must be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining required coverage.

D. If the value of the trust fund is greater than the required amount of coverage, the owner or operator or petroleum storage tank vendor may submit a written request to the board for release of the excess.

E. If other financial assurance as specified in this regulation is substituted for all or part of the trust fund, the owner or operator or petroleum storage tank vendor may submit a written request to the board for release of the excess.

F. Within 60 days after receiving a request from the owner or operator or petroleum storage tank vendor for release of funds as specified in subsection D or E of this section, the board will instruct the trustee to release to the owner or operator or petroleum storage tank vendor such funds as the board specifies in writing.

§ 12. Standby trust fund.

A. An owner or operator or petroleum storage tank vendor using any one of the mechanisms authorized by §§ 7, 9 and 10 must establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The standby trust agreement or trust agreement must be worded identically as specified in Appendix VII, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted, and accompanied by a formal certification of acknowledgment as specified in Appendix VIII.

C. The board will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the board determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

D. An owner or operator or petroleum storage tank vendor may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule.

§ 13. Substitution of financial assurance mechanisms by owner or operator or petroleum storage tank vendor.

A. An owner or operator or petroleum storage tank vendor may substitute any alternate financial assurance mechanisms as specified in this regulation, provided that at all times he maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of § 4.

B. After obtaining alternate financial assurance as specified in this regulation, an owner or operator or petroleum storage tank vendor may cancel a financial assurance mechanism by providing notice to the provider of financial assurance.

§ 14. Cancellation or nonrenewal by a provider of financial assurance.

A. Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator or petroleum storage tank vendor.

1. Termination of a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the owner or operator or petroleum storage tank vendor receives the notice of termination, as evidenced by the return receipt.

2. Termination of insurance or group self-insurance pool coverage, except for nonpayment or misrepresentation by the insured may not occur until 60 days after the date on which the owner or operator or petroleum storage tank vendor receives the notice of termination, as evidenced by the return receipt. Termination for nonpayment of premium or misrepresentation by the insured may not occur until a minimum of 15 days after the date on which the owner or operator or petroleum storage tank vendor receives the notice of termination, as evidenced by the return receipt.

B. If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in § 15, the owner or operator or petroleum storage tank vendor must obtain alternate coverage as specified in this section within 60 days after receipt of the notice of termination. If the owner or operator or petroleum storage tank vendor fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator or petroleum storage tank vendor must immediately notify the board of such failure and submit:

1. The name and address of the provider of financial assurance;

2. The effective date of termination; and

3. The evidence of the financial assurance mechanism subject to the termination maintained in accordance with § 16 B.

§ 15. Reporting by owner or operator or petroleum storage tank vendor.

A. An owner or operator must submit *a letter which identifies the owner's or operator's name and address and the underground storage tank(s) location by site name, street address, board incident designation number and* the appropriate forms listed in § 16 B documenting current evidence of financial responsibility to the board within 30 days after the owner or operator identifies or confirms a release from an underground storage tank required to be reported under § 5.4 or § 6.2 of VR 680-13-02. *For all subsequent releases within the same financial reporting year, the owner or operator shall submit a letter which identifies the owner's or operator's name and address and the underground storage tank(s) location by site name, street address, board incident designation number and a statement that the financial responsibility documentation previously provided to the board for this financial reporting year is currently in force.*

The board may require any petroleum storage tank vendor to submit the appropriate forms listed in § 16 B documenting current evidence of financial repsonsibility.

B. An owner or operator or petroleum storage tank vendor must submit the appropriate forms listed in § 16 B documenting current evidence of financial responsibility to the board if the owner or operator or petroleum storage tank vendor fails to obtain alternate coverage as required by this regulation within 30 days after the owner or operator or petroleum storage tank vendor receives notice of:

1. Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor,

2. Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism,

3. Failure of a guarantor to meet the requirements of the financial test, *or*

4. Other incapacity of a provider of financial assurance.

C. An owner or operator or petroleum storage tank vendor must submit the appropriate forms listed in § 16 B documenting current evidence of financial responsibility to the board as required by §§ 6 G and 14 B.

D. An owner or operator must certify compliance with the financial responsibility requirements of this regulation as specified in the new tank notification form when notifying the board of the installation of a new underground storage tank under § 2.3 of VR 680-13-02.

E. The board may require an owner or operator or petroleum storage tank vendor to submit evidence of financial assurance as described in § 16 B or other information relevant to compliance with this regulation at any time.

§ 16. Recordkeeping.

A. Owners or operators and petroleum storage tank vendors must maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this regulation for an underground storage tank until released from the requirements of this regulation under § 18. An owner or operator and petroleum storage tank vendor must maintain such evidence at the underground storage tank site or the owner's or operator's and petroleum storage tank vendor's place of business in this Commonwealth. Records maintained off-site must be made available upon request of the board.

B. Owners or operators and petroleum storage tank vendors must maintain the following types of evidence of financial responsibility:

1. An owner or operator or petroleum storage tank vendor using an assurance mechanism specified in §§ 6 through 11 must maintain a copy of the instrument worded as specified.

2. An owner or operator or petroleum storage tank vendor using a financial test or guarantee must maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence must be on file no later than 120 days after the close of the financial reporting year.

3. An owner or operator or petroleum storage tank vendor using a guarantee, surety bond, or letter of credit must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

4. An owner or operator or petroleum storage tank vendor using an insurance policy or group self-insurance pool coverage must maintain a copy of the signed insurance policy or group self-insurance pool coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

5.a. An owner or operator or petroleum storage tank vendor using an assurance mechanism specified in §§ 6 through 11 must maintain an updated copy of a certification of financial responsibility worded identically as specified in Appendix IX, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

b. The owner or operator or petroleum storage tank vendor must update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).

§ 17. Drawing on financial assurance mechanisms.

A. The board shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the board, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

1.a. The owner or operator or petroleum storage tank vendor fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, *or* letter of credit; and

b. The board determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and so notifies the owner or operator, or petroleum storage tank vendor, or the owner or operator has notified the board pursuant to Parts V and VI of VR 680-13-02 of a release from an underground storage tank covered by the mechanism; or

2. The conditions of subdivision B 1 or B 2a or B 2b of this section are satisfied.

B. The board may draw on a standby trust fund when:

1. The board makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under Part VI of VR 680-13-02; or

2. The board has received either:

a. Certification from the owner or operator or petroleum storage tank vendor and the third-party liability claimant(s) and from attorneys representing the owner or operator and the third-party liability claimant(s) that a third-party liability claim should be paid. The certification must be worded identically as specified in Appendix X, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted; or

b. A valid final court order establishing a judgment against the owner or operator or petroleum storage tank vendor for bodily injury or property damage caused by an accidental release from an underground storage tank covered by financial assurance under this regulation and the board determines that the owner or operator or petroleum storage tank vendor has not satisfied the judgment.

c. If the board determines that the amount of corrective action costs and third-party liability claims eligible for payment under subsection B of this section may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The board shall direct payment from the standby trust fund for third-party liability claims in the order in which the board receives certifications under subdivision B 2a of this section and valid court orders under subdivision B 2b of this section.

§ 18. Release from the requirements.

An owner or operator is no longer required to maintain financial responsibility under this regulation for an underground storage tank after the tank has been properly closed or a change-in-service properly completed or, if corrective action is required, after corrective action has been completed and the tank has been properly closed as required by Part VII of VR 680-13-02.

§ 19. Bankruptcy or other incapacity of owner, operator, petroleum storage tank vendor or provider of financial assurance.

A. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator or petroleum storage tank vendor as debtor, the owner or operator or petroleum storage tank vendor must notify the board by certified mail of such commencement and submit the appropriate forms listed in § 16 B documenting current financial responsibility.

B. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor must notify the owner or operator or petroleum storage tank vendor by certified mail of such commencement as required under the terms of the guarantee specified in § 7.

C. An owner or operator or petroleum storage tank vendor who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, group self-insurance pool coverage policy, surety bond, or letter of credit. The owner or operator or petroleum storage tank vendor must obtain alternate financial assurance as specified in this regulation within 30 days after receiving notice of such an event. If the owner or operator or petroleum storage tank vendor does not obtain alternate coverage within 30 days after such notification, he must immediately notify the board in writing.

D. Within 30 days after receipt of written notification that the Virginia ~~Underground~~ Petroleum Storage Tank Fund has become incapable of covering costs in excess of those specified in § 4 up to $1 million, for paying for assured corrective action or third-party compensation costs, the owner or operator or petroleum storage tank vendor must obtain alternate financial assurance in accordance with Subpart H of 40 CFR Part 280.

§ 20. Replenishment of guarantees, letters of credit or surety bonds.

A. If at any time after a standby trust is funded upon the instruction of the board with funds drawn from a guarantee, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator or petroleum storage tank vendor shall by the anniversary date of the financial mechanism from which the funds were drawn:

1. Replenish the value of financial assurance to equal the full amount of coverage required ~~.~~ ; or

2. Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

B. For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by § 4 of this regulation. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

§ 21. Virginia ~~Underground~~ Petroleum Storage Tank Fund ~~(Fund)~~ .

~~A. The Fund will be used for costs in excess of the financial responsibility requirements specified under § 4 A up to $1 million per occurrence for both taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases from petroleum underground storage tanks in accordance with the following:~~

~~1. Corrective action disbursements for accidental releases with no associated third party disbursements from the fund shall not exceed $950,000 per occurrence. Third party disbursements for accidental releases with no corrective action disbursements from the fund shall not exceed $850,000 per occurrence. Combined corrective action and third party disbursements from the fund shall not exceed $800,000 per occurrence, except as specified in subdivision C 2 of this subsection. The first priority for disbursements from the fund shall be for corrective action costs necessary to protect human health and the environment. Third party liability claims against the Fund shall only be paid in accordance with final court orders where the board has been represented or in cases of an agreed settlement between the third party and the board.~~

~~2. Owner or operator managed cleanups. An owner or operator responding to a release and conducting a board approved corrective action plan in accordance with Parts V and VI of VR 680-13-02 may proceed to pay for all costs incurred for such activities. An accounting submitted to the board of all costs incurred will be reviewed and those costs in excess of the financial responsibility requirements up to $1 million which are reasonable and have been approved by the board will be reimbursed from the Fund.~~

~~3. Joint owner or operator and board managed cleanups. An owner or operator responding to a release and conducting a board approved corrective action plan in accordance with Parts V and VI of VR 680-13-02 may proceed to pay for those costs up to the first $50,000. An accounting of all costs incurred shall be submitted to the board and those costs which are reasonable and approved by the board will be applied to the owner or operator financial responsibility requirement. After the owner or operator meets the financial responsibility requirement the site will become a state managed cleanup. In order to have an orderly transition from the owner or operator managed cleanup to a board managed cleanup, the owner or operator shall only initiate activities associated with Part VI §§ 6.4 through 6.8 of VR 680-13-02 which can be completed within the owner or operator financial responsibility requirement.~~

~~Owners or operators who cannot complete a corrective action activity within the financial responsibility requirement, shall make available upon demand by the board the unexpended financial requirement moneys for the board's use in continuing a state managed cleanup at the site. The foregoing does not relieve owners or operators of their responsibility to conduct activities associated with Part VI §§ 6.1 through 6.3 of VR 680-13-02.~~

~~4. No person shall receive reimbursement from the Fund for any costs or damages incurred:~~

~~(a) Where the person, his employee or agent, or anyone within the privity or knowledge of that person, has violated substantive environmental regulations under VR 680-13-02 or this regulation; or~~

~~(b) Where the release occurrence is caused, in whole or in part, by the willful misconduct or negligence of the person, his employee or agent, or anyone within the privity or knowledge of that person; or~~

~~(c) Where the person, his employee or agent, or anyone within the privity or knowledge of that person, has (i) failed to carry out the instructions of the board, committed willful misconduct or been negligent in carrying out or conducting actions~~

under Part V or VI of VR 680-13-02 or (ii) has violated applicable federal or state safety, construction or operating laws or regulations in carrying out or conducting actions under Parts V or VI of VR 680-13-02; or

(d) Where the claim has been reimbursed or is reimbursable, by an insurance policy, self-insurance program or other financial mechanism.

5. No person shall receive reimbursement from the Fund for third party bodily injury or property damage claims:

(a) Where the release, occurrence, injury or property damage is caused, in whole or in part, by the willful misconduct or negligence of the claimant, his employee or agent, or anyone within his privity or knowledge; or

(b) Where the claim has been reimbursed or is reimbursable, by an insurance policy, self-insurance program or other financial mechanism.

B. The Fund will be used to demonstrate financial responsibility requirements for owners or operators in excess of the amounts specified under § 4 B up to the $1 million or $2 million annual aggregate, as applicable, required by 40 CFR Part 280, Subpart H for both taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases from petroleum underground storage tanks.

C. This Fund may also be used for the following:

1. Costs incurred by the board for taking immediate corrective action to contain or mitigate the effects of any release of petroleum into the environment from an underground storage tank if such action is necessary, in the judgment of the board to protect human health and the environment.

2. Costs incurred by the board for taking both corrective action and third party liability claims up to $1 million for any release of petroleum into the environment from an underground storage tank:

a. Whose owner or operator cannot be determined by the board within 90 days; or

b. Whose owner or operator is incapable, in the judgment of the board, of carrying out such corrective action properly and paying for third party liability claims.

3. Costs incurred by the board for taking corrective action for any release of petroleum into the environment from tanks which are otherwise specifically listed in VR 680-13-02 § 1.1 as exemptions in the definition of an underground storage tank.

4. All other uses authorized by Virginia Code § 62.1-44.34:11.

D. The board shall seek recovery of Fund moneys expended for corrective action in accordance with Virginia Code § 62.1-44.34:11 where the owner or operator has violated substantive environmental regulations under VR 680-13-02 or this regulation.

E. The board shall have the right of subrogation for moneys expended from the Fund as compensation for bodily injury, death, or property damage against any person who is liable for such injury, death or damage.

F. No funds shall be paid for reimbursement of moneys expended by an owner or operator for corrective action and for compensating third parties for bodily injury and property damage prior to the effective date of this regulation.

G. No disbursements shall be made from the Fund for owners or operators who are federal government entities or whose debts and liabilities are the debts and liabilities of the United States.

The Fund will be used for all uses authorized by § 62.1-44.34:11 of the Code of Virginia in accordance with the requirements specified in VR 680-13-06.

§ 22. Notices to the State Water Control Board.

All requirements of this regulation for notification to the State Water Control Board shall be addressed as follows:

Mailing Address:

Executive Director
State Water Control Board
2111 North Hamilton Street
P.O. Box 11143
Richmond, Virginia 23230-1143

Location Address:

State Water Control Board
4900 Cox Road
Glen Allen, Virginia 23060

§ 23. Delegation of authority.

The executive director , or in his absence a designee acting for him , may perform any act of the board provided under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.

APPENDIX I

LETTER FROM CHIEF FINANCIAL OFFICER

NOTE: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.

I am the chief financial officer of [insert: name and address of the owner or operator*, or guarantor]. This letter is in support of the use of [insert: "the financial test of self-insurance," and/or "Guarantee"] to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

* Note: Where this document is to be utilized by a petroleum storage tank vendor, then the words "petroleum storage tank vendor" shall be substituted for "owner or operator" where appropriate.

Underground storage tanks at the following facilities are assured by this financial test by this [insert: "owner or operator," and/or "guarantor"]:

[List for each facility: the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to § 2.3 of VR 680-13-02 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements)]

A [insert: "financial test," and/or "guarantee"] is also used by this [insert: "owner or operator " or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under 40 CFR Parts 271 and 145:

EPA Regulation for each state of business operations (specify state):

..... Amount

Closure (§§ 264.143 and 265.143) ..... $ .....

Post-Closure Care (§§ 264.145 and 265.145) ..... $ .....

Liability Coverage (§§ 264.147 and 265.147) ..... $ .....

Corrective Action (§ 264.101(b)) ..... $ .....

Plugging and Abandonment (§§ 144.63) ..... $ .....

[Other State Programs (specify state)

Closure ..... $ .....

Post-Closure Care ..... $ .....

Liability Coverage ..... $ .....

Corrective Action ..... $ .....

Plugging and Abandonment ..... $ .....

Virginia Hazardous Waste Management Regulations:

Closure (VR 672-10-1 §§ 10.7.C. and 9.7.C) ..... $ .....

Post-Closure Care (VR 672-10-1 §§ 10.7.E and 9.7.E.) $ .....

Liability Coverage (VR 672-10-1 §§ 10.7.G. and 9.7.G.) ..... $ .....

Corrective Action (VR 672-10-1 § 10.5.L.2.) ..... $ .....

Plugging and Abandonment (40 CFR § 144.63) ..... $ .....

A [insert: "financial test," and/or "guarantee"] is also used by this [insert: "owner or operator," or "guarantor"] to demonstrate evidence of financial responsibility in the following amount for the operation of facilities and/or tank vessels in accordance with § 62.1-44.34:16 of the Code of Virginia:

The amount of annual aggregate coverage for facility(ies) ..... *$ .....*

The amount of annual aggregate coverage for tank vessel(s) ..... *$ .....*

..... TOTAL ..... $ .....

This [insert: "owner or operator," or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on ~~his~~ *the* financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of § 6.B are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of § 6.C are being used to demonstrate compliance with the financial test requirements.]

ALTERNATIVE I

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee ... $ .....

2. Amount of annual aggregate coverage for facilities and/or tank vessels covered by a finanicl test, and/or guarantee ..... $ .....

~~2.~~ *3.* Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or

guarantee ..... $ .....

~~3.~~ *4.* Sum of lines 1 ~~and~~ , 2 *and 3* ..... $ .....

~~4.~~ *5.* Total tangible assets ..... $ .....

~~5.~~ *6.* Total liabilities [if any of the amount reported on line ~~3~~ *4* is included in total liabilities, you may deduct that amount from this line or add that amount to line ~~6~~ *7*]
..... $.....

~~6.~~ *7.* Tangible net worth [subtract line ~~5~~ *6* from line ~~4~~ *5*]
..... $ .....

~~7.~~ *8.* Is line ~~6~~ *7* at least equal to line 1 above?
..... Yes ... No ...

~~8.~~ *9.* Is line ~~6~~ *7* at least equal to the sum of ~~line~~ *lines* 1 *and 2* plus 10 times line ~~2~~ *3* ? Yes ... No ...

~~9.~~ *10.* Have financial statements for the latest ~~fiscal~~ *financial reporting* year been filed with the Securities and Exchange Commission? Yes ... No ...

~~10.~~ *11.* Have financial statements for the latest ~~fiscal~~ *financial reporting* year been filed with the Energy Information Administration? Yes ... No ...

~~11.~~ *12.* Have financial statements for the latest ~~fiscal~~ *financial reporting* year been filed with the Rural Electrification Administration? Yes ... No ...

~~12.~~ *13.* Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of at least ~~BB ($200,000 to $299,999)~~ *equal to the amount of annual UST aggregate coverage being assured according to the table below* ?

Annual Aggregate Requirement	*Dun and Bradstreet Rating*	
$20,000	*EE*	*($20,000 to $34,999)*
$40,000	*DC*	*($50,000 to $74,999)*
$80,000	*CB*	*($125,000 to $199,000)*
$150,000	*BB*	*($200,000 to $299,999)*
$200,000	*BB*	*($200,000 to $299,999)*

[Answer "Yes" only if ~~both~~ *BOTH* criteria have been met.] Yes ... No ...

~~13.~~ *14.* If you did not answer Yes to one of lines ~~9~~ *10* through ~~12~~ *13* , please attach a report from an independent certified public accountant certifying that there are no material differences between the data reported in lines ~~4~~ *5* through ~~8~~ *9* above and the financial statements for the latest ~~fiscal~~ *financial reporting* year.

ALTERNATIVE II

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee ... $ .....

2. Amount of annual aggregate coverage for facilities and/or tank vessels covered by a financial test, and/or guarantee ..... $ .....

~~2.~~ *3.* Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee ..... $ .....

~~3.~~ *4.* Sum of lines 1 ~~and~~ , 2 *and 3* ..... $ .....

~~4.~~ *5.* Total tangible assets ..... $ .....

~~5.~~ *6.* Total liabilities [if any of the amount reported on line ~~3~~ *4* is included in total liabilities, you may deduct that amount from this line or add that amount to line ~~6~~ *7*]
..... $ .....

~~6.~~ *7.* Tangible net worth [subtract line ~~5~~ *6* from line ~~4~~ *5*]
..... $ .....

~~7.~~ *8.* Total assets in the U.S. [required only if less than 90 percent of assets are located in the U.S.] ..... $ .....

~~8.~~ *9.* Is line ~~6~~ *7* at least equal to line 1 above?
..... Yes ... No ...

~~9.~~ *10.* Is line ~~6~~ *7* at least equal to the sum of ~~line~~ *lines* 1 *and 2* plus 6 times the sum of line ~~2~~ *3* ? Yes ... No ...

~~10.~~ *11.* Are at least 90 percent of assets located in the U.S.? [If "No," complete line ~~11.~~ *12.*] Yes ... No ...

~~11.~~ *12.* Is line ~~7~~ *8* at least equal to the sum of ~~line~~ *lines* 1 *and 2* plus 6 times the sum of line ~~2~~ *3* ? Yes ... No ...

[Fill in either lines ~~12-15~~ *13-16* or lines ~~16-18~~ *17-19* :]

~~12.~~ *13.* Current assets ..... $ .....

~~13.~~ *14.* Current liabilities ..... $ .....

~~14.~~ *15.* Net working capital [subtract line ~~13~~ *14* from line ~~12~~ *13*] ..... $ .....

~~15.~~ *16.* Is line ~~14~~ *15* at least equal to the sum of ~~line~~ *lines* 1 *and 2* plus 6 times the sum of line ~~2~~ *3* ?
..... Yes ... No ...

~~16.~~ *17.* Current bond rating of most recent bond issue
..... Yes ... No ...

~~17.~~ *18.* Name of rating service Yes ... No ...

~~18.~~ *19.* Date of maturity of bond Yes ... No ...

~~19.~~ *20.* Have financial statements for the latest ~~fiscal~~

financial reporting year been filed with the SEC, the Energy Information Administration, or the Rura Electrification Administration? Yes ... No ...

[If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines ~~4-18~~ *15-19* above and the financial statements for the latest ~~fiscal~~ *financial reporting* year.]

[For Alternatives I and II complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in Appendix I of VR 680-13-03 as such regulations were constituted on the date shown immediately below.

[Signature]
[Name]
[Title]
[Date]

APPENDIX II

GUARANTEE

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state of [insert name of state], herein referred to as guarantor, to the State Water Control Board of the Commonwealth of Virginia and to any and all third parties, and obligees, on behalf of [owner or operator*] of [business address].

* Note: Where this document is to be utilized by a petroleum storage tank vendor, then the words "petroleum storage tank vendor" shall be substituted for "owner or operator" where appropriate.

Recitals.

(1) Guarantor meets or exceeds the financial test criteria of § 6.B or C and D of the Virginia Petroleum Underground Storage Tank Financial Requirement Regulation VR 680-13-03, and agrees to comply with the requirements for guarantors as specified in § 7.B of VR 680-13-03.

(2) [Owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to § 2.3. of VR 680-13-02 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements), and the name and address of the facility.] This guarantee satisfies VR 680-13-03 requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location! arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related firm of the owner or operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to the State Water Control Board and to any and all third parties that:

In the event that [owner or operator] fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this guarantee and the State Water Control Board has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the State Water Control Board, shall fund a standby trust fund in accordance with the provisions of § 17 of VR 680-13-03, in an amount not to exceed the coverage limits specified above.

In the event that the State Water Control Board determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with Part VI of VR 680-13-02 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements), the guarantor upon written instructions from the State Water Control Board shall fund a standby trust in accordance with the provisions of § 17 of VR 680-13-03, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the State Water Control Board, shall fund a standby trust in accordance with the provisions of § 17 of VR 680-13-03 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of § 6.B or C and

D of VR 680-13-03, guarantor shall send within 120 days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate 120 days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to VR 680-13-02 and VR 680-13-03.

(7) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial responsibility requirements of VR 680-13-03 for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator] under a workers compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of § 4 of VR 680-13-03.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the State Water Control Board, by any or all third parties, or by [owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in Appendix II of VR 680-13-03 as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]

Signature of witness or notary:

APPENDIX III

ENDORSEMENT

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number:

Period of Coverage: [current policy period]

Name of [Insurer or Group Self-Insurance Pool]:

Address of [Insurer or Group Self-Insurance Pool]:

Name of Insured:

Address of Insured:

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks in connection with the insured's obligation to demonstrate financial responsibility under the Virginia Petroleum Underground Storage Tank Financial Requirements Regulation (VR 680-13-03):

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to § 2.3 of VR 680-13-02 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements), and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or

location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the corrective action "each occurence" and third party "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) through (d) for occurrence policies and (a) through (e) for claims-made policies of this paragraph 2 are hereby amended to conform with subsections (a) through (e):

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Pool"] of its obligations under the policy to which this endorsement is attached.

b. The ["Insurer" or "Pool"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Pool"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in §§ 6 through 11 of VR 680-13-03.

c. Whenever requested by the State Water Control Board, the ["Insurer" or "Pool"] agrees to furnish to State Water Control Board a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Pool"], except for nonpayment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for nonpayment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 15 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:]

e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Pool"] within six months of the effective date of cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.

I hereby certify that the wording of this endorsement is in no respect less favorable than the coverage specified in Appendix III of VR 680-13-03 and has been so certified by the State Corporation Commission of the Commonwealth of Virginia. I further certify that the ["Insurer" or "Pool"] is ["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in the Commonwealth of Virginia"].

[Signature of authorized representative of Insurer or Group Self-Insurance Pool]
[Name of person signing]
[Title of person signing], Authorized Representative of
[name of Insurer or Group Self-Insurance Pool]
[Address of Representative]

APPENDIX IV

CERTIFICATE OF INSURANCE

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number:

Endorsement (if applicable):

Period of Coverage: [current policy period]

Name of [Insurer or Group Self-Insurance Pool]:

Address of [Insurer or Group Self-Insurance Pool]:

Name of Insured:

Address of Insured:

Certification:

1. [Name of Insurer or Group Self-Insurance Pool], [the "Insurer" or "Pool"], as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tank(s) in connection with the insured's obligation to demonstrate financial responsibility under the Virginia Petroleum Underground Storage Tank Financial Requirements Regulation (VR 680-13-03):

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to § 2.3 of VR 680-13-02 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements), and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the corrective action "each occurrence" and third party "each occurrence" and "annual aggregate" limits of the Insurer's or Groups liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["Insurer" or "Pool"] further certifies the following with respect to the insurance described in Paragraph 1:

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Pool"] of its obligations under the policy to which this certificate applies.

b. The ["Insurer" or "Pool"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Pool"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in §§ 6 through 11 of VR 680-13-03.

c. Whenever requested by the State Water Control Board, the ["Insurer" or "Pool"] agrees to furnish to the State Water Control Board a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Pool"], except for nonpayment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for nonpayment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 15 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies]

e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Pool"] within six months of the effective date of cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.

I hereby certify that the wording of this instrument is identical to the wording in Appendix IV of VR 680-13-03 and that the ["Insurer" or "Pool"] is ["licensed to transact the business of insurance, or eligible to provide insurance as an excess or approved surplus lines insurer, in the Commonwealth of Virginia"].

[Signature of authorized representative of Insurer]
[Type name] [Title], Authorized Representative of [name of Insurer or Group Self Insurance Pool]
[Address of Representative]

APPENDIX V

PERFORMANCE BOND

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Date bond executed:

Period of coverage:

Principal: [legal name and business address of owner or operator]* Type of organization: [insert "individual" "joint venture," "partnership," or "corporation"]

State of incorporation (if applicable):

* Note: Where this document is to be utilized by a petroleum storage tank vendor, then the words "petroleum storage tank vendor" shall be substituted for "owner or operator" where appropriate. Surety(ies): [name(s) and business address(es)]

Scope of Coverage: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to § 2.3 of VR 680-13-02 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements), and the name and address of the facility. List the coverage guaranteed by the bond: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" "arising from operating the underground storage tank"].

Penal sums of bond:
Corrective Action (per occurrence ..... $ .....
Third Party Liability (per occurrence) ..... $ .....
Annual aggregate ..... $ .....

Surety's bond number:

Know All Persons by These Presents, that we, the principal and Surety(ies), hereto are firmly bound to the State Water Control Board of the Commonwealth of Virginia, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under §§ 62.1-44.34:8 through § 62.1-44.34:12 of the Code of Virginia, Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, and under the Virginia Petroleum Underground Storage Tank Financial Requirements Regulation (VR 680-13-03), to provide financial assurance for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully ["take corrective action, in accordance with Part VI of VR 680-13-02 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements) and the State Water Control Board's instructions for," and/or "compensate injured third parties for bodily injury and property damage caused by" either "sudden" or "nonsudden" or "sudden and nonsudden"] accidental releases arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in VR 680-13-03, within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator*] under a workers compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of § 4 of VR 680-13-03.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the State Water Control Board that the Principal has failed to ["take corrective action, in accordance with Part VI of VR 680-13-02 and the State Water Control Board's instructions," and/or "compensate injured third parties"] as guaranteed by this bond, the Surety(ies) shall either perform ["corrective action in, accordance with VR 680-13-02 and the Board's instructions," and/or "third-party liability compensation"] or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the State Water Control Board under § 17 of VR 680-13-03.

Upon notification by the State Water Control Board that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the State Water Control Board has determined or suspects that a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the State Water Control Board under § 17 of VR 680-13-03.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Thereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in Appendix V of VR 680-13-03 as such regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]

CORPORATE SURETY(IES)

[Name and address]
State of Incorporation:
Liability limit: $ ....
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $ ....

APPENDIX VI

IRREVOCABLE STANDBY LETTER OF CREDIT

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

[Name and address of issuing institution] [Name and address of the Executive Director of the State Water Control Board of the Commonwealth of Virginia and Director(s) of other state implementing agency(ies)] Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No .... in your favor, at the request and for the account of [owner or operator* name] of [address] up to the aggregate amount of [in words] U.S. dollars ($[insert dollar amount]), available upon presentation [insert, if more than one Director of a state implementing agency is a beneficiary, "by any one of you"] of

(1) your sight draft, bearing reference to this letter of credit, No..... and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of §§ ~~62.1-44.34:8~~ ~~9~~ *62.1-44.34:9* through 62.1-44.34:12 of the Code of Virginia and Subtitle I of the Resource Conservation and Recovery Act of 1976, as amended."

* Note: Where this document is to be utilized by a petroleum storage tank vendor, then the words "petroleum storage tank vendor" shall be substituted for "owner or operator" where appropriate. that the amount of the draft is payable pursuant to regulations issued under authority of §§ 62.1-44.34:8 through 62.1-44.34:12 of the Code of Virginia and Subtitle I of the Resource Conservation and Recovery Act of 1976, as amended."

This letter of credit may be drawn on to cover [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of [in words] $ [insert dollar amount] per occurrence and [in words] $ [insert dollar amount] annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification

number provided in the notification submitted pursuant to § 2.3 of VR 680-13-02 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements), and the name and address of the facility.]

The letter of credit may not be drawn on to cover any of the following:

(a) Any obligation, of [insert owner or operator*] under a workers compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of § 4 of VR 680-13-03 (Virginia Petroleum Underground Storage Tank Financial Requirements Regulation).

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify [owner or operator] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [owner or operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by [owner or operator], as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner or operator] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in Appendix VI of VR 680-13-03 as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

APPENDIX VII

TRUST AGREEMENT

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator*], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "Incorporated in the state of ....." or "a national bank"], the "Trustee."

Whereas, the State Water Control Board of the Commonwealth of Virginia has established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank. The attached Schedule A lists the number of tanks at each facility and the name(s) and address(es)

* Note: Where this document is to be utilized by a petroleum storage tank vendor, then the words "petroleum storage tank vendor" shall be substituted for "owner or operator" where appropriate. of the facility(ies) where the tanks are located that are covered by the standby trust agreement.;

Whereas, the Grantor has elected to establish [insert either "a guarantee," "surety bond," or "letter of credit"] to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.);

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) "VR 680-13-03" is the Petroleum Underground Storage Tank Financial Requirements Regulation promulgated by the State Water Control Board for the Commonwealth of Virginia.

Section 2. Identification of the Financial Assurance Mechanism.

This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

Section 3. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the State Water Control Board of the Commonwealth of Virginia. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. [The Fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to the State Water Control Board's instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the State Water Control Board.

Section 4. Payment for ["Corrective Action" and/or "Third-Party Liability Claims"].

The Trustee shall make payments from the Fund as the State Water Control Board shall direct, in writing, to provide for the payment of the costs of [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

(a) Any obligation of [insert, owner or operator] under a workers compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of § 4 of VR 680-13-03.

The Trustee shall reimburse the Grantor, or other persons as specified by the State Water Control Board, from the Fund for corrective action expenditures and/or third-party liability claims in such amounts as the State Water Control Board shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the State Water Control Board specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section 6. Trustee Management.

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee.

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel.

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee.

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as

are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests and instructions by the State Water Control Board to the Trustee shall be in writing, signed by the Executive Director of the State Water Control Board, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the State Water Control Board hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the State Water Control Board, except as provided for herein.

Section 14. Amendment of Agreement.

This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the State Water Control Board if the Grantor ceases to exist.

Section 15. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the State Water Control Board, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 16. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the State Water Control Board issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law.

This Agreement shall be administered, construed, and enforced according to the laws of the Commonwealth of Virginia, or the Comptroller of the Currency in the case of National Association banks.

Section 18. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in Appendix VII of VR 680-13-03 as such regulations were constituted on the date written above.

[Signature of Grantor]
[Name of the Grantor]
[Title]

Attest:

[Signature of Trustee]
[Name of the Trustee]
[Title]
[Seal]

[Signature of Witness]
[Name of Witness]
[Title]
[Seal]

APPENDIX VIII

CERTIFICATION OF ACKNOWLEDGEMENT

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

State of

County of

On this [date], before me personally came [owner or operator*] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]
[Name of Notary Public]
My Commission expires:

* Note: Where this document is to be utilized by a petroleum storage tank vendor, then the words "petroleum storage tank vendor" shall be substituted for "owner or operator" where appropriate.

APPENDIX IX

CERTIFICATION OF FINANCIAL RESPONSIBILITY

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

[Owner or operator or petroleum storage tank vendor] hereby certifies that it is in compliance with the requirements of VR 680-13-03 (Petroleum Underground Storage Tank Financial Requirements Regulation).

The financial assurance mechanisms! used to demonstrate financial responsibility under VR 680-13-03 is [are] as follows:

[For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage and whether the mechanism covers "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases."]

[Signature of owner or operator or petroleum storage tank vendor]
[Name of owner or operator or petroleum storage tank vendor] [Title] [Date]
[Signature of notary]
[Name of notary] [Date] My Commission expires:

APPENDIX X

CERTIFICATION OF VALID CLAIM

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

The undersigned, as principals and as legal representatives of [insert owner or operator*] and [insert name and address of third-party claimant], hereby certify that the claim of bodily injury [and/or] property damage caused by an accidental release arising from operating [owner's or operator's] underground storage tank should be paid in the amount of $.

[Signatures] ..... [Signature(s)]
Owner or Operator ..... Claimant(s)

Attorney for ..... Attorney(s) for
Owner or Operator ..... Claimant(s)

(Notary) Date ..... (Notary) Date

* Note: Where this document is to be utilized by a petroleum storage tank vendor, then the words "petroleum storage tank vendor" shall be substituted for "owner or operator" where appropriate.

APPENDIX XI

LETTER FROM CHIEF FINANCIAL OFFICER (Short Form)

[Note: This Appendix may onley be used by owners, operators or petroleum storage tank vendors who do not own or operate hazardous waste facilities, underground injection control wells, aboveground storage tank facilities or tank vessels.]

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

I am the chief financial officer of [insert: name and address of the owner or operator, or guarantor]. This letter is in support of the use of [insert: "the financial test of self-insurance," and/or "Guarantee"] to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).*

Underground storage tanks at the following facilities are assured by this financial test by this [insert: "owner or operator," and/or "guarantor"]:

[List for each facility: the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to § 2.3 of VR 680-13-02 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements).]

** Note: Where this document is to be utilized by a petroleum storage tank vendor, then the words "petroleum storage tank vendor" shall be substituted for "owner or operator" where appropriate.*

I am not required to demonstrate evidence of financial responsibility for any other EPA regulation or state programs authorized by EPA or for operation of facilities and/or tank vessels in accordance with § 62.1-44.34:16 of the Code of Virginia.

I have not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on the financial statements for the latest completed fiscal year.

[Fill in the information below to demonstrate compliance with the financial test requirements.]

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee $ .....

2. Total tangible assets ..... $ .....

3. Total liabilities [if any of the amount reported on line 1 is included in total liabilities, you may deduct that amount from this line or add that amount to line 4] ..... $ .....

4. Tangible net worth [subtract line 3 from line 2] $ .....

5. Is line 4 at least equal to line 1 above ..... Yes .... No .....

6. Have financial statements for the latest financial reporting year been filed with the Securities and Exchange Commission? ..... Yes .... No .....

7. Have financial statements for the latest financial reporting year been filed with the Energy Information Administration? ..... Yes .... No .....

8. Have financial statements for the latest financial reporting year been filed with the Rural Electrification Administration? ..... Yes .... No .....

9. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating at least equal to the amount of annual UST aggregate coverage being assured according to the table below? .. Yes .... No .....

Annual Aggregate Requirement	Dun and Bradstreet Rating
$20,000	EE ($20,000 to $34,999)
$40,000	DC ($50,000 to $74,999)
$80,000	CB ($125,000 to $199,999)
$150,000	BB ($200,000 to $299,999)
$200,000	BB ($200,000 to $299,999)

[Answer ''Yes'' only if BOTH criteria have been met.] ....

If you did not answer Yes to one of lines 6 through 9, please attach a report from an independent certified public accountant certifying that there are no material differences between the data reported in lines 2 through 5 above and the finanical statements for the latest financial reporting year.

I hereby certify that the wording of this letter is identical to the wording specified in Appendix XI of VR 680-13-03 as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

* * * * * * * *

Title of Regulation: **VR 680-13-06. Virginia Petroleum Storage Tank Fund.**

Statutory Authority: § 62.1-44.34:10, 62.1-44.34:11, 62.1-44.34:12, and 62.1-44.15 (10) of the Code of Virginia.

Public Hearing Dates:
February 9, 1993 - 2 p.m.
February 10, 1993 - 2 p.m.
February 12, 1993 - 3 p.m.
February 18, 1993 - 7 p.m.
February 23, 1993 - 2 p.m.
Written comments may be submitted through March 15, 1993.
(See Calendar of Events section for additional information)

Summary:

Recent changes by the General Assembly to Article 10 of the State Water Control Law necessitate the development of a new regulation to administer the Virginia Petroleum Storage Tank Fund (Fund). This proposed regulation retains much of what is currently in effect from § 21 (Virginia Underground Petroleum Storage Tank Fund) of VR 680-13-03 and establishes requirements for access to the Fund for reimbursement of corrective action costs for certain classes of aboveground and underground storage tanks. Owners and operators of regulated petroleum underground storage tank (UST) systems, operators of facilities with oil aboveground storage tanks, operators of farm or residential motor fuel USTs having a capacity of 1,100 gallons or less and operators of underground and aboveground storage tanks containing heating oil with a capacity of 5,000 gallons or less have access to the Fund above their financial responsibility requirements up to a total of $1 million per occurrence.

The proposed regulation clarifies requirements for access to the Fund by owners and operators of USTs to compensate third parties for bodily injury and property damage. The proposed regulation will also address agency requirements to conduct clean ups where an emergency exists, where the responsible party is unknown or financially incapable or where it is more practical for the agency to conduct the cleanup.

The federal financial responsibility regulation for owners and operators of petroleum USTs requires a demonstration of financial assurance of $1 million per occurrence and an annual aggregate of $1 or $2 million for corrective action and third party claims for bodily injury and property damage. This proposed regulation in conjunction with the proposed amendments to the Petroleum Underground Storage Tank Financial Responsibility Requirements (VF

680-13-03) will enable regulated petroleum UST owners to meet the federal requirement. The Fund will be used to demonstrate costs above the new state financial responsibility requirements (sliding scale: total of $20,000 to $200,000 per occurrence and annual aggregate) and thereby comply with federal requirements for demonstration of financial responsibility.

The State Water Control Board will administer the Fund in accordance with this regulation.

VR 680-13-06. Virginia Petroleum Storage Tank Fund Requirements.

§ 1. Definitions.

The following words and terms, when used in this regulation, shall have the following meaning, unless the context clearly indicates otherwise:

"Aboveground storage tanks" means any one or combination of tanks, including pipes used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than 90% above the surface of the ground. This term does not include (i) line pipe and breakout tanks of an interstate pipeline regulated under the Hazardous Liquid Pipeline Safety Act of 1979 and (ii) flow through process equipment used in processing or treating oil by physical, biological, or chemical means.

"Accidental release" means any sudden or nonsudden release of petroleum from an UST system, an exempt UST 1 and 2, a small heating oil aboveground storage tank or a facility that results in a need for corrective action or compensation for bodily injury or property damage where such was neither expected nor intended by the owner or operator.

"Annual basis" means the financial reporting year immediately preceding the year for which the owner or operator of an UST system or the operator of a facility is demonstrating financial responsibility.

"Board" means the State Water Control Board.

"Bodily injury" means the death or injury of any person incident to an accidental release from a petroleum UST system, but not including any death, disablement, or injuries covered by worker's compensation, disability benefits or unemployment compensation law or other similar law. Bodily injury may include payment of medical, hospital, surgical, and funeral expenses arising out of the death or injury of any person. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

"Claimant" means an owner or operator of an UST system, operator of an exempt UST 1 and 2, operator of a small heating oil aboveground storage tank or an operator of a facility who has submitted an application for reimbursement from the Fund.

"Corrective action" means all actions necessary to abate, contain and clean up a release from an UST system, an exempt UST 1 and 2, a small heating oil aboveground storage tank or a facility; to mitigate the public health or environmental threat from such releases and to rehabilitate state waters. Corrective action for an UST system must be conducted in accordance with Parts V and VI of VR 680-13-02. Corrective action for an exempt UST 1 and 2, a small heating oil aboveground storage tank or a facility shall include the requirements for containment and cleanup as defined in § 62.1-44.34:14 of the Code of Virginia and must be conducted in accordance with § 62.1-44.34:18 of the Code of Virginia. This term includes the provision of an alternate water supply and actions necessary to abate, contain and clean up a release conducted on the property of a third party who is neither the owner nor the operator of the leaking UST system, or the operator of an exempt UST 1 and 2, or the operator of a small heating oil aboveground storage tank, or the operator of the facility. The term does not include those actions normally associated with closure or change in service as set out in Part VII of VR 680-13-02 or the replacement of an UST system, or an exempt UST 1 and 2, or a small heating oil aboveground storage tank, or a facility.

"Exempt UST 1 and 2" means an underground storage tank exempted in subdivisions 1 and 2 of the definition of an underground storage tank.

"Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil, and includes aboveground storage tanks. The term does not include UST systems or pipelines.

"Financial reporting year" means the latest consecutive 12-month fiscal or calendar year period.

"Fund" means the Virginia Petroleum Storage Tank Fund established by § 62.1-44.34:11 of the Code of Virginia.

"Legal defense cost" is any expense that an owner or operator of an UST system, operator of an exempt UST 1 and 2, operator of a small heating oil aboveground storage tank or an operator of a facility incurs in defending against claims or actions brought (i) by the federal government or the board to require corrective action or to recover the costs of corrective action, or to collect civil penalties under federal or state law or to assert any claim on behalf of the Fund; (ii) by or on behalf of a third party for bodily injury or property damage caused by an accidental release; or (iii) by any person to enforce the terms of a financial assurance mechanism.

"Occurrence" means an accident, including continuous

or repeated exposure to conditions, which results in a release from an UST system, an exempt UST 1 and 2, a small heating oil aboveground storage tank, or a facility. Note: This definition is intended to assist in the understanding of this regulation and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."

"Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity.

"Operator of a facility" means any person who owns, operates, rents or otherwise exercises control over or responsibility for a facility.

"Operator of an exempt UST 1 and 2" means any person who owns, operates, rents or otherwise exercises control over or responsibility for an exempt UST 1 and 2.

"Operator of a small heating oil aboveground storage tank" means any person who owns, operates, rents or otherwise exercises control over or responsibility for a small heating oil aboveground storage tank.

"Operator of an UST system" means any person in control of, or having responsibility for, the daily operation of the UST system.

"Owner of an UST system" means:

1. In the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and

2. In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

"Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.

"Petroleum" means petroleum, including crude oil or any fraction thereof, that is liquid at standard conditions of temperature and pressure (60°F and 14.7 pounds per square inch absolute).

"Petroleum pumped" means either the amount pumped into or the amount pumped out of a petroleum underground storage tank.

"Property damage" means the loss or destruction of, or damage to, the property of any third party including any loss, damage or expense incident to an accidental release from a petroleum UST system. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from UST systems which are covered by the policy.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an UST system, an exempt UST 1 and 2, a small heating oil aboveground storage tank, or a facility into ground water, surface water or upon lands, subsurface soils, or storm drain systems.

"Small heating oil aboveground storage tank" means any aboveground storage tank with a capacity of 5,000 gallons or less, used for storing heating oil for consumption on the premises where stored.

"Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground. This term does not include any:

1. Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

2. Tank used for storing heating oil for consumption on the premises where stored, except for tanks having a capacity of more than 5,000 gallons and used for storing heating oil;

3. Septic tank;

4. Pipeline facility (including gathering lines) regulated under:

a. The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671 et seq.), or

b. The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001 et seq.), or

c. Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in subdivision 4 a or 4 b of this definition;

5. Surface impoundment, pit, pond, or lagoon;

6. Stormwater or wastewater collection system;

7. Flow-through process tank;

8. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

9. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor. The term "underground storage tank" or "UST" does not include any pipes connected to any tank which is described in subdivisions 1 through 9 of this definition.

"UST system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

"VR 680-13-02" means the Underground Storage Tanks; Technical Standards and Corrective Action Requirements Regulation promulgated by the board.

"VR 680-13-03" means the Petroleum Underground Storage Tank Financial Responsibility Requirements Regulation promulgated by the board.

"VR 680-14-14" means the Facility Financial Responsibility Requirements Regulation promulgated by the board.

§ 2. Purpose.

The purpose of this regulation is to establish requirements for using the Fund. The Fund may be used for the following purposes:

1. To administer the state regulatory programs authorized by § 62.1-44.34:8 et seq. of the Code of Virginia;

2. As a mechanism for owners and operators of UST systems to demonstrate financial responsibility;

3. To reimburse owners or operators of UST systems, operators of exempt USTs 1 and 2, operators of small heating oil aboveground storage tanks and operators of facilities;

4. For all uses authorized by § 62.1-44.34:11 of the Code of Virginia in accordance with the requirements specified in this regulation; and

5. For other purposes as provided for by applicable provisions of state and federal law.

§ 3. Applicability.

A. This regulation applies to owners and operators of UST systems, operators of exempt USTs 1 and 2, operators of small heating oil aboveground storage tanks, and operators of facilities, except as otherwise provided herein.

B. Nothing in this regulation shall limit in any way the liability of an owner or operator of an UST system, an operator of an exempt UST 1 and 2, an operator of a small heating oil aboveground storage tank, and an operator of a facility to perform corrective action.

§ 4. Demonstration of financial responsibility by owners and operators of UST systems.

The Fund is used by owners and operators of UST systems to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases of petroleum from UST systems in excess of the financial responsibility requirements specified in § 4 A of VR 680-13-03 up to $1 million per occurrence.

§ 5. Reimbursement from the fund for corrective action costs.

A. Except as otherwise provided in this regulation, the Fund will be used to reimburse:

1. Owners or operators of UST systems for reasonable and necessary costs incurred for taking corrective action, resulting from an accidental release of petroleum from an UST system, in accordance with Parts V and VI of VR 680-13-02;

2. Operators of exempt USTs 1 and 2 for reasonable and necessary costs incurred for taking corrective action, resulting from an accidental release of petroleum from an exempt UST 1 and 2, as directed by the board in accordance with § 62.1-44.34:18 of the Code of Virginia;

3. Operators of small heating oil aboveground storage tanks for reasonable and necessary costs incurred for taking corrective action, resulting from an accidental release of oil from a small heating oil aboveground storage tank, as directed by the board in accordance with § 62.1-44.34:18 of the Code of Virginia;

4. Operators of facilities for reasonable and necessary costs incurred for taking corrective action, resulting from an accidental release of oil from a facility, as directed by the board in accordance with § 62.1-44.34:18 of the Code of Virginia; and

5. In cases where the owner and operator are unknown or incapable, any person who assumes liability for performing the corrective action, resulting from an accidental release of petroleum or oil, in accordance with subdivisions A 1 through A 4 of this section.

B. Funds shall be paid for reimbursement in excess of the applicable financial responsibility requirements specified in §§ 6, 7 and 8 for moneys expended for corrective action by:

1. An owner or operator of an UST system; or

2. An operator of an exempt UST 1 and 2; or

3. An operator of a small heating oil aboveground storage tank.

The date the release occurred shall be used to determine the applicable financial responsibility requirement for reimbursement claims.

C. Funds shall be paid for reimbursement in excess of the applicable financial responsibility requirements specified in § 9 for moneys expended after January 29, 1992, by an operator of a facility for corrective action resulting from a release from a facility of a product subject to § 62.1-44.34:13 of the Code of Virginia.

D.1. Applications for reimbursement shall be made to the board in a manner prescribed by the board and shall include sufficient documentation, in the opinion of the board, to evaluate the costs incurred.

2. In order to be eligible for reimbursement, the claimant must provide a complete reimbursement application to the board. No application will be considered for reimbursement processing until the claimant has:

a. Provided sufficient documentation to determine the claimant's applicable level of financial responsibility required in accordance with § 6, 7, 8 or 9 of this regulation;

b. Provided all information required by the application forms;

c. Provided sufficient documentation to evaluate the claim;

d. Provided proof of payment for each cost incurred;

e. Submitted the notification form required in VR 680-13-02 or VR 680-14-12, if applicable; and

f. Complied with the instructions of the board and the requirements for corrective action.

E. The board will conduct an initial review of the application and will notify the claimant if additional documentation is required. After the initial review has been completed by the board, the application will be placed on a reimbursement evaluation list.

F. The board will evaluate each completed application to determine which costs are reimbursable from the Fund. Subject to the requirements specified in §§ 5 A, 6, 7, 8, 9, 10, and 11 of this regulation, the board will approve reimbursement of reasonable and necessary costs incurred by the claimant.

G. A claimant may submit up to six reimbursement applications for each occurrence during any calendar year. Each application must request reimbursement for at least $10,000 in costs, unless the claimant is filing a final reimbursement application.

H. A claimant who receives reimbursement from the Fund shall be required to maintain all records supporting the claim for seven years from the date of reimbursement. The board may require the claimant to submit records relevant to compliance with this regulation at any time.

§ 6. Reimbursement from the Fund for owners and operators of UST systems.

A. For releases which occurred between December 22, 1989, and July 1, 1992, the Fund will be used for costs in excess of the following per occurrence financial responsibility requirements up to $1 million for both taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases of petroleum from UST systems:

1. $50,000 for corrective action; and

2. $150,000 for compensating third parties for bodily injury and property damage.

Corrective action disbursements for accidental releases with no associated third party disbursements shall not exceed $950,000 per occurrence. Third party disbursements for accidental releases with no corrective action disbursements from the Fund shall not exceed $850,000 per occurrence. Combined corrective action and third party disbursements from the Fund for each occurrence shall not exceed $800,000. Per occurrence disbursements from the Fund up to $1 million shall include costs incurred under § 11 for board managed corrective action.

B. For releases which occur on or after July 1, 1992, the Fund will be used for costs in excess of the per occurrence financial responsibility requirements specified in § 4 A of VR 680-13-03 up to $1 million for both taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases of petroleum from UST systems. Per occurrence disbursements from the Fund up to $1 million shall include costs incurred under § 11 for board managed corrective action.

1. Reimbursement of corrective action costs for an accidental release from a petroleum UST system with no associated third party disbursements from the Fund shall not exceed the following per occurrence amounts for each level of the financial responsibility requirements specified in § 4 A of VR 680-13-03:

a. $995,000 for the $5,000 corrective action requirement;

b. $990,000 for the $10,000 corrective action

requirement;

c. $980,000 for the $20,000 corrective action requirement;

d. $970,000 for the $30,000 corrective action requirement;

e. $950,000 for the $50,000 corrective action requirement.

2. Third party disbursements for accidental releases from petroleum UST systems with no corrective action cost disbursements from the Fund shall not exceed the following per occurrence amounts for each level of the financial responsibility requirements specified in § 4 A of VR 680-13-03:

a. $985,000 for the $15,000 third party requirement;

b. $970,000 for the $30,000 third party requirement;

c. $940,000 for the $60,000 third party requirement;

d. $880,000 for the $120,000 third party requirement;

e. $850,000 for the $150,000 third party requirement.

3. Combined corrective action and third party disbursements from the Fund for accidental releases from petroleum UST systems shall not exceed the following per occurrence amounts for each level of the financial responsibility requirements specified in § 4 A of VR 680-13-03:

a. $980,000 for the $20,000 combined requirement;

b. $960,000 for the $40,000 combined requirement;

c. $920,000 for the $80,000 combined requirement;

d. $850,000 for the $150,000 combined requirement;

e. $800,000 for the $200,000 combined requirement.

4. Owners and operators of petroleum UST systems must demonstrate financial responsibility and must provide to the board documentation of their demonstration and level of financial responsibility requirement.

a. The access level to the Fund shall be based on the applicable financial responsibility requirement demonstrated in accordance with VR 680-13-03.

b. The records to be submitted in support of the financial responsibility requirement shall be those documents specified in § 4 C of VR 680-13-03.

C. The owner or operator of an UST system must pay the financial responsibility requirement specified in this section for each occurrence.

D. Where the owner and operator of an UST system are unknown or incapable, any person who assumes liability for performing corrective action will have access to the Fund at the level of financial responsibility which would have been required from the owner or operator. The person assuming liability shall provide evidence documenting the owner's and the operator's level of financial responsibility in accordance with either subsection A or B of this section, depending on the date the release occurred. Based on this evidence, the board will make a determination on the appropriate level for the person's access to the Fund, but in no event will this level be lower than $5,000 for corrective action and $15,000 for third party claims.

E. Where the owner or operator of an UST system and operator of a facility is the same person, and there is a release from a facility which is determined by the board to be part of the same occurrence, the UST owner's or operator's level of access to the Fund will be determined in accordance with § 6 or § 9 of this regulation, whichever level of access to the Fund is higher.

F. The first priority for per occurrence disbursements from the Fund shall be for corrective action. Because third party claims have a lower Fund payment priority than corrective action costs, third party claims will not be considered for payment from the Fund until all necessary corrective action has been completed for that occurrence.

1. Third party liability claims against the Fund shall only be paid:

a. In accordance with final court orders where the board has received the written notice required by this section and has been given an opportunity to intervene in the litigation; or

b. Where the board has received the written notice required by this section and has agreed to a settlement of the claim with the third party.

2. The person who intends to file a third party claim against the Fund shall send written notice of the third party claim containing the information specified in this section to the executive director by certified mail. This notice must be received by the executive director prior to the initiation of litigation or prior to the execution of any settlement agreement between the owner or operator of the UST system and the third party.

3. This notice must identify the owner's or operator's name and address, if known; the underground storage tank(s) location by site name, street address and board incident designation number; the third party's name and address; and include a statement describing each item claimed and identifying the amount of the

claim for that item.

a. If the person is filing a notice of a third party claim pursuant to a lawsuit, copies of all subsequent pleadings and answers filed in the litigation must be sent by certified mail to the executive director in order to comply with this notice requirement.

b. If the person is filing a notice of a third party claim pursuant to a settlement agreement, the notice must include the amount and terms of the proposed settlement.

4. No third party claim will be considered for payment where the owner or operator of the UST system fails to:

a. Provide the executive director with written notice as specified in subdivisions F 2 and F 3 of this section;

b. Adequately defend, for any reason whatsoever, all issues as to liability and damages which are raised in the third party lawsuit; or

c. Provide any additional documentation required by the board.

5. In the case where the owner or operator of the UST system has been determined to be unknown or incapable by the board, no third party claim will be considered for payment where the third party fails to:

a. Provide the executive director with written notice as specified in subdivisions F 2 and F 3 of this section; or

b. Provide any additional documentation required by the board.

6. The board does not need to be named as a party in a lawsuit in order for the owner or operator of the UST system to have access to the Fund.

7. Upon the request of the board, the person who intends to file a third party claim against the Fund must submit a copy of any interrogatory and request for stipulations or admissions resulting from litigation relating to any claims arising under this section.

8. The board reserves the right to review all evidence supporting a third party claim prior to making any determination concerning the payment of the claim from the Fund and to establish the amount the Fund will pay to third parties for each occurrence on a case-by-case basis.

9. Upon acceptance of a settlement agreement, the board will provide written approval of the final settlement of the third party claim to all interested parties. No payment will be made from the Fund until the third party has executed any documents required by the board to process payment from the Fund and to waive future claims against the Fund.

§ 7. Reimbursement from the Fund for underground storage tanks exempted in subdivisions 1 and 2.

A. For releases which occurred between December 22, 1989, and July 1, 1992, the Fund will be used for costs in excess of $50,000 per occurrence up to $1 million for taking corrective action resulting from an accidental release of petroleum from an underground storage tank exempted in subdivisions 1 and 2 of the definition of an underground storage tank in this regulation. Per occurrence disbursements from the Fund up to $1 million shall include costs incurred under § 11 for board managed corrective action.

B. For releases which occurred after July 1, 1992, the Fund will be used for costs in excess of $2,500 up to $1 million per occurrence for taking corrective action resulting from an accidental release of petroleum from an underground storage tank exempted in subdivisions 1 and 2 of the definition of an underground storage tank in this regulation. Per occurrence disbursements from the Fund up to $1 million shall include costs incurred under § 11 for board managed corrective action.

C. The operator of an exempt UST 1 and 2 has access to the Fund at the applicable level specified in subsection A or B of this section, unless there is a release from an UST system or from a facility or both which is determined by the board to be part of the same occurrence. If the occurrence includes a release from an UST system or from a facility or both, the operator's level of access to the Fund will be determined in accordance with § 6 or § 9 of this regulation, whichever level of access to the Fund is higher.

D. The operator of an exempt UST 1 and 2 must submit sufficient information to the board to document the level of access to the Fund.

E. The operator of an exempt UST 1 and 2 must pay the financial responsibility requirement specified in this section for each occurrence.

§ 8. Reimbursement from the Fund for heating oil aboveground storage tanks with a capacity of 5,000 gallons or less.

A. For releases which occurred between December 22, 1989, and July 1, 1992, there is no access to the Fund for costs for taking corrective action resulting from an accidental release of oil from an aboveground storage tank with a capacity of 5,000 gallons or less used for storing heating oil for consumption on the premises where stored.

B. For releases which occurred after July 1, 1992, the

Fund will be used for costs in excess of $2,500 up to $1 million per occurrence for taking corrective action resulting from an accidental release of oil from an aboveground storage tank with a capacity of 5,000 gallons or less used for storing heating oil for consumption on the premises where stored. Per occurrence disbursements from the Fund up to $1 million shall include costs incurred under § 11 for board managed corrective action.

C. The operator of a small heating oil aboveground storage tank has access to the Fund at the $2,500 level, unless there is a release from an UST system or from a facility or both which is determined by the board to be part of the same occurrence. If the occurrence includes a release from an UST system or from a facility or both, the operator's level of access to the Fund will be determined in accordance with § 6 or § 9 of this regulation, whichever level of access to the Fund is higher.

D. The operator of a small heating oil aboveground storage tank must submit sufficient information to the board to document the level of access to the Fund.

E. The operator of a small heating oil aboveground storage tank must pay the financial responsibility requirement specified in this section for each occurrence.

§ 9. Reimbursement from the Fund for operators of facilities.

A. The Fund will be used for costs in excess of the financial responsibility requirements specified in VR 680-14-14 up to $1 million per occurrence for taking corrective action resulting from an accidental release of oil from a facility of a product subject to § 62.1-44.34:13 of the Code of Virginia where the operator's financial responsibility requirement in § 4 A of VR 680-14-14 is less than $200,000 and the operator's net annual profits from all facilities do not exceed $10 million.

B. The Fund will be used for costs in excess of $200,000 up to $1 million per occurrence for taking corrective action resulting from an accidental release of oil from a facility of a product subject to § 62.1-44.34:13 of the Code of Virginia where the operator's financial responsibility requirement in § 4 A of VR 680-14-14 is equal to or greater than $200,000 and the operator's net annual profits from all facilities do not exceed $10 million.

C. The Fund will be used for costs in excess of the greater of $200,000 or the financial responsibility requirement imposed in § 4 A of VR 680-14-14 up to $1 million for taking corrective action resulting from an accidental release of oil from a facility of a product subject to § 62.1-44.34:13 of the Code of Virginia where the operator's net annual profits from all facilities exceeds $10 million.

D. The Fund will be used for costs in excess of $2,500 up to $1 million per occurrence for taking corrective action resulting from an accidental release of oil from a facility of a product subject to § 62.1-44.34:13 of the Code of Virginia where the operator is exempt from financial responsibility requirements under § 62.1-44.34:17 of the Code of Virginia.

E. Per occurrence disbursements from the Fund paid under this § 9 up to $1 million shall include costs incurred under § 11 for board managed corrective action.

F. Where the operator of a facility and the owner or operator of an UST system is the same person, and there is a release from an UST system and from a facility which is determined by the board to be part of the same occurrence, the operator's level of access to the Fund will be determined in accordance with § 6 or § 9 of this regulation, whichever level of access to the Fund is higher.

G. The operator of a facility must demonstrate financial responsibility in accordance with VR 680-14-14 and must submit sufficient information to the board to document the level of access to the Fund.

H. Where the operator of a facility is unknown or incapable, any person who assumes liability for performing corrective action will have access to the Fund at the level of financial responsibility which would have been required from the operator. The person assuming liability shall provide evidence documenting the operator's level of financial responsibility in accordance with either subsection A, B, C or D of this section, depending on the date the release occurred. Based on this evidence, the board will make a determination on the appropriate level for the person's access to the Fund.

I. The operator of a facility must pay the financial responsibility requirement specified in this section for each occurrence.

§ 10. Limitations on reimbursement from the Fund.

A. Reimbursements from the Fund shall be denied or limited as follows:

1. No person shall receive reimbursement from the Fund for any costs or damages incurred:

a. Where the person, his employee or agent, or anyone within the privity or knowledge of that person, has violated substantive environmental laws or regulations; or

b. Where the release occurrence is caused, in whole or in part, by the willful misconduct or negligence of the person, his employee or agent, or anyone within the privity or knowledge of that person; or

c. Where the person, their employee or agent, or anyone within the privity or knowledge of that person, has (i) failed to carry out the instructions of

the board, (ii) committed willful misconduct or been negligent in carrying out or conducting corrective action, or (iii) violated applicable federal or state safety, construction or operating laws or regulations in carrying out or conducting corrective action; or

d. Where the claim has been reimbursed or is reimbursable, by an insurance policy, self-insurance program or other financial mechanism.

2. No person shall receive reimbursement from the Fund for third party bodily injury or property damage claims:

a. Where the release, occurrence, injury or property damage is caused, in whole or in part, by the willful misconduct or negligence of the claimant, any employee or agent of the claimant, or anyone within the claimant's privity or knowledge; or

b. Where the claim has been reimbursed or is reimbursable, by an insurance policy, self-insurance program or other financial mechanism; or

c. Where the claim resulted from a release of oil from an exempt UST 1 and 2, or a small heating oil aboveground storage tank or a facility.

3. No person shall receive reimbursement for legal defense costs, penalties, charges or fines imposed pursuant to any applicable local, state or federal law.

4. No operator of a facility shall be reimbursed:

a. For moneys expended prior to January 29, 1992, for corrective action resulting from a release from a facility of a product subject to § 62.1-44.34:13 of the Code of Virginia;

b. For corrective action costs that are reimbursed or reimbursable from other applicable state or federal programs;

c. If the operator of the facility has not complied with applicable statutes or regulations governing reporting, prevention, containment and cleanup of a release of oil; and

d. If the product released is not subject to a fee as required in § 62.1-44.43:13 of the Code of Virginia.

5. No reimbursement shall be paid for moneys expended for corrective action taken prior to December 22, 1989, to:

a. An owner or operator of an UST system;

b. An operator of an exempt UST 1 and 2; or

c. An operator of a small heating oil aboveground storage tank.

B. No reimbursements shall be made from the Fund for owners or operators of UST systems, operators of exempt USTs 1 and 2, operators of small heating oil aboveground storage tanks and operators of facilities who are federal government entities or whose debts and liabilities are the debts and liabilities of the United States.

§ 11. Board managed corrective action.

A. The board may conduct corrective action for an owner or operator of an UST system, an operator of an exempt UST 1 and 2, an operator of a small heating oil aboveground storage tank or an operator of a facility, if in the judgment of the board, any of the following conditions exist:

1. Immediate corrective action is necessary to protect human health and the environment;

2. The owner or operator is unknown;

3. The owner or operator is financially incapable;

4. The owner or operator cannot perform the cleanup properly because of disabilities or other restrictions; or

5. It is expeditious and practical for the board to conduct the cleanup.

B. Owners or operators of UST systems, operators of exempt USTs 1 and 2, operators of small heating oil aboveground storage tanks or operators of facilities who are responding to a release and conducting corrective action and believe one or more of the conditions in subdivision A 3, 4 or 5 of this section exist, may request in writing that the board manage the cleanup for the owner or operator. The written request shall be sent to the board. The request must include:

1. The name and address of the owner or operator;

2. The source and location of the release by site name, street address, and board incident designation number;

3. The reason for requesting that the board manage the cleanup;

4. Authorization for access to the site and records; and

5. A reimbursement application prepared in accordance with § 5 of this regulation if the owner or operator has incurred any corrective action costs prior to requesting board review.

C. If the owner or operator of an UST system, operator of an exempt UST 1 and 2, operator of a small heating oil aboveground storage tank or operator of a facility is requesting a board managed corrective action based upo

inability to pay, the written request shall also include:

1. The amount, if any, which the owner or operator is able to pay for corrective action costs;

2. Copies of personal and business federal tax returns for the last three years, including all schedules attached to each return;

3. Audited or unaudited financial statements for the business, if any;

4. A statement listing the type and value of all assets owned by the business including cash, stocks, bonds, certificates of deposit, real estate, vehicles and equipment;

5. A statement listing the type and value of all personal assets owned by the owner or operator including cash, stocks, bonds, certificates of deposit, real estate, vehicles and equipment; and

6. Any additional documentation which the board requires for the inability to pay determination. The board will notify the owner or operator of the inability to pay determination in writing.

D. The foregoing does not relieve owners or operators of UST systems, operators of exempt USTs 1 and 2, operators of small heating oil aboveground storage tanks or operators of facilities of their responsibility to conduct corrective action as directed by the board during the review of any request made under this section.

E. Based on the information provided by the owner or operator in B and, if applicable C, the board will determine if the request for a board managed corrective action is acceptable. If the board denies the request, the owner or operator must conduct the corrective action and complete the cleanup as required by the board. If it becomes necessary for the board to undertake corrective action, release response and cleanup by the board will be conducted on a priority basis.

§ 12. Other disbursements from the Fund.

A. The Fund will also be used for the following purposes:

1. To administer the state regulatory programs authorized by § 62.1-44.34:8 et seq. of the Code of Virginia;

2. For costs incurred by the board for taking immediate corrective action to contain or mitigate the effects of any release of petroleum into the environment from an UST system or a release of oil from a facility, pipeline or tank vessel, if such action is necessary, in the judgment of the board to protect human health and the environment.

3. For costs incurred by the board for taking corrective action and compensating third party liability claims up to $1 million for any release of petroleum into the environment from an UST system:

a. Whose owner or operator cannot be determined by the board; or

b. Whose owner or operator is incapable, in the judgment of the board, of carrying out such corrective action properly and paying for third party liability claims.

4. For costs incurred by the board for taking corrective action up to $1 million for any release of oil into the environment from an aboveground storage tank or a facility:

a. Whose operator cannot be determined by the board; or

b. Whose operator is incapable, in the judgment of the board, of carrying out such corrective action properly.

B. The Fund may also be used for the following purposes:

1. For costs incurred by the board for taking corrective action for a release of petroleum into the environment from tanks which are otherwise specifically listed in this regulation as exemptions 3 through 9 in the definition of an underground storage tank;

2. For all other uses authorized by § 62.1-44.34:11 of the Code of Virginia; and

3. For other purposes as provided for by applicable provisions of state and federal law.

§ 13. Cost recovery by the board for moneys expended from the Fund.

A. The board shall seek recovery of moneys expended from the Fund for corrective action in accordance with § 62.1-44.34:11 of the Code of Virginia.

B. The board shall have the right of subrogation for moneys expended from the Fund as compensation for bodily injury, death or property damage against any person who is liable for such injury, death or damage.

§ 14. Notices to the Executive Director of the State Water Control Board.

All requirements of this regulation for notification to the Executive Director of the State Water Control Board shall be addressed as follows:

Mailing Address:

Executive Director
State Water Control Board
P.O. Box 11143
Richmond, Virginia 23230-1143

Location Address:

Executive Director
State Water Control Board
4900 Cox Road
Glen Allen, Virginia 23060

§ 15. Delegation of authority.

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

* * * * * * * * *

Title of Regulation: **VR 680-13-07. Ground Water Withdrawal Regulations.**

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

Public Hearing Dates:
February 22, 1993 - 7 p.m.
February 23, 1993 - 7 p.m.
February 24, 1993 - 7 p.m.
Written comments may be submitted through March 15, 1993.
(See Calendar of Events section for additional information)

Summary:

The Ground Water Management Act of 1992 (Act) authorizes the State Water Control Board to declare ground water management areas and apply corrective controls to conserve, protect and beneficially utilize the ground water resources of the Commonwealth and to ensure the preservation of the public welfare, safety and health. In particular the board is given the duty of adopting such regulations as it deems necessary to administer and enforce the provisions of the Act and to issue ground water withdrawal permits in accordance with those regulations.

The purpose of this proposed regulation is to administer and enforce the provisions of the Act. This proposed regulation establishes procedures for declaration of ground water management areas, issuance of ground water withdrawal permits to persons who hold certificates of ground water right or permits to withdraw ground water in ground water management areas established under the Ground Water Act of 1973, issuance of ground water withdrawal permits and special exceptions to persons who wish to initiate or expand an existing ground water withdrawal in any ground water management area, and enforcement of the provisions of the Act.

The State Water Control Board will administer this program. The board will issue ground water withdrawal permits to existing holders of certificates of ground water right or permits to withdraw ground water upon receipt of preliminary applications documenting their historical usage of ground water. The board will evaluate applications for ground water withdrawal permits and special exceptions and either issue permits or special exceptions, issue permits or special exceptions with conditions, or deny the application.

VR 680-13-07. Ground Water Withdrawal Regulations.

PART I.
GENERAL.

§ 1.1. Definitions.

Unless a different meaning is required by the context, the following terms, as used in this regulation, shall have the following meanings.

"Act" means the Ground Water Management Act of 1992, Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia.

"Applicant" means a person filing an application to initiate or enlarge a ground water withdrawal in a ground water management area.

"Beneficial use" includes, but is not limited to domestic (including public water supply), agricultural, commercial, and industrial uses.

"Board" means the State Water Control Board.

"Consumptive use" means the withdrawal of ground water, without recycle of said waters to their source of origin.

"Draft permit" means a prepared document indicating the board's tentative decision relative to a permit action.

"Executive director" means executive director of the State Water Control Board.

"Ground water" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir or other body of surface water wholly or partially within the boundaries of this Commonwealth, whatever the subsurface geologic structure in which such water stands, flows, percolates or otherwise occurs.

"Human consumptive use" means the withdrawal of ground water for private residential domestic use and that portion of ground water withdrawals in a public water supply system that support residential domestic uses.

"Permit" means a Ground Water Withdrawal Permit

issued by the board permitting the withdrawal of a specified quantity of ground water under specified conditions in a ground water management area.

"Permittee" means a person who currently has an effective Ground Water Withdrawal Permit issued by the board.

"Person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized under the laws of this Commonwealth or any other state or country.

"Public hearing" means a fact finding proceeding held to afford interested persons an opportunity to submit factual data, views and comments to the board pursuant to the board's Procedural Rule No. 1.

"Special exception" means a document issued by the board for withdrawal of ground water in unusual situations where requiring the user to obtain a ground water withdrawal permit would be contrary to the purpose of the Ground Water Management Act of 1992. Special exceptions allow the withdrawal of a specified quantity of ground water under specified conditions in a ground water management area.

§ 1.2. Purpose.

The Ground Water Management Act of 1992 recognizes and declares that the right to reasonable control of all ground water resources within the Commonwealth belongs to the public and that in order to conserve, protect and beneficially utilize the ground water resource and to ensure the public welfare, safety and health, provisions for management and control of ground water resources are essential. This regulation delineates the procedures and requirements to be followed when establishing Ground Water Management Areas and the issuance of Ground Water Withdrawal Permits by the board pursuant to the Ground Water Management Act of 1992.

§ 1.3. Authority for regulations.

The authority for this regulation is pursuant to the Ground Water Management Act of 1992, Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia, in particular § 62.1-256.8.

§ 1.4. Prohibitions and requirements for ground water withdrawals.

A. No person shall withdraw, attempt to withdraw, or allow the withdrawal of ground water within a ground water management area, except as authorized pursuant to a ground water withdrawal permit, or as excluded in § 1.5 of this regulation.

B. No permit or special exception shall be issued for more ground water than can be applied to the proposed beneficial use.

§ 1.5. Exclusions.

The following do not require a ground water withdrawal permit:

1. Withdrawals of less than 300,000 gallons per month.

2. Withdrawals associated with temporary construction dewatering that do not exceed 24 months in duration.

3. Withdrawals associated with a state-approved ground water remediation that do not exceed 60 months in duration.

4. Withdrawals for use by a ground water source heat pump where the discharge is reinjected into the aquifer from which it was withdrawn.

5. Withdrawals from ponds recharged by ground water without mechanical assistance.

6. Withdrawals for the purpose of conducting geophysical investigations, including pump tests.

7. Withdrawals coincident with exploration for and extraction of coal or activities associated with coal mining regulated by the Department of Mines, Minerals, and Energy.

8. Withdrawals coincident with the exploration for or production of oil, gas or other minerals other than coal, unless such withdrawal adversely impacts aquifer quantity or quality or other ground water users within a ground water management area.

9. Withdrawals in any area not declared to be a ground water management area.

10. Withdrawal of ground water authorized pursuant to a special exception issued by the board.

§ 1.6. Effect of a permit.

A. Compliance with a ground water withdrawal permit constitutes compliance with the permit requirements of the Ground Water Management Act of 1992.

B. The issuance of a permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize injury to private property or any invasion of personal rights or any infringement of federal, state or local law or regulation.

PART II.
DECLARATION OF GROUND WATER MANAGEMENT AREAS.

§ 2.1. Criteria for consideration of a ground water management area.

The board upon its own motion, or in its discretion, upon receipt of a petition by any county, city or town within the area in question, may initiate a ground water management area proceeding, whenever in its judgment there is reason to believe that any one of the four following conditions exist:

1. Ground water levels in the area are declining or are expected to decline excessively.

2. The wells of two or more ground water users within the area are interfering or may be reasonably expected to interfere substantially with one another.

3. The available ground water supply has been or may be overdrawn.

4. The ground water in the area has been or may become polluted.

§ 2.2. Declaration of ground water management areas.

A. If the board finds that any of the conditions listed in § 2.1 exist, and further determines that the public welfare, safety and health require that regulatory efforts be initiated, the board shall declare the area in question a ground water management area, by regulation.

B. Such regulations shall be promulgated in accordance with the Agency's Public Participation Guidelines (VR 680-40-01:1) and the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

C. The regulation shall define the boundaries of the ground water management area, including which aquifers included in the area of question are included in the ground water management area. Any number of aquifers that either wholly or partially overlie one another may be included within the same ground water management area.

D. After adoption the board shall mail a copy of the regulation to the mayor or chairman of the governing body of each county, city or town within which any part of the ground water management area lies.

PART III.
PERMIT APPLICATION AND ISSUANCE.

§ 3.1. Application for a permit.

A. Persons withdrawing ground water or who have rights to withdraw ground water prior to July 1, 1992, in the Eastern Virginia or Eastern Shore Ground Water Management Areas and not excluded from requirements of this regulation by § 1.5 shall apply for a permit.

1. Any person who was issued a certificate of ground water right or a permit to withdraw ground water prior to July 1, 1991, and who was withdrawing ground water pursuant to said permit or certificate on July 1, 1992, shall file an application on or before December 31, 1992, to continue said withdrawal. Withdrawals claimed shall be documented by withdrawal reports required as certificate or permit conditions or by reports required by Water Withdrawal Reporting Regulations (VR 680-15-01).

2. Any person who was issued a certificate of ground water right or a permit to withdraw ground water prior to July 1, 1991, and who had not initiated the withdrawal prior to July 1, 1992, may initiate a withdrawal on or after July 1, 1992, pursuant to the terms and conditions of the certificate or permit and shall file an application for a ground water withdrawal permit on or before December 31, 1995, to continue said withdrawal. Withdrawals claimed shall be documented by withdrawal reports required as certificate or permit conditions or by reports required by Water Withdrawal Reporting Regulations (VR 680-15-01).

3. Any person who was issued a permit to withdraw ground water on or after July 1, 1991, and prior to July 1, 1992, shall not be required to apply for a ground water withdrawal permit until the expiration of the permit to withdraw ground water or 10 years from the date of issuance of the permit to withdraw ground water, whichever occurs first. Such persons shall reapply for a ground water withdrawal permit as described in § 3.1 D of this regulation.

4. (Reserved)

5. Any political subdivision, or authority serving a political subdivision, holding a certificate of ground water right or a permit to withdraw ground water issued prior to July 1, 1992, for the operation of a public water supply well for the purpose of providing supplemental water during drought conditions, shall file an application on or before December 31, 1992. Any political subdivision, or authority serving a political subdivision, shall submit, as part of the application, a water conservation and management plan as described in § 3.2 B of this regulation.

6. Any person who is required to apply in § 3.1 A 1, § 3.1 A 2, or § 3.1 A 5 and who uses the certificated or permitted withdrawal to operate a public water supply system shall provide a copy of the waterworks operation permit, or equivalent, with the required application for a ground water withdrawal permit.

7. Any person who is withdrawing ground water without a certificate of ground water right or a permit to withdraw ground water shall file an application for a ground water withdrawal permit as described in § 3.1 C of this regulation.

8. Any person described in § 3.1 A 1, § 3.1 A 2, § 3.1

A 3, or § 3.1 A 5 who files an application by the date required may continue to withdraw ground water pursuant to the existing certificate or permit until such time as the board takes action on the outstanding application for a ground water withdrawal permit. Any person described in § 3.1 A 4 who files an application by the date required may continue their existing withdrawal until such time as the board takes action on the outstanding application for a ground water withdrawal permit.

9. Any person described in § 3.1 A 1, § 3.1 A 2, § 3.1 A 3, § 3.1 A 4, or § 3.1 A 5 who fails to file an application by the date required abandons all claims to ground water withdrawal based on historic use. Should such a person wish to withdraw ground water, they must follow the procedures for an application for a new withdrawal as described in § 3.1 C.

B. Persons withdrawing ground water when a ground water management area is declared or expanded after July 1, 1992, and not excluded from requirements of this regulation by § 1.5 shall apply for a permit.

1. Any person withdrawing ground water in an area that is declared to be a ground water management area after July 1, 1992, shall file an application for a ground water withdrawal permit within six months of the effective date of the regulation creating or expanding the ground water management area. Withdrawals claimed shall be documented by withdrawal reports required by Water Withdrawal Reporting Regulations (VR 680-15-01).

2. Any person withdrawing ground water who uses the withdrawal to operate a public water supply system shall provide a copy of the waterworks operation permit, or equivalent, with the required application for a ground water withdrawal permit.

3. Any person who is required to apply for a ground water withdrawal permit and does so within six months after the effective date of the regulation creating or expanding a ground water management area may continue their withdrawal until such time as the board takes action on the outstanding application for a ground water withdrawal permit.

4. Any person who fails to file an application within six months after the effective date creating or expanding a ground water management area abandons all claims to ground water withdrawal based on historic use. Should such a person wish to withdraw ground water, they must follow the procedures for an application for a new withdrawal as described in § 3.1 C.

C. Persons wishing to initiate a new withdrawal or expand an existing withdrawal in any ground water nanagement area and not excluded from requirements of this regulation by § 1.5 shall apply for a permit.

1. A ground water withdrawal permit application shall be completed and submitted to the board prior to the initiation of any withdrawal not specifically excluded in § 1.5 of this regulation.

2. A complete ground water withdrawal permit application for a new withdrawal, at a minimum, shall contain the following:

a. A ground water withdrawal permit application completed in its entirety with all maps, attachments, and addenda that may be required.

b. The application shall include a Local Government Approval Form that certifies that the location and operation of the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 11 (§ 15.1-427 et seq.) of Title 15.1 of the Code of Virginia.

c. The application must have an original signature by a responsible person as described in § 3.7 of this regulation.

d. A detailed location map of each existing and proposed well with the latitude, longitude and elevation certified by a licensed professional surveyor, engineer or other qualified person. The map should be of sufficient detail such that the site may be easily located for site inspection.

e. A completed well construction report for all existing wells. Well construction report forms will be in a format specified by the board and are available from the State Water Control Board.

f. A well construction report of the proposed construction for all proposed wells shall be provided and shall be clearly marked to distinguish them from well construction reports of existing wells. Well construction report forms will be in a format specified by the board and are available from the State Water Control Board. Following construction of any proposed wells, well construction reports documenting the actual construction of the well shall be provided to the board.

g. An evaluation of the lowest quality water needed for the intended beneficial use.

h. An evaluation of sources of water supply, other than ground water, including sources of reclaimed water.

i. A water conservation and management plan as described in § 3.2 of this regulation.

j. An evaluation to determine the areas of any aquifers that will experience at least one foot of

water level declines due to the proposed withdrawal and a listing of all ground water withdrawal permittees within those areas.

3. In addition to requirements contained in § 3.1 C 2, the board may require any or all of the following information prior to considering an application complete.

a. Ground water flow or solute transport modeling or both to determine the area and extent of predicted impacts due to the proposed withdrawal.

b. An evaluation of the potential for the proposed withdrawal to cause salt water intrusion into any portions of any aquifers or the movement of waters of lower quality to areas where such movement would result in adverse impacts on existing ground water users or the ground water resource.

c. A mitigation plan to address potential adverse impacts due to the proposed withdrawal on existing ground water users or the ground water resource.

d. The installation of monitoring wells and the collection and analysis of drill cuttings, continuous cores, geophysical logs, water quality samples or other hydrogeologic information necessary to characterize the aquifer system present at the proposed withdrawal site.

e. The completion of pump tests or aquifer tests to determine aquifer characteristics at the proposed withdrawal site.

f. Other information that the board believes is necessary to evaluate the application.

D. Duty to reapply.

1. Any permittee with an effective permit shall submit a new permit application at least 270 days before the expiration date of an effective permit unless permission for a later date has been granted by the board.

2. Permittees who have effective permits shall submit a new application 270 days prior to any proposed modification to their activity which will:

a. Result in an increase of withdrawals.

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

3. The board shall require all information described in §§ 3.1 C 1 and 3.1 C 2 and may require any information described in § 3.1 C 3 for any reapplication.

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

F. When an application does not appropriately describe an existing or proposed withdrawal, the board may require the applicant to amend an existing application, submit a new application, or submit new applications before the application will be processed.

G. All persons required by this regulation to apply for ground water withdrawal permits shall submit application forms in a format specified by the board. Such application forms are available from the State Water Control Board. All applications must have an original signature by a responsible person as described in § 3.7 of this regulation.

H. No ground water withdrawal permit application shall be considered complete until a permit fee is submitted as required by the Permit Fee Regulations (VR 680-01-01).

§ 3.2. Water conservation and management plans.

A. Any application to initiate a new withdrawal or expand an existing withdrawal in any ground water management area or the reapplication at the end of a permit cycle for all permits shall require a water conservation and management plan before the application or reapplication is considered complete.

B. A water conservation and management plan shall include:

1. Requirements for the use of water saving plumbing and processes including, where appropriate, the use of water saving fixtures in new and renovated plumbing as provided in the Uniform Statewide Building Code.

2. A water loss reduction program.

3. A water use education program.

4. An evaluation of potential water reuse options.

5. Requirements for mandatory water use reductions during water shortage emergencies declared by the local governing body or executive director including, where appropriate, ordinances prohibiting the waste of water generally.

6. Requirements providing for mandatory water use restrictions, with penalties, during water shortage emergencies.

C. The board shall review all water conservation and management plans and assure that such plans contain all elements required in § 3.2 B. The board shall approve all plans that:

1. Contain requirements that water saving fixtures be used in all new and renovated plumbing as provided in the Uniform Statewide Building Code.

2. Contain requirements for making technological, procedural, or programmatic improvements to the applicant's facilities and processes to decrease water consumption. These requirements shall assure that the most efficient use is made of ground water.

3. Contain requirements for an audit of the total amount of ground water used in the applicant's distribution system and operational processes during the first two years of the permit cycle. Subsequent implementation of a leak detection and repair program will be required within one year of the completion of the audit, when such a program is technologically feasible.

4. Contain requirements for the education of water users and employees of water consuming processes to assure that water conservation principles are well known by the users of the resource.

5. Contain an evaluation of potential water reuse options and assurances that water will be reused in all instances where reuse is technically feasible.

6. Contain requirements for mandatory water use restrictions during water shortage emergencies that prohibit all nonessential uses such as lawn watering, car washing, and similar nonessential industrial and commercial uses for the duration of the water shortage emergency.

7. Contain penalties for failure to comply with mandatory water use restrictions.

§ 3.3. Criteria for issuance of permits.

A. The board shall not issue any permit for more ground water than will be applied to the proposed beneficial use.

B. The board shall issue ground water withdrawal permits to persons withdrawing ground water or who have rights to withdraw ground water prior to July 1, 1992, in the Eastern Virginia or Eastern Shore Ground Water Management Areas and not excluded from requirements of this regulation by § 1.5 based on the following criteria:

1. The board shall issue a ground water withdrawal permit for persons meeting the criteria of § 3.1 A 1 for the total amount of ground water withdrawn in any consecutive 12-month period between July 1, 1987, and June 30, 1992.

2. The board shall issue a ground water withdrawal permit for persons meeting the criteria of § 3.1 A 2 for the total amount of ground water withdrawn and applied to a beneficial use in any consecutive 12-month period between July 1, 1992, and June 30, 1995.

3. (Reserved)

4. The board shall issue a ground water withdrawal permit for persons meeting the criteria of § 3.1 A 5 for the amount of ground water withdrawal needed to annually meet human consumption needs as documented in the water conservation and management plan approved by the board. The board shall include conditions in such permits that require the implementation of mandatory use restrictions before such withdrawals can be exercised.

5. When requested by persons described in §§ 3.1 A 1, 3.1 A 2 and 3.1 A 4 the board shall issue ground water withdrawal permits that include withdrawal amounts in excess of those which an applicant can support based on historic usage. These additional amounts shall be based on water savings achieved through water conservation measures. The applicant shall demonstrate withdrawals prior to implementation of water conservation measures, type of water conservation measure implemented, and withdrawals after implementation of water conservation measures. Withdrawal amounts shall be documented by metered withdrawals and estimated amounts shall not be accepted to claim additional withdrawal amounts due to water conservation. Decreases in withdrawal amounts due to production declines, climatic conditions, population declines, or similar events shall not be used as a basis to claim additional withdrawal amounts based on water conservation.

C. The board shall issue ground water withdrawal permits to persons withdrawing ground water when a ground water management area is declared or expanded after July 1, 1992, and not excluded from requirements of this regulation by § 1.5 based on the following criteria:

1. The board shall issue a ground water withdrawal permit to nonagricultural users for the total amount of ground water withdrawn in any consecutive 12-month period during the five years preceding the effective date of the regulation creating or expanding the ground water management area.

2. (Reserved)

3. When requested by the applicant the board shall issue ground water withdrawal permits that include withdrawal amounts in excess of those which an applicant can support based on historic usage. These additional amounts shall be based on water savings

achieved through water conservation measures. The applicant shall demonstrate withdrawals prior to implementation of water conservation measures, type of water conservation measure implemented, and withdrawals after implementation of water conservation measures. Withdrawal amounts shall be documented by metered withdrawals and estimated amounts shall not be accepted to claim additional withdrawal amounts due to water conservation. Decreases in withdrawal amounts due to production declines, climatic conditions, population declines, or similar events shall not be used as a basis to claim additional withdrawal amounts based on water conservation.

D. The board shall issue ground water withdrawal permits to persons wishing to initiate a new withdrawal or expand an existing withdrawal in any ground water management area and not excluded from requirements of this regulation by § 1.5 based on the following criteria:

1. When the applicant demonstrates to the board's satisfaction that the maximum safe supply of ground water will be preserved and protected for all other beneficial uses and that the applicant's proposed withdrawal will have no significant unmitigated impact on existing ground water users or the ground water resource. In order to assure that the applicant's proposed withdrawal complies with the above stated requirements, the applicant's demonstration shall include, but not be limited to, compliance with the following criteria:

a. The applicant demonstrates that no other sources of water supply, including reclaimed water, are economically viable.

b. The applicant demonstrates that the ground water withdrawal will originate from the aquifer that contains the lowest quality water that will support the proposed beneficial use.

c. The applicant demonstrates that the area of impact of the proposed withdrawal will remain on property owned by the applicant and that no existing ground water withdrawers will be impacted by the withdrawal.

d. In cases where the area of impact does not remain on the property owned by the applicant, the applicant shall provide and implement a mitigation plan to mitigate all adverse impacts on existing ground water users and the ground water resource. Approvable mitigation plans shall, at a minimum, contain the following features and implementation of the mitigation plan shall be included as enforceable permit conditions:

(1) The rebuttable presumption that water level declines at existing wells within the area of impact are due to the proposed withdrawal.

(2) A commitment by the applicant to mitigate adverse impacts due to the proposed withdrawal in a timely fashion.

(3) A speedy, nonexclusive, low-cost process to fairly resolve disputed claims for mitigation between the applicant and any claimant.

e. The applicant demonstrates that the proposed withdrawal will not lower water levels, in any confined aquifer that the withdrawal impacts, below a point that represents 80% of the distance between the historical prepumping water levels in the aquifer and the top of the aquifer. Compliance with the 80% drawdown criteria will be determined at the points that are halfway between the proposed withdrawal site and the predicted one foot drawdown contour based on the predicted stabilized effects of the proposed withdrawal.

f. No pumps or water intake devices are placed below the top of the uppermost confined aquifer or below the bottom of an unconfined aquifer that a well utilizes as a ground water source.

g. The applicant demonstrates that the amount of ground water withdrawal requested is the smallest amount of withdrawal necessary to support the proposed beneficial use and that the amount is representative of the amount necessary to support similar beneficial uses when adequate conservation measures are employed.

h. The applicant demonstrates that the proposed ground water withdrawal will not result in salt water intrusion or the movement of waters of lower quality to areas where such movement would result in adverse impacts on existing ground water users or the ground water resource.

i. The applicant provides a water conservation and management plan as described in § 3.2 of this regulation and implements the plan as an enforceable condition of the ground water withdrawal permit.

j. The applicant provides certification by the local governing body that the location and operation of the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 11 (§ 15.1-427 et seq.) of Title 15.1 of the Code of Virginia.

2. The board may also take the following factors into consideration when evaluating a ground water withdrawal permit application or special conditions associated with a ground water withdrawal permit:

a. The nature of the use of the proposed withdrawal.

b. The proposed use of innovative approaches such as aquifer storage and recovery systems, surface and ground water conjunctive use systems, and desalinization of brackish ground water.

c. Climatic cycles.

d. Economic cycles.

e. The unique requirements of nuclear power stations.

f. Population projections during the term of the proposed permit.

g. The status of land use and other necessary approvals.

h. Other factors that the board deems appropriate.

E. When proposed uses of ground water are in conflict or available supplies of ground water are not sufficient to support all those who desire to use them, the board shall prioritize the evaluation of applications in the following manner:

1. Applications for human consumptive use shall be given the highest priority.

2. Should there be conflicts between applications for human consumptive uses, applications will be evaluated in order based on the date that said applications were considered complete.

3. Applications for all uses, other than human consumption, will be evaluated following the evaluation of proposed human consumptive uses in order based on the date that said applications were considered complete.

F. Criteria for reissuance of permits.

The board shall consider all criteria for reissuance of a ground water withdrawal permit that are considered for issuance as described in this section of this regulation. Existing permitted withdrawal amounts shall not be the sole basis for determination of the appropriate withdrawal amounts when a permit is reissued.

The board shall reissue a permit to any public water supply user for an annual amount no less than the amount equal to that portion of the withdrawal that was used by said system to support human consumptive uses during 12 consecutive months of the previous term of the permit.

§ 3.4. Public water supplies.

The board shall evaluate all applications for ground water withdrawals for public water supplies as described in § 3.3. The board shall make a preliminary decision on the application and prepare a draft ground water withdrawal permit and forward the draft permit to the Virginia Department of Health. The board shall not issue a final ground water withdrawal permit until such time as the Virginia Department of Health issues a waterworks operation permit, or equivalent. The board shall establish withdrawal limits for such permits as described in § 3.6 A 3.

§ 3.5. Conditions applicable to all permits.

A. Duty to comply.

The permittee shall comply with all conditions of the permit. Nothing in these regulations shall be construed to relieve the Ground Water Withdrawal Permit holder of the duty to comply with all applicable federal and state statutes and regulations. At a minimum, a person must obtain a well construction permit from the Virginia Department of Health prior to the construction of any well. Any permit noncompliance is a violation of the Act and law, and is grounds for enforcement action, permit termination, revocation, amendment, or denial of a permit renewal application.

B. Duty to cease or confine activity.

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

C. Duty to mitigate.

The permittee shall take all reasonable steps to:

1. Avoid all adverse impacts on the ground water resource or adverse impacts to lawful ground water users which could result from the withdrawal, and

2. Where impacts cannot be avoided, provide mitigation of the adverse impact as described in § 3.3 D 1 d of this regulation.

D. Inspection and entry.

Upon presentation of credentials, any duly authorized agent of the board may, at reasonable times and under reasonable circumstances:

1. Enter upon any permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the permit conditions.

2. Inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the permit.

3. Sample or monitor any substance, parameter or

activity for the purpose of assuring compliance with the conditions of the permit or as otherwise authorized by law.

E. Duty to provide information.

The permittee shall furnish to the board, within a reasonable time, any information which the board may request to determine whether cause exists for amending or revoking the permit, or to determine compliance with the permit. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.

F. Monitoring and records requirements.

1. Monitoring shall be conducted according to approved analytical methods as specified in the permit.

2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit, for a period of at least three years from the date of the expiration of a granted permit. This period may be extended by request of the board at any time.

4. Records of monitoring information shall include:

a. The date, exact place and time of sampling or measurements.

b. The name of the individual(s) who performed the sampling or measurements.

c. The date the analyses were performed.

d. The name of the individual(s) who performed the analyses.

e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used.

f. The results of such analyses.

G. Permit action.

A permit may be amended or revoked as set forth in Part VI of this regulation.

If a permittee files a request for permit amendment or revocation, or files a notification of planned changes, or anticipated noncompliance, the permit terms and conditions shall remain effective until the request is acted upon by the board. This provision shall not be used to extend the expiration date of the effective permit.

Permits may be amended or revoked upon the request of the permittee, or upon board initiative, to reflect the requirements of any changes in the statutes or regulations.

§ 3.6. Establishing applicable standards, limitations or other permit conditions.

A. In addition to the conditions established in §§ 3.2, 3.3, 3.4 and 3.5 of this regulation, each permit may include conditions with the following requirements where applicable:

1. A permit may contain the total depth of each permitted well in feet.

2. A permit may contain the designation of the aquifer(s) to be utilized.

3. A permit shall contain conditions limiting the withdrawal amount of a single well or a group of wells that comprise a withdrawal system to a quantity specified by the board. A withdrawal limit may be placed on all or some of the wells which constitute a withdrawal system. A permit shall contain a maximum annual withdrawal limit and may contain additional withdrawal limits on any frequency as determined by the board.

4. A ground water withdrawal permit for a public water supply shall contain a maximum permitted daily withdrawal set by the board at a level consistent with the requirements and conditions contained in the waterworks operation permit, or equivalent, issued by the Virginia Department of Health. This requirement shall not limit the authority of the board to reduce or eliminate ground water withdrawals by public water suppliers if necessary to protect human health or the environment.

5. A permit may contain conditions requiring water quality and water levels monitoring at specified intervals in any wells deemed appropriate by the board.

6. A permit may contain conditions specifying water quality action levels in pumping and observation/monitoring wells to protect against or mitigate water quality degradation. The board may require permitted users to initiate control measures which include, but are not limited to, the following:

a. Pumping arrangements to reduce ground water withdrawal in areas of concentrated pumping.

b. Location of wells to eliminate or reduce ground

water withdrawals near saltwater-freshwater interfaces.

c. Requirement of selective withdrawal from other available aquifers than those presently used.

d. Selective curtailment, reduction or cessation of ground water withdrawals to protect the public welfare, safety or health or to protect the resource.

e. Conjunctive use of freshwater and saltwater aquifers, or waters of less desirable quality where water quality of a specific character is not essential.

f. Construction and use of observation or monitoring wells, drilled into aquifers between areas of ground water withdrawal (or proposed areas of ground water withdrawal) and sources of lower quality water including saltwater.

g. Prohibiting the hydraulic connection of aquifers that contain different quality waters that could result in deterioration of water quality in an aquifer.

h. Such other necessary control or abatement techniques as are technically feasible.

7. A permit may contain conditions limiting water level declines in pumping wells and observation wells. At a maximum, water levels shall not be permitted to drop below a point that represents 80% of the distance between the historical prepumping water levels in the confined aquifer and the top of the aquifer. Compliance with the 80% drawdown criteria will be determined at the points that are halfway between the proposed withdrawal site and the one-foot drawdown contour due to the proposed withdrawal when the effects of the withdrawal have stabilized.

8. The permittee may not place a pump or water intake device lower than the top of the uppermost confined aquifer or lower than the bottom of an unconfined aquifer that a well utilizes as a ground water source.

9. All permits shall specify monitoring requirements as conditions of the permit.

a. Permitted users shall install in-line totalizing flow meters to read gallons, cubic feet or cubic meters on each permitted well prior to beginning the permitted use. Such meters shall produce volume determinations within plus or minus 10% of actual flows. A defective meter or other device must be repaired or replaced within 30 days. A defective meter is not grounds for not reporting withdrawals. During any period when a meter is defective, generally accepted engineering methods shall be used to estimate withdrawals and the period during which the meter was defective must be clearly identified in ground water withdrawal reports. An alternative method for determining flow may be approved by the board on a case-by-case basis.

b. Requirements concerning the proper use, maintenance and installation, when appropriate, of monitoring equipment or methods when required as a condition of the permit.

c. Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity and including, when appropriate, continuous monitoring and sampling.

d. Each permitted well shall be equipped in a manner such that water levels can be measured during pumping and nonpumping periods without dismantling any equipment. Any opening for tape measurement of water levels shall have an inside diameter of 0.5 inches and be sealed by a removable plug or cap. The permittee shall provide a tap for taking raw water samples from each permitted well.

10. All permits shall include requirements to report the amount of water withdrawn from each permitted well and well system on forms provided by the board with a frequency dependent on the nature and effect of the withdrawal, but in no case less than once per year.

11. All permits may include requirements to report water quality and water level information on forms provided by the board with a frequency dependent on the nature and effect of the withdrawal, but in no case less than once per year.

12. Ground water withdrawal permits issued under this regulation shall have an effective and expiration date which will determine the life of the permit. Ground water withdrawal permits shall be effective for a fixed term not to exceed 10 years. Permit durations of less than the typical period of time may be recommended in areas where hydrologic conditions are changing or are not adequately known. The term of any permit shall not be extended by amendment beyond the maximum duration. Extension of permits for the same activity beyond the maximum duration specified in the original permit will require reapplication and issuance of a new permit.

13. Each permit shall have a condition allowing the reopening of the permit for the purpose of amending the conditions of the permit to meet new regulatory standards duly adopted by the board. Cause for reopening permits include but is not limited to a determination that the circumstances on which the previous permit was based have materially and

substantially changed, or special studies conducted by the board or the permittee show material and substantial change, since the time the permit was issued and thereby constitute cause for permit amendment or revocation.

B. In addition to conditions described in §§ 3.5 and 3.6 A, the board may issue any permit with any terms, conditions and limitations necessary to protect the public welfare, safety and health.

C. Each well that is included in a ground water withdrawal permit shall have affixed to the well casing, in a prominent place, a permanent well identification plate that records the State Water Control Board well identification number, the ground water withdrawal permit number, the total depth of the well and the screened intervals in the well, at a minimum. Such well identification plates shall be in a format specified by the board and are available from the State Water Control Board.

§ 3.7. Signatory requirements.

Any application, report, or certification shall be signed as follows:

1. Application.

a. For a corporation: by a responsible corporate official. For purposes of this section, a responsible corporate official means (i) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

b. For a municipality, state, federal or other public agency by either a principal executive officer or ranking elected official. (A principal executive officer of a federal, municipal, or state agency includes the chief executive officer of the agency or head executive officer having responsibility for the overall operation of a principal geographic unit of the agency).

c. For a partnership or sole proprietorship, by a general partner or proprietor respectively.

d. Any application for a permit under this regulation must bear the signatures of the responsible party and any agent acting on the responsible party's behalf.

2. Reports. All reports required by permits and other information requested by the board shall be signed by:

a. One of the persons described in subdivision 1 a, b or c of this section; or

b. A duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing to the board by a person described in subdivision 1 a, b, or c of this section; and

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated withdrawal facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position.

(3) If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization must be submitted to the board prior to or together with any separate information, or applications to be signed by an authorized representative.

3. Certification of application and reports. Any person signing a document under subdivision 1 or 2 of this section shall make the following certification: I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.

§ 3.8. Draft permit.

A. Upon receipt of a complete application, the board shall make a decision to tentatively issue or deny the application. If a tentative decision is to issue the permit then a draft permit shall be prepared in advance of public notice. The following tentative determinations shall be incorporated into a draft permit:

1. Conditions, withdrawal limitations, standards and other requirements applicable to the permit.

2. Monitoring and reporting requirements.

3. Requirements for mitigation of adverse environmental impacts.

4. Requirements for a water conservation and management plan.

B. If the tentative decision is to deny the application, the board shall do so in accordance with § 6.6 of this regulation.

PART IV.
SPECIAL EXCEPTION APPLICATION AND ISSUANCE.

§ 4.1. Application for a special exception.

A. Any person who wishes to initiate a ground water withdrawal in any ground water management area and is not exempted from the provisions of this regulation by § 1.5 may apply for a special exception in unusual cases where requiring the proposed user to obtain a ground water withdrawal permit would be contrary to the purpose of the Ground Water Management Act of 1992.

B. A special exception application shall be completed and submitted to the board prior to the initiation of any withdrawal not specifically excluded in § 1.5 of this regulation. Special exception application forms shall be in a format specified by the board and are available from the State Water Control Board.

C. Due to the unique nature of applications for special exceptions the board shall determine the completeness of an application on a case-by-case basis. The board may require any information required in § 3.1 C 2 or § 3.1 C 3 prior to considering an application for a special exception complete.

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

§ 4.2. Water conservation and management plans.

A. The board may require water conservation and management plans as described in § 3.2 B prior to considering an application for special exception complete.

B. In instances where a water conservation and management plan is required, the board may include the implementation of such plans as an enforceable condition of the applicable special exception.

§ 4.3. Criteria for the issuance of special exceptions.

A. The board shall issue special exceptions only in unusual situations where the applicant demonstrates to the board's satisfaction that requiring the applicant to obtain a ground water withdrawal permit would be contrary to the intended purposes of the Ground Water Management Act of 1992.

B. The board may require compliance with any criteria described in § 3.3 of this regulation.

§ 4.4. Public water supplies.

The board shall not issue special exceptions for the normal operations of public water supplies.

§ 4.5. Conditions applicable to all special exceptions.

The holder of any special exception shall be responsible for compliance with all conditions contained in the special exception and shall be subject to the same requirements of permittees as described in § 3.5 of this regulation.

§ 4.6. Establishing applicable standards, limitations or other special exception conditions.

The board may issue special exceptions which include any requirement for permits as described in § 3.6 of this regulation, with the exception that special exceptions shall not be renewed. In the case where the activity that is being supported by the specially excepted withdrawal will require that the withdrawal extend beyond the term of the existing special exception, the ground water user shall apply for a permit to withdraw ground water.

§ 4.7. Signatory requirements.

The signatory requirements for any application, report or certification shall be the same as those described in § 3.7 of this regulation.

§ 4.8. Draft special exception.

A. Upon receipt of a complete application, the board shall make a decision to tentatively issue or deny the application. If a tentative decision is to issue the special exception then a draft special exception shall be prepared in advance of public notice. The following tentative determinations shall be incorporated into a draft special exception:

1. Conditions, withdrawal limitations, standards and other requirements applicable to the special exception.

2. Monitoring and reporting requirements.

3. Requirements for mitigation of adverse environmental impacts.

B. If the tentative decision is to deny the application,

the board shall return the application to the applicant. The applicant may then apply for a ground water withdrawal permit for the proposed withdrawal in accordance with Part III of this regulation.

PART V.
PUBLIC INVOLVEMENT.

§ 5.1. Public notice of permit or special exception action and public comment period.

A. Every draft permit and special exception shall be given public notice in a form prescribed by the board and paid for by the owner, by publication once in a newspaper of general circulation in the area affected by the withdrawal.

B. Notice of each draft permit and special exception will be mailed by the board to each local governing body within the ground water management area within which the proposed withdrawal will occur on or before the date of public notice.

C. The board shall allow a period of at least 30 days following the date of the public notice for interested persons to submit written comments on the tentative decision and to request an informal hearing.

D. The contents of the public notice of a draft permit or draft special exception action shall include:

1. Name and address of the applicant. If the location of the proposed withdrawal differs from the address of the applicant the notice shall also state the location in sufficient detail such that the specific location may be easily identified.

2. Brief description of the beneficial use that the ground water withdrawal will support.

3. The name and depth below ground surface of the aquifer that will support the proposed withdrawal.

4. The amount of ground water withdrawal requested expressed as an average gallonage per day.

5. A statement of the tentative determination to issue or deny a permit or special exception.

6. A brief description of the final determination procedure.

7. The address and phone number of a specific person at the board's office from whom further information may be obtained.

8. A brief description on how to submit comments and request a public hearing.

E. Public notice shall not be required for submission or approval of plans and specifications or conceptual engineering reports not required to be submitted as part of the application.

F. When a permit or special exception is denied the board will do so in accordance with § 6.5 of this regulation.

§ 5.2. Public access to information.

All information pertaining to permit and special exception application and processing shall be available to the public.

§ 5.3. Public comments and public hearing.

A. All written comments submitted during the 30-day comment period described in § 5.1 C shall be retained by the board and considered during its final decision on the permit or special exception.

B. The executive director shall consider all written comments and requests for an informal hearing received during the comment period, and shall make a determination on the necessity of an informal hearing in accordance with § 1.12 of Procedural Rule No. 1 (VR 680-31-01). All proceedings, informal hearings and decisions therefrom will be in accordance with Procedural Rule No. 1.

C. Should the executive director, in accordance with Procedural Rule No. 1, determine to dispense with the informal hearing, he may grant the permit or special exception, or, at his discretion, transmit the application or request, together with all written comments thereon and relevant staff documents and staff recommendations, if any, to the board for its decision.

D. Any owner aggrieved by any action of the board taken without a formal hearing may request in writing a formal hearing pursuant to Procedural Rule No. 1.

§ 5.4. Public notice of hearing.

A. Public notice of any informal hearing held pursuant to § 5.3 shall be circulated as follows:

1. Notice shall be published once in a newspaper of general circulation in the area affected by the proposed withdrawal.

2. Notice of the informal hearing shall be sent to all persons and government agencies which received a copy of the public notice of the draft permit or special exception and to those persons requesting an informal hearing or having commented in response to the public notice.

B. Notice shall be effected pursuant to subdivisions A 1 and A 2 of this section at least 30 days in advance of the informal hearing.

C. The content of the public notice of any informal hearing held pursuant to § 5.3 shall include at least the following:

1. Name and address of each person whose application will be considered at the informal hearing and a brief description of the beneficial use that will be supported by the proposed ground water withdrawal.

2. The precise location of the proposed withdrawal and the aquifers that will support the withdrawal. The location should be described, where possible, with reference to route numbers, road intersections, map coordinates or similar information.

3. A brief reference to the public notice issued for the permit or special exception application and draft permit or special exception, including identification number and date of issuance unless the public notice includes the informal hearing notice.

4. Information regarding the time and location for the informal hearing.

5. The purpose of the informal hearing.

6. A concise statement of the relevant issues raised by the persons requesting the informal hearing.

7. Contact person and the address of the State Water Control Board office at which interested persons may obtain further information or request a copy of the draft permit or special exception prepared pursuant to § 3.5.

8. A brief reference to the rules and procedures to be followed at the informal hearing.

D. Public notice of any formal hearing held pursuant to § 5.3 D shall be in accordance with Procedural Rule No.1.

PART VI.
PERMIT AND SPECIAL EXCEPTION AMENDMENT, REVOCATION AND DENIAL.

§ 6.1. Rules for amendment and revocation.

Permits and special exceptions shall be amended or revoked only as authorized by this part of this regulation as follows:

1. A permit or special exception may be amended in whole or in part, or revoked.

2. Permit or special exception amendments shall not be used to extend the term of a permit or special exception.

3. Amendment or revocation may be initiated by the board, on the request of the permittee, or other person at the board's discretion under applicable laws or the provisions of this regulation.

§ 6.2. Causes for revocation.

After public notice and opportunity for a formal hearing pursuant to § 1.20 of Procedural Rule No. 1 a permit or special exception can be revoked for cause. Causes for revocation are as follows:

1. Noncompliance with any condition of the permit or special exception;

2. Failure to fully disclose all relevant facts or misrepresentation of a material fact in applying for a permit or special exception, or in any other report or document required by the Act, this regulation or permit or special exception conditions;

3. The violation of any regulation or order of the board, or any order of a court, pertaining to ground water withdrawal;

4. A determination that the withdrawal authorized by the permit or special exception endangers human health or the environment and can not be regulated to acceptable levels by permit or special exception amendment;

5. A material change in the basis on which the permit or special exception was issued that requires either a temporary or permanent reduction, application of special conditions or elimination of any ground water withdrawal controlled by the permit or special exception.

§ 6.3. Causes for amendment.

A. A permit or special exception may, at the board's discretion, be amended for any cause as described in § 6.2 of this regulation.

B. A permit or special exception may be amended, but not revoked, except when the holder of the permit or special exception agrees or requests, when any of the following developments occur:

1. When new information becomes available about the ground water withdrawal covered by the permit or special exception, or the impact of the withdrawal, which was not available at permit or special exception issuance and would have justified the application of different conditions at the time of issuance.

2. When ground water withdrawal reports submitted by the permittee indicate that the permittee is using less than 60% of their permitted withdrawal amount on a routine basis.

3. When a change is made in the regulations on

which the permit or special exception was based.

4. When changes occur which are subject to "reopener clauses" in the permit or special exception.

§ 6.4. Transferability of permits and special exceptions.

A. Transfer by amendment.

Except as provided for under automatic transfer in subsection B of this section, a permit or special exception shall be transferred only if the permit has been amended to reflect the transfer.

B. Automatic transfer.

Any permit or special exception shall be automatically transferred to a new owner if:

1. The current owner notifies the board 30 days in advance of the proposed transfer of the title to the ground water withdrawal facility;

2. The notice to the board includes a written agreement between the existing and proposed new owner containing a specific date of transfer of permit or special exception responsibility, coverage and liability between them; and

3. The board does not within the 30-day time period notify the existing owner and the proposed owner of its intent to amend the permit or special exception.

§ 6.5. Minor amendment.

A. Upon request of the holder of a permit or special exception, or upon board initiative with the consent of the holder of a permit or special exception, minor amendments may be made in the permit or special exception without following the public involvement procedures.

B. For ground water withdrawal permits and special exceptions, minor amendments may only:

1. Correct typographical errors.

2. Require reporting at a greater frequency than required in the permit or special exception.

3. Change an interim compliance date in a schedule of compliance to no more than 120 days from the original compliance date and provided it will not interfere with the final compliance date.

4. Allow for a change in ownership or operational control when the board determines that no other change in the permit or special exception is necessary, provided that a written agreement containing a specific date for transfer of permit or special exception responsibility, coverage and liability from the current to the new owner has been submitted to the board.

§ 6.6. Denial of a permit or special exception.

A. The applicant shall be notified by letter of the staff's decision to recommend to the board denial of the permit or special exception requested.

B. The staff shall provide sufficient information to the applicant regarding the rationale for denial, such that the applicant may, at his option, modify the application in order to achieve a favorable recommendation; withdraw his application; or proceed with the processing on the original application.

C. Should the applicant withdraw his application, no permit or special exception will be issued.

D. Should the applicant elect to proceed with the original project, the staff shall make its recommendation of denial to the executive director for determination of the need for public notice of a formal hearing to consider the denial as provided for in accordance with Procedural Rule No. 1.

PART VII.
ENFORCEMENT.

§ 7.1. Enforcement.

The board may enforce the provisions of this regulation utilizing all applicable procedures under the Ground Water Management Act of 1992 or any other section of the Code of Virginia that may be applicable.

PART VIII.
MISCELLANEOUS.

§ 8.1. Delegation of authority.

The executive director, or his designee, may perform any act of the board provided under this regulation, except as limited by § 62.1-256.9 of the Code of Virginia.

§ 8.2. Control of naturally flowing wells.

The owner of any well that naturally flows, in any portion of the Commonwealth, shall either:

1. Permanently abandon the well in accordance with the Virginia Department of Health's Private Well Construction Regulations; or

2. Equip the well with valves that will completely stop the flow of ground water when it is not being applied to a beneficial use.

§ 8.3. Statewide information requirements.

The board may require any person withdrawing ground

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

§ 8.4. Statewide right to inspection and entry.

Upon presentation of credentials the board, or any duly authorized agent, shall have the power to enter, at reasonable times and under reasonable circumstances, any establishment or upon any property, public or private, located anywhere in the Commonwealth for the purposes of obtaining information, conducting surveys or inspections, or inspecting wells and springs to ensure compliance with any permits, standards, policies, rules, regulations, rulings and special orders which it may adopt, issue or establish to carry out the provisions of the Ground Water Management Act of 1992 and this regulation.

* * * * * * * * *

Title of Regulation: **VR 680-14-12. Facility and Aboveground Storage Tank Registration Requirements.**

Statutory Authority: § 62.1-44.34:19.1 and 62.1-44.15(10) of the Code of Virginia.

Public Hearing Dates:
February 9, 1993 - 7 p.m.
February 10, 1993 - 7 p.m.
February 12, 1993 - 10 a.m.
February 18, 1993 - 2 p.m.
February 23, 1993 - 7 p.m.
Written comments may be submitted through March 15, 1993.
(See Calendar of Events section for additional information)

Summary:

In accordance with § 62.1-44.34:19.1 of the Code of Virginia, the State Water Control Board intends to promulgate regulations requiring all facility operators in the Commonwealth of Virginia having an aggregate aboveground maximum storage of more than 1,320 gallons of oil or an individual aboveground storage tank with a capacity of more than 660 gallons of oil to register the facility and provide an inventory of aboveground storage tanks at the facility. Registration must be made to the board and to the local director or coordinator of emergency services appointed pursuant to § 44-146.19 of the Code of Virginia.

The purpose of this regulation is to provide guidance for operators of facilities in the Commonwealth to register the facility and aboveground storage tank is located at the facility. Facilities and aboveground storage tanks must be registered within 90 days of the effective date of this regulation. Registration shall be renewed every five years or whenever title to a facility or an aboveground storage tank is transferred, whichever first occurs.

VR 680-14-12. Facility and Aboveground Storage Tank Registration Requirements Regulations.

§ 1. Definitions.

The following words and terms, when used in this regulation, shall have the following meaning, unless the context clearly indicates otherwise:

"Aboveground storage tank" means any one or combination of tanks, including pipes, used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than 90% above the surface of the ground. This term does not include line pipe and breakout tanks of an interstate pipeline regulated under the Hazardous Liquid Pipeline Safety Act of 1979.

"Board" means the State Water Control Board.

"Containment and cleanup" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.

"Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

"Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil, and includes a pipeline.

"Local building official" means the person authorized by the Commonwealth to enforce the provisions of the Uniform Statewide Building Code.

"Local director or coordinator of emergency services" means any person or any coordinator appointed pursuant to § 44-146.18 of the Code of Virginia.

"Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity.

"Operator" means any person who owns, operates, charters by demise, rents or otherwise exercises control over or responsibility for a facility or a vehicle or vessel.

"Person" means any firm, corporation, association or partnership, one or more individuals, or any governmental

unit or agency thereof.

"Pipeline" means all new and existing pipe, rights of way, and any equipment, facility, or building used in the transportation of oil including, but not limited to, line pipe, valves and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks.

"Storage capacity" means the total capacity of an AST or a container, whether the AST or container is filled in whole or in part with oil or a mixture of oil or other substances, or is empty. The term does not include the capacity of any AST which has been permanently closed in accordance with this regulation.

"Tank" means a device designed to contain an accumulation of oil and constructed of nonearthen materials, such as concrete, steel or plastic, which provide structural support. This terms does not include flow-through process equipment used in processing or treating oil by physical, biological, or chemical means.

"Tank vessel" means any vessel used in the transportation of oil as cargo.

"Uniform Statewide Building Code" means § 36-99 et seq. of the Code of Virginia.

"Vehicle" means any motor vehicle, rolling stock or other artificial contrivance for transport whether self-propelled or otherwise, except vessels.

"Vessel" includes every description of watercraft or other contrivance used as a means of transporting on water, whether self-propelled or otherwise, and shall include barges and tugs.

§ 2. Applicability.

A. This regulation applies to (i) an operator of a facility located within the Commonwealth with an aboveground storage capacity of more than 1,320 gallons of oil, or (ii) an operator having an individual AST located within the Commonwealth with a storage capacity of more than 660 gallons of oil.

B. The requirements of this regulation do not apply to:

1. Operators of tank vessels or vehicles;

2. An operator of:

a. An AST containing petroleum, including crude oil or any fraction thereof, which is subject to and specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601);

b. An AST which is regulated by the Department of Mines, Minerals and Energy under Title 45.1 of the Code of Virginia;

c. An AST used for the storage of products which are regulated pursuant ot the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.);

d. An AST which is used to store hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act (42 U.S.C. § 6901 et seq.), or a mixture of such hazardous wastes and other regulated substances;

e. An AST with a storage capacity of less than 660 gallons which is used for storage heating oil for consumption on the premises where stored;

f. An AST which is used to store propane gas;

g. An AST of 660 gallons or less located at a farm or residence which is used for storing motor fuel for noncommercial purposes or for storing substances that are used to facilitate the production of crops, livestock, and livestock products on a farm;

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

i. A nonstationary AST liquid trap or associated gathering lines directly related to oil and gas production or gathering;

j. A drum, barrel or portable AST that has a storage capacity of less than 110 gallons;

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

l. A stormwater or wastewater collection system; and

m. Equipment or machinery that contains oil for operational purposes.

§ 3. Compliance dates.

A. Within 90 days of the effective date of these regulations, the operator of a facility located within the Commonwealth with an aboveground storage capacity of more than 1,320 gallons of oil or an operator having any individual AST located within the Commonwealth with a storage capacity of more than 660 gallons of oil shall register the facility or the AST with the board and the local director of emergency services appointed pursuant to § 44-146.19 of the Code of Virginia, and provide an inventory of all AST's.

B. The operator of a facility or the operator of an individual AST shall renew the registration required by this regulation either every five years or whenever title to

a facility or AST is transferred, whichever occurs first.

§ 4. Statement of purpose.

The purpose of this regulation is to establish requirements for registration of facilities and individual AST's located within the Commonwealth to provide the board with the information necessary to identify and inventory facilities with a storage capacity of more than 1,320 gallons of oil or individual AST's with a storage capacity of more than 660 gallons of oil.

§ 5. Registration.

A. An operator of a facility located within the Commonwealth with an aboveground storage capacity of more than 1,320 gallons of oil or an operator having any individual AST located within the Commonwealth with a storage capacity of more than 660 gallons of oil shall register all AST's located in the Commonwealth with the board and the local director of emergency services within 90 days of the effective date of this regulation. For any registration submitted pursuant to this section, an operator shall submit to the board the form prescribed in Appendix I of this regulation.

B. In addition to the initial registration required by § 5 A, an operator of a facility or an AST shall within 30 days after:

1. A new or converted facility or AST has been brought into operation, register the facility or the AST with the board and the local director of emergency services.

2. The upgrade, repair, replacement, or temporary or permanent closure of an existing AST or installation of a new AST, notify the board of such upgrade, repair, replacement, closure or installation.

§ 6. Installing, retrofitting or bringing an AST into use.

A. This section applies to operators of facilities with a total storage capacity of less than 25,000 gallons of oil when installing, retrofitting or bringing a regulated AST into use after the effective date of this regulation.

B. A regulated AST, including an AST operated by the federal government, shall not be registered without proof that the operator has obtained the required permit, inspections and Certification of Use from the local building official, except in the case of a regulated AST operated by the Commonwealth. The Department of General Services shall function as the local building official in accordance with § 36-98.1 of the Code of Virginia for all AST's operated by the Commonwealth.

§ 7. Aboveground storage tank closure.

Closure of any aboveground storage tank subject to this regulation shall be accomplished in accordance with the requirements of § 8 of VR 680-14-13, Aboveground Storage Tank Pollution Prevention Requirements.

§ 8. Administrative fees.

A. This section establishes application fees for registration of aboveground storage tanks. Fees shall be paid by check, draft or postal money order made payable to the State Water Control Board.

B. An operator of an AST subject to this regulation shall submit an fee of $25 to the board for each AST up to a maximum of $50 per facility. An operator of multiple facilities shall submit a fee of $100 to the board to register all of the facilities and ASTs.

C. Fees shall be submitted as part of the initial registration and upon each registration renewal of the facility or AST. Registration forms will not be accepted by the board as complete unless the applicable fee has been paid by the operator.

§ 9. Notices to the State Water Control Board.

All requirements of this regulation for registration or notification to the State Water Control Board shall be addressed as follows:

Mailing Address:

State Water Control Board
Office of Spill Response and Remediation
P.O. Box 11143
Richmond, VA 23230-1143

Location Address:

State Water Control Board
Office of Spill Response and Remediation
4900 Cox Road
Glen Allen, VA 23060

§ 10. Delegation of authority.

The executive director, or a designee, may perform any act of the board under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.

APPENDIX I
REGISTRATION OF ABOVEGROUND STORAGE TANKS

State Water Control Board ..... State use only

P.O. Box 11143 ..... ID Number . . . .

Richmond, VA 23230 ..... Date Received . . . .

Please type or print in ink all items except signature in certification section.

General Information

An operator of a facility or an operator of an individual AST shall regiater all AST located within the Commonwealth with the board and the local director or coordinator of emergency services within 90 days of the effective date of this regulation as required by § 62.1-44.34:19.1 of the Code of Virginia.

The primary purpose of this registration is to identify and inventory the aboveground oil storage tanks containing oil located in the Commonwealth. It is expected that the information you provide will be based on available records, or in the absence of available records, to the best your knowledge, belief or recollection.

WHO MUST NOTIFY?

A. Section 62.1-44.34:19.1 of the Code of Virginia requires that the operator of a facility located within the Commonwealth with an aboveground storage capacity of more than 1,320 gallons of oil or with an individual aboveground storage tank located within the Commonwealth with a storage capacity of more than 660 gallons of oil shall register their facilities and provide an inventory of aboveground storage tanks at the facility. An operator means any person who owns, operates, charters, rents or otherwise exercises control over or responsibility for a facility or a vehicle or vessel.

WHICH AST's MUST BE REGISTERED?

Aboveground storage tanks or "AST" means any one or combination of tanks, including pipes, used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than 90% above the surface of the ground. This term includes any tank or device used to contain an accumulation of oil and constructed of nonearthen materials, such as concrete, steel or plastic which provide structural support. This term does not include (i) line pipe and breakout tanks of an interstate pipeline regulated under the Hazardous Liquid Pipeline Safety Act of 1979, or (ii) flow through process equipment used in processing or treating oil by physical, biological, or chemical means.

WHAT AST's ARE EXEMPT FROM THE REGISTRATION REQUIREMENTS?

The requirements of this regulation do not apply to:

1. Operators of tank vessels or vehicles;

2. An operator of:

a. An AST containing petroleum, including crude oil or any fraction thereof, which is subject to and specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601);

b. An AST which is regulated by the Department of Mines, Minerals and Energy under Title 45.1 of the Code of Virginia;

c. An AST used for the storage of products which are regulated pursuant to the Federal Food, Drug, and Cosmetic Act (21 USC § 301 et seq.);

d. An AST which is used to store hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act, (42 U.S.C. § 6901 et seq.) or a mixture of such hazardous waste and other regulated substances;

e. An AST with a storage capacity of less than 660 gallons which is used for storing heating oil for consumption on the premises where stored;

f. An AST which is used to store propane gas;

g. An AST of 660 gallons or less located at a farm or residence which is used for storing motor fuel for noncommercial purposes or for storing substances that are used to facilitate the production of crops, livestock, and livestock products on a farm;

h. An AST used to store nonpetroleum based animal and vegetable oils;

i. A nonstationary AST liquid trap or associated gathering lines directly related to oil and gas production or gathering;

j. A drum, barrel or portable AST that has a storage capacity of less than 110 gallons;

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

l. A stormwater or wastewater collection system; and

m. Equipment or machinery that contains oil for operational purposes.

WHAT OILS ARE COVERED?

"Oil" means oil of any kind and in any form including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity.

WHEN TO REGISTER

A. An operator of a facility or an operator of an individual AST shall register all AST's located within the Commonwealth with the board and the local director or coordinator of emergency services within 90 days of the

effective date of this regulation.

For any registration submitted pursuant to this § 5, an operator shall submit to the board the form prescribed in Appendix I of this regulation.

B. In addition to the initial registration required by § 5 A, an operator of a facility or an AST shall within 30 days after:

1. A new facility or AST has been brought into operation, register the facility or AST with the board and local director or coordinator of emergency services.

2. The upgrade, repair, replacement, or temporary or permanent closure of an existing AST or installation of a new AST, notify the board of such upgrade, repair, replacement, closure or installation.

I. Facility Operator

. . . . . .
Operator Name

. . . . . .
Street Address

. . . . . .
City State Zip

. . . . . .
County

. . . . . .
Phone Number (Area Code)

II. Facility Address

. . . . . .
Latitude

. . . . . .
Longitude

. . . . . .
Street Address

. . . . . .
City State Zip

. . . . . .
County

. . . . . .
Phone Number (Area Code)

III. Type of Operator

... Federal Government ... State Government

... Local Government ... Private

... Commercial

IV. Type of Facility

... Petroleum Distributor ... Refinery

... Airline ... Bulk Storage

... Federal Government ... State Government

... Local Government ... Commercial

... Industrial ... Railroad

... Other (Explain)

V. Contact Person in Charge of Tanks

. . . . . .
Name Position Address and Phone Number

VI. AST SECONDARY CONTAINMENT

If applicable, provide a brief description of the method of secondary containment utilized for the AST(s).

. . . . . .

. . . . . .

. . . . . .

VII. Type of Leak Detection Utilized (If applicable)

... Groundwater Monitoring ... Vapor monitoring

... Interstitial Monitoring ... Other (Describe)

STATE WATER CONTROL BOARD PAGE 21 OF 23
VR 680-14-12 FACILITY AND ABOVEGROUND STORAGE TANK REGISTRATION REQUIREMENTS

VIII. DESCRIPTION OF ABOVEGROUND STORAGE TANK(S)

Tank Identification Number	Tank No. ____	Tank No. ____	Tank No. ____	Tank No. ____	Tank No. ____
1. Status of Tank (Mark only one) Currently in Use					
Temporarily Out of Use (Remember to fill out section X.)					
Permanently Out of Use (Remember to fill out section X.)					
Amendment of Information					
2. Date of Installation (mo./year)					
3. Estimated Total Capacity (gallons)					
4. Tank Material of Construction (Mark all that apply)					
Asphalt Coated or Bare Steel					
Cathodically Protected Steel					
Epoxy Coated Steel					
Composite (Steel with Fiberglass)					
Fiberglass Reinforced Plastic					
Lined Interior					
Double Walled					
Polyethylene Tank Jacket					
Concrete					
Excavation Liner					
Unknown					
Other (Please specify)					
Has tank been repaired?					
5. Piping Material of Construction (Mark all that apply) Bare Steel					
Galvanized Steel					
Fiberglass Reinforced Plastic					
Copper					
Cathodically Protected					
Double Walled					
Secondary Containment					
Unknown					
Other (Please specify)					
Has piping been repaired?					
6. Piping (Type) (Mark only one)					
Suction: no valve at tank					
Suction: valve at tank					
Pressure					
Gravity Fed					

Page 3

IX. AST Closure

Tank No. .... closed Date Closed ....

Tank No. .... closed Date Closed ....

Tank No. .... closed Date Closed ....

Tank No. .... closed Date Closed ....

Tank No. .... closed Date Closed ....

Results of Closure Assessment

. . . . . .

. . . . . .

.... Evidence of a discharge detected? (Yes/No)

.... If a discharge was detected, was it reported to the Board?

X. Certification (Read and sign after completing all sections)

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the submitted information is true, accurate, and complete. (To be signed by either the operator or the operator's authorized representative.)

. . . . . .

Name and title of operator ... Signature ... Date Signed authorized representative

. . . . . .

Name and title of operator's ... Signature ... Date Signed authorized representative

* * * * * * * *

Title of Regulation: **VR 680-14-13. Aboveground Storage Tanks Pollution Prevention Requirements.**

Statutory Authority: §§ 62.1-44.34:15.1 and 62.1-44.15(10) of the Code of Virginia.

Public Hearing Dates:

February 9, 1993 - 7 p.m.
February 10, 1993 - 7 p.m.
February 12, 1993 - 10 a.m.
February 18, 1993 - 2 p.m.
February 23, 1993 - 7 p.m.
Written comments may be submitted through March 15, 1993.
(See Calendar of Events section for additional information)

Summary:

In accordance with § 62.1-44.34:15.1 of the Code of Virginia, the State Water Control Board intends to promulgate regulations requiring all operators of facilities in the Commonwealth of Virginia having an aggregate aboveground storage capacity of 25,000 gallons or more of oil to comply with standards and procedures relating to the prevention of pollution from aboveground storage tanks.

The purpose of this regulation is to develop the standards and procedures necessary to be followed by facility operators to prevent the discharge of oil to state waters, lands and storm drain systems from new and existing aboveground storage tanks. These standards and procedures were required to be developed in substantial conformity with the current codes and standards recommended by the National Fire Protection Association. Section 62.1-44.34:15.1 also requires the board to incorporate accepted industry practices contained in the American Petroleum Insititute publications and other accepted industry standards. The board conducted an extensive review of existing industry practices relating to aboveground storage tanks.

VR 680-14-13. Aboveground Storage Tanks Pollution Prevention Requirements

§ 1. Definitions.

The following words and terms, when used in this regulation, shall have the following meaning, unless the context clearly indicates otherwise:

"Aboveground storage tank" or "AST" means any one or combination of tanks, including pipes, used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than 90% above the surface of the ground. This term does not include line pipe and breakout tanks of an interstate pipeline regulated under the Hazardous Liquid Pipeline Safety Act of 1979.

"Board" means the State Water Control Board.

"Containment and cleanup" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.

"Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

"Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil, and includes a pipeline.

"Local building official" means the person authorized by the Commonwealth to enforce the provisions of the Uniform Statewide Building Code.

"Local director of emergency services" means any person or any coordinator appointed pursuant to § 44-146.19 of the Code of Virginia.

"Oil" means oil of any kind and in any form including, but not limited to, petroleum and petroleum by-products,

fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity.

"Operator" means any person who owns, operates, charters, rents or otherwise exercises control over or responsibility for a facility or a vehicle or a vessel.

"Person" means any firm, corporation, association or partnership, one or more individuals, or any governmental unit or agency thereof.

"Pipeline" means all new and existing pipe, rights of way, and any equipment, facility, or building used in the transportation of oil including, but not limited to, line pipe, valves and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks.

"Storage capacity" means the total capacity of an AST or a container, whether the AST or container is filled in whole or in part with oil or a mixture of oil or other substances, or is empty. This term does not include the capacity of any AST which has been permanently closed in accordance with this regulation.

"Tank" means a device designed to contain an accumulation of oil and constructed of nonearthen materials, such a concrete, steel or plastic, which provide structural support. This term does not include flow-through process equipment used in processing or treating oil by physical, biological or chemical means.

"Tank vessel" means any vessel used in the transporation of oil as cargo.

"Uniform Statewide Building Code" means § 36-99 et seq. of the Code of Virginia.

"Vehicle" means any motor vehicle, rolling stock or other artificial contrivance for transport whether self-propelled or otherwise, except vessels.

"Vessel" includes every description of watercraft or other contrivance used as a means of transporting on water, whether self-propelled or otherwise, and shall include barges and tugs.

§ 2. Applicability.

This regulation applies to aboveground storage tanks at facilities with an aggregate capacity of 25,000 gallons of oil or more.

§ 3. Compliance dates.

Operators of facilities with an aggregate aboveground storage capacity of 25,000 gallons or more of oil shall comply with this regulation 30 days after publication in the Virginia Register unless otherwise specified in this regulation.

§ 4. Statement of purpose.

The purpose of this regulation is to develop standards and procedures for operators of facilities with an aggregate aboveground storage capacity of 25,000 gallons or more of oil relating to the prevention of pollution from aboveground storage tanks.

§ 5. Incorporation by reference.

The following versions of standards and recommended practices, codes and federal regulations are hereby incorporated by reference:

1. Underwriters Laboratories Standards. Specification 142, "Steel Aboveground Tanks for Flammable and Combustible Liquids" (1982).

2. American Petroleum Institute Standards.

a. Specification Number 12B and Supplement 2, October 1, 1990, "Specification for Bolted Tanks for Storage of Production Liquids," Thirteenth Edition.

b. Specification Number 12D and Supplement 2, 1982, as supplemented 1985, "Specification for Field Welded for Storage of Production Liquids," Ninth Edition.

c. Specification Number 12F, and Supplement 1, 1982, as supplemented 1988, "Specification for Shop Welded Tanks for Storage of Production Liquids," Tenth Edition.

d. Standard Number 620, 1985, "Design and Construction of Large Welded Low-Pressure Storage Tanks," Eighth Edition.

e. Standard Number 650, 1988, "Welded Steel Tanks for Oil Storage," Eighth Edition.

f. Recommended Practice 651, April 1991, "Cathodic Protection of Aboveground Petroleum Storage Tanks," First Edition.

g. Recommended Practice 652, April 1991, "Lining of Aboveground Storage Tank Bottoms," First Edition.

h. Standard 653, January 1991, "Tank Inspection, Repair, Alteration, and Reconstruction," First Edition, incorporates supplement 1, January 1992.

i. Publication 1110, "Recommended Practice for the Pressure Testing of Liquid Petroleum Pipelines."

j. Recommended Practice 1632, 1987 as supplemented March 1989, "Cathodic Protection of Underground Storage Tanks and Piping Systems."

k. Recommended Practice 2350, March 1987, "Overfill Protection for Petroleum Storage Tanks."

3. National Fire Protection Association Standards. NFPA 30, "Flammable and Combustible Liquids Code."

4. National Association of Corrosion Engineers Standards.

a. Recommended Practice 0169-83, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems," 1983.

b. Recommended Practice 0285-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," 1985.

5. 33 C.F.R. Part 154.

6. 40 C.F.R. Part 112.

7. 29 C.F.R. Part 1910.106.

§ 6. Pollution prevention standards and procedures.

A. For existing aboveground storage tanks at facilities with an aggregate capacity of 1 million gallons or greater the following requirements apply:

1. Inventory control, testing for variations and formal tank tests.

a. Each operator shall institute inventory control procedures capable of detecting a significant variation of inventory. A significant variation shall be considered a variation in excess of 1/10 of 1.0% of the facility aggregate aboveground storage capacity of oil or the facility total monthly throughput of oil whichever is less. Inventories shall be reconciled on a monthly basis. If the reconciliation of inventory indicates a greater than 1/10 of 1.0% variation within two consecutive reconciliation periods, the operator shall notify the board and the local director or coordinator of emergency services and initiate testing to determine the reason for the variation. The method of testing shall be submitted to the board for review and approval. Inventories shall also be reconciled after each receipt or transfer of oil.

b. Inventory records shall be kept of incoming and outgoing volumes of oil and oil movements within the facility. All tanks shall be gauged on a daily basis during each day of normal operation and tanks shall be gauged after each transfer of oil. Physical measurements shall be reconciled to 60°F.

c. All AST's shall be formally inspected on the following basis:

(1) Each AST shall undergo a formal external tank inspection every five years using accepted methods of nondestructive testing in accordance with the provisions of API 653. The initial external inspection shall be completed within three years of the effective date of this regulation. The operator of each facility shall submit to the board for approval, within six months of the effective date of this regulation, a schedule of tank inspections for all tanks on the facility. This formal inspection shall also include a determination by the operator that the tank bottom is not leaking. The operator shall submit documentation of the method(s) that will be used to make this determination to the board for approval six months prior to its application.

(2) Each existing AST that has been in operation for more than five years shall be internally inspected within three years of the effective date of this regulation. An internal inspection conducted on or after January 1, 1991, in accordance with the provisions of API 653 may satisfy this requirement based upon review and acceptance by the board of supporting documentation submitted by the operator. Inspections shall be conducted in accordance with the provisions of API 653 and shall include formal inspection of the entire tank bottom. If construction practices allow external access to the tank bottom, a formal external inspection utilizing accepted methods of nondestructive testing shall be allowed in lieu of the internal inspection. The operator of each facility shall submit to the board for approval, within six months of the effective date of this regulation, a schedule of tank inspections for all tanks on the facility.

(3) Each existing AST that has been in operation for less than five years shall be internally inspected within five years of the effective date of this regulation. Inspections shall be conducted in accordance with the provisions of API 653 and shall include formal inspection of the entire tank bottom. If construction practices allow external access to the tank bottom, a formal external inspection utilizing accepted methods of nondestructive testing may be allowed in lieu of the internal inspection. The operator of each facility shall submit to the board for approval, within six months of the effective date of this regulation, a schedule of tank inspections for all tanks on the facility.

(4) Each AST shall undergo an internal reinspection every 10 years after the inspection required in subdivisions A 1 c(2) and A 1 c(3) of this section unless the operator can demonstrate to the board that an extension of the reinspection period is warranted. Such demonstration shall be provided to the board for approval at least six months prior to the date reinspection is due. Inspections shall be conducted in accordance with the provisions of API 653 and shall include formal inspection of the entire

tank bottom. If construction practices allow external access to the tank bottom, a formal external inspection utilizing accepted methods of nondestructive testing may be allowed in lieu of the internal reinspection. The operator of each facility shall submit a schedule indicating which tanks are to be reinspected three months prior to the scheduled tests.

(5) Each secondary containment dike or berm shall be recertified every 10 years by a professional engineer. This certification shall attest to the dike or berm having maintained compliance with 40 C.F.R. Part 112, NFPA 30 and 29 C.F.R. Part 1910.106. This certification shall also include a statement of the degree of permeability of the entire dike or berm including the floor. This permeability shall be not less than 10-6 cm/sec. The initial certification shall be completed within five years of the effective date of this regulation.

(6) Each existing AST that has been in operation for more than five years without cathodic protection of the tank bottom shall be evaluated in accordance with the provisions of API 651, API 653, NACE 0169 and NACE 0285 to determine the need for cathodic protection. This evaluation shall be accomplished by a corrosion professional and shall be conducted within five years of the effective date of this regulation.

2. Safe fill and shutdown procedures.

a. Each operator shall institute safe fill and shutdown procedures which will ensure that overfilling of tanks does not occur. The operator must ensure that the volume available in the tank is greater than the volume of oil to be transferred to the tank before the transfer operation commences and that the transfer operation is monitored constantly until complete. Each operator shall also ensure that all tank fill valves not in use are secured. The operator shall also monitor all other storage tanks to ensure that only the tank designated is receiving oil.

b. Each operator of a facility shall ensure compliance with NFPA 30.

c. All receipts of oil shall be authorized by facility personnel trained by the operator. All oil transfer areas where tank filling connections are made with vehicles shall be equipped with a spill containment system capable of containing and collecting any spills that may occur. The operator shall ensure compliance with NFPA 30 relating to this requirement. The secondary automatic shutoff control required by NFPA 30, Chapter 5, sections 5-4.4.1.10 and 5-4.4.1.11 shall be tested prior to the loading of each tank vehicle. The tank vehicle operator shall remain at the loading rack during all phases of any transfer operation.

d. If installed, an automatic shutdown system utilized during transfer of oil shall include the capability of directing the flow of oil to another tank capable of receiving the transferred oil or in the case of transfers from a vehicle, it shall provide for the shutdown of the pumping system. This automatic shutdown system shall be tested prior to each receipt of oil or monthly whichever occurs first.

e. All AST's shall be equipped with a liquid level gauge that indicates the level of oil in the tank. In addition, the storage capacity and tank identification number must be clearly marked on the tank and at the location of the gauge. These gauges shall be calibrated annually.

f. Each AST shall be equipped with a high level alarm. Activation of the high level alarm shall initiate an immediate and orderly emergency shutdown of the transfer. Each operator shall include this emergency shutdown procedure in the facility records and shall ensure that all facility personnel involved in the transfer operation are trained in this procedure. The alarm shall consist of a visual and audible device capable of alerting the operator both by sight and hearing of an impending overfill situation. If the operator is in a control station, this alarm shall cause a warning light and audible signal on the control panel to activate. In addition, this system shall alarm on failure, malfunction or power loss. This high level alarm shall be tested prior to each receipt of oil or monthly whichever occurs first.

3. Cathodic protection of piping and pressure testing of piping.

a. The requirement for cathodic protection of piping shall apply to buried piping only. Aboveground piping shall be protected from corrosion using methods and procedures referenced in NFPA 30. Cathodic protection shall be installed and maintained in accordance with the provisions of API 1632, NFPA 30, NACE 01-69 or NACE 02-85. Piping which passes through the wall of the containment berm or dike or under road crossings shall be protected from corrosion using practices recommended in the above listed publications.

b. All piping shall be hydrostatically tested within five years of the effective date of this regulation and every five years thereafter. Tests conducted in accordance with the provisions of API 1110 may be used to satisfy this requirement. The use of oil as a hydrostatic test medium is acceptable if the flash point is greater than 120°F. The board will consider alternatives to the hydrostatic test requirement based on site specific conditions. The operator shall

submit any proposal regarding alternative method(s) to the board for approval six months prior to their application.

4. Visual daily inspection, weekly inspection, monthly gauging and inspection of monitoring wells, monitoring of well head space and quarterly sampling and analysis of monitoring wells.

a. The operator or his representative shall conduct a daily visual inspection of the facility each day of normal operation. Upon completion of this inspection, the facility person conducting the inspection shall document completion of this inspection by making an appropriate notation in the facility records and shall sign this notation. This visual inspection shall include the following:

(1) A complete walkthrough of the facility property to ensure that no hazardous conditions exist.

(2) An inspection of ground surface for signs of leakage, spillage or stained or discolored soils.

(3) A check of the berm or dike area for excessive accumulation of water and to ensure the dike or berm manual drain valves are secured.

(4) A visual inspection of the exterior tank shell to look for signs of leakage or damage.

b. The operator or his representative shall conduct a weekly inspection of the facility using a checklist submitted to and approved by the board. Board guidance as to content of this checklist is available in Appendix I. The operator shall submit the facility checklist to the board for approval within 90 days of the effective date of this regulation. This checklist shall be signed and dated by the facility person(s) conducting the inspection and shall become part of the facility record.

c. All monitoring wells required by VR 680-14-07, Oil Discharge Contingency Plans and Administrative Fees for Approval, shall be gauged monthly. The wellhead space of each well shall be sampled monthly for the presence of petroleum vapors. The board developed guidelines for this procedure are found in Appendix II.

d. All monitoring wells required by VR 680-14-07, Oil Discharge Contingency Plans and Administrative Fees for Approval, shall be sampled and analyzed to determine the presence of petroleum or petroleum by product contamination. The board developed guidelines for this procedure are found in Appendix II.

e. All observations and data gathered as a result of subdivisions A 4 c and A 4 d of this section shall be maintained at the facility, compiled into a summary and submitted to the board annually. Appendix II provides guidance as to the proper form for submittal. Should any such observations or data indicate the presence of petroleum hydrocarbons in ground water, the results shall be immediately reported to the board and to the local director or coordinator of emergency services appointed pursuant to § 44-146.19 of the Code of Virginia.

5. To ensure proper training of individuals conducting inspections required by subdivision A 4 of this section, the operator of a facility shall certify personnel based on the following:

a. Each facility operator must establish a training program for those facility personnel conducting the daily visual and weekly inspections of the facility and shall document completion of this training in the facility records. The required training may be conducted by the operator or by a third party. The training program shall be submitted to the board for approval within six months of the effective date of this regulation.

b. The required training shall be conducted for facility personnel within 12 months of the effective date of this regulation. Personnel not receiving this training initially who will be conducting these inspections shall receive the training prior to conducting any inspection.

c. Initial training shall address at a minimum:

(1) Basic information regarding hazard recognition, personnel protection and facility operations.

(2) The procedures to be followed in conducting the daily visual and weekly facility inspections.

(3) The procedures to be followed upon recognition of a hazard or the potential for a hazard as a result of improper facility operations.

(4) The procedure for evaluating the condition of aboveground storage tanks.

d. The operator of a facility shall recertify facility personnel upon any changes to the contents of the initial training program or every two years and shall make this recertification action part of the facility records.

e. All formal inspections and testing required by subdivision A 1 c of this section shall be conducted by a person certified or licensed to conduct the inspection or test. This certification shall be accomplished in accordance with the provisions of API 650 and API 653. Proof of this certification shall be maintained in the facility records. The results of all tests and inspections required by

subdivision A 1 c of this section shall be maintained at the facility or at a location approved by the board for the life of the facility.

B. For existing aboveground storage tanks at facilities with an aggregate capacity of less than 1 million gallons but more than 25,000 gallons, the following requirements shall apply:

1. Inventory control and testing for significant variations.

a. Each operator shall institute inventory control procedures capable of detecting a significant variation of inventory. A significant variation shall be considered a variation in excess of 1/10 of 1.0% of the facility aggregate aboveground storage capacity of oil or the facility total monthly throughput of oil whichever is less. Inventories shall be reconciled on a monthly basis. If the reconciliation of inventory indicates a greater than 1/10 of 1.0% variation within two consecutive reconciliation periods, the operator shall notify the board and the local director or coordinator of emergency services and initiate testing to determine the reason for the variation. The method of testing shall be submitted to the board for review and approval. Inventories shall also be reconciled after each receipt or transfer of oil.

b. Inventory records shall be kept of incoming and outgoing volumes of oil and oil movements within the facility. All tanks shall be gauged on a daily basis during each day of normal operation and tanks shall be gauged after each transfer of oil. Physical measurements shall be reconciled to 60°F.

c. Each secondary containment dike or berm shall be recertified every 10 years by a professional engineer. This certification shall attest to the dike or berm having maintained compliance with 40 C.F.R. Part 112, NFPA 30 and 29 C.F.R. Part 1910.106. This certification shall also include a statement of the degree of permeability of the entire dike or berm including the floor. This permeability shall be not less than 10-6 cm/sec. The initial certification shall be completed within five years of the effective date of this regulation.

2. Safe fill and shutdown procedures.

a. Each operator shall institute safe fill and shutdown procedures which will ensure that overfilling of tanks does not occur. The operator must ensure that the volume available in the tank is greater than the volume of oil to be transferred to the tank before the transfer operation commences and that the transfer operation is monitored constantly until complete. Each operator shall also ensure that all tank fill valves not in use are secured. The operator shall also monitor all other storage tanks to ensure that only the tank designated is receiving oil.

b. Each operator shall ensure compliance with the provisions of NFPA 30.

c. All receipts of oil shall be authorized by facility personnel trained by the operator. All oil transfer areas where tank filling connections are made with vehicles shall be equipped with a spill containment system capable of containing and collecting any spills that may occur. The operator shall ensure compliance with NFPA 30 relating to this requirement. The secondary automatic shutoff control required by NFPA 30, Chapter 5, sections 5-4.4.1.10 and 5-4.4.1.11 shall be tested prior to the loading of each tank vehicle. The tank vehicle operator shall remain at the loading rack during all phases of any transfer operation.

d. If installed by the operator, an automatic shutdown system utilized during receipt of oil shall include the capability of directing the flow of oil to another tank capable of receiving the transferred oil. This automatic shutdown system shall be tested prior to each receipt of oil or monthly whichever occurs first.

e. All AST's shall be equipped with a liquid level gauge that indicates the level of oil in the tank. In addition, the storage capacity and tank identification number must be clearly marked on the tank and at the location of the gauge. These gauges shall be calibrated annually.

f. If an AST receiving oil is unattended during transfer operations, it shall be equipped with a high level alarm. Activation of the high level alarm shall initiate an immediate and orderly emergency shutdown of the transfer. Each operator shall include this emergency shutdown procedure in the facility records and shall ensure that all facility personnel involved in the transfer operation are trained in this procedure. The alarm shall consist of a visual and audible device capable of alerting the operator both by sight and hearing of an impending overfill situation. If the operator is in a control station, this alarm shall cause a warning light and audible signal on the control panel to activate. In addition, this system shall alarm on failure, malfunction or power loss. This high level alarm shall be tested prior to each receipt of oil or monthly whichever occurs first.

3. Pressure testing of piping. All piping shall be hydrostatically tested within five years of the effective date of this regulation and every five years thereafter. Tests conducted in accordance with the provisions of API 1110 may be used to satisfy this requirement. The use of oil as a hydrostatic test medium is acceptable if the flash point is greater than 120°F.

The board will consider alternatives to the hydrostatic test requirement based on site specific conditions. The operator shall submit any proposal regarding alternative method(s) to the board six months before their application. The piping tests required by this section shall be conducted by a person certified or licensed to conduct the inspection or test.

4. Visual daily inspection and weekly inspections of the facility.

a. The operator or his representative shall conduct a daily visual inspection of the facility each day of normal operation. Upon completion of this inspection, the facility person conducting the inspection shall document completion of this inspection by making an appropriate notation in the facility records and shall sign this notation. This visual inspection shall include the following:

(1) A complete walkthrough of the facility property to ensure that no hazardous conditions exist.

(2) An inspection of ground surface for signs of leakage, spillage or stained or discolored soils.

(3) A check of the berm or dike area for excessive accumulation of water and to ensure the dike or berm manual drain valves are secured.

(4) The procedure for evaluating the condition of aboveground storage tanks.

b. The operator or his representative shall conduct a weekly inspection of the facility using a checklist submitted to and approved by the board. Board guidance as to content of this checklist is available in Appendix I. The operator shall submit the facility checklist to the board for approval within 90 days of the effective date of this regulation. This checklist shall be signed and dated by the facility person(s) conducting the inspection and shall become part of the facility record.

5. To ensure proper training of individuals conducting inspections required by subdivision B 4 of this section, the operator of a facility shall certify personnel based on the following:

a. Each facility operator must establish a training program for those facility personnel conducting the daily visual and weekly inspections of the facility and shall document completion of this training in the facility records. The required training may be conducted by the operator or by a third party. The training program shall be submitted to the board for approval within six months of the effective date of this regulation.

b. The required training shall be conducted for facility personnel within 12 months of the effective date of this regulation. Personnel not receiving this training initially who will be conducting these inspections shall receive the training prior to conducting any inspection.

c. Initial training shall address at a minimum:

(1) Basic information regarding hazard recognition, personnel protection and facility operations.

(2) The procedures to be followed in conducting the daily visual and weekly facility inspections.

(3) The procedures to be followed upon recognition of a hazard or the potential for a hazard as a result of improper facility operations.

(4) The procedure for evaluating the condition of aboveground storage tanks.

d. The operator of a facility shall recertify facility personnel upon any changes to the contents of the initial training program or every two years and shall make this recertification action part of the facility records.

§ 7. Performance standards for aboveground storage tanks installed, retrofitted or brought into use.

A. All AST's brought into service after the effective date of this regulation shall be built in accordance with design standards adopted by Underwriters Laboratories and the American Petroleum Institute. All newly installed AST's shall be installed in a manner consistent with the applicable requirements found in NFPA 30. Approval and any applicable permits must be obtained from the local building official before construction starts.

B. All AST's installed after the effective date of this regulation must be strength tested before being placed in service in accordance with the applicable code or standard under which they were built. The ASME code stamp, API monogram or the UL label on a tank is evidence of compliance with this strength test.

C. AST's installed after the effective date of this regulation which have the tank bottom in direct contact with the soil must have a determination made by a corrosion professional as to the type and degree of corrosion protection needed to ensure the integrity of the tank system during the use of the tank. If a survey indicates the need for corrosion protection for the new installation, corrosion protection shall be provided.

D. AST's installed after the effective date of this regulation shall have a release prevention barrier (RPB) installed either under or in the bottom of the tank. This RPB shall be capable of preventing the escape of contained materials and containing or channeling the released material for release detection.

E. Existing AST's which are retrofitted or brought back into use after the effective date of this regulation shall be brought into compliance with all accepted applicable industry standards which incorporate proven technologies to prevent the discharge of oil and which are cost effective. The operator of the facility shall submit a compliance schedule and documentation of the method of compliance to the board six months prior to its application.

F. Operators of AST's installed, retrofitted or brought back into use after the effective date of this regulation shall comply with § 6 A or § 6 B whichever is applicable.

§ 8. Aboveground storage tank closure.

A. Prior to temporary closure, the operator of an AST shall obtain a permit and the inspection required in accordance with the provisions of the Uniform Statewide Building Code. No AST shall be deemed to be temporarily closed unless the AST is inspected in accordance with the provisions of the Uniform Statewide Building Code. Notice of intent to temporarily close an AST shall be made to the board in accordance with § 5 of this regulation.

Where any AST has been temporarily closed for more than 12 months, the operator shall permanently close the AST unless the AST meets the standards established of a new AST established in VR 680-14-13, or the local building official permits an extension of the 12-month temporary closure period. The operator of the temporarily closed AST must complete the site assessment required by § 7 C of this regulation prior to applying for an extension from the local building official.

B. Prior to permanent closure, the operator of an AST shall obtain a permit and the inspections required in accordance with the provisions of the Uniform Statewide Building Code. Notice of intent to permanently close an AST shall be made to the board in accordance with § 5 of this regulation.

1. If the closure is in response to containment and cleanup actions that necessitate AST removal, the operator of the AST shall immediately notify the local building official and the board utilizing the form prescribed in Appendix I of this regulation.

2. The assessment of the AST site required by this section shall be conducted by the operator after notifying the board and the local building official but prior to completion of permanent closure.

3. An AST, including an AST operated by the federal government, shall not be permanently closed unless the closure is approved by the local building official, except in the case of an AST operated by the Commonwealth. The Department of General Services shall function as the local building official in accordance with § 36-98.1 of the Code of Virginia for all ASTs operated by the Commonwealth.

C. Operators shall sample and test for the presence of petroleum hydrocarbons at the AST site in any area where contamination is likely to have occurred. Samples must be taken in accordance with established EPA analytical methods or other methods approved by the board. Depth to ground water must be considered when selecting the appropriate means of sampling.

1. The operator shall submit copies of the laboratory results, a description of the area sampled, a photograph of the site indicating sampled areas and a site map indicating the location of the closed AST and associated piping as attachments to the registration form required by § 7 B.

2. If contaminated soils, contaminated ground water or free product as a liquid or vapor is discovered, operators shall immediately notify the board and conduct the cleanup in accordance with board requirements.

3. The board may consider modification of the requirements of this section if the operator of the AST can demonstrate to the board's satisfaction that a previously installed leak detection system would have been sufficient to have detected a leak from the closed AST.

D. When deemed necessary by the board, the operator of an AST, which was permanently closed prior to the effective date of this regulation, shall assess the site and close the AST in accordance with the requirements of this regulation.

E. Operators shall maintain all records relating to compliance with this regulation for a period of five years from the date the board receives notice of the closure. These records shall be made available to the board at any time upon request.

§ 9. Record keeping and access to facilities.

A. Each operator of a facility subject to this regulation shall maintain the following records:

1. Books, papers, documents and records relating to all measurements and inventory of oil at the facility;

2. All information relating to tank/pipe testing;

3. All records relating to spill events and other discharges of oil from the facility;

4. All supporting documentation for developed contingency plans; and

5. Any records required to be kept by statute or regulation of the board.

B. These records shall be kept by the operator of a facility at the facility or at an alternate location approved

by the board for a period of five years unless otherwise indicated.

C. Upon request, each operator shall make these records available to the board and to the director or coordinator of emergency services for the locality in which the facility is located or to any political subdivision within one mile of the facility.

§ 10. Notices to the State Water Control Board.

All written communications to the State Water Control Board related to the requirements of this regulation shall be addressed as follows:

Mailing Address:

State Water Control Board
Office of Spill Response and Remediation
P.O. Box 11143
Richmond, VA 23230-1143

Location Address:

State Water Control Board
Office of Spill Response and Remediation
4900 Cox Road
Glen Allen, VA 23060

§ 11. Delegation of authority.

The executive director, or a designee, may perform any act of the board under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.

APPENDIX I- WEEKLY INSPECTION CHECKLIST

Aboveground Storage Tank Systems

..... 1. Containment dike or berm in satisfactory condition.

..... 2. Containment area free of excess standing water or oil.

..... 3. Gate valves used for emptying containment areas secured.

..... 4. Containment area/base of tank free of high grass, weeds, and debris.

..... 5. Tank shell surface, including any peeling areas, welds, rivets/bolts, seams, and foundation, visually inspected for areas of rust and other deterioration.

..... 6. Ground surface around tanks and containment structures and transfer areas checked for signs of leakage.

..... 7. Leak detection equipment in satisfactory condition.

..... 8. Separator or drainage tank in satisfactory condition.

..... 9. Tank water bottom draw offs not in use are secured.

..... 10. Tank fill valves not in use are secured.

..... 11. Valves inspected for signs of leakage or deterioration.

..... 12. Inlet and outlet piping and flanges inspected for leakage.

APPENDIX II- VAPOR/GROUNDWATER MONITORING GUIDELINE

Groundwater Monitoring Guidelines

This guidance document provides operators of AST facilities a detailed explanation of groundwater monitoring reporting requirements and procedures. Use these guidelines as a basic framework to conduct and report monthly, quarterly, and annual groundwater monitoring. Report any deviations from these guidelines to the VWCB AST Groundwater Monitoring Program, OSRR, P.O. Box 11143, Richmond, VA 23230, in writing prior to conducting any groundwater sampling.

One groundwater monitoring report summary should be submitted annually. The exception to this reporting procedure is if, during the year of monitoring, a release is detected. Facilities who discover a leak during this program's monitoring requirements must then perform reporting requirements under paragraph 1.2. The first yearly report should be submitted July 1, 1994. The annual groundwater monitoring report summary should consist of three sections and be submitted in the report format outlined below.

ANNUAL AST GROUNDWATER MONITORING REPORT FORMAT

Section I. Monthly Vapor Monitoring Report

1. Description of temperature, soil moisture conditions (i.e. last rainfall), monitoring sensor, calibration data including date of calibrations and calibration standards used, and any sensor maintenance at the time of vapor sampling.

2. Brief description of measurement gathering procedures.

3. Table of all monthly vapor concentrations and static water levels presented in a tabular format.

4. Identify on a monitoring well location map vapor concentrations, wells used to establish background vapor concentration measurements, and wells that show suspect readings.

Section II. Quarterly Groundwater Monitoring Report

1. Brief description of groundwater collection procedures.

2. Table of all visual groundwater inspection results.

3. Identify on a monitoring well location may any wells that showed visual indications of contamination.

4. Table of any laboratory groundwater sampling results.

Section III. Annual Groundwater Quality Evaluation

1. Summarize groundwater analytical sample results.

2. Table of analytical methods used.

3. Table of analytical results.

4. Isoconcentration map.

Appendix A - Groundwater Analytical Data including Chain-of Custody forms

1.0 - Facilities Required to Report

Facilities with an aggregate capacity over 1 million gallons of hydrocarbons or hydrocarbon by-product are required to conduct groundwater monitoring and submit a yearly report.

1.1 Facilities Currently Conducting Groundwater Monitoring

Facilities that currently conduct periodic groundwater monitoring for petroleum constituents under a corrective action or remediation investigation and/or permit requirements (other than VPDES permit requirements) do not have to submit groundwater monitoring reports for this program. Groundwater monitoring required by VR 680-14-13 commences at the time corrective action monitoring or other monitoring programs conclude. In the event that monitoring is currently conducted at the facility, documentation of other groundwater monitoring programs should be sent to the VWCB. This documentation should include the name and address of the facility, facility contact person, the name of the agency requesting periodic monitoring reports, an individual contact within the requesting agency, identification of wells being monitored, and constituents analyzed.

1.2 Facilities Under CAP Resulting from GCS

If groundwater contamination was discovered during the AST groundwater characterization study required by VR 680-14-07 then the facility shall submit yearly summaries of groundwater monitoring data collected under the VWCB's corrective action monitoring requirements. Groundwater monitoring required by VR 680-14-13 commences at the time corrective action monitoring concludes.

1.3 Facility Notification Requirements

Facilities must notify the VWCB 48 hours in advance of performing quarterly and annual groundwater sampling. Representatives from the VWCB may choose to be present and split groundwater samples for laboratory analysis.

Section 2.0 - Monitoring Schedule

2.1 Monthly Vapor Sampling

Monthly vapor monitoring of all wells installed or identified in the groundwater characterization study shall be conducted. Monthly vapor monitoring consists of collecting three measurements. Collect one measurement each day for three consecutive days. Measure static water levels using an electronic water level indicator or steel tape. Record measurements for each well sampled.

2.1.1 Vapor Monitoring System Design

The two major components used for a vapor monitoring system in this program are the groundwater monitoring well and the vapor monitoring device or sensor. A monitoring device is temporarily placed in well to collect vapor samples.

If the vapor monitoring device (sensor) does not react to the stored substance it is totally ineffective. Equally important, is a sensor's ability to avoid reacting to substances for which the site is not being monitored (i.e. methane). Manufacturers list the types of stored products that their sensor will effectively monitor. For a sensor to be effective at a site that has high background concentrations, it must be able to record and monitor a high level of vapors. The appropriate monitoring device to use when there are high background levels is one that is responsive to a high level of vapors. The level of background contamination and the desired range of detection should be considered before choosing a monitoring device. Vapor monitoring results must be carefully interpreted to differentiate between releases and interferences.

2.1.2 Background Vapor Concentrations

Background vapor concentrations should be established from upgradient monitoring wells. If the monitor indicates background concentrations are high (above 1,500 ppm for gasoline), further investigation should be undertaken to determine whether the concentrations are due to a current leak or off-site interference.

When background contamination is due to a past release or off-site interference, vapor monitoring can still be conducted if the contamination levels are below the alarm threshold limit of the monitor. Some instruments have

adjustable threshold limits. If the background contamination levels exceed the instrument's threshold limit, the site can be injected with air to lower the level of contamination. This can be done by using an air pump to inject low levels of air through temporary wells into the soil. If background contamination levels cannot be reduced below the instrument's threshold limit, a tracer compound should be introduced. The use of a tracer avoids the problem of background contamination because the vapor monitor will react to the tracer compound, not to the compounds that are contained in the background contamination. The use of vapor-detection tubes is not acceptable for monthly vapor monitoring.

2.1.3 Environmental Considerations

Temperature can be an inhibiting factor for proper vapor monitor operations. The colder the temperature, the less volatile the substance. Vapor measurements should be taken at approximately the same temperature month to month. For approximately every 20°F increase, the gasoline volatilization rate increases by about one-third. Temperature is not a problem when monitoring wells extend below the frost line. Soil moisture conditions can also inhibit vapor movement and volatilization rates.

2.1.4 Maintenance and Calibration

Calibrate equipment properly to detect vapors from stored product. Calibrations consists of exposing the monitor to a pure gas standard to ensure the monitor correctly responds to vapors. If a sensor is not calibrated correctly, it is likely to give either false positive or false negative results. Calibrations for portable monitors should be performed on a monthly basis before monthly vapor measurements are taken.

Maintenance of vapor monitoring sensors includes cleaning, calibration and operations checks. Maintenance consists of recharging the electrical component and keeping the device clean. Some systems may require periodic replacement of a filament or a lamp.

2.1.5 Interpretations and Suspect Measurements

Vapor measurements that are at 50% higher than the background concentrations are considered suspect and further investigations should be conducted. For gasoline, vapor levels of 3,000 to 4,000 parts per million with an increasing trend will be also be considered suspect. This level can vary from site to site and for different brands of monitoring devices.

If vapor readings are suspect, immediately collect groundwater samples for visual examination. If free product or a sheen is encountered in a well immediately report the release to the VWCB at 804-527-5200. Take immediate action to prevent any further release of the substance into the environment and identify and mitigate fire, explosion, and vapor hazards.

Conduct free-product removal in a manner than minimizes the spread of contamination into previously uncontaminated zones. Use recovery and disposal techniques such has hand-bailers to remove any free product from monitoring wells. Properly treat, discharge, or dispose of recovered by-products in compliance with applicable local, state and federal laws and regulations.

If sheen or free product is visible in the groundwater sample, collect a groundwater sample for BTEX and TPH laboratory analysis. If 0.01 foot or more of free product is encountered then groundwater samples should not be submitted for laboratory analysis. If sheen or free product is not visible in the sample, continue vapor monitoring for an additional period of time (three to five additional days). If vapor measurements continue at the same rate or increase, collect a groundwater sample for BTEX and TPH laboratory analysis.

Groundwater samples should be collected and analyzed as outlined in the ODCP Groundwater Characterization Plan and referenced under paragraph 2.4 in this document. Additional information concerning vapor monitoring can be obtained from Detecting Leaks, Successful Methods, Step-by-Step, EPA Document No. EPA/530 UST-89/012.

2.1.6 Groundwater Level Measurements

Measure static water levels using an electronic water level indicator or steel tape. Static water level measurements should be taken prior to each monthly sampling event. Record measurements for each well sampled.

Reference all water-level measurements, including total well-depth measurements, from an established and documented point on the top of the well casing. Measurements should be correlated with mean sea level datum and measured to the nearest 0.01 foot.

2.2 Quarterly Groundwater Monitoring

Quarterly groundwater monitoring of all wells installed or identified in the groundwater characterization study shall be conducted and reported. Quarterly groundwater monitoring consists of measuring static water levels, measuring for free product, and collecting groundwater grab samples for visual inspection for sheen or free product. One measurement per well should be collected.

2.2.1 Presence of Free Hydrocarbon Product

If free product or a sheen is encountered in a well immediately report the release to the VWCB at 804-527-5200. Take immediate action to prevent any further release of the substance into the environment; and identify and mitigate fire, explosion, and vapor hazards.

Conduct free-product removal in a manner than minimizes the spread of contamination into previously uncontaminated zones. Use recovery and disposal

techniques such as hand-bailers to remove any free product from monitoring wells. Properly treat, discharge, or dispose of recovered by-products in compliance with applicable local, state and federal laws and regulations.

Measure the thickness of the hydrocarbon layer floating on groundwater if present. This can be done using an electronic measuring device, chemically-sensitive paste, or a clear acrylic bailer designed to collect a liquid sample where free product and groundwater meet. A graduated scale on the bailer is helpful for determining the thickness of free product. Record the thickness of free product for each well.

2.2.2 Interpretation

If sheen or free product is visible in the groundwater sample, collect a groundwater sample for BTEX and TPH laboratory analysis. If 0.01 foot or more of free product is encountered then groundwater samples should not be submitted for laboratory analysis. Record all results of visual groundwater monitoring. Groundwater samples should be collected and analyzed as outlined in the ODCP Groundwater Characterization Plan and referenced under paragraph 2.4 of this document.

2.3 Annual Laboratory Analysis of Groundwater

Annual groundwater monitoring of all wells installed or identified in the groundwater characterization study shall be conducted and reported. Annual groundwater monitoring consists of measuring static water levels and collecting groundwater samples for laboratory analysis. Groundwater samples should be collected and analyzed for BTEX and TPH from each well. If possible, collect groundwater samples in a period where groundwater levels are high (i.e. spring). Procedures for sampling groundwater for laboratory analysis measuring groundwater elevations are outlined in paragraphs 2.4 and 2.1.6 respectively.

2.4 Procedures for Groundwater Sampling

2.4.1 Purging Procedures

Calculate total well volume after determining the static water level of the well, but prior to collecting a sample. A minimum of three well volumes should be purged from the well. If the well is purged to dryness before three well volumes are obtained, no further purging is required. Collect samples as soon as a sufficient volume of groundwater recharges into the well.

All purged water shall be managed in accordance with local, state, and federal laws and regulations and in a manner that will not cause pollution.

All groundwater monitoring wells shall be sampled unless 0.01 foot or more of free product is encountered. In cases where free product is encountered, the depth of free product shall be documented to the nearest 0.01 foot and groundwater sampling shall not be required as long as free product is present. All monitoring wells containing less than 0.01 foot of free product should be sampled as described below.

2.4.1.1 Groundwater Sample Collection

Groundwater samples should be collected in a manner that reduces or eliminates the possibility of loss of volatile constituents from the sample. For collecting samples, a gas-actuated positive displacement pump or a submersible pump is preferred if pumping is required to sample. Disposable, teflon, or stainless steel bailers are acceptable for sample collection. Peristaltic pumps or airlift pumps should not be used. In order to keep agitation of the sample to a minimum, lower the bailer slowly into the water column. When transferring the sample from the bailer to the sample container minimize agitation. When collecting volatile organic samples completely fill the sample container so no air bubbles are trapped inside. All sample containers should be pre-cleaned and sealed by the distributor or laboratory. Each sample should be preserved with the proper preservative (i.e., HCL).

Cross-contamination from transferring pumps (or bailers) from well to well can occur and should be avoided by a meticulous cleaning between sampling episodes. Dedicated (i.e., permanent installation) well pumps, while expensive, are often cost effective in the long term (quarterly sampling requirements) and ensure data reliability relative to cross-contamination.

Upon collection, label and immediately place all samples in a cooler and chill to approximately 4°C or less. The samples should be maintained at 4°C or less until they are delivered to the laboratory for analysis.

2.4.1.2 Chain-of-Custody

A completed chain-of-custody form should accompany each groundwater sample. This form should be signed by the person collecting the sample, the laboratory receiving the sample, and all intermediary persons with possession of the sample. Sample security shall be maintained during all phases of transport.

2.4.2 Analytical Methods for Groundwater Sampling

The GCS requires laboratory analysis of Benzene, Toluene, Ethylbenzene and Total Xylenes (BTEX), Methyl-tert-butyl-ether (MTBE), Total Petroleum Hydrocarbons commonly referred to as TPH, for groundwater samples. Selection of the analytical method for TPH is more involved than selection of methods for other analytes. To avoid the need for variances of methods used for TPH analyses, specific analytical methods are recommended below for TPH constituents. Other state acceptable methods are listed in Table 2. Tabulate all analytical data and plot results on a isoconcentration map or overlay.

2.4.2.1 Selection of analytical methods for BTEX Analysis

Groundwater samples should be quantitatively analyzed for BTEX using EPA Method 8020 with Purge and Trap Method 5030. The practical quantitation limit (PQL) is .002 mg/L for water samples.

2.4.2.2 Selection of analytical methods for TPH Analysis for Gasoline

For analysis of hydrocarbons that correspond to a range of C6 to C10 and a boiling point range between 60° and 220°F, the Wisconsin Modified Gasoline Range Organics (GRO) Method or California GC/FID Method should be used. The PQL of the GRO method is 0.1 mg/L for water. The PQL for the California method is .5 mg/L for water.

2.4.2.3 Selection of analytical methods for TPH Analysis for Nos. 1 and 2 Fuel Oil, Nos. 1 and 2 Diesel, Kerosene, and Jet Fuel

For analysis of hydrocarbons that correspond to a range of C10 to C28 and a boiling point range between approximately 170° and 430°F, the Wisconsin Modified Diesel Range Organics (DRO) Method or California GC/FID Method should be used. The PQL of the DRO method is 0.1 mg/L for water. The PQL for the California method is .5 mg/L for water.

2.4.2.4 Selection of analytical methods for TPH Analysis for Heavy Hydrocarbons (Crude Oil, Nos. 5 and 6 Fuel Oil, Used Oil, and Hydraulic Oil)

For analysis of heavy hydrocarbon mixtures that have a boiling point greater than 430°F the Wisconsin Modified Total Recoverable Petroleum Hydrocarbons (TRPH) or Method 418.1 should be used. The PQL for TRPH is 1.0 mg/L or less in water samples. The PQL for Method 418.1 is 1.0 mg/L for water samples.

2.4.2.5 Selection of analytical methods for MTBE Analysis

Groundwater samples should be quantitatively analyzed for MTBE using EPA Method 602 modified to include MTBE if monitoring for gasoline.

2.4.3 Field Quality Assurance

All sampling performed during the GCS must be conducted in accordance with the documented Field QA plan included in the QAPP. Field QA samples should be handled in an identical manner to actual samples. Results of the analysis of field and trip blanks must be included in the GCS report, and should be evaluated in the data assessment portions of the report.

2.4.3.1 Field QA Soil Samples - One field blank with every field sample batch. A field sample batch is defined as all samples taken during a single sampling event at each site and on each sampling day. Field blanks are deionized water samples collected from the same sampling and filtering equipment used as a check on decontamination procedures. One temperature blank per sampling event (batch of samples). One trip blank collected per sampling event. Trip blanks are reagent water samples analyzed both before leaving the lab upon their return as a check on contamination from sources outside samples.

2.4.3.2 Field QA Groundwater Samples - One field blank with every 10 samples (or less) collected. One temperature blank per sampling event (batch of samples). One trip blank collected per sampling event.

* * * * * * * *

Title of Regulation: **VR 680-14-14. Facility Financial Responsibility Requirements.**

Statutory Authority: §§ 62.1-44.34:16, 62.1-44.34:21 and 62.1-44.15(10)

Public Hearing Dates:
February 9, 1993 - 7 p.m.
February 10, 1993 - 7 p.m.
February 12, 1993 - 10 a.m.
February 18, 1993 - 2 p.m.
February 23, 1993 - 7 p.m.
Written comments may be submitted through March 15, 1993.
(See Calendar of Events section for additional information)

Summary:

In accordance with § 62.1-44.34:16 of the Code of Virginia, the State Water Control Board intends to promulgate regulations requiring all facility operators in the Commonwealth of Virginia having an aggregate aboveground maximum storage of more than 25,000 gallons of oil to demonstrate financial responsibility sufficient to comply with the requirements of Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia as a condition of operation. Regulations shall take into consideration the type, oil storage and handling capacity and location of a facility, the risk of discharge of oil at that type of facility in the Commonwealth, the potential damage or injury to state waters or the impairment of their beneficial use that may result from a discharge at that type of facility, the potential cost of containment and cleanup at that type of facility, and the nature and degree of injury or interference with general health, welfare and property that may result from a discharge at that type of facility. In no instance shall the financial responsibility requirements for facilities exceed five cents per gallon of aboveground storage capacity or $5 million dollars for a pipeline. The regulations establish an administrative fee for the approval of a demonstration of financial responsibility

VR 680-14-14. Facility Financial Responsibility Requirements Regulations.

§ 1. Definitions.

The following words and terms, when used in this regulation, shall have the following meaning, unless the context clearly indicates otherwise:

"Aboveground storage tank" or "AST" means any one or combination of tanks, including pipes, used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than 90% above the surface of the ground. This term does not include line pipe and breakout tanks of an interstate pipeline regulated under the Hazardous Liquid Pipeline Safety Act of 1979.

"Accidental discharge" means any sudden or nonsudden discharge of oil from a facility that results in a need for containment and cleanup which was neither expected nor intended by the operator.

"Annual basis" means the financial reporting year immediately preceding the year for which the operator is demonstrating financial responsibility.

"Board" means the State Water Control Board.

"Containment and cleanup" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.

"Controlling interest" means direct ownership of at least 50% of the voting stock of another entity.

"Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

"Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil, and includes a pipeline.

"Financial reporting year" means the latest consecutive 12-month period for which any of the following reports used to support a financial test is prepared:

1. 10-K report submitted to the U.S. Securities & Exchange Commission (SEC);

2. Annual report of tangible net worth submitted to Dun and Bradstreet;

3. Annual reports submitted to the Energy Information Administration or the Rural Electrification Administration; or

4. A year-end financial statement authorized in § 6 B or § 6 C of this regulation. "Financial reporting year" may thus comprise a fiscal or calendar year period.

"Legal defense cost" is any expense that an operator or provider of financial assurance incurs in defending against claims or actions brought (i) by the federal government or the board to require containment or cleanup or to cover the costs of containment and cleanup, or to collect civil penalties under federal or state law or to assert any claim on behalf of the Virginia Petroleum Storage Tank Fund; or (ii) by any person to enforce the terms of a financial assurance mechanism.

"Local government entity" means a municipality, county, town, commission, separately chartered and operated special districts, school boards, political subdivision of a state or other special purpose governments which provide essential services.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a discharge from a facility. Note: This definition is intended to assist in the understanding of this regulations and is not intended either to limit the means of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."

"Oil" means oil of any kind or in any form, including, but not limited to petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity.

"Operator" means any person who owns, operates, charters, rents or otherwise exercises control over or responsibility for a facility or a vehicle or a vessel.

"Person" means any firm, corporation, association or partnership, one or more individuals, or any governmental unit or agency thereof.

"Pipeline" means all new and existing pipe, rights-of-way, and any equipment, facility, or building used in the transportation of oil, including, but not limited to, line pipe, valves and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks.

"Provider of financial assurance" means an entity that provides financial assurance to an operator of a facility through one of the mechanisms listed in §§ 6 through 11, including a guarantor, insurer, group self-insurance pool, surety, or issuer of a letter of credit.

"Storage capacity" means the total capacity of an AST, whether the AST is filled in whole or in part with oil or a mixture of oil and other substances, or is empty.

"Substantial business relationship" means the extent of a business relationship necessary under Virginia law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic rator.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

"Tank" means a device designed to contain an accumulation of oil and constructed of nonearthen materials, such as concrete, steel or plastic which provide structural support. This term does not include flow-through process equipment used in processing or treating oil by physical, biological or chemical means.

"Termination" under Appendix III and Appendix IV means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

"Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground. Exemptions from this definition include:

1. Farm or residential tanks having a capacity of 1,100 gallons or less and used for storing motor fuel for noncommercial purposes;

2. Tanks used for storing heating oil for consumption on the premises where stored, except for tanks having a capacity of more than 5,000 gallons and used for storing heating oil;

3. Septic tanks;

4. Pipeline facilities, including gathering lines, regulated under (i) the Natural Gas Pipeline Safety Act of 1968, (ii) the Hazardous Liquid Pipeline Safety Act of 1979, or (iii) any intrastate pipeline facility regulated under state laws comparable to the provisions of law in clauses (i) or (ii) of this definition;

5. Surface impoundments, pits, ponds, or lagoons;

6. Storm water or waste water collection systems;

7. Flow-through process tanks;

8. Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; and

9. Storage tanks situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.

"VR 680-13-03" means the Petroleum Underground Storage Tank Financial Responsibility Requirements promulgated by the board.

"VR 680-13-06" means the Virginia Petroleum Storage Tank Fund Regulation promulgated by the board.

"VR 680-14-12" means the Facility and Aboveground Storage Tank Registration Requirements promulgated by the board.

§ 2. Applicability.

A. Unless otherwise exempted in this section, this regulation applies to:

1. Operators of facilities having a maximum storage capacity of 25,000 gallons or more of oil; or

2. Operators of pipelines having an average daily pumped through volume (throughput) of 25,000 gallons or more of oil.

B. State and federal government entities whose debts and liabilities are the debts and liabilities of the Commonwealth or the United States have the requisite financial strength and stability to fulfill their financial assurance requirements and are relieved of the requirements to further demonstrate an ability to provide financial responsibility under this regulation.

§ 3. Compliance dates.

A. Operators of facilities are required to comply with the requirements of this regulation within 90 days of the effective date of this regulation.

B. Operators of new facilities must comply with these regulations prior to bringing any proposed facility into operation.

§ 4. Amount and scope of required financial responsibility.

A. Operators of facilities located within the Commonwealth must demonstrate financial responsibility for containment and cleanup of discharges of oil in the following per occurrence and annual aggregate amount:

1. Five cents per gallon of storage capacity; or

2. $5 million for a pipeline.

B. As a condition of operation, an operator of a facility or an operator of a pipeline must submit evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this regulation until released from the requirements of this regulation under § 18. The board will review the mechanism(s) demonstrating financial responsibility and will notify the operator of its

approval in writing. An operator of a facility must submit the original financial assurance forms specified in §§ 6 through 12 to the board for approval:

1. By the date specified in § 3 of this regulation;

2. Upon the effective date of any change of any mechanism;

3. In accordance with § 14 of this regulation, upon any cancellation of any mechanism; and

4. 30 days prior to the expiration or renewal of the financial responsibility demonstration on an annual basis.

C. If the operator uses separate mechanisms or combinations of mechanisms to demonstrate financial responsibility for the containment and clean up of oil, the amount of assurance provided by each mechanism or combination of mechanisms must be in the full amount specified in subsection A of this section.

D. An operator must determine the applicable financial responsibility requirement on an annual basis based on the total storage capacity of the facility or, in the case of a pipeline, $5 million.

E. An operator of multiple facilities shall demonstrate financial responsibility based on the total storage capacity of all facilities operated within the Commonwealth.

F. An operator which demonstrates financial responsibility must maintain copies of those records on which the determination is based. The following documents may be used for purposes of demonstrating financial responsibility by operators to support a financial responsibility requirement determination:

1. For facilities, a manufacturer's certification of storage capacity for each regulated AST operated within the Commonwealth;

2. For pipelines, copies of shipping invoices which indicate the daily throughput of oil; and

3. Any other form of documentation which the board may deem to be acceptable evidence to support a financial responsibility determination.

G. The amounts of assurance required under this section exclude legal defense costs.

H. The required demonstration of financial responsibility does not in any way limit the liability of the operator under § 62.1-44.34:18 of the Code of Virginia.

§ 5. Allowable mechanisms and combinations of mechanisms.

A. Subject to the limitations of subsection B of this section, an operator may use any one or combination of the mechanisms listed in §§ 6 through 12 to demonstrate financial responsibility under this regulation for one or more facilities or pipelines.

B. An operator may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this regulation, the financial statements of the operator are not consolidated with the financial statements of the guarantor.

§ 6. Financial test of self-insurance.

A. An operator and/or guarantor may satisfy the requirements of § 4 by passing a financial test as specified in this section. To pass the financial test of self-insurance, the operator and/or guarantor must meet the requirements of subsection B or C and subsection D of this section based on year-end financial statements for the latest completed financial reporting year.

B.1. The operator of a facility and/or guarantor must have a tangible net worth at least equal to the total of the applicable amount required by § 4 A for which a financial test is used to demonstrate financial responsibility.

2. The owner, operator and/or guarantor of a petroleum UST must also have a tangible net worth at least equal to the total of the applicable aggregate amount required for demonstration of financial responsibility for owners or operators of petroleum USTs required under VR 680-13-03.

3. The operator of a facility and/or guarantor must also have a tangible net worth of at least 10 times:

a. The sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test for self-insurance is used in each state of business operations to demonstrate financial responsibility to the EPA under 40 CFR §§ 264.101(b), 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147, to another state implementing agency under a state program authorized by EPA under 40 CFR Part 271 or to the Department of Waste Management under VR 672-10-1 §§ 10.5 L, 10.7 C, 10.7 E, 9.7 C, 9.7 E, 10.7 G, 9.7 G (Virginia Hazardous Waste Management Regulations); and

b. The sum of current plugging and abandonment cost estimates for which a financial test for self-insurance is used in each state of business operations to demonstrate financial responsibility to EPA under 40 CFR § 144.63 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 145.

4. The operator of a facility and/or guarantor must

comply with either subdivision B 4 a or b of this section:

a.(1) The financial reporting year-end financial statements of the operator and/or guarantor must be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination; and

(2) The financial reporting year-end financial statements of the operator and/or guarantor cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

b.(1)(a) File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration; or

(b) Report annually the tangible net worth of the operator and/or guarantor to Dun and Bradstreet, and Dun and Bradstreet must have assigned a financial strength rating which at least equals the amount of financial responsibility required by the operator in § 4 A; and

(2) The financial reporting year-end financial statements of the operator and/or guarantor, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

5. The operator and/or guarantor of a facility must have a letter signed by the chief financial officer worded identically as specified in Appendix I/Alternative I or Appendix X.

C.1. The operator and/or guarantor of a facility must have a tangible net worth at least equal to the total of the applicable aggregate amount required by § 4 A for which a financial test is used to demonstrate financial responsibility.

2. The operator of a facility and/or guarantor must also have a tangible net worth of at least:

a. The sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test for self-insurance is used in each state of business operations to demonstrate financial responsibility to the EPA under 40 CFR §§ 264.101(b), 264.143, 264.145, 265.143, 265.145, 264.147, 265.147, to another state implementing agency under a state program authorized by EPA under 40 CFR Part 271 or to the Department of Waste Management under VR 672-10-1 §§ 10.5 L, 10.7 C, 10.7 E, 9.7 C, 9.7E, 10.7 G, 9.7 G (Virginia Hazardous Waste Management Regulations); and

b. The sum of current plugging and abandonment cost estimates for which a financial test for self-insurance is used in each state of business operations to demonstrate financial responsibility to EPA under 40 CFR § 144.63 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 145.

3. The financial reporting year-end financial statements of the operator and/or guarantor must be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.

4. The financial reporting year-end financial statements of the operator and/or guarantor cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

5. If the financial statements of the operator and/or guarantor are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration or the Rural Electrification Administration, the operator and/or guarantor must obtain a special report by an independent certified public accountant stating that:

a. The accountant has compared the data that the letter from the chief financial officer specified as having been derived from the latest financial reporting year-end financial statements of the operator and/or guarantor with the amounts in such financial statements; and

b. In connection with that comparison, no matters came to the accountant's attention which caused him to believe that the specified data should be adjusted.

6. The operator of a facility and/or guarantor must have a letter signed by the chief financial officer, worded identically as specified in Appendix I/Alternative II.

D. To meet the financial demonstration test under subsection B or C of this section, the chief financial officer of the operator and/or guarantor must sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded identically as specified in Appendix I with the appropriate Alternative or Appendix X, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.

E. If an operator using the test to provide financial assurance finds that he no longer meets the requirements of the financial test based on the financial reporting year-end financial statements, the operator must obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

F. The board may require reports of financial condition at any time from the operator and/or guarantor. If the board finds, on the basis of such reports or other information, that the operator of a facility and/or guarantor no longer meets the financial test requirements of subsection B or C and subsection D of this section, the operator and/or guarantor must obtain alternate coverage within 30 days after notification of such finding.

G. If the operator fails to obtain alternate assurance within 150 days of finding that he no longer meets the requirements of the financial test based on the financial reporting year-end financial statements, or within 30 days of notification by the board that he no longer meets the requirements of the financial test, the operator must notify the board of such failure within 10 days.

§ 7. Guarantee.

A. An operator may satisfy the requirements of § 4 by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be:

1. A firm that:

a. Possesses a controlling interest in the operator;

b. Possesses a controlling interest in a firm described under subdivision A 1 a of this section; or

c. Is controlled through stock ownership by a common parent firm that possesses a controlling interest in the operator; or

2. A firm engaged in a substantial business relationship with the operator and issuing the guarantee as an act incident to that business relationship.

B. Within 120 days of the close of each financial reporting year the guarantor must demonstrate that it meets the financial test criteria of §§ 6 B or C and D based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in Appendix I or Appendix X and must deliver the letter to the operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year, the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the operator. If the board notifies the guarantor that he no longer meets the requirements of the financial test of §§ 6 B or C and D, the guarantor must notify the operator within 10 days of receiving such notification from the board. In both cases, the guarantee will terminate no less than 120 days after the date the operator receives the notification, as evidenced by the return receipt. The operator must obtain alternate coverage as specified in § 19 C.

C. The guarantee must be worded identically as specified in Appendix II, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

D. An operator who uses a guarantee to satisfy the requirements of § 4 must establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the board under § 17. This standby trust fund must meet the requirements specified in § 12.

§ 8. Insurance and group self-insurance pool coverage.

A.1. An operator of a facility may satisfy the requirements of § 4 by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or group self-insurance pool.

2. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

3. Group self-insurance pools must comply with § 62.1-44.34:16 of the Code of Virginia in a manner consistent with all State Corporation Commission Bureau of Insurance regulations.

B. Each insurance policy must be amended by an endorsement worded in no respect less favorable than the coverage as specified in Appendix III, or evidenced by a certificate of insurance worded identically as specified in Appendix IV, except that instructions in brackets must be replaced with the relevant information and the brackets deleted.

C. Each insurance policy must be issued by an insurer or a group self-insurance pool that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or approved surplus lines insurer in the Commonwealth.

D. Each insurance policy shall provide first dollar coverage. The insurer or group self-insurance pool shall be liable for the payment of all amounts within any deductible applicable to the policy to the provider of containment and cleanup as provided in this regulation, with a right of reimbursement by the insured for any such payment made by the insurer or group. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in §§ 6 through 11.

§ 9. Surety bond.

A. An operator of a facility may satisfy the requirements of § 4 by obtaining a surety bond that conforms to the requirements of this section. The surety

company issuing the bond must be licensed to operate as a surety in the Commonwealth and be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

B. The surety bond must be worded identically as specified in Appendix V, except that instructions in brackets must be replaced with the relevant information and the brackets deleted.

C. Under the terms of the bond, the surety will become liable on the bond obligation when the operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per occurrence and annual aggregate penal sums.

D. The operator who uses a surety bond to satisfy the requirements of § 4 must establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the board under § 17. This standby trust fund must meet the requirements specified in § 12.

§ 10. Letter of credit.

A. An operator of a facility may satisfy the requirements of § 4 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution must be an entity that has the authority to issue letters of credit in the Commonwealth and whose letter-of-credit operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The letter of credit must be worded identically as specified in Appendix VI, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

C. An operator who uses a letter of credit to satisfy the requirements of § 4 must also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the board will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the board under § 17. This standby trust fund must meet the requirements specified in § 12.

D. The letter of credit must be irrevocable with a term specified by the issuing institution. The letter of credit must provide that credit will be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the operator by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the 120 days will begin on the date when the operator receives the notice, as evidenced by the return receipt.

§ 11. Trust fund.

A. An operator of a facility may satisfy the requirements of § 4 by establishing an irrevocable trust fund that conforms to the requirements of this section. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The trust fund shall be irrevocable and shall continue until terminated at the written direction of the grantor and the trustee, or by the trustee and the board, if the grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, shall be delivered to the operator. The wording of the trust agreement must be identical to the wording specified in Appendix VII, and must be accompanied by a formal certification of acknowledgment as specified in Appendix VIII.

C. The irrevocable trust fund, when established, must be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining required coverage.

D. If the value of the trust fund is greater than the required amount of coverage, the operator may submit a written request to the board for release of the excess.

E. If other financial assurance as specified in this regulation is substituted for all or part of the trust fund, the operator may submit a written request to the board for release of the excess.

F. Within 60 days after receiving a request from the operator for release of funds as specified in subsection D or E of this section, the board will instruct the trustee to release to the operator such funds as the board specifies in writing.

§ 12. Standby trust fund.

A. An operator of a facility using any one of the mechanisms authorized by §§ 7, 9 and 10 must establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The standby trust agreement or trust agreement must be worded identically as specified in Appendix VII, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted, and accompanied by a formal certification of acknowledgment as specified in Appendix VIII.

C. The board will instruct the trustee to refund the balance of the standby trust fund to the provider of

financial assurance if the board determines that no additional containment and cleanup costs will occur as a result of a discharge covered by the financial assurance mechanism for which the standby trust fund was established.

D. An operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule.

§ 13. Substitution of financial assurance mechanisms by operator.

A. An operator of a facility may substitute any alternate financial assurance mechanisms as specified in this regulation, provided that at all times he maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of § 4.

B. After obtaining alternate financial assurance as specified in this regulation, an operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance.

§ 14. Cancellation or nonrenewal by a provider of financial assurance.

A. Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the operator.

1. Termination of a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the operator receives the notice of termination, as evidenced by the return receipt.

2. Termination of insurance or group self-insurance pool coverage, except for nonpayment or misrepresentation by the insured, may not occur until 60 days after the date on which the operator receives the notice of termination, as evidenced by the return receipt. Termination for nonpayment of premium or misrepresentation by the insured may not occur until a minimum of 60 days after the date on which the operator receives the notice of termination, as evidenced by the return receipt.

B. If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in § 15, the operator must obtain alternate coverage as specified in this section within 60 days after receipt of the notice of termination. If the operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the operator must immediately notify the board of such failure and submit: (i) the name and address of the provider of financial assurance; (ii) the effective date of termination; and (iii) the evidence of the financial assurance mechanism subject to the termination maintained in accordance with § 16 B.

§ 15. Reporting by operator.

A. An operator of a facility must submit a letter which identifies the operator's name and address and the aboveground storage tank(s) or pipeline location by site name, street address, board incident designation number and the appropriate forms listed in § 16 B documenting current evidence of financial responsibility to the board within 30 days after the operator identifies or confirms a discharge from an aboveground storage tank or pipeline required to be reported under § 62.1-44.34:19 of the Code of Virginia. For all subsequent discharges within the same financial reporting year, the operator shall submit a letter which identifies the operator's name and address and the aboveground storage tank(s) location by site name, street address, board incident designation number and a statement that the financial responsibility documentation previously provided to the board for this financial reporting year is currently in force.

B. An operator must submit the appropriate forms listed in § 16 B documenting current evidence of financial responsibility to the board if the operator fails to obtain alternate coverage as required by this regulation within 30 days after the operator receives notice of:

1. Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor,

2. Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism,

3. Failure of a guarantor to meet the requirements of the financial test, or

4. Other incapacity of a provider of financial assurance.

C. An operator must submit the appropriate forms listed in § 16 B documenting current evidence of financial responsibility to the board as required by §§ 6 G and 14 B.

D. An operator must certify compliance with the financial responsibility requirements of this regulation to the board at any time the operator installs a new AST.

E. The board may require an operator to submit evidence of financial assurance as described in § 16 B or other information relevant to compliance with this regulation at any time.

§ 16. Recordkeeping.

A. Operators of facilities must maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this regulation for a facility until released from the requirements of this regulation under § 18. An operator must maintain such evidence at

the facility or the operator's place of business in this Commonwealth or at an alternate location approved by the board for a period of at least five years. Records maintained off-site must be made available upon request of the board.

B. Operators must maintain the following types of evidence of financial responsibility:

1. An operator using an assurance mechanism specified in §§ 6 through 12 must maintain a copy of the instrument worded as specified.

2. An operator using a financial test or guarantee must maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence must be on file no later than 120 days after the close of the financial reporting year.

3. An operator using a guarantee, surety bond, or letter of credit must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

4. An operator using an insurance policy or group self-insurance pool coverage must maintain a copy of the signed insurance policy or group self-insurance pool coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

5.a. An operator using an assurance mechanism specified in §§ 6 through 12 must maintain an updated copy of a certification of financial responsibility worded identically as specified in Appendix IX, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

b. The operator must update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).

§ 17. Drawing on financial assurance mechanisms.

A. The board shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the board, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

1. The operator of a facility fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond or letter of credit; and

2. The board determines or suspects that a discharge from a facility covered by the mechanism has occurred and so notifies the operator, or the operator has notified the board pursuant to § 62.1-44.34:18 of the Code of Virginia of a discharge from a facility covered by the mechanism.

B. The board may draw on a standby trust fund when the board makes a final determination that a discharge has occurred and immediate or long-term containment and/or cleanup for the discharge is needed, and the operator, after appropriate notice and opportunity to comply, has not conducted containment and cleanup pursuant to § 62.1-44.34:18 of the Code of Virginia.

C. If the board determines that the amount of containment and cleanup costs eligible for payment under subsection B of this section may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be board approved containment and cleanup costs necessary to protect human health and the environment. The board shall direct payment from the standby trust fund for containment and cleanup costs.

§ 18. Release from the requirements.

An operator of a facility is no longer required to maintain financial responsibility under this regulation for a facility or an AST after the facility or the AST has been properly closed in accordance with VR 680-14-12 or, if containment and cleanup is required, after containment and cleanup has been completed in accordance with § 62.1-44.34:18 of the Code of Virginia.

§ 19. Bankruptcy or other incapacity of operator or provider of financial assurance.

A. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an operator of a facility as debtor, the operator must notify the board by certified mail of such commencement and submit the appropriate forms listed in § 16 B documenting current financial responsibility.

B. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor must notify the operator by certified mail of such commencement as required under the terms of the guarantee specified in § 7.

C. An operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, group self-insurance pool coverage policy, surety bond, or letter of credit. The operator must obtain alternate financial assurance as specified in this regulation within 30 days after receiving notice of such an event. If the operator does not obtain alternate coverage within 30 days after

such notification, he must immediately notify the board in writing.

§ 20. Replenishment of guarantees, letters of credit or surety bonds.

A. If at any time after a standby trust is funded upon the instruction of the board with funds drawn from a guarantee, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the operator shall by the anniversary date of the financial mechanism from which the funds were drawn:

1. Replenish the value of financial assurance to equal the full amount of coverage required; or

2. Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

B. For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by § 4 of this regulation. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

§ 21. Virginia Petroleum Storage Tank Fund.

The Fund will be used for all uses authorized by § 62.1-44.34:11 of the Code of Virginia, including reimbursement of an operator of a facility at the level specified in and subject to the requirements in VR 680-13-06.

§ 22. Administrative fees.

A. This section establishes fees for demonstrating financial responsibility to the board for facilities and pipelines in the Commonwealth. Fees shall be paid by check, draft or postal money order made payable to the board.

B. An operator of a facility or a pipeline subject to this regulation shall submit the following fee(s) for approval of a demonstration of financial responsibility:

1. $50 for a facility with an aboveground storage capacity of 25,000 to 1,000,000 gallons of oil;

2. $100 for a facility with an aboveground storage capacity greater than 1,000,000 gallons of oil; or

3. $100 for a pipeline.

C. The fee for approval of a demonstration of financial responsibility shall be based on the total storage capacity of all facilities operated within the Commonwealth.

D. Fees shall be submitted by the operator of a facility or the operator of a pipeline as a part of the initial demonstration of financial responsibility and upon each financial responsibility demonstration renewal compliance date of the facility or pipeline. Forms documenting financial responsibility will not be accepted by the board as complete until the applicable fee has been paid by the operator.

E. Fees paid for approval of financial responsibility forms will be refunded upon receipt by the board of a written request for a refund if a request for approval is withdrawn or an overpayment is made by the operator. No refund shall be paid if the refund request is received by the board later than 30 days after the original submittal.

§ 23. Notices to the State Water Control Board.

All requirements of this regulation for a demonstration of financial responsibility to the State Water Control Board shall be addressed as follows:

Mailing Address:

Executive Director
State Water Control Board
P.O. Box 11143
Richmond, Virginia 23230-1143

Location Address:

Executive Director
State Water Control Board
4900 Cox Road
Glen Allen, Virginia 23060

§ 24. Delegation of authority.

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

APPENDIX I - LETTER FROM CHIEF FINANCIAL OFFICER

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

I am the chief financial officer of [insert: name and address of the operator, or guarantor]. This letter is in support of the use of [insert: "the financial test of self-insurance," and/or "guarantee"] to demonstrate financial responsibility for the containment and cleanup of discharges of oil in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating a facility.

Facilities at the following locations are assured by this financial test by this [insert: "operator," and/or "guarantor"]:

[List for each location: the name and address of the location where the facility(ies) assured by this financial test is (are) located, and whether the facility(ies) is (are) assured by this financial test. If separate mechanisms or combinations of mechanisms are being used to assure (any of) the facility(ies) at this location, list each facility assured by this financial test by the facility identification number provided in the notification submitted pursuant to VR 680-14-12 (Facility and Aboveground Storage Tank Registration Requirements).]

A [insert: "financial test," and/or "guarantee"] is also used by this [insert: "owner or operator," or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under 40 CFR Parts 271 and 145:

EPA Regulation for each state of business operations (specify state):

	Amount
Closure (§§ 264.143 and 265.143)	$ . . . .
Post-Closure Care (§§ 264.145 and 265.145)	$ . . . .
Liability Coverage (§§ 264.147 and 265.147)	$ . . . .
Corrective Action (§ 264.101(b))	$ . . . .
Plugging and Abandonment (§ 144.63)	$ . . . .

Other State Programs (specify state):

Closure	$ . . . .
Post-Closure Care	$ . . . .
Liability Coverage	$ . . . .
Corrective Action	$ . . . .
Plugging and Abandonment	$ . . . .

Virginia Hazardous Waste Management Regulations:

Closure (VR 672-10-1 §§ 10.7 C and 9.7 C)	$ . . . .
Post-Closure Care (VR 672-10-1 §§ 10.7 E and 9.7 E)	$ . . . .
Liability Coverage (VR 672-10-1 §§ 10.7 G and 9.7 G)	$ . . . .
Corrective Action (VR 672-10-1 §§ 10.5 L 2)	$ . . . .
Plugging and Abandonment (40 CFR § 144.63)	$ . . . .
TOTAL	$ . . . .

A [insert: financial test," and/or "guarantee"] is also used by this [insert: "operator," or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts for the operation of underground storage tanks in accordance with § 62.1-44.34:12 of the Code of Virginia and/or tank vessels in accordance with § 62.1-44.34:16 of the Code of Virginia:

The amount of annual aggregate coverage for underground storage tanks ..... $ . . . .

The amount of annual aggregate coverage for tank vessels ..... $ . . . .

Total ..... $ . . . .

This [insert: "operator," or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on the financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of § 6 B are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of § 6 C are being used to demonstrate compliance with the financial test requirements.]

ALTERNATIVE I

1. Amount of annual aggregate coverage for facility(ies) being assured by a financial test, and/or guarantee ..... $ . . .

2. Amount of annual aggregate coverage for regulated underground storage tanks and tank vessels covered by a financial test and/or guarantee ..... $ . . . .

3. Amount of corrective action, closure and post-closure care costs, liability coverage and plugging and abandonment costs covered by a financial test and/or guarantee ..... $ . . . .

4. Sum of lines 1, 2 and 3 ..... $ . . . .

5. Total tangible assets ..... $ . . . .

6. Total liabilities [if any of the amount reported on line 4 is included in total liabilities, you may deduct that amount from this line or add that amount to line 7] ..... $ . . . .

7. Tangible net worth [subtract line 6 from line 5] ..... $ . . .

8. Is line 7 at least equal to line 1 above? ..... *Yes* .... *No* ....

9. Is line 7 at least equal to the sum of lines 1 and 2 plus 10 times line 3? ..... *Yes* .... *No* ....

10. Have financial statements for the latest financial reporting year been filed with the Securities and Exchange Commission? ..... *Yes* .... *No* ....

11. Have financial statements for the latest financial reporting year been filed with the Energy Information Administration? ..... *Yes* .... *No* ....

12. Have financial statements for the latest financial reporting year been filed with the Rural Electrification

Administration? ..... Yes .... No ....

13. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating which at least equals the amount of financial responsibility required by the operator in § 4 A. [Answer "Yes" only if both criteria have been met.]
..... Yes .... No ....

14. If you did not answer Yes to one of lines 10 through 13, please attach a report from an independent certified public accountant certifying that there are no material differences between the data reported in lines 5 through 9 above and the financial statements for the latest financial reporting year.

ALTERNATIVE II

1. Amount of annual facility aggregate coverage being assured by a financial test, and/or guarantee ... $ . . . .

2. Amount of annual aggregate coverage for regulated underground storage tanks and/or tank vessels covered by a financial test and/or guarantee.
..... $ . . . .

3. Amount of corrective action, closure and post-closure care costs, liability coverage and plugging and abandonment costs covered by a financial test, and/or guarantee ..... $ . . . .

4. Sum of lines 1, 2 and 3 ..... $ . . . .

5. Total tangible assets ..... $ . . . .

6. Total liabilities [if any of the amount reported on line 4 is included in total liabilities, you may deduct that amount from this line or add that amount to line 7]
..... $ . . . .

7. Tangible net worth [subtract line 6 from line 5] ..... $ . . .

8. Total assets in the U.S. [required only if less than 90% of assets are located in the U.S.] ..... $ . . . .

9. Is line 7 at least equal to line 1 above?.
..... Yes .... No ....

10. Is line 7 at least equal to the sum of lines 1 and 2 plus 6 times the sum of line 3? .... Yes .... No ....

11. Are at least 90 % of assets located in the U.S.? [If "No," complete line 12.] ..... Yes .... No ....

12. Is line 8 at least equal to the sum of lines 1 and 2 plus 6 times the sum of line 3? .... Yes .... No ....

[Fill in either lines 13-16 or lines 17-19:]

13. Current assets ..... $ . . . .

14. Current liabilities ..... $ . . . .

15. Net working capital [subtract line 14 from line 13]
..... $ . . . .

16. Is line 15 at least equal to the sum of lines 1 and 2 plus 6 times the sum of line 3? .... Yes .... No ....

17. Current bond rating of most recent bond issue . . . .

18. Name of rating service ....

19. Date of maturity of bond ....

20. Have financial statements for the latest financial reporting year been filed with the SEC, the Energy Information Administration, or the Rural Electrification Administration? ..... Yes .... No ....

[If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 5-19 above and the financial statements for the latest financial reporting year.]

[For Alternatives I and II, complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in Appendix I of VR 680-14-14 (Facility Financial Responsibility Requirements) as such regulations were constituted on the date shown immediately below.

[Signature]
[Name]
[Title]
[Date]

[Signature of notary]

APPENDIX II - GUARANTEE

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state of [insert name of state], herein referred to as guarantor, to the State Water Control Board of the Commonwealth of Virginia and obligees, on behalf of [operator] of [business address].

Recitals.

(1) Guarantor meets or exceeds the financial test criteria of § 6 B or C and D of VR 680-14-14 (Facility Financial Responsibility Requirements), and agrees to comply with the requirements for guarantors as specified in § 7 B of VR 680-14-14 (Facility Financial Responsibility Requirements).

(2) Operator owns or operates the following facility(ies) covered by this guarantee:

[List the number of aboveground storage tanks at the facility(ies) and the name(s) and address(es) of the facility(ies) where the aboveground storage tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each aboveground storage tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to § 5 of VR 680-14-12 (Facility and Aboveground Storage Tank Registration Requirements), and the name and address of the facility.]

This guarantee satisfies the requirements of VR 680-14-14 (Facility Financial Responsibility Requirements) for assuring funding for containment and cleanup of discharges of oil; if coverage is different for different facility(ies) or locations, indicate the type of coverage applicable to each facility or location arising from operating the above-identified aboveground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the operator); "On behalf of our affiliate" (if guarantor is a related firm of the operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with operator)] [operator or guarantor] guarantees to the State Water Control Board that:

In the event that operator fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this guarantee and the State Water Control Board has determined or suspects that a discharge has occurred at a facility covered by this guarantee, the guarantor, upon instructions from the State Water Control Board, shall fund a standby trust fund in accordance with the provisions of § 17 of VR 680-14-14 (Facility Financial Responsibility Requirements), in an amount not to exceed the coverage limits specified above.

In the event that the State Water Control Board determines that operator has failed to perform containment and cleanup for discharges arising out of the operation of the above-identified facility(ies) in accordance with § 62.1-44.34:18 of the Code of Virginia, the guarantor upon written instructions from the State Water Control Board shall fund a standby trust in accordance with the provisions of § 17 of VR 680-14-14 (Facility Financial Responsibility Requirements), in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of § 6 B or C and D of VR 680-14-14 (Facility Financial Responsibility Requirements), guarantor shall send within 120 days of such failure, by certified mail, notice to operator. The guarantee will terminate 120 days from the date of receipt of the notice by operator, as evidenced by the return receipt.

(5) Guarantor agrees to notify operator by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of operator pursuant to § 62.1-44.34:18 of the Code of Virginia and VR 680-14-14 (Facility Financial Responsibility Requirements).

(7) Guarantor agrees to remain bound under this guarantee for so long as operator must comply with the applicable financial responsibility requirements of VR 680-14-14 (Facility Financial Responsibility Requirements) for the above-identified facilities, except that guarantor may cancel this guarantee by sending notice by certified mail to operator, such cancellation to become effective no earlier than 120 days after receipt of such notice by operator, as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of operator under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of operator arising from, and in the course of, employment by operator;

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by operator that is not the direct result of a discharge of oil from a facility;

(e) Bodily damage or property damage for which operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of § 4 of VR 680-14-14 (Facility Financial Responsibility Requirements).

(9) Guarantor expressly waives notice of acceptance of this guarantee by the State Water Control Board or by operator.

I hereby certify that the wording of this guarantee is identical to the wording specified in Appendix II of VR 680-14-14 (Facility Financial Responsibility Requirements)

as such regulations were constituted on the effective date shown immediately below.

Effective date

[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]

Signature of witness or notary:

APPENDIX III - ENDORSEMENT

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Name: . . . . . [name of each covered location].

Address: . . . [address of each covered location].

Policy Number: . . . . . .

Period of Coverage: . . . [current policy period].

Name of [Insurer or Group Self-Insurance Pool]:

. . . . . .

Address of [Insurer or Group Self-Insurance Pool]:

. . . . . .

. . . . . .

Name of Insured: . . . . . .

Address of Insured:

. . . . . .

. . . . . .

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following facilities in connection with the insured's obligation to demonstrate financial responsibility under VR 680-14-14 (Facility Financial Responsibility Requirements):

[List the number of aboveground storage tanks at each facility and the name(s) and address(es) of the facility(ies) where the aboveground storage tanks are located. If more than one instrument is used to assure different aboveground storage tanks at any one facility, for each aboveground storage tank covered by this instrument, list the aboveground storage tank identification number provided in the notification submitted pursuant to VR 680-14-13 (Facility and Aboveground Storage Tank Registration Requirements), and the name and address of the facility.] for containment and cleanup of a discharge of oil in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; [if coverage is different for different aboveground storage tanks or facilities, indicate the type of coverage applicable to each aboveground storage tank or location] arising from operating the facility(ies) identified above.

The limits of liability are [insert the dollar amount of the containment and cleanup "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different aboveground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each aboveground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) through (d) for occurrence policies and (a) through (e) for claims-made policies of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Pool"] of its obligations under the policy to which this endorsement is attached.

b. The ["Insurer" or "Pool"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of containment and cleanup, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Pool"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in §§ 6 through 11 of VR 680-14-14 (Facility Financial Responsibility Requirements).

c. Whenever requested by the State Water Control Board, the ["Insurer" or "Pool"] agrees to furnish to State Water Control Board a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Pool"], except for nonpayment of premium or misrepresentation by the insured, will be effective only upon written

notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for nonpayment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 15 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Pool"] within six months of the effective date of cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this endorsement is in no respect less favorable than the coverage specified in Appendix III of VR 680-14-14 (Facility Financial Responsibility Requirements) and has been so certified by the State Corporation Commission of the Commonwealth of Virginia. I further certify that the ["Insurer" or "Pool"] is ["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in the Commonwealth of Virginia"].

[Signature of authorized representative of Insurer or Group Self-Insurance Pool]

[Name of person signing]

[Title of person signing], Authorized Representative of [name of Insurer or Group Self-Insurance Pool]

[Address of Representative]

APPENDIX IV - CERTIFICATE OF INSURANCE

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Name: . . . . [name of each covered location] . . . .

Address: . . . [address of each covered location] . . .

. . . . . .

Policy Number: . . . . . .

Endorsement (if applicable): . . . . . .

Period of Coverage: . . .[current policy period] . . .

Name of [Insurer or Group Self-Insurance Pool]:

. . . . . .

Address of [Insurer or Group Self-Insurance Pool]:

. . . . . .

. . . . . .

Name of Insured: . . . . . .

Address of Insured: . . . . . .

Certification:

1. [Name of Insurer or Group Self-Insurance Pool], [the "Insurer" or "Pool"], as identified above, hereby certifies that it has issued liability insurance covering the following facility(ies) in connection with the insured's obligation to demonstrate financial responsibility under VR 680-14-14 (Facility Financial Responsibility Requirements):

[List the number of aboveground tanks at each facility and the name(s) and address(es) of the facility(ies) where the aboveground storage tanks are located. If more than one instrument is used to assure different aboveground storage tanks at any one facility, for each aboveground storage tank covered by this instrument, list the aboveground storage tank identification number provided in the notification submitted pursuant to 680-14-12 (Facility and Aboveground Storage Tank Registration Requirements), and the name and address of the facility.] for containment and cleanup of discharges of oil; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; [if coverage is different for different tanks or locations, indicate the type of coverage applicable to each aboveground storage tank or location] arising from operating the facility(ies) identified above.

The limits of liability are [insert the dollar amount of the containment and cleanup "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different aboveground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each aboveground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["Insurer" or "Pool"] further certifies the following with respect to the insurance described in Paragraph 1:

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Pool"] of its obligations under the policy to which this certificate applies.

b. The ["Insurer" or "Pool"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of containment and cleanup with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Pool"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in §§ 6 through 11 of VR 680-14-14 (Facility Financial Responsibility Requirements).

c. Whenever requested by the State Water Control Board, the ["Insurer" or "Pool"] agrees to furnish to the State Water Control Board a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Pool"], except for nonpayment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 60 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies]

e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Pool"] within six months of the effective date of cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.

I herby certify that the wording of this instrument is identical to the wording in Appendix IV of VR 680-14-14 (Facility Financial Responsibility Requirements) and that the ["Insurer" or ["Pool"] is ["licensed to transact the business of insurance, or is eligible to provide insurance as an excess or approved surplus lines insurer, in the Commonwealth of Virginia"].

[Signature of authorized representative of Insurer]

[Type name] [Title],

Authorized Representative of [name of Insurer or Group Self-Insurance Pool]

[Address of Representative]

APPENDIX V - PERFORMANCE BOND

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Date bond executed:. . . . .

Period of coverage: . . . . . .

Principal: [legal name and business address of owner] . . . . . .

Type of organization: [insert "individual" "joint venture," "partnership," or "corporation"]. . . . . .

State of incorporation (if applicable):. . . . . .

Surety(ies): [name(s) and business address(es)] . . . . . .

Scope of Coverage:

[List the number of aboveground storage tanks at each facility and the name(s) and address(es) of the facility(ies) where the aboveground storage tanks are located. If more than one instrument is used to assure different aboveground storage tanks at any one facility, for each aboveground storage tank covered by this instrument, list the aboveground storage tank identification number provided in the notification submitted pursuant to VR 680-14-12 (Facility and Aboveground Storage Tank Registration Requirements), and the name and address of the facility. List the coverage guaranteed by the bond: containment and cleanup of oil from a discharge arising from operating the aboveground storage tank.]

Penal sums of bond:

Containment and Cleanup (per occurrence) . $ . . . .

Annual Aggregate ..... $ . . . .

Surety's bond number: ....

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the State Water Control Board of the Commonwealth of Virginia, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of

the penal sums.

Whereas said Principal is required under § 62.1-44.34:16 of the Code of Virginia, Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, and under VR 680-14-14 (Facility Financial Responsibility Requirements), to provide financial assurance for containment and cleanup necessitated by discharges of oil; if coverage is different for different aboveground storage tank or locations, indicate the type of coverage applicable to each aboveground storage tank or location] arising from operating the facilities identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully contain and cleanup, in accordance with the State Water Control Board's instructions for containment and cleanup of discharges of oil arising from operating the aboveground storage tanks identified above, or if the Principal shall provide alternate financial assurance, as specified in VR 680-14-14 (Facility Financial Responsibility Requirements), within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

(a) Any obligation of [insert operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of operator arising from, and in the course of, employment by operator;

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by operator that is not the direct result of a discharge from an aboveground storage tank;

(e) Bodily injury or property damage for which operator is obliged to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of § 4 of VR 680-14-14 (Facility Financial Responsibility Requirements).

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the State Water Control Board that the Principal has failed to contain and cleanup in accordance with § 62.1-44.34:16 of the Code of Virginia and the State Water Control Board's instructions, "the Surety(ies) shall perform containment and cleanup in accordance with § 62.1-44.34:16 and the board's instructions," or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the State Water Control Board under § 17 of VR 680-14-14 (Facility Financial Responsibility Requirements).

Upon notification by the State Water Control Board that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the State Water Control Board has determined or suspects that a discharge has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the State Water Control Board under § 12 of VR 680-14-14 (Facility Financial Responsibility Requirements).

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Thereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in Appendix V of VR 680-14-14 (Facility Financial Responsibility Requirements) as such regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

CORPORATE SURETY(IES)

[Name and address]

State of Incorporation:

Liability limit: $ . . . .

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $ . . . .

APPENDIX VI - IRREVOCABLE STANDBY LETTER OF CREDIT

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

[Name and address of issuing institution]

[Name and address of the Executive Director of the State Water Control Board of the Commonwealth of Virginia and Director(s) of other state implementing agency(ies)]

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. . . . in your favor, at the request and for the account of [operator name] of [address] up to the aggregate amount of [in words] U.S. dollars ($[insert dollar amount]), available upon presentation [insert, if more than one Director of a state implementing agency is a beneficiary, "by any one of you"] of

(1) your sight draft, bearing reference to this letter of credit, No. . . . and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of § 62.1-44.34:16 of the Code of Virginia and Subtitle I of the Resource Conservation and Recovery Act of 1976, as amended."

This letter of credit may be drawn on to cover containment and cleanup necessitated by discharges of oi. arising from operating the facilities identified below in the amount of [in words] $ [insert dollar amount] per occurrence and [in words] $ [insert dollar amount] annual aggregate:

[List the number of aboveground storage tanks at each facility and the name(s) and address(es) of the facility(ies) where the aboveground storage tanks are located. If more than one instrument is used to assure different aboveground storage tanks at any one facility, for each aboveground storage tank covered by this instrument, list the aboveground storage tank identification number provided in the notification submitted pursuant to VR 680-14-12 (Facility and Aboveground Storage Tank Registration Requirements), and the name and address of the facility.]

The letter of credit may not be drawn on to cover any of the following:

(a) Any obligation, of operator under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of operator arising from, and in the course of, employment by operator;

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by an operator that is not the direct result of a discharge of oil from an aboveground storage tank;

(e) Bodily injury or property damage for which an operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of § 4 of VR 680-14-14 (Facility Financial Responsibility Requirements).

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify operator by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that operator is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by operator, as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of operator in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in Appendix VI of VR 680-14-14 (Facility Financial Responsibility Requirements) as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

APPENDIX VII - TRUST AGREEMENT

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the operator], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "Incorporated in the state of . . ." or "a national bank"], the "Trustee."

Whereas, the State Water Control Board of the Commonwealth of Virginia has established certain regulations applicable to the Grantor, requiring that an operator of a facility shall provide assurance that funds will be available when needed for containment and cleanup of a discharge of oil arising from the operation of the facility. The attached Schedule A lists the number of aboveground storage tanks at each facility and the name(s) and address(es) of the facility(ies) where the aboveground storage tanks are located that are covered by the standby trust agreement;

Whereas, the Grantor has elected to establish [insert either "a guarantee," "surety bond," or "letter of credit"] to provide all or part of such financial assurance for the aboveground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument; [This paragraph is only applicable to the standby trust agreement.]

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) "VR 680-14-14" is the Facility Financial Responsibility Requirements promulgated by the State Water Control Board for the Commonwealth of Virginia.

Section 2. Identification of the Financial Assurance Mechanism.

This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)]

Section 3. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the State Water Control Board of the Commonwealth of Virginia. The Grantor and the Trustee intend that no third party have access to the Fund. [The Fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to the State Water Control Board's instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the State Water Control Board.

Section 4. Payment for Containment and Cleanup.

The Trustee shall make payments from the Fund as the State Water Control Board shall direct, in writing, to provide for the payment of the costs of containment and cleanup of a discharge of oil arising from operating the facility(ies) covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

(a) Any obligation of operator under a workers'

compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of operator arising from, and in the course of, employment by operator;

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by operator that is not the direct result of a discharge from a facility; or

(e) Bodily injury or property damage for which operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of § 4 of VR 680-14-14 (Facility Financial Responsibility Requirements).

The Trustee shall reimburse the Grantor, or other persons as specified by the State Water Control Board, from the Fund for containment and cleanup in such amounts as the State Water Control Board shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the State Water Control Board specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section 6. Trustee Management.

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that: (i) Securities or other obligations of the Grantor, or any other operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government; (ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and (iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee.

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualifed central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books

and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel.

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee.

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests and instructions by the State Water Control Board to the Trustee shall be in writing, signed by the Executive Director of the State Water Control Board, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the State Water Control Board hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the State Water Control Board, except as provided for herein.

Section 14. Amendment of Agreement.

This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the State Water Control Board if the Grantor ceases to exist.

Section 15. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the State Water Control Board, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 16. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the State Water Control Board issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law.

This Agreement shall be administered, construed, and

enforced according to the laws of the Commonwealth of Virginia, or the Comptroller of the Currency in the case of National Association banks.

Section 18. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in Appendix VII of VR 680-14-14 (Facility Financial Responsibility Requirements) as such regulations were constituted on the date written above.

[Signature of Grantor]

[Name of the Grantor]

[Title]

Attest:

[Signature of Trustee]

[Name of the Trustee]

[Title]

[Seal]

[Signature of Witness]

[Name of Witness]

[Title]

[Seal]

APPENDIX VIII - CERTIFICATE OF ACKNOWLEDGEMENT

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

State of . . . .

County of . . . .

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

[Name of Notary Public]

My Commission expires: . . . . .

APPENDIX IX - CERTIFICATION OF FINANCIAL RESPONSIBILITY

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Operator hereby certifies that it is in compliance with the requirements of VR 680-14-14 (Facility Financial Responsibility Requirements).

The financial assurance mechanism[s] used to demonstrate financial responsibility under VR 680-14-14 (Facility Financial Responsibility Requirements) is [are] as follows:

[For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage.

[Signature of operator]

[Name of operator]

[Title] [Date]

[Signature of notary]

[Name of notary] [Date] My Commission expires: . . . . . .

APPENDIX X - LETTER FROM CHIEF FINANCIAL OFFICER (Short Form)

[Note: This Appendix may only be used by operators who do not own or operate hazardous waste facilities or pipeline which involves the transport of hazardous waste.]

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

I am the chief financial officer of [insert: name and address of the operator or guarantor]. This letter is in support of the use of [insert: "the financial test of self-insurance," and/or "Guarantee"] to demonstrate financial responsibility for containment and cleanup caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating a

facility(ies)

Aboveground storage tanks at the following facilities are assured by this financial test by this [insert "operator and/or guarantor"]:

List for each facility: the name and address of the facil ity where aboveground storage tanks assured by this financial test are located, and whether the aboveground storage tanks are assured by this financial test. If separate mechanisms or combinations of mechanisms are being used to assure any of the aboveground storage tanks at this facility, list each aboveground storage tank assured by this financial test as listed in the notification submitted pursuant to VR 680-14-12 (Facility and Aboveground Storage Tank Registration Requirements).

I am not required to demonstrate evidence of financial responsibility for any other EPA regulation or state programs authorized by EPA or for operation of facilities and/or tank vessels in accordance with Virginia Code § 62.1-44.34:16.

I have not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on the financial statements for the latest completed fiscal year.

Fill in the information below to demonstrate compliance with the financial test requirements.]

1. Amount of annual aboveground storage tank aggregate coverage being assured by a financial test, and/or guarantee ..... $ . . . . .

2. Total tangible assets ..... $ . . . .

3. Total liabilities [if any of the amount reported on line 1 is included in total liabilities, you may deduct that amount from this line or add that amount to line 4] . $ . . . .

4. Tangible net worth [subtract line 3 from line 2] . . . .

5. Is line 4 at least equal to line 1 above Yes .... No ....

6. Have financial statements for the latest financial reporting year been filed with the Securities and Exchange Commission? ..... Yes .... No ....

7. Have financial statements for the latest financial reporting year been filed with the Energy Information Administration? ..... Yes .... No ....

8. Have financial statements for the latest financial reporting year been filed with the Rural Electrification Administration? ..... Yes .... No ....

9. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided an acceptable financial strength rating? .. Yes .... .. No ....

10. If you did not answer Yes to one of line 6 through 9, please attach a report from an independent certified public accountant certifying that there are no material differences between the data reported in lines 2 through 5 above and the financial statements for the latest financial reporting year.

I hereby certify that the wording of this letter is identical to the wording specified in Appendix X of VR 680-14-14 (Facility Financial Responsibility Requirements) as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

[Signature of Notary]

* * * * * * * * *

Title of Regulation: **VR 680-16-03. Upper James River Basin Water Quality Management Plan.**

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Public Hearing Date: February 16, 1993 - 7 p.m.
Written comments may be submitted through March 12, 1993.
(See Calendar of Events section for additional information)

Summary:

Water quality management plans set forth measures for the board to implement in order to reach and maintain applicable water quality goals in general terms and also by establishing waste load allocations for industrial and municipal dischargers in critical water quality segments. The purpose of the proposed amendment to the Upper James River Basin Water Quality Management Plan is to increase the waste load allocation for the Town of Crewe's Sewage Treatment Plant (plant) discharge to an unnamed tributary to Deep Creek from 20 pounds per day of biological oxygen demand to 50.1 pounds per day of carbonaceous biological oxygen demand.

VR 680-16-03. Upper James River Basin Water Quality Management Plan.

Upper James Water River Basin Water Quality Management Plan
State Water Control Board
Text of Regulation

Reference for the Unnamed Tributary of Deep Creek, river mile 2.2 - 0.0 in Table 7, "Load Allocations Based on Existing Discharge Point" on Page 25 of Volume V-A, Part 1 of 3 would be amended as follows:

Stream Name	Segment Number	Segment Classification	Mile to Mile	Significant Dischargers	Total Assimilative Capacity of Stream BOD5 Lbs/Day	Waste Load Allocation BOD5 Lbs/Day	Reserve BOD5 Lbs/Day
Unnamed Tributary of Deep Creek	2-22	W.Q.	2.2 - 0.0	Crewe STP	~~25~~ 50.3[11,12]	~~20~~ 50.1[11,12]	~~5~~ ~~(20%)~~ 0.2 (0.4%)[11,12,13]

11. 5-day Carbonaceous Biological Oxygen Demand (cBOD5).
12. Revision supersedes all subsequent Crewe STP stream capacity, allocation, and reserve references.
13. 0.4 percent reserve: Determined by SWCB Piedmont Regional Office.

Reference to Deep Creek, river mile 25.0 - 12.8 in Table 8, "Additional Load Allocations Based on Recommended Discharge Point" on Page 26 of Volume V-A, Part 1 of 3 would be deleted as follows:

Stream Name	Segment Number	Segment Classification	Mile to Mile	Significant Dischargers	Total Assimilative Capacity of Stream BOD5 Lbs/Day	Waste Load Allocation BOD5 Lbs/Day	Reserve BOD5 Lbs/Day
~~Deep Creek~~	~~2-17~~	~~E.C.~~	~~25.0---12.8~~	~~Crewe STP~~	~~69.0~~	~~55.0~~	~~14.0 (20%)~~

Reference to the Town of Crewe in Table 11, "Recommended Water Quality Management Plan" on Page 36 of Volume V-A, Part 1 of 3 would be amended as follows:

Facility	Recommended Alternative	Waste Load Allocation (Lbs/Day BOD5)	Removal Efficiency Required	2000 Design Flow MGD	Treatment Scheme	Recommended Method of Sludge Disposal
Crewe	~~EW-4~~	~~20~~ 50.1[11]	~~96.3~~ 95.0	~~0.74~~ 0.50	~~4~~ 3	Land Application

11. 5-day Carbonaceous Biological Oxygen Demand (cBOD5).

* * * * * * * *

REGISTRAR'S NOTICE: Due to its length, the proposed regulation filed by the State Water Control Board is not being published. However, in accordance with § 9-6.14:22 of the Code of Virginia, the summary is being published in lieu of the full text. The full text of the regulation is available for public inspection at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, 910 Capitol Street, Richmond, Virginia 23219 and at the State Water Control Board, Innsbrook Corporate Center, 4900 Cox Road, Glen Allen, Virginia 23060.

Title of Regulation: **VR 680-21-00. Water Quality Standards. (VR 680-21-07.2, Special Designations in Surface Waters; VR 680-21-07.3, Nutrient Enriched Waters; and VR 680-21-08, River Basin Section Tables)**

Statutory Authority: § 62.1-44.15(3a) of the Code of Virginia.

Public Hearing Dates:

February 10, 1993 - 2 p.m.
February 11, 1993 - 7 p.m.
February 17, 1993 - 7 p.m.
February 18, 1993 - 2 p.m.
Written comments may be submitted through March 15, 1993.
(See Calendar of Events section for additional information)

Summary:

Water quality standards and criteria consist of narrative statements that describe water quality requirements in general terms and numerical limits for specific physical, chemical and biological characteristics of water. These statements and limits describe water quality necessary for reasonable, beneficial water uses such as swimming, propagation and growth of aquatic life, and domestic water supply.

The objectives of these amendments are to update, clarify and correct sections VR 680-21-07.2 (Special Designations in Surface Waters), VR 680-21-07.3 (Nutrient Enriched Waters) and VR 680-21-08 (River Basin Section Tables). These proposed amendments include revisions to the scenic river and endangered species designations, addition of a new nutrient enriched water designation, clarification of the trout water subclassifications, revision of the trout water and public water supply designations and modification of a pH standard for an unnamed tributary to Coles Run (Augusta County).

For information concerning Final Regulations, see information page.

Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a substantial change from the proposed text of the regulations.

BOARD OF HISTORIC RESOURCES

Title of Regulation: **VR 390-01-01. Public Participation Guidelines.**

Statutory Authority: §§ 9-6.14:7.1 and 10.1-2205 of the Code of Virginia.

Effective Date: February 10, 1993.

Summary:

Section 9-6.14:7.1 of the Code of Virginia requires each agency to develop, adopt and utilize public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such guidelines shall not only be utilized prior to the formation and drafting of the proposed regulation, but shall also be utilized during the entire formation, promulgation and final adoption process of the regulation.

The purpose of this final regulation is to adopt public participation guidelines that establish, in regulation, various provisions to ensure that interested persons have the necessary information to comment on regulatory actions in a meaningful fashion in all phases of the regulatory process and establish guidelines that are consistent with those of the other agencies within the Natural Resources Secretariat. Specifically, the final guidelines (i) require an expanded notice of intended regulatory action, (ii) establish a formal petition process for the public, (iii) require the use of advisory committees in formulating regulations unless specifically waived by the board, (iv) require that a summary of all comments received be prepared and made available by the Department of Historic Resources, and (v) require the performance of certain analyses.

VR 390-01-01. Public Participation Guidelines.

§ 1. Definitions.

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"Administrative Process Act" means Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.

"Board" means the Board of Historic Resources.

"Department" means the Department of Historic Resources.

"Director" means the Director of the Department of Historic Resources or his designee.

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

Unless specifically defined in Chapters 22, 23, and 24 of Title 10.1 of the Code of Virginia or in this regulation, terms used shall have the meanings commonly ascribed to them.

§ 2. General provisions.

A. The procedures in § 3 of this regulation shall be used for soliciting the input of interested persons in the initial formation and development, amendment or repeal of regulations in accordance with the Administrative Process Act. This regulation does not apply to regulations exempted from the provisions of the Administrative Process Act [(§ 9-6.14:4.1 A and B)] or excluded from the operation of Article 2 of the Administrative Process Act [(§ 9-6.14:4.1 C)] .

B. At the discretion of the board or the director, the procedures in § 3 may be supplemented [~~by any means and in any manner~~] to provide additional public participation in the regulation adoption process or as necessary to meet federal requirements.

C. The failure of any person to receive any notice or copies of any documents provided under these guidelines shall not affect the validity of any regulation otherwise adopted in accordance with this regulation.

[D. Any person may petition the board for the adoption, amendment or repeal of a regulation. The petition, at a minimum, shall contain the following information:

1. Name of petitioner;

2. Petitioner's mailing address and telephone number;

3. Petitioner's interest in the proposed action;

4. Recommended regulation or addition, deletion or amendment to a specific regulation or regulations;

5. Statement of need and justification for the proposed action;

6. Statement of impact on the petitioner and other affected persons; and

7. Supporting documents, as applicable.

If the board determines not to act upon a petition, it shall provide a written response to such petition within 180 days from receipt of the petition.

§ 3. Public participation procedures.

A. The department shall establish and maintain a list or lists consisting of persons expressing an interest in the adoption, amendment or repeal of regulations.

B. Whenever the board so directs or upon its own initiative, the department may commence the regulation adoption process and proceed to draft a proposal according to these procedures.

C. The department [~~may~~ shall] form an ad hoc advisory group [or utilize a standing advisory committeee] to assist in the drafting and formation of the proposal [unless the board specifically authorizes the department to proceed without utilizing an ad hoc advisory group or standing advisory committee] . When an ad hoc advisory group is formed, such ad hoc advisory group shall [~~be appointed from groups and individuals registering interest in working with the department~~ include representatives of the regulated community and the general public] .

D. The department shall issue a notice of intended regulatory action (NOIRA) whenever it considers the adoption, amendment or repeal of any regulation.

1. The NOIRA shall include at least the following:

a. A brief statement as to the need for regulatory action;

b. A brief description of alternatives available, if any, to meet the need.

c. A request for comments on the intended regulatory action, to include any ideas to assist the department in the drafting and formation of any proposed regulation developed pursuant to the NOIRA.

d. A request for comments on the costs and benefits of the stated alternatives or other alternatives.

2. During the public comment period for NOIRAs, the department shall conduct public meetings as follows:

a. The department shall hold at least one public meeting [~~when considering the adoption of new regulations. In the case of a proposal to amend or repeal existing regulations, the director, in his sole discretion, may dispense with the public meeting~~ whenever the board considers the adoption, amendment or repeal of any regulation unless the board specifically authorizes the department to proceed without holding a public meeting] .

b. In those cases where a public meeting(s) will be held, the NOIRA shall also include the date, not to be less than 30 days after publication of the Virginia Register, time and place of the public meeting(s).

3. The public comment period for NOIRAs under this section shall be no less than 30 days after publication of the NOIRA in the Virginia Register.

E. The department shall disseminate the NOIRA to the public via the following:

1. Distribution to the Registrar of Regulations for publication in the Virginia Register of Regulations.

2. Distribution by mail to persons on the list(s) established under subsection A of this section.

F. After consideration of public comment, the department may prepare the draft proposed regulation and [~~prepare the notice of public comment (NOPC) and~~] any supporting documentation required for review. If an ad hoc advisory group has been established, the draft regulation shall be developed in consultation with such group. A summary or copies of the comments received in response to the NOIRA shall be distributed to the ad hoc advisory group during the development of the draft regulation. A summary or copies of the comments received in response to the NOIRA shall also be distributed to the board.

G. Upon approval of the draft proposed regulation by the [~~director~~ board] , the department [~~may, at its discretion, proceed by publishing~~ shall publish] the NOPC and the proposal for public comment.

H. The NOPC shall include the following:

1. The notice of the opportunity to comment on the proposed regulation, location where copies of the draft may be obtained and name, address and telephone number of the individual to contact for further information about the proposed regulation.

2. A description of provisions of the proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed.

3. A request for comments on the costs and benefits of the proposal.

4. A statement that an analysis of the following has been conducted by the agency and is available to the public upon request:

a. A statement of purpose: why the regulation is proposed and the desired end result or objective of the regulation.

b. A statement of estimated impact:

(1) Number and types of regulated entities or persons affected.

(2) Projected cost to regulated entities (and to the public, if applicable) for implementation and compliance. In those instances where an agency is unable to quantify projected costs, it shall offer qualitative data, if possible, to help define the impact of the regulation. Such qualitative data shall include, if possible, an example or examples of the impact of the proposed regulation on a typical member or members of the regulated community.

(3) Projected cost to the department for implementation and enforcement.

(4) The beneficial impact the regulation is designed to produce.

c. An explanation of need for the proposed regulation and potential consequences that may result in the absence of the regulation.

d. An estimate of the impact of the proposed regulation upon small businesses as defined in § 9-199 of the Code of Virginia or upon other organizations in Virginia.

e. A discussion of alternative approaches that were considered to meet the need the proposed regulation addresses, and a statement [~~*why*~~ *as to whether*] *the department believes that the proposed regulation is the least burdensome alternative to the regulated community* [*that fully meets the stated purpose of the regulation*] .

f. A schedule setting forth when, [~~*within two years*~~] *after the effective date of the regulation, the* [~~*department*~~ *board*] *will evaluate it for effectiveness and continued need.*

5. The date, time and place of at least one public hearing held in accordance with § 9-6.14:7.1 of the Code of Virginia to receive comments on the proposed regulation. (In those cases in which the [~~*agency*~~ *department*] *elects to conduct an evidential hearing, the notice shall indicate that the evidential hearing will be held in accordance with § 9-6.14:8 of the Code of Virginia.) The hearing(s) may be held at any time during the public comment period* [*and, whenever practicable, no less than 10 days prior to the close of the public comment period*] . *The hearing(s) may be held in such location(s) as the department determines will best facilitate input from interested persons.*

I. The public comment period shall close no less than 60 days after publication of the NOPC in the Virginia Register.

J. The department shall disseminate the NOPC to the public via the following:

1. Distribution to the Registrar of Regulations for:

a. Publication in the Virginia Register of Regulations;

b. Publication in a newspaper of general circulation published at the state capitol and such other newspapers as the department may deem appropriate.

2. Distribution by mail to persons on the list(s) established under subsection A of this section.

K. The department shall prepare a summary of comments received in response to the NOPC and [*the department's response to the comments received. The department shall*] *submit* [~~*it or*~~ *the summary and agency response and*] , *if requested, submit the full comments to the board.* [~~*Both the*~~ *The*] *summary* [, *the department's response,*] *and the comments shall become a part of the department file* [*and after final action on the regulation by the board, made available, upon request, to interested persons*] .

[*L. If the department determines that the process to adopt, amend or repeal any regulation should be terminated after approval of the draft proposed regulation by the board, the department shall present to the board for its consideration a recommendation and rationale for the withdrawal of the proposed regulation.*]

[~~*L.*~~ *M.*] *Completion of the remaining steps in the adoption process shall be carried out in accordance with the Administrative Process Act.*

[*§ 4. Transition.*

A. All regulatory actions for which a NOIRA has been published in the Virginia Register prior to February 10, 1993, shall be processed in accordance with the Public Participation Guidelines specified in Chapter 656 of the Acts of Assembly of 1989.

B. All regulatory actions for which a NOIRA has not been published in the Virginia Register prior to February 10, 1993, shall be processed in accordance with this regulation (VR 390-01-01).]

DEPARTMENT OF HISTORIC RESOURCES

Title of Regulation: **VR 392-01-01. Public Participation Guidelines.**

Statutory Authority: §§ 9-6.14:7.1 and 10.1-2202 of the Code

of Virginia.

Effective Date: February 10, 1993.

Summary:

Section 9-6.14:7.1 of the Code of Virginia requires each agency to develop, adopt and utilize public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such guidelines shall not only be utilized prior to the formation and drafting of the proposed regulation, but shall also be utilized during the entire formation, promulgation and final adoption process of the regulation.

The purpose of this final regulation is to adopt public participation guidelines that establish, in regulation, various provisions to ensure that interested persons have the necessary information to comment on regulatory actions in a meaningful fashion in all phases of the regulatory process and establish guidelines that are consistent with those of the other agencies within the Natural Resources Secretariat. Specifically, the final guidelines (i) require an expanded notice of intended regulatory action, (ii) establish a formal petition process for the public, (iii) require the use of advisory committees in formulating regulations unless specifically waived by the director, (iv) require that a summary of all comments received be prepared and made available by the department, and (v) require the performance of certain analyses.

VR 392-01-01. Public Participation Guidelines.

§ 1. Definitions.

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"Administrative Process Act" means Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.

"Department" means the Department of Historic Resources.

"Director" means the Director of the Department of Historic Resources or his designee.

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

Unless specifically defined in Chapters 22, 23, and 24 of Title 10.1 of the Code of Virginia or in this regulation, terms used shall have the meanings commonly ascribed to them.

§ 2. General provisions.

A. The procedures in § 3 of this regulation shall be used for soliciting the input of interested persons in the initial formation and development, amendment or repeal of regulations in accordance with the Administrative Process Act. This regulation does not apply to regulations exempted from the provisions of the Administrative Process Act [(§ 9-6.14:4.1 A and B)] or excluded from the operation of Article 2 of the Administrative Process Act [(§ 9-6.14:4.1 C)] .

B. At the discretion of the director, the procedures in § 3 may be supplemented [~~by any means and in any manner~~] to provide additional public participation in the regulation adoption process or as necessary to meet federal requirements.

C. The failure of any person to receive any notice or copies of any documents provided under these guidelines shall not affect the validity of any regulation otherwise adopted in accordance with this regulation.

[D. Any person may petition the director for the adoption, amendment or repeal of a regulation. The petition, at a minimum, shall contain the following information:

1. Name of petitioner;

2. Petitioner's mailing address and telephone number;

3. Petitioner's interest in the proposed action;

4. Recommended regulation or addition, deletion or amendment to a specific regulation or regulations;

5. Statement of need and justification for the proposed action;

6. Statement of impact on the petitioner and other affected persons; and

7. Supporting documents, as applicable.]

If the director determines not to act upon a petition, he shall provide a written response to such petition within 180 days from receipt of the petition.]

§ 3. Public participation procedures.

A. The department shall establish and maintain a list or lists consisting of persons expressing an interest in the adoption, amendment or repeal of regulations.

B. The department may commence the regulation adoption process upon its own initiative and proceed to draft a proposal according to these procedures.

C. The department [~~may~~ shall] form an ad hoc advisory group [or utilize a standing advisory committee] to assist in the drafting and formation of the proposal [unless the director specifically authorizes the department

to proceed without utilizing an ad hoc advisory group or standing advisory committee] . When an ad hoc advisory group is formed, such ad hoc advisory group shall [~~be appointed from groups and individuals registering interest in working with the department~~ [include representatives of the regulated community and the general public] .

D. The department shall issue a notice of intended regulatory action (NOIRA) whenever it considers the adoption, amendment or repeal of any regulation.

1. The NOIRA shall include at least the following:

a. A brief statement as to the need for regulatory action;

b. A brief description of alternatives available, if any, to meet the need.

c. A request for comments on the intended regulatory action, to include any ideas to assist the department in the drafting and formation of any proposed regulation developed pursuant to the NOIRA.

d. A request for comments on the costs and benefits of the stated alternatives or other alternatives.

2. During the public comment period for NOIRAs, the department shall conduct public meetings as follows:

a. The department shall hold at least one public meeting [~~when considering the adoption of new regulations. In the case of a proposal to amend or repeal existing regulations, the director, in his sole discretion, may dispense with the public meeting~~ whenever the director considers the adoption, amendment or repeal of any regulation unless the director specifically authorizes the department to proceed without holding a public meeting] .

b. In those cases where a public meeting(s) will be held, the NOIRA shall also include the date, not to be less than 30 days after publication of the Virginia Register, time and place of the public meeting(s).

3. The public comment period for NOIRAs under this section shall be no less than 30 days after publication of the NOIRA in the Virginia Register.

E. The department shall disseminate the NOIRA to the public via the following:

1. Distribution to the Registrar of Regulations for publication in the Virginia Register of Regulations.

2. Distribution by mail to persons on the list(s) established under subsection A of this section.

F. After consideration of public comment, the department may prepare the draft proposed regulation and [~~prepare the notice of public comment (NOPC) and~~] any supporting documentation required for review. If an ad hoc advisory group has been established, the draft regulation shall be developed in consultation with such group. A summary or copies of the comments received in response to the NOIRA shall be distributed to the ad hoc advisory group during the development of the draft regulation.

G. Upon approval of the draft proposed regulation by the director, the department [~~may, at its discretion, proceed by publishing~~ shall publish] the NOPC and the proposal for public comment.

H. The NOPC shall include the following:

1. The notice of the opportunity to comment on the proposed regulation, location where copies of the draft may be obtained and name, address and telephone number of the individual to contact for further information about the proposed regulation.

2. A description of provisions of the proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed.

3. A request for comments on the costs and benefits of the proposal.

4. A statement that an analysis of the following has been conducted by the agency and is available to the public upon request:

a. A statement of purpose: why the regulation is proposed and the desired end result or objective of the regulation.

b. A statement of estimated impact:

(1) Number and types of regulated entities or persons affected.

(2) Projected cost to regulated entities (and to the public, if applicable) for implementation and compliance. In those instances where an agency is unable to quantify projected costs, it shall offer qualitative data, if possible, to help define the impact of the regulation. Such qualitative data shall include, if possible, an example or examples of the impact of the proposed regulation on a typical member or members of the regulated community.

(3) Projected cost to the department for implementation and enforcement.

(4) The beneficial impact the regulation is designed to produce.

c. An explanation of need for the proposed

regulation and potential consequences that may result in the absence of the regulation.

d. An estimate of the impact of the proposed regulation upon small businesses as defined in § 9-199 of the Code of Virginia or upon other organizations in Virginia.

e. A discussion of alternative approaches that were considered to meet the need the proposed regulation addresses, and a statement [~~*why*~~ *as to whether*] *the department believes that the proposed regulation is the least burdensome alternative to the regulated community* [*that fully meets the stated purpose of the regulation*] .

f. A schedule setting forth when, [~~*within two years*~~] *after the effective date of the regulation, the department will evaluate it for effectiveness and continued need.*

5. The date, time and place of at least one public hearing held in accordance with § 9-6.14:7.1 of the Code of Virginia to receive comments on the proposed regulation. (In those cases in which the [~~*agency*~~ *department*] *elects to conduct an evidential hearing, the notice shall indicate that the evidential hearing will be held in accordance with § 9-6.14:8 of the Code of Virginia.) The hearing(s) may be held at any time during the public comment period* [*and, whenever practicable, no less than 10 days prior to the close of the public comment period*] . *The hearing(s) may be held in such location(s) as the department determines will best facilitate input from interested persons.*

I. The public comment period shall close no less than 60 days after publication of the NOPC in the Virginia Register of Regulations.

J. The department shall disseminate the NOPC to the public via the following:

1. Distribution to the Registrar of Regulations for:

a. Publication in the Virginia Register of Regulations;

b. Publication in a newspaper of general circulation published at the state capitol and such other newspapers as the department may deem appropriate.

2. Distribution by mail to persons on the list(s) established under subsection A of this section.

K. The department shall prepare a summary of comments received in response to the NOPC [*and the department's response to the comments received*] . *Both the summary and the comments shall become a part of the department file* [*and after final action on the regulation by the director, made available, upon request, to interested persons*] .

L. Completion of the remaining steps in the adoption process shall be carried out in accordance with the Administrative Process Act.

[*§ 4. Transition.*

A. All regulatory actions for which a NOIRA has been published in the Virginia Register prior to February 10, 1993, shall be processed in accordance with the Public Participation Guidelines specified in Chapter 656 of the Acts of Assembly of 1989.

B. All regulatory actions for which a NOIRA has not been published in the Virginia Register prior to February 10, 1993, shall be processed in accordance with this regulation (VR 392-01-01).]

DEPARTMENT OF STATE POLICE

Title of Regulation: **VR 545-00-01. Public Participation Policy.**

Statutory Authority: §§ 9-6.14:7.1, 46.2-1165, 52-8.4 and 54.1-4009 of the Code of Virginia.

Effective Date: February 10, 1993.

Summary:

This regulation sets forth the policy of the Department of State Police to seek public participation when proposing regulations or substantial changes to present regulations.

VR 545-00-01. Public Participation Policy.

§ 1. Policy.

It is the policy of the Department of State Police to seek public participation when proposing regulations or substantial changes to present regulations.

§ 2. Guidelines.

A. When the Department of State Police proposes regulations or substantial changes to present regulations, a notice of intent will be published in The Virginia Register. The notice will request input from interested parties and will contain information as outlined in the Virginia Register Form, Style and Procedure Manual.

B. The Department of State Police will mail a notice of proposed regulatory action to known interested parties and add to the mailing list as groups and individuals express an interest in the agency's regulatory activities.

The notice of proposed regulatory action shall include:

1. Subject of proposed regulation;

2. Purpose of proposed regulation;

3. Request for comments from interested parties;

4. Name, address, and telephone number of contact person; and

5. Date for submission of comments by interested parties.

C. The agency shall file a "Notice of Comment Period" and its proposed regulations with the Registrar of Regulations as required by § 9-6.14:7.1 of the Code of Virginia. Such notice shall establish the last date on which written comments will be accepted from interested parties.

D. Final regulations shall be published in The Virginia Register and shall become effective 30 days after publication.

STATE WATER CONTROL BOARD

Title of Regulation: **VR 680-14-11. Corrective Action Plan (CAP) General Permit.**

Statutory Authority: §§ 62.1-44.15(10) and 62.1-44.34:9 of the Code of Virginia.

Effective Date: February 24, 1993.

Summary:

This general permit regulation authorizes remediation activities at leaking underground storage tank (UST) sites. The general permit incorporates the requirements of the Corrective Action Plan (CAP) permit and the Virginia Pollutant Discharge Elimination System (VPDES) permit that might be issued for cleanup of sites contaminated with petroleum products. It requires monitoring of any effluent discharged to surface waters as well as monitoring of free product, ground water, soil and soil vapors, depending on the situation at the site. All of the limits for discharges to surface waters are designed to protect aquatic life and human health regardless of the dilution in the receiving waters.

The site specific Corrective Action Plan developed for each individual UST cleanup includes the end points for the remediation work at that site. This plan will be incorporated into the CAP general permit by reference and no CAP general permit may be issued until the Corrective Action Plan for the site has been reviewed and approved.

No facility may be covered by the general permit unless the local governing body has certified that the facility complies with all applicable zoning and planning ordinances. Coverage under the CAP general permit would not be allowed where regulations require the issuance of an individual permit. The general permit would not be issued to facilities proposing to discharge to state waters where such discharges are prohibited by other board regulations or policies nor where central wastewater treatment is reasonably available.

The CAP general permit will provide a number of benefits to the regulated community, as well as to the board staff. There is a considerable amount of flexibility built into the draft general permit which allows the board to apply specific limits or monitoring requirements based on the activities that are approved for a particular site. The expense and time required to file for coverage under the general permit should be considerably less than those incurred in applying for an individual VPDES or CAP permit. The staff turnaround time in issuing the permit should be much shorter than for an individual permit, thus reducing the manpower needed for permitting these activities. This shorter turnaround time should also expedite the initiation of ground water remediation efforts.

Based on concerns reaised during the public comment period on the proposed regulation, certain changes were made. Those changes appear in the following sections of the regulation:

Section 1 - Added a definition of "petroleum products" for clarification of the intended scope of the regulation.

Section 2 - Here, and elsewhere in the regulation, the purpose of the regulation was clarified to state that it governs the cleanup of releases of petroleum products from underground storage tank systems.

Section 5 - Added a specific effective date for the regulation.

Section 6 - Clarified the intent of Subpart D relative to local government review of the permitted activity.

Section 7 - Modified the language of the registration statement to be consistent with changes made in § 6 and deleted the first sentence of the "Certification" in order to make it consistent with the language required by the Permit Regulation (VR 680-14-01).

Section 8 - Added references to specific test methods to be used in monitoring discharges. Combined all gasoline products into one category and added kerosene to the diesel and jet fuel category. Reduced all monthly CAP Monitoring Requirements to quarterly frequency. Provided for alternative sampling and screening methods for soil samples. Revised the language of Part II Corrective Action Plan Requirements for clarification of intent. Extended the records retention period to three years following site

closure and reduced the reporting frequency to once per quarter. Revised the language under "Right of Entry" to require permittees who are not owners of the property to secure authority to grant access to agency representatives.

VR 680-14-11. Corrective Action Plan (CAP) General Permit.

§ 1. Definitions.

The words and terms used in this regulation shall have the meanings defined in the State Water Control Law, VR 680-14-01 (Permit Regulation) and VR 680-13-02 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements) unless the context clearly indicates otherwise [*: , except that for the purposes of this regulation:*

"Petroleum products" means gasoline, diesel, jet fuel and kerosene.]

§ 2. Purpose.

This General Permit regulation governs the cleanup of [~~*ground water and soils contaminated by*~~ *releases of*] *petroleum products* [~~*at*~~ *from regulated*] *underground storage tank [* ~~*sites*~~ *systems*] .

§ 3. Authority for regulation.

The authority for this regulation is pursuant to the State Water Control Law §§ 62.1-44.15 [*(7), (9), (10), (14)*] *; 62-44.16; 62.1-44.17;* [~~*62.1-44.20*~~] *62.1-44.21; 62.1-44.34:9 of the Code of Virginia and 33 USC 1251 et seq. and § 6.2 of the Permit Regulation (VR 680-14-01) and* [~~*§ 6.7*~~ *Part VI*] *of the Underground Storage Tanks; Technical Standards and Corrective Action Requirements (VR 680-13-02).*

§ 4. Delegation of authority.

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

§ 5. Effective date of the permit.

This General Permit will become effective [~~*upon filing with the Registrar of Regulations and completion of public notice*~~ *on February 24, 1993*] *. This General Permit will expire five years from the effective date. This General Permit is effective as to any covered owner/operator upon compliance with all the provisions of § 6 and the receipt of this CAP General Permit.*

§ 6. Authorization to cleanup contaminated underground storage tank sites.

Any owner/operator governed by this General Permit is hereby authorized to cleanup a contaminated underground storage tank site within the Commonwealth of Virginia provided that the owner/operator files [*and receives acceptance by the board of*] *the Registration Statement of § 7, complies with the effluent limitations and other requirements of § 8, and provided that:*

1. Individual permit. The owner/operator shall not have been required to obtain an individual permit as may be required in § 6.2 B of the Permit Regulation.

2. Prohibited discharge locations. The owner/operator shall not be authorized by this General Permit to discharge to state waters where other board regulations or policies prohibit such discharges.

3. Central wastewater treatment facilities. The owner/operator shall not be authorized by this General Permit to discharge to surface waters where there are central wastewater treatment facilities reasonably available, as determined by the Board.

4. Local government notification. The owner/operator [~~*of any proposed facility, or any facility which has not previously been issued a valid permit by the board*~~] *shall obtain* [*the*] *notification from the governing body of the county, city or town* [~~*in which the discharge is to take place that the location and operation of the discharging facility is consistent with all ordinances adopted pursuant to Chapter 11 (§ 15.1-427 et seq.) of Title 15.1*~~ *required by § 62.1-44.15:3 of the Code of Virginia*] *.*

5. Corrective action plan (CAP). The owner/operator shall have submitted a corrective action plan [*and CAP checklist*] *to the board and the board shall have approved the plan after ensuring that implementation of the plan will adequately protect human health, safety and the environment.*

Receipt of this CAP General Permit does not relieve any owner/operator of the responsibility to comply with any other [*appropriate federal, state or local*] *statute* [*, ordinance*] *or regulation* [~~*adopted pursuant to the Code of Virginia*~~] *.*

§ 7. Registration statement.

The owner/operator shall file a complete CAP General Permit registration statement. The required registration statement shall be in the following form:

CORRECTIVE ACTION PLAN GENERAL PERMIT REGISTRATION STATEMENT FOR CLEANUP OF [~~*GROUND WATER AND SOILS AT CONTAMINATED*~~ *RELEASES OF PETROLEUM PRODUCTS FROM*] *UNDERGROUND STORAGE TANK (UST)* [~~*SITES*~~ *SYSTEMS*]

1. Legal Name of [~~*Facility*~~ *UST System*]

2. Location of [~~*Facility*~~ *UST System*] *(Address and Telephone Number)*

3. [~~Facility~~ UST System] Owner/Operator
Last Name First Name M.I.

4. Address of Owner/Operator

Street

City State Zip

5. Phone
Home Work

6. Type of petroleum product(s) [~~or regulated substance~~] causing or that caused contamination.

7. Has the corrective action plan for this site been submitted to the State Water Control Board, in accordance with § 6.6 of VR 680-13-02? Yes .... No ....

8. Will the cleanup result in a point source discharge to surface waters? Yes .... No ....

9. If yes, identify the waterbody into which the discharge will occur.

If no, identify the procedures that will be utilized to prevent a point source discharge to surface waters.

10. Attach a topographic or other map which indicates the UST [~~site~~ system] , the receiving waterbody name and the discharge point, as well as property boundaries, wells, downstream houses, etc. within a 1/2 mile radius of the site.

11. The owner/operator [~~of any proposed facility or any facility which has not previously been issued a valid permit by the board~~] must attach to this Registration Statement [the] notification from the governing body of the county, city or town [~~in which the discharge is to take place that the location and operation of the discharging facility is consistent with all ordinances adopted pursuant to Chapter 11 (§ 15.1-427 et seq) of Title 15.1 of the Code of Virginia~~ required by § 62.1-44.15:3 of the Code of Virginia] .

12. Are central wastewater treatment facilities available to this site? Yes .... No .... If yes, has the option of discharging to the central facilities been evaluated? What was the result of that evaluation?

13. Does this [~~facility~~ UST system] currently have a permit issued by the board? Yes .... No ....
If yes, please provide permit number:

Certification:

[~~I hereby grant to duly authorized agents of the State Water Control Board, upon presentation of credentials, permission to enter the property for the purpose of determining the suitability of the General Permit.~~] I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.

Signature: . . . .Date: . . . . . .

For Water Control Board use only:

Registration Statement Accepted/Not Accepted by:

.....Date: . . . . . .

..... Basin ..... Stream Class ..... Section

Special Standards

§ 8. General permit.

Any owner/operator whose registration statement is accepted by the board will receive the following permit and shall comply with the requirements therein and be subject to all requirements of § 6.2 of the Permit Regulation. Not all pages of Part I of the General Permit will apply to every permittee. The determination of which pages apply will be based on the type of contamination and the medium, soil or water, contaminated at the individual site. All pages of Parts II, III and IV apply to all permittees.

General Permit No.: VAG000002

. . . . . Effective Date:

. . . . . Expiration Date:

CORRECTIVE ACTION PLAN GENERAL PERMIT

AUTHORIZATION TO CLEANUP [~~CONTAMINATED~~ RELEASES OF PETROLEUM PRODUCTS FROM] UNDERGROUND STORAGE TANK (UST) [~~SITES~~ SYSTEMS] AND TO DISCHARGE OR MANAGE POLLUTANTS UNDER THE CORRECTIVE ACTION PLAN, THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM [PERMIT PROGRAM] AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended, the State Water Control Law and regulations adopted pursuant thereto, owners/operators are authorized to clean up [~~contaminated~~ releases of petroleum products from] UST [~~sites~~ systems] and to manage pollutants or discharge to surface waters [at the locations identified in

the accepted Registration Statement] within the boundaries of the Commonwealth of Virginia, except to designated public water supplies or waters where Board Regulations or Policies prohibit such discharges.

The authorized cleanup of the contamination and the discharge or management of pollutants shall be in accordance with the Corrective Action Plan, this cover page, Part I - Effluent Limitations and Monitoring Requirements and CAP Monitoring Requirements, Part II Corrective Action Plan Requirements, and Post Operational Monitoring and Closure Requirements, Part III - Monitoring and Reporting Requirements, and Part IV - Management Requirements, as set forth herein.

If there is any conflict between the requirements of the Corrective Action Plan and this Permit, the requirements of this Permit shall govern.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - [~~AUTOMOTIVE~~] GASOLINE CONTAMINATION - FRESHWATER

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge to freshwater receiving waterbodies treated ground water that has been contaminated with [~~automotive~~] gasoline from outfall serial number 001. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: Outfall from the final treatment unit prior to mixing with any other waters.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (MGD)	NA	NL	1/Month	Estimate
Benzene	NA	50 ug/l	1/Month	Grab[*]
Toluene	NA	175 ug/l	1/Month	Grab[*]
Ethylbenzene	NA	320 ug/l	1/Month	Grab[*]
Total Xylenes	NA	74 ug/l	1/Month	Grab[*]
pH (standard units)	6.0	9.0	1/Month	Grab
Total Recoverable Lead[*]	NA	$e^{(1.273[\ln(\text{hardness})]-4.705)}$	1/Month	Grab[***]
Hardness [(mg/l as $CaCO_3$)][*]	NL	NA	1/Month	Grab[***]

NL = No Limitation, monitoring required

NA = Not Applicable

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

[* Benzene, Toluene, Ethylbenzene and Total Xylenes shall be analyzed according to EPA SW 846 Method 8020 (1986).]

[** Hardness of the effluent.]

*[**] Monitoring for this parameter is required only when contamination results from leaded fuel.[Lead analysis shall be according to EPA SW 846 Method 7421 (1986).]

~~[** Hardness of the effluent.]~~

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - [~~AVIATION GASOLINE~~][KEROSENE], JET FUEL, DIESEL CONTAMINATION - FRESHWATER

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge to freshwater receiving waterbodies treated ground water that has been contaminated with [~~aviation gasoline~~][kerosene], jet fuel or diesel from outfall serial number 001. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: Outfall from the final treatment unit prior to mixing with any other waters.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (MGD)	NA	NL	1/Month	Estimate
Naphthalene	NA	62 ug/l	1/Month	Grab[*]
Total Petroleum Hydrocarbons	NA	NL	1/Month	Grab[**]
pH (standard units)	6.0	9.0	1/Month	Grab

NL = No Limitation, monitoring required

NA = Not Applicable

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

[* Naphthalene analysis shall be according to EPA Method 610 (1991).]

[** TPH shall be analyzed using the GC-FID method as specified in the California Department of Health Services LUFT Manual (1989) using the appropriate standards with EPA SW 846 Method 3510 (1987) for sample preparation.]

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - [~~AUTOMOTIVE~~] GASOLINE CONTAMINATION - SALTWATER

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge to saltwater receiving waterbodies treated ground water that has been contaminated with [~~automotive~~] gasoline from outfall serial number 001. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: Outfall from the final treatment unit prior to mixing with any other waters.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (MGD)	NA	NL	1/Month	Estimate
Benzene	NA	50 ug/l	1/Month	Grab[*]
Toluene	NA	500 ug/l	1/Month	Grab[*]
Ethylbenzene	NA	4.3 ug/l	1/Month	Grab[*]
Total Xylenes	NA	13 ug/l	1/Month	Grab[*]
pH (standard units)	6.0	9.0	1/Month	Grab
Total Recoverable Lead[*]	NA	8.5 ug/l	1/Month	Grab[**]

NL = No Limitation, monitoring required

NA = Not Applicable

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

/* Benzene, Toluene, Ethylbenzene and Total Xylenes shall be analyzed according to EPA SW 846 Method 8020 (1986).]

*[*] Monitoring for this parameter is required only when contamination results from leaded fuel.[Lead analysis shall be according to EPA SW 846 Method 7421 (1986).]

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - [~~AVIATION GASOLINE~~][KEROSENE], JET FUEL, DIESEL CONTAMINATION - SALTWATER

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge to saltwater receiving waterbodies treated ground water that has been contaminated with [~~aviation gasoline~~][kerosene], jet fuel or diesel from outfall serial number 001. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: Outfall from the final treatment unit prior to mixing with any other waters.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (MGD)	NA	NL	1/Month	Estimate
Naphthalene	NA	23.5 ug/l	1/Month	Grab[*]

PART I

A. CAP MONITORING REQUIREMENTS - MONITORING FREE PRODUCT

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is required to monitor Free Product. Samples taken in compliance with the monitoring requirements specified below shall be taken at the locations identified in the Corrective Action Plan.

Monitoring of the contaminated area during the cleanup operation shall be required as specified below:

PARAMETERS	MONITORING REQUIREMENTS	
	FREQUENCY	SAMPLE TYPE
Free Product	1/[~~Month~~][Quarter]	Measurement*

2. Post operational monitoring of the contaminated area after system shutdown shall be required as described in Part II.B.1. See Part II.A.4.c. for the requirements for system shutdown.

3. There shall be no discharge to surface water from this Free Product monitoring operation.

* Free Product measurement shall be done by probe or bailer prior to well bailing or sample collection and shall measure product thickness to an accuracy within 0.01 feet.

PART I

A. CAP MONITORING REQUIREMENTS - MONITORING SOIL VAPOR

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is required to monitor soil vapor at the well/sample locations identified in the Corrective Action Plan.

__ Monitoring of the contaminated area during the cleanup operation shall be required as specified below:

PARAMETERS	MONITORING REQUIREMENTS FREQUENCY	SAMPLE TYPE
Volatile Organics	1/[~~Month~~][Quarter]	Air Sample*

2. Post operational monitoring of the contaminated area after system shutdown shall be required as described in Part II.B.1. See Part II.A.4.c. for the requirements of system shutdown.

* Air sample collection shall be according to EPA stationary source [~~method~~][Method] 18 [(1992)] and sample analysis shall be according to EPA [~~method~~][Method] TO-3 [(1984)] for volatile organics or other staff approved method.

PART I

A. CAP MONITORING REQUIREMENTS - MONITORING RESIDUAL PRODUCT IN SOIL FOR IN SITU TREATMENT - [~~AUTOMOTIVE~~] GASOLINE CONTAMINATION

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is required to monitor residual product in soil that has been contaminated with [~~automotive~~] gasoline at the locations specified in the Corrective Action Plan.

__ Monitoring of the contaminated area during the cleanup operation shall be required as specified below:

PARAMETERS	MONITORING REQUIREMENTS FREQUENCY	SAMPLE TYPE
Benzene	1/Year	Soil Sample*
Toluene	1/Year	Soil Sample*
Ethylbenzene	1/Year	Soil Sample*
[Total]Xylenes	1/Year	Soil Sample*

2. Post operational monitoring of the contaminated area after system shutdown shall be required as described in Part II.B.1. See Part II.A.4.c. for the requirements for system shutdown.

3. There shall be no discharge to surface water from this monitoring of residual product in soil [and][or from the] in situ [treatment] operation.

__ * Benzene, Toluene, Ethylbenzene and [Total] Xylenes (BTEX) soil samples shall be collected using [either] a split spoon sampler [or hand auger] and shall be screened using a Photoionization [or Flame Ionization] Detector (PID[/FID]) type instrument. [When a split spoon sampler is used the sample shall be screened using a PID/FID detector and the segment of the boring that gave the highest PID/FID reading shall be analyzed. When a hand auger is used soil shall be removed in one foot increments and screened with the PID/FID as they are removed.]A discrete BTEX soil sample from the segment of the boring that gives the highest PID[/FID] reading shall be analyzed using [EPA] SW 846 Method 8020 [(1986)] modified for soils.

PART I

A. CAP MONITORING REQUIREMENTS - MONITORING RESIDUAL PRODUCT IN SOIL FOR IN SITU TREATMENT - [~~AVIATION GASOLINE~~][KEROSENE], JET FUEL, DIESEL CONTAMINATION

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is required to monitor residual product in soil that has been contaminated with [~~aviation gasoline~~][kerosene], jet fuel or diesel at the locations specified in the Corrective Action Plan.

Monitoring of the contaminated area during the cleanup operation shall be required as specified below:

PARAMETERS	MONITORING REQUIREMENTS	
	FREQUENCY	SAMPLE TYPE
Total Petroleum Hydrocarbons (TPH)	1/Year	Soil Sample*

2. Post operational monitoring of the contaminated area after system shutdown shall be required as described in Part II.B.1. See Part II.A.4.c. for the requirements for system shutdown.

3. There shall be no discharge to surface water from this monitoring of residual product in soil [~~and~~]/or from the] in situ [treatment] operation.

* TPH soil samples shall be collected using [either] a split spoon sampler [or hand auger] and shall be screened using a Photoionization [or Flame Ionization] Detector (PID[/FID]) type instrument. [When a split spoon sampler is used the sample shall be screened using a PID/FID detector and the segment of the boring that gave the highest PID/FID reading shall be analyzed. When a hand auger is used soil shall be removed in one foot increments and screened with the PID/FID as they are removed.]A discrete TPH soil sample from the segment of the boring that gives the highest PID[/FID] reading shall be analyzed using the GC-PID method as specified in the California Department of Health Services LUFT Manual (1989) using the appropriate standards with [EPA] SW 846 Method 3550 (Sonication)[(1986)] for sample preparation.

PART I

A. CAP MONITORING REQUIREMENTS - MONITORING RESIDUAL PRODUCT IN EXCAVATED SOIL - [~~AUTOMOTIVE~~] GASOLINE CONTAMINATION

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is required to monitor residual product in the excavated soil that has been contaminated with [~~automotive~~] gasoline at the locations identified in the Corrective Action Plan.

__ Monitoring of the contaminated area during the cleanup operation shall be required as specified below:

PARAMETERS	MONITORING REQUIREMENTS FREQUENCY	SAMPLE TYPE
Benzene	1/[~~Month~~][Quarter]	Grab*
Toluene	1/[~~Month~~][Quarter]	Grab*
Ethylbenzene	1/[~~Month~~][Quarter]	Grab*
[Total] Xylenes	1/[~~Month~~][Quarter]	Grab*

2. Post operational monitoring of the contaminated area after system shutdown shall be required as described in Part II.B.1. See Part II.A.4.c. for the requirements for system shutdown.

3. There shall be no discharge to surface water from this monitoring of residual product in [~~this~~] excavated soil [or from this treatment] operation.

__ * Benzene, Toluene, Ethylbenzene and [Total] Xylenes (BTEX) soil samples shall be collected using a hand auger and shall be screened using a Photoionization [or Flame Ionization] Detector (PID[/FID]] type instrument. A discrete BTEX soil sample from the segment of the boring that gives the highest PID[/FID] reading shall be analyzed using [EPA] SW 846 Method 8020 [(1986)] modified for soils.

PART I

A. CAP MONITORING REQUIREMENTS - MONITORING RESIDUAL PRODUCT IN EXCAVATED SOIL - [~~AVIATION GASOLINE~~][KEROSENE], JET FUEL, DIESEL CONTAMINATION

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is required to monitor residual product in the excavated soil that has been contaminated with [~~aviation gasoline~~][kerosene], jet fuel or diesel at the locations identified in the Corrective Action Plan.

__ Monitoring of the contaminated area during the cleanup operation shall be required as specified below:

PARAMETERS	MONITORING REQUIREMENTS	
	FREQUENCY	SAMPLE TYPE
Total Petroleum Hydrocarbons (TPH)	1/[~~Month~~][Quarter]	Grab*

2. Post operational monitoring of the contaminated area after system shutdown shall be required as described in Part II.B.1. See Part II.A.4.c. for the requirements for system shutdown.

3. There shall be no discharge to surface water from this monitoring of residual product in [~~this~~] excavated soil [or from this treatment] operation.

__ * TPH soil samples shall be collected using a hand auger and shall be screened using a Photoionization [or Flame Ionization] Detector (PID[/FID]) type instrument. A discrete TPH soil sample from the segment of the boring that gives the highest PID[/FID] reading shall be analyzed using the GC-FID method as specified in the California Department of Health Services LUFT Manual (1989) using the appropriate standards with [EPA] SW 846 Method 3550 (Sonication) [(1986)] for sample preparation.

PART I

A. CAP MONITORING REQUIREMENTS - MONITORING GROUND WATER - [~~AUTOMOTIVE~~] GASOLINE CONTAMINATION

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is required to monitor ground water that has been contaminated with [~~automotive~~] gasoline at the well/sample locations identified in the Corrective Action Plan.

Monitoring of the contaminated area during the cleanup operation shall be required as specified below:

PARAMETERS	MONITORING REQUIREMENTS FREQUENCY	SAMPLE TYPE
Benzene	1/[~~Month~~][Quarter]	Grab*
Toluene	1/[~~Month~~][Quarter]	Grab*
Ethylbenzene	1/[~~Month~~][Quarter]	Grab*
[Total] Xylenes	1/[~~Month~~][Quarter]	Grab*
Total Lead[**]	1/[~~Month~~][Quarter]	Grab[**]
Ground Water Elevation (Ft.)	1/[~~Month~~][Quarter]	Measure***

2. Post operational monitoring of the contaminated area after system shutdown shall be required as described in Part II.B.1. See Part II.A.4.c. for the requirements for system shutdown.

3. There shall be no discharge to surface water from this [~~Ground-~~][ground] [~~Water~~][water] monitoring operation[, except as authorized elsewhere in Part I.A. of this permit].

* Benzene, Toluene, Ethylbenzene and [Total] Xylenes shall be analyzed according to [EPA] SW 846 Method 8020 [(1986)].

** Monitoring for this parameter is required only when contamination results from leaded fuel. Total lead analysis shall be according to [EPA] SW 846 Method [~~7420~~/]7421[(1986)].

*** The ground water elevation shall be determined prior to bailing or sampling of wells. Ground water measurement accuracy shall be within 0.01 feet and reported in relation to mean sea level.

PART I

A. CAP MONITORING REQUIREMENTS - MONITORING GROUND WATER - [~~AVIATION GASOLINE~~][KEROSENE), JET FUEL, DIESEL CONTAMINATION

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is required to monitor ground water that has been contaminated with [~~aviation gasoline~~][kerosene], jet fuel or diesel at the well/sample locations identified in the Corrective Action Plan.

Monitoring of the contaminated area during the cleanup operation shall be required as specified below:

PARAMETERS	MONITORING REQUIREMENTS	
	FREQUENCY	SAMPLE TYPE
Total Petroleum Hydrocarbons (TPH)	1/[~~Month~~][Quarter]	Grab*
Ground Water Elevation (Ft.)	1/[~~Month~~][Quarter]	Measure**

2. Post operational monitoring of the contaminated area after system shutdown shall be required as described in Part II.B.1. See Part II.A.4.c. for the requirements for system shutdown.

3. There shall be no discharge to surface water from this [~~Ground~~][ground] [~~Water~~][water] monitoring operation[, except as authorized elsewhere in Part I.A. of this permit].

* TPH shall be analyzed using the GC-FID method as specified in the California Department of Health Services LUFT Manual (1989) using the appropriate standards with [EPA] SW 846 Method 3510 [(1987)] for sample preparation.

** The ground water elevation shall be determined prior to bailing or sampling of wells. Ground water measurement accuracy shall be within 0.01 feet and reported in relation to mean sea level.

Part II.

A. Corrective action plan requirements.

1. In accordance with State Water Control Board Regulation VR 680-13-02, the permittee shall immediately provide an alternate water supply to any user of ground water should monitoring [of the release covered by the corrective action plan and this permit] indicate pollutant contamination of existing water supply wells for any parameter listed in the ground water monitoring requirement found in Part I A of this permit.

2. O & M Manual. The owner/operator shall develop and submit within 30 days of coverage under this general permit, an Operations and Maintenance (O & M) Manual for the treatment works permitted herein. This manual shall detail practices and procedures which will be followed to ensure compliance with the requirements of this permit. The owner/operator shall operate the remediation program and treatment works in accordance with the O & M Manual.

3. Corrective action plan. [Coverage under this general permit constitutes approval of the corrective action plan (CAP). The approved CAP and any subsequent modifications approved by the board are incorporated into this permit and noncompliance with the CAP is a violation of this permit.] Cleanup of the [~~contaminated~~ ~~UST~~ ~~site~~ release of petroleum products from the UST system] shall be conducted in accordance with the [~~corrective action plan (CAP) approved by the board. The approved CAP and any subsequent addenda are incorporated into this permit and noncompliance with the CAP is a violation of this permit~~ CAP] .

[If, at any given time during the life of this permit the board determines that cleanup is not proceeding in a satisfactory manner, the permittee will be required to reevaluate the cleanup approach and submit CAP modifications within 30 days of notification from the board. This notification will include a summary of the existing CAP deficiencies. The permittee may at any time request CAP modifications.]

4. Cleanup endpoints.

a. Cleanup endpoints for each phase of contamination are specified in the approved corrective action plan.

b. The endpoints must be achieved within the zone of contamination, as evidenced by Part I.A. CAP monitoring requirements and using specific board approved methods of analysis.

c. After demonstrating that the cleanup endpoints in the approved corrective action plan have been maintained for [~~six~~ two] consecutive [~~months~~ quarters] , the permittee may request that the executive director allow a shutdown of the system and the permittee shall initiate post operational monitoring (as described in Part II B 1).

5. Operation schedule. The permittee shall construct, install and begin operating the cleanup system approved by the board within 60 days of coverage under this general permit. The permittee shall notify the board's regional office within five days after the completion of installation and commencement of operation.

6. CAP [permit] reopener. This permit shall be modified, or alternatively revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved under §§ 301(b) (2) (C), (D), and (E), 304 (b) (2) (3) (4), and 307 (a) (2) of the Clean Water Act, if the effluent standard or limitation so issued or approved:

a. Contains different conditions or is otherwise more stringent than any effluent limitation in the permit; or

b. Controls any pollutant not limited in the permit. The permit as modified or reissued under this paragraph shall also contain any other requirements of the Act then applicable.

[~~If, at any given time during the life of this permit the board determines that cleanup is not proceeding in a satisfactory manner, the permittee will be required to reevaluate the cleanup approach and submit CAP modifications within 30 days of notification from the board. This notification will include a summary of the existing CAP deficiencies. The permittee may at any time request CAP modifications in order to improve the existing cleanup.~~]

7. Resumption of cleanup. The permittee shall resume cleanup immediately at the site if post operational monitoring results indicate that the cleanup goals are no longer being maintained. The permittee shall resume cleanup operations in accordance with the approved CAP and this permit.

8. Annual evaluation reports. The permittee shall submit annual reports which evaluate the effectiveness of the corrective action plan and its progress toward achieving cleanup endpoints to the board's regional office. The first report shall be submitted within 12 months of coverage under this general permit and yearly thereafter.

9. Other requirements. Except as expressly authorized by this permit [or another permit issued by the board,] no product, materials, industrial wastes, or other wastes resulting from the purchase, sale, mining,

extraction, transport, preparation, or storage of raw or intermediate materials, final product, by-product or wastes, shall be handled, disposed of, or stored so as to permit a discharge of such product, materials, industrial wastes, or other wastes to state waters.

B. Post operational monitoring and closure requirements.

1. Post operational monitoring requirements. After system shutdown, the permittee shall initiate post operational monitoring, which shall be a continuation of the monitoring required in Part I A, [~~*with a reduction in frequency to once per quarter*~~] *for a period of one year.*

Post operational monitoring for in situ treatment of residual product in the soil shall be [~~*a continuation of the monitoring required in Part I A for a period of one year*~~ *conducted at the end of the one-year period*] .

2. Closure requirement. Provided that the post operational monitoring confirms the remediation endpoints have been maintained, the permittee [~~*shall*~~ *may*] *request site closure* [*and termination of coverage under the general permit*] . *This request shall be sent to the board's regional office with appropriate documentation or references to documentation already in the board's possession. Upon receipt of the regional* [~~*office*~~ *director's*] *approval, the site shall be deemed closed* [*and coverage under this general permit terminated*] .

PART III.

MONITORING AND REPORTING.

A. Sampling and analysis methods.

1. Samples and measurements taken as required by this permit shall be representative of the volume and nature of the monitored activity.

2. Unless otherwise specified in the permit all sample preservation methods, maximum holding times and analysis methods for pollutants shall comply with requirements set forth in (i) this permit, (ii) guidelines establishing test procedures for the analysis of pollutants under the Clean Water Act as published in the Federal Register (40 C.F.R. [*Part*] *136* [*(1992)*] *or (iii) other methods approved by the board.*

3. The sampling and analysis program to demonstrate compliance with the permit shall, at a minimum, conform to Part I of this permit.

4. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

B. Recording of results.

For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:

1. The date, exact place and time of sampling or measurements;

2. The person(s) who performed the sampling or measurements;

3. The dates analyses were performed;

4. The person(s) who performed each analysis;

5. The analytical techniques or methods used;

6. The results of such analyses and measurements;

7. The method detection limit;

8. The sample medium (soil, water); and

9. The units of measure.

C. Records retention.

All records and information resulting from the monitoring activities required by this permit, including all records of analyses performed and calibration and maintenance of instrumentation and recording from continuous monitoring instrumentation, shall be retained for three years from the date of the sample, measurement or report [*or for three years following approval of site closure, whichever is later*] . *This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.*

D. Additional monitoring by permittee.

If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit, using approved analytical methods as specified above, the results of such monitoring shall be included in the calculation and reporting of the values required in the monitoring report. Such increased frequency shall also be reported.

E. Water quality monitoring.

The board may require every permittee to furnish such plans, specifications, or other pertinent information as may be necessary to determine the effect of the pollutant(s) on the water quality or to ensure pollution of state waters does not occur or such information as may be necessary to accomplish the purposes of the Virginia State Water Control Law, Clean Water Act or the board's regulations.

The permittee shall obtain and report such information if requested by the board. Such information shall be subject to inspection by authorized state and federal representatives and shall be submitted with such frequency and in such detail as requested by the board.

F. Reporting requirements.

1. The permittee shall submit [~~an~~] original monitoring [~~report~~ reports] of [~~the preceding~~ each] month's performance to the State Water Control Board regional office [once per quarter] by the 10th of [~~each~~ the] month [following the end of the quarter. Reports shall be submitted on or before April 10, July 10, October 10 and January 10] . This report shall include the results of all monitoring required by Part I A Effluent Limitations and Monitoring Requirements and CAP Monitoring Requirements, and Part II Corrective Action Plan Requirements and Post Operational Monitoring and Closure Requirements.

2. If, for any reason, the permittee does not comply with one or more limitations, standards, monitoring or management requirements specified in this permit, the permittee shall submit to the board with the monitoring report at least the following information:

a. A description and cause of noncompliance;

b. The period of noncompliance, including exact dates and times or the anticipated time when the noncompliance will cease; and

c. Actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncompliance.

Whenever such noncompliance may adversely affect state waters or may endanger public health, the permittee shall submit the above required information by oral report within 24 hours from the time the permittee becomes aware of the circumstances and by written report within five days. The board may waive the written report requirement on a case by case basis if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report any unpermitted, unusual or extraordinary discharge which enters or could be expected to enter state waters. The permittee shall provide information specified in Part III F 2 a-c regarding each such discharge immediately, that is as quickly as possible upon discovery, however, in no case later than 24 hours. A written submission covering these points shall be provided within five days of the time the permittee becomes aware of the circumstances covered by this paragraph.

Unusual or extraordinary discharge would include but not be limited to (i) unplanned bypasses, (ii) upsets, (iii) spillage of materials resulting directly or indirectly from processing operations or pollutant management activities, (iv) breakdown of processing or accessory equipment, (v) failure of or taking out of service, sewage or industrial waste treatment facilities, auxiliary facilities or pollutant management activities, or (vi) flooding or other acts of nature.

If the regional office cannot be reached, the board maintains a 24-hour telephone service in Richmond (804-527-5200) to which the report required above is to be made.

G. Signatory requirements.

Any registration statement, report, or certification required by this permit shall be signed as follows:

1. Registration statement.

a. For a corporation: by a responsible corporate official. For purposes of this section, a responsible corporate official means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

b. For a municipality, state, federal or other public agency by either a principal executive officer or ranking elected official. (A principal executive officer of a federal, municipal, or state agency includes the chief executive officer of the agency or head executive officer having responsibility for the overall operation of a principal geographic unit of the agency).

c. For a partnership or sole proprietorship, by a general partner or proprietor respectively.

2. Reports. All reports required by permits and other information requested by the board shall be signed by:

a. One of the persons described in subdivision 1 a, b or c of this subsection; or

b. A duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in subdivision 1 a, b or c of this subsection; and

(2) The authorization specifies either an individual or a position having responsibility for the overall

operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position).

(3) If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization must be submitted to the board prior to or together with any separate information, or registration statement to be signed by an authorized representative.

3. Certification. Any person signing a document under subdivision 1 or 2 of this subsection shall make the following certification: I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.

PART IV.
MANAGEMENT REQUIREMENTS.

A. Change in discharge or management of pollutants.

1. Any permittee proposing a new discharge or the management of additional pollutants shall submit an amended corrective action plan and a registration statement at least 180 days prior to commencing erection, construction, or expansion or employment of new pollutant management activities or processes at any facility. There shall be no commencement of treatment or management of pollutants activities until a permit is received.

2. All discharges or pollutant management activities authorized by this permit shall be made in accordance with the terms and conditions of the permit. The permittee shall submit to the board an amended corrective action plan and a registration statement 180 days prior to all expansions, production increases, or process modifications, that will result in new or increased pollutants. The discharge or management of any pollutant more frequently than, or at a level greater than that identified and authorized by this permit, shall constitute a violation of the terms and conditions of this permit.

3. The permittee shall promptly provide written notice to the board of the following:

a. Any new introduction of pollutant(s), into treatment works or pollutant management activities which represents a significant increase in the discharge or management of pollutant(s) which may interfere with, pass through, or otherwise be incompatible with such works or activities, from an establishment, treatment works, or discharge(s), if such establishment, treatment works, or discharge(s) were discharging or has the potential to discharge pollutants to state waters; and

b. Any substantial change, whether permanent or temporary, in the volume or character of pollutants being introduced into such treatment works by an establishment, treatment works, pollutant management activities, or discharge(s) that was introducing pollutants into such treatment works at the time of issuance of the permit.

c. Any reason to believe that any activity has occurred or will occur which would result in the discharge on a routine or frequent basis of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(1) One hundred micrograms per liter (100 ug/l);

(2) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2, 4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

(3) Five times the maximum concentration value reported for the pollutant in the registration statement; or

(4) The level established in accordance with regulation under § 307(a) of the Act and accepted by the board.

d. Any activity has occurred or will occur which would result in any discharge on a nonroutine or infrequent basis of a toxic pollutant which is not limited in the permit if that discharge will exceed the highest of the following "notification levels":

(1) Five hundred micrograms per liter (500 ug/l);

(2) One milligram per liter (1 mg/l) for antimony;

(3) Ten times the maximum concentration value reported for that pollutant in the registration statement;

(4) The level established by the board.

Such notice shall include information on: (i) the

characteristics and quantity of pollutants to be introduced into or from such treatment works or pollutant management activities; (ii) any anticipated impact of such change in the quantity and characteristics of the pollutants to be discharged from such treatment works or pollutants managed at a pollutant management activity; and (iii) any additional information that may be required by the board.

B. Treatment works operation and quality control.

1. Design and operation of facilities or treatment works and disposal of all wastes shall be in accordance with the corrective action plan and registration statement filed with the State Water Control Board and in conformity with the conceptual design, or the plans, specifications, or other supporting data approved by the board. The approval of the treatment works conceptual design or the plans and specifications does not relieve the permittee of the responsibility of designing and operating the facility in a reliable and consistent manner to meet the facility performance requirements in the permit. If facility deficiencies, design or operation, are identified in the future which could affect the facility performance or reliability, it is the responsibility of the permittee to correct such deficiencies.

2. All waste collection, control, treatment, management of pollutant activities and disposal facilities shall be operated in a manner consistent with the following:

a. At all times, all facilities and pollutant management activities shall be operated in accordance with the Operation and Maintenance (O&M) Manual and in a prudent and workmanlike manner so as to minimize upsets and discharges of excessive pollutants to state waters.

b. The permittee shall provide an adequate operating staff which is duly qualified to carry out the operation, maintenance and testing functions required to ensure compliance with the conditions of this permit.

c. Maintenance of treatment facilities or pollutant management activities shall be carried out in such a manner that the monitoring and limitation requirements are not violated.

d. Collected sludges shall be stored in such a manner as to prevent entry of those wastes (or runoff from the wastes) into state waters, and disposed of in accordance with this permit or plans approved by the board.

C. Adverse impact.

The permittee shall take all feasible steps to minimize any adverse impact to state waters resulting from noncompliance with any limitation(s) or conditions specified in this permit, and shall perform and report such accelerated or additional monitoring as is necessary to determine the nature and impact of the noncomplying limitation(s) or conditions.

D. Duty to halt, reduce activity or to mitigate.

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

2. The permittee shall take all reasonable steps to minimize, correct or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Structural stability.

The structural stability of any of the units or parts of the facilities herein permitted is the sole responsibility of the permittee and the failure of such structural units or parts shall not relieve the permittee of the responsibility of complying with all terms and conditions of this permit.

F. Bypassing.

Any bypass ("Bypass - means intentional diversion of waste streams from any portion of a treatment works") of the treatment works herein permitted is prohibited unless:

1. Anticipated bypass. If the permittee knows in advance of the need for a bypass, the permittee shall notify the board promptly at least 10 days prior to the bypass. After considering its adverse effects the board may approve an anticipated bypass if:

a. The bypass is unavoidable to prevent a loss of life, personal injury, or severe property damage ("Severe Property Damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.); and

b. There are no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment down-time. However, if a bypass occurs during normal periods of equipment down-time, or preventive maintenance and in the exercise of reasonable engineering judgment the permittee could have installed adequate backup equipment to prevent such bypass, this exclusion shall not apply as a defense.

2. Unplanned bypass. If an unplanned bypass occurs, the permittee shall notify the board as soon as possible, but in no case later than 24 hours, and shall take steps to halt the bypass as early as possible. This notification will be a condition for defense to an enforcement action that an unplanned bypass met the conditions in Part IV [G F] 1 above and in light of the information reasonably available to the permittee at the time of the bypass.

G. Conditions necessary to demonstrate an upset.

A permittee may claim an upset as an affirmative defense to an action brought for noncompliance for only technology-based effluent limitations. In order to establish an affirmative defense of upset, the permittee shall present properly signed, contemporaneous operating logs or other relevant evidence that shows:

1. That an upset occurred and that the cause can be identified;

2. The facility permitted herein was at the time being operated efficiently and in compliance with proper operation and maintenance procedures;

3. The permittee submitted a notification of noncompliance as required by Part III F above; and

4. The permittee took all reasonable steps to minimize or correct any adverse impact to state waters resulting from noncompliance with the permit.

H. Compliance with state and federal law.

Compliance with this permit during its term constitutes compliance with the State Water Control Law and the Clean Water Act except for any toxic standard imposed under § 307(a) of the Clean Water Act.

Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean Water Act.

I. Property rights.

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.

J. Severability.

The provisions of this permit are severable.

K. Duty to reregister.

If the permittee wishes to continue to discharge under a general permit after the expiration date of this permit, the permittee must submit a new registration statement at least 180 days prior to the expiration date of this permit.

L. Right of entry.

The permittee shall allow [or secure necessary authority to allow] authorized state and federal representatives, upon the presentation of credentials:

1. To enter upon the permittee's premises on which the establishment, treatment works, pollutant management activities, or discharge(s) is located or in which any records are required to be kept under the terms and conditions of this permit;

2. To have access to inspect and copy at reasonable times any records required to be kept under the terms and conditions of this permit;

3. To inspect at reasonable times any monitoring equipment or monitoring method required in this permit;

4. To sample at reasonable times any waste stream, discharge, process stream, raw material or by-product; and

5. To inspect at reasonable times any collection, treatment, pollutant management activities or discharge facilities required under this permit.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging or involved in managing pollutants. Nothing contained herein shall make an inspection time unreasonable during an emergency.

M. Transferability of permits.

This permit may be transferred to another person by a permittee if:

1. The current owner notifies the board 30 days in advance of the proposed transfer of the title to the facility or property;

2. The notice to the board includes a written agreement between the existing and proposed new owner containing a specific date of transfer of permit responsibility, coverage and liability between them; and

3. The board does not within the 30-day time period notify the existing owner and the proposed owner of its intent to modify or revoke and reissue the permit.

Such a transferred permit shall, as of the date of the transfer, be as fully effective as if it had been issued

directly to the new permittee.

N. Public access to information.

All information pertaining to permit processing or in reference to any source of discharge of any pollutant, shall be available to the public, unless the information has been identified by the applicant as a trade secret, of which the effluent data remain open public information. All information claimed confidential must be identified as such at the time of submission to the board or EPA. Otherwise, all information will be made available to the public. Notwithstanding the foregoing, any supplemental information that the board may obtain from filings made under the Virginia Toxics Substance Information Act (TSIA) shall be subject to the confidentiality requirements of TSIA.

O. Permit modification.

The permit may be modified when any of the following developments occur:

1. When a change is made in the promulgated standards or regulations on which the permit was based;

2. When an effluent standard or prohibition for a toxic pollutant must be incorporated in the permit in accordance with provisions of § 307(a) of the Clean Water Act; or

3. When the level of discharge of or management of a pollutant not limited in the permit exceeds applicable Water Quality Standards or Water Quality Criteria, or the level which can be achieved by technology-based treatment requirements appropriate to the permittee.

P. Permit termination.

After public notice and opportunity for a hearing, the general permit may be terminated for cause.

Q. When an individual permit may be required.

The board may require any permittee authorized to discharge under this permit to apply for and obtain an individual permit. Cases where an individual permit may be required include, but are not limited to, the following:

1. The discharger(s) is a significant contributor of pollution.

2. Conditions at the operating facility change altering the constituents or characteristics of the discharge such that the discharge no longer qualifies for a General Permit.

3. The discharge violates the terms or conditions of this permit.

4. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source.

5. Effluent limitation guidelines are promulgated for the point sources covered by this permit.

6. A water quality management plan containing requirements applicable to such point sources is approved after the issuance of this permit.

This permit may be terminated as to an individual permittee for any of the reasons set forth above after appropriate notice and an opportunity for a hearing.

R. When an individual permit may be requested.

Any owner/operator operating under this permit may request to be excluded from the coverage of this permit by applying for an individual permit. When an individual permit is issued to an owner/operator the applicability of this general permit to the individual owner/operator is automatically terminated on the effective date of the individual permit. When a General Permit is issued which applies to an owner/operator already covered by an individual permit, such owner/operator may request exclusion from the provisions of the General Permit and subsequent coverage under an individual permit.

S. Civil and criminal liability.

Except as provided in permit conditions on "bypassing" (Part IV [~~G~~ F]) , and "upset" (Part IV [~~H~~ G]) nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

T. Oil and hazardous substance liability.

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the Code of Virginia.

U. Unauthorized discharge of pollutants.

Except in compliance with this permit, it shall be unlawful for any permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or

2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses.

* * * * * * * * *

Title of Regulation: **VR 680-40-01. Public Participation Guidelines. REPEALED.**

Title of Regulation: **VR 680-40-01:1. Public Participation Guidelines.**

Statutory Authority: § 62.1-44.15(7) of the Code of Virginia.

Effective Date: February 10, 1993.

Summary:

Section 9-6.14:7.1 of the Code of Virginia requires each agency to develop, adopt and utilize public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such guidelines shall not only be utilized prior to the formation and drafting of the proposed regulation, but shall also be utilized during the entire formation, promulgation and final adoption process of a regulation.

The purpose of this action is to repeal existing Public Participation Guidelines and adopt new Public Participation Guidelines which establish, in regulation, various provisions to ensure interested persons have the necessary information to comment on regulatory actions in a meaningful fashion in all phases of the regulatory process and establish guidelines which are consistent with those of the other agencies within the Natural Resources Secretariat. Specifically, the guidelines require an expanded notice of intended regulatory action, require that either a summary or a copy of comments received in response to the NOIRA be submitted to the board, and require the performance of certain analyses.

Revisions to the proposed guidelines made in response to public comment include the addition of provisions for persons to petition for rulemaking and for terminating the regulatory process on proposed regulations. Other revisions related to the use of ad hoc advisory committees and convening public meetings. The majority of the revisions are located in § 3 of the guidelines.

VR 680-40-01:1 Public Participation Guidelines.

§ 1. Definitions.

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"Administrative Process Act" means Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.

"Agency" means the administrative agency of the State Water Control Board, including staff, etc., established pursuant to the Environmental Protection Law that implements programs and provides administrative support to the approving authority.

"Approving authority" means the collegial body of the State Water Control Board, established pursuant to [the] Environmental Protection Law as the legal authority to adopt regulations.

"Director" means the executive director of the State Water Control Board or his designee.

"Environmental Protection Law" means the provisions found in the Code of Virginia authorizing the approving authority or agency or both to make regulations or decide cases or containing procedural requirements thereof including, but not limited to, Chapter 3.1 (§ [~~62.1-44.1~~ 62.1-44.2] et seq.), Chapter 3.2 (§ 62.1-44.36 et seq.), [~~Chapter 3.4 (§ 62.1-44.83 et seq.),~~ ~~and~~] Chapter 24 (§ 62.1-242 et seq.) [, and Chapter 25 (§ 62.1-254 et seq.)] of Title 62.1 of the Code of Virginia.

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

Unless specifically defined in the Environmental Protection Law or in this regulation, terms used shall have the meanings commonly ascribed to them.

§ 2. General.

A. The procedures in § 3 of this regulation shall be used for soliciting the input of interested persons in the initial formation and development, amendment or repeal of regulations in accordance with the Administrative Process Act. This regulation does not apply to regulations exempted from the provisions of the Administrative Process Act [(§ 9-6.14:4 1 A and B)] or excluded from the operation of Article 2 of the Administrative Process Act [(§ 9-6.14:4.1 C)] .

B. At the discretion of the approving authority [or the agency] , the procedures in § 3 may be supplemented [~~by any means and in any manner~~] to provide additional public participation in the regulation adoption process or as necessary to meet federal requirements.

C. The failure of any person to receive any notice or copies of any documents provided under these guidelines shall not affect the validity of any regulation otherwise adopted in accordance with this regulation.

[D. Any person may petition the approving authority for the adoption, amendment or repeal of a regulation. The petition, at a minimum, shall contain the following information:

1. Name of petitioner;

2. Petitioner's mailing address and telephone number;

3. Petitioner's interest in the proposed action;

4. Recommended regulation or addition, deletion or amendement to a specific regulation or regulations;

5. Statement of need and justification for the proposed action;

6. Statement of impact on the petitioner and other affected persons; and

7. Supporting documents, as applicable.

The approving authority shall provide a written response to such petition within 180 days from the date the petition was received.]

§ 3. Public participation procedures.

A. The agency shall establish and maintain a list or lists consisting of persons expressing an interest in the adoption, amendment or repeal of regulations.

B. Whenever the approving authority so directs or upon its own initiative, the agency may commence the regulation adoption process and proceed to draft a proposal according to these procedures.

C. The agency [~~may~~ shall] form an ad hoc advisory group [or utilize a standing advisory committee] to assist in the drafting and formation of the proposal [unless the approving authority specifically authorizes the agency to proceed without utilizing an ad hoc advisory group or standing advisory committee] . When an ad hoc advisory group is formed, such ad hoc advisory group shall [~~be appointed from groups and individuals registering interest in working with the agency~~ include representatives of the regulated community and the general public] .

D. The agency shall issue a notice of intended regulatory action (NOIRA) whenever it considers the adoption, amendment or repeal of any regulation.

1. The NOIRA shall include, at least, the following:

a. A brief statement as to the need for regulatory action.

b. A brief description of alternatives available, if any, to meet the need.

c. A request for comments on the intended regulatory action, to include any ideas to assist the agency in the drafting and formation of any proposed regulation developed pursuant to the NOIRA.

d. A request for comments on the costs and benefits of the stated alternatives or other alternatives.

2. The agency shall hold at least one public meeting [~~when considering the adoption of new regulations. In the case of a proposal to amend or repeal existing regulations, the executive director, in his sole discretion, may dispense with the public meeting~~ whenever it considers the adoption, amendment or repeal of any regulation unless the approving authority specifically authorizes the agency to proceed without holding a public meeting] .

In those cases where a public meeting(s) will be held, the NOIRA shall also include the date, not to be less than 30 days after publication in the Virginia Register, time and place of the public meeting(s).

3. The public comment period for NOIRAs under this section shall be no less than 30 days after publication of the NOIRA in the Virginia Register.

E. The agency shall disseminate the NOIRA to the public via the following:

1. Distribution to the Registrar of Regulations for publication in the Virginia Register of Regulations.

2. Distribution by mail to persons on the list(s) established under subsection A of this section.

F. After consideration of public input, the agency may prepare the draft proposed regulation and [~~prepare the notice of public comment (NOPC) and~~] any supporting documentation required for review. If an ad hoc advisory group has been established, the draft regulation shall be developed in consultation with such group. A summary or copies of the comments received in response to the NOIRA shall be distributed to the ad hoc advisory group during the development of the draft regulation. This summary or copies of the comments received in response to the NOIRA shall also be distributed to the approving authority.

G. Upon approval of the draft proposed regulation by the approving authority, the agency [~~may~~ shall] publish [~~the NOPC~~ a Notice of Public Comment (NOPC)] and the proposal for public comment.

H. The NOPC shall include at least the following:

1. The notice of the opportunity to comment on the proposed regulation, location of where copies of the draft may be obtained and name, address and telephone number of the individual to contact for further information about the proposed regulation.

2. A description of provisions of the proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed.

3. A request for comments on the costs and benefits of the proposal.

4. A statement that an analysis of the following has been conducted by the agency and is available to the public upon request:

a. A statement of purpose: why the regulation is proposed and the desired end result or objective of the regulation.

b. A statement of estimated impact:

(1) Number and types of regulated entities or persons affected.

(2) Projected cost to regulated entities (and to the public, if applicable) for implementation and compliance. In those instances where an agency is unable to quantify projected costs, it shall offer qualitative data, if possible, to help define the impact of the regulation. Such qualitative data shall include, if possible, an example or examples of the impact of the proposed regulation on a typical member or members of the regulated community.

(3) Projected cost to the agency for implementation and enforcement.

(4) The beneficial impact the regulation is designed to produce.

c. An explanation of need for the proposed regulation and potential consequences that may result in the absence of the regulation.

d. An estimate of the impact of the proposed regulation upon small businesses as defined in § 9-199 of the Code of Virginia or organizations in Virginia.

e. A discussion of alternative approaches that were considered to meet the need the proposed regulation addresses, and a statement [~~*why*~~ *as to whether*] *the agency believes that the proposed regulation is the least burdensome alternative to the regulated community* [*that fully meets the stated purpose of the proposed regulation*] .

f. A schedule setting forth when, [~~*within two years*~~] *after the effective date of the regulation, the agency will evaluate it for effectiveness and continued need.*

5. The date, time and place of at least one public hearing held in accordance with § 9-6.14:7.1 of the Code of Virginia to receive comments on the proposed regulation. (In those cases where the agency elects to conduct an evidential hearing, the notice [*shall indicate that the evidential hearing*] *will be held in accordance with § 9-6.14:8.) The hearing(s) may be held at any time during the public comment period* [*and, whenever practicable, no less than 10 days prior to the close of the public comment period*] . *The hearing(s) may be held in such location(s) as the agency determines will best facilitate input from interested persons.*

I. The public comment period shall close no less than 60 days after publication of the NOPC in the Virginia Register.

J. The agency shall disseminate the NOPC to the public via the following:

1. Distribution to the Registrar of Regulations for:

a. Publication in the Virginia Register of Regulations.

b. Publication in a newspaper of general circulation published at the state capital and such other newspapers as the agency may deem appropriate.

2. Distribution by mail to persons on the list(s) established under subsection A of this section.

K. The agency shall prepare a summary of comments received in response to the NOPC and [*the agency's response to the comments received. The agency shall*] *submit* [~~*it or*~~ *the summary and agency response and*] , *if requested, submit the full comments to the approving authority.* [~~*Both the*~~ *The*] *summary* [, *the agency response,*] *and the comments shall become a part of the agency file* [*and after final action on the regulation by the approving authority, made available, upon request, to interested persons*] .

[*L. If the agency determines that the process to adopt, amend or repeal any regulation should be terminated after approval of the draft proposed regulation by the approving authority, the agency shall present to the approving authority for their consideration a recommendation and rationale for the withdrawal of the proposed regulation.*]

[~~*L.*~~ *M.*] *Completion of the remaining steps in the adoption process shall be carried out in accordance with the Administrative Process Act.*

[*§ 4. Transition.*

A. All regulatory actions for which a NOIRA has been published in the Virginia Register prior to February 10, 1993, shall be processed in accordance with the VR 680-40-01 Public Participation Guidelines.

B. All regulatory actions for which a NOIRA has not been published in the Virginia Register prior to February, 10, 1993, shall be processed in accordance with this regulation (VR 680-40-01:1).]

BUREAU OF INSURANCE

December 15, 1992

Administrative Letter 1992-25

TO: All Insurance Companies Licensed to Write Automobile Insurance in Virginia

RE: Assignment of Points Under Safe Driver Insurance Plans

It has come to the attention of the SCC Bureau of Insurance that a number of insurers writing private passenger automobile policies are failing to comply with Virginia Code Sections 38.2-610.A. and 38.2-1905 when applying accident and conviction surcharges.

Section 38.2-602 defines an "Adverse Underwriting Decision" among other things as "the charging of a higher rate on the basis of information that differs from that which the applicant or policyholder furnished." Section 38.2-610.A. mandates that the insurer give written notice in the event of an adverse underwriting decision. The notice must disclose the specific reason or reasons for the adverse underwriting decision or advise that the person may make written request for the reason or reasons. Furthermore, the written notice must provide a summary of the policyholder's rights as outlined in Sections 38.2-608 and 38.2-609.

Section 38.2-1905 prohibits an insurer from increasing the insured's premium or charging safe driver points for accidents unless the accident was caused wholly or partially by the named insured, a resident of the same household, or other customary operator. In addition, an insurer may not charge points where the operator causing the accident is a principal operator insured under a separate policy. When an insurer increases a premium or charges points due to a motor vehicle accident, the insurer is required to notify the named insured in writing and in the same notice advise the named insured that he may appeal the insurer's decision to the Commissioner of Insurance. The right to review only applies to accident surcharges, not surcharges for convictions.

It appears from recent complaint investigations that many insurers are not giving the required notices particularly on auto assigned risk policies. This is to make you aware that Sections 38.2-610 and 38.2-1905 apply to private passenger automobile residual market policies as well as policies written in the voluntary market. Any insurer violating these sections may be subjected to monetary penalty and/or suspension or revocation of its license to transact the business of insurance in Virginia.

Furthermore, as explained in Administrative Letter 1980-12, justification for an accident surcharge must be obtained prior to applying the surcharge rather than in response to the Commissioner's review. Insurers are expected to provide adequate information in their initial response to Bureau inquiries. In the absence of such information, we reserve the right to rule in the insured's favor. Any insurer charging points without investigating whether or not the insured was wholly or partially at fault is violating the provisions of Section 38.2-1905 and also may be subjected to the penalties mentioned above.

Questions concerning compliance with Sections 38.2-610 and 38.2-1905 should be directed to:

Consumer Services Section
Property and Casualty Division
Bureau of Insurance
Box 1157
Richmond, VA 23209

/s/ Steven T. Foster
Commissioner of Insurance

* * * * * * * *

December 11, 1992

Administrative Letter 1992-26

TO: All Insurers Licensed to Market Life Insurance and Annuities in Virginia

RE: Administrative Letter 1992-20

Modified Guaranteed Life Insurance and Modified Guaranteed Annuities

The purpose of this letter is to inform you that the withdrawal of forms on December 15, 1992 as provided in Administrative Letter 1992-20 will not take place. Companies with forms which have been filed or approved previously may continue to market those forms until January 15, 1993. Withdrawal of these forms will take place on January 15, 1993 unless an officer of the company completes and returns the attached affidavit by no later than January 15, 1993.

Companies that wish to file modified guaranteed life insurance and annuity contracts to be marketed in Virginia or companies having forms which have been disapproved that wish the forms to be reconsidered should send a completed affidavit, as attached, with the forms when they are submitted.

Upon receipt of this affidavit, the Bureau of Insurance will temporarily deem forms for companies filing properly completed affidavits to be in compliance with Sections 38.2-3113.1 and 38.2-1443.1 of the Code of Virginia. These forms will be subject to all other statutory and regulatory requirements that are applicable. This temporary deemer shall extend only until the effective date of a regulation addressing modified life insurance and annuities adopted by the State Corporation Commission. Upon the effective date of the regulation, companies must comply with the

provisions of the regulation.

/s/ Steven T. Foster
Commissioner of Insurance

AFFIDAVIT

Name of Company: _____

NAIC Number: _____

RE: Form Number(s)

_____ _____ _____
_____ _____ _____
_____ _____ _____

I, as an officer of the above-referenced insurer, hereby certify, under penalty of perjury, that:

1. The above-referenced insurer has reviewed Sections 38.2-1443.1 and 38.2-3113.1 of the Code of Virginia, as amended;

2. In the case of a foreign or alien insurer, the form(s) identified above have been filed with and approved by the insurance regulatory authority of the above-referenced insurer's state of domicile; and,

3. The forms identified above comply with the specific requirements of Section 38.2-3113.1, subsection F., of the Code of Virginia, as amended.

_____
Signature

_____
Date

_____
Name

_____
Title

Notarial Acknowledgment

State of _____

County or City of _____

_____, being duly sworn according to law, deposes and says that he/she executed the above instrument and that the statements contained therein are true and correct to the best of his/her knowledge and belief.

Subscribed and sworn to before me this _____ day of _____, 19____.

_____
Notary Public

(S E A L)

My Commission Expires: _____

FINAL

STATE CORPORATION COMMISSION

AT RICHMOND, DECEMBER 11, 1992

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION
CASE NO. SEC920112
Ex Parte, in re: Promulgation
of rules pursuant to Va. Code
§ 13.1-523 (Securities Act)

ORDER ADOPTING RULES

On or about October 28, 1992, the National Association of Securities Dealers, Inc. ("NASD") mailed notice to interested persons of proposed changes ("Proposals") to Securities Act Rule 504, the rule which establishes the NASDAQ/National Market System Exemption under the Securities Act (Va. Code § 13.1-501 et seq.). The notice included a summary of the Proposals, an invitation to submit written comments in regard to the Proposals, and information about obtaining copies of, as well as requesting a hearing on, the Proposals. In addition, the notice and the text of the Proposals were published in "The Virginia Register of Regulations," Volume 9, Issue 3, November 2, 1992, pp. 383-87. One person filed comments; no one requested an opportunity to be heard.

The Commission, upon consideration of the Proposals, the comments filed and the recommendations of its Division of Securities and Retail Franchising, is of the opinion and finds that the Proposals should be adopted as proposed; it is, therefore,

ORDERED that the Proposals considered in this proceeding, a copy of which is attached hereto and made a part hereof, be, and they hereby are, adopted and shall become effective as of December 15, 1992.

AN ATTESTED COPY hereof, including the attachment, shall be sent to each of the following by the Clerk of the Commission: Any person who filed comments in this proceeding; the Commission's Division of Information Resources; Securities Regulation and Law Report, c/o The Bureau of National Affairs, Inc., 1231 25th Street, N. W., Washington, D.C. 20037; and Blue Sky Law Reporter, c/o Commerce Clearing House, Inc., 4025 West Peterson Avenue, Chicago, Illinois 60646.

Rule 504 NASDAQ/National Market System Exemption

In accordance with Section 13.1-514 A.12. of the Act, any security designated on the National Association of Securities Dealers Automated Quotations National Market System (NASDAQ/National Market System) is exempt from the securities registration requirements of the Act if (i) the issuer of the security meets any of the criteria set forth in Section A and (ii) the system has at least the following criteria set forth in Sections B through F:

A. The issuer, or in the case of an American Depository Receipt, the foreign issuer of the underlying equity securities, has been subject to the reporting requirements of Section 13 of the Securities Exchange Act of 1934 for the preceding 180 days; or,

in the case of an insurance company meeting the conditions of Section 12(g)(2)(G) of the Securities Exchange Act of 1934, such company has been subject to the reporting requirements imposed by the applicable insurance regulatory authority in its domiciliary State for the preceding 180 days; or,

in the case of a closed-end investment management company registered under Section 8 of the Investment Company Act of 1940, such company has been subject to the applicable reporting requirements of Section 30 of the Investment Company Act of 1940 for the preceding 180 days.

B. The National Association of Securities Dealers (NASD) shall require that the issuer have a class of securities currently registered under Section 12 of the Securities Exchange Act of 1934; or in the case of an American Depository Receipt issued against the equity securities of a foreign issuer, such equity securities are registered pursuant to Section 12 of the Securities Exchange Act of 1934; or the issuer is an insurance company meeting the conditions of Section 12(g)(2)(G) of the Securities Exchange Act of 1934 or is a closed-end investment management company registered under Section 8 of the Investment Company Act of 1940 with securities registered under the Securities Act of 1933.

C. The NASD shall require at least the following standards to be met for designation of securities of an issuer on the quotation system:

	Alt. No. 1	Alt. No. 2
Net Tangible Assets [1]	$4,000,000	$12,000,000
Public Float	500,000	1,000,000
Pre-Tax Income	750,000	.....
Net Income	400,000	.....
Shareholders [2]	800/400	800/400
Market Value of Float	3,000,000	15,000,000
Minimum Bid	$5/Share	.....
Operating History	.....	3 Years

[1] ''Net Tangible Assets'' is defined for purposes of this Rule to include the value of patents, copyrights, and trademarks but to exclude the value of good will.

[2] The minimum number of shareholders under each alternative is 800 for issuers with 500,000 to 1,000,000 shares publicly held or a minimum of 400 if the issuer has either (i) over 1 million shares publicly held or (ii) over 500,000 shares publicly

held and average daily trading volume in excess of 2,000 shares per day for the six months preceding the transaction.

. . . . . .

The rules of the NASD shall require at least two authorized market makers for each issuer.

D. The NASD shall require at least the following minimum corporate governance standards for its domestic issuers:

1. Distribution of Annual and Interim Reports.

a. Each issuer shall distribute to shareholders copies of an annual report containing audited financial statements of the company and its subsidiaries. The report shall be distributed to shareholders a reasonable period of time prior to the company's annual meeting of shareholders and shall be filed with the NASD at the time it is distributed to shareholders.

b. Each issuer which is subject to SEC Rule 13a-13 shall make available to shareholders copies of quarterly reports including statements of operating results either prior to or as soon as practicable following the company's filing its Form 10-Q with the SEC. If the form of such quarterly report differs from the Form 10-Q, both the quarterly report and the Form 10-Q shall be filed with the NASD. The statement of operations contained in quarterly reports shall disclose, as a minimum, any substantial items of an unusual or nonrecurrent nature, net income, and the amount of estimated federal taxes.

c. Each issuer which is not subject to SEC Rule 13a-13 and which is required to file with the SEC or another federal or state regulatory authority interim reports relating primarily to operations and financial position shall make available to shareholders reports which reflect the information contained in those interim reports. Such reports shall be made available to shareholders either before or as soon as practicable following filing with the appropriate regulatory authority. If the form of the interim report made available to shareholders differs from that filed with the regulatory authority, both the report to shareholders and the report to the regulatory authority shall be filed with the NASD.

2. Independent Directors. Each issuer shall maintain a minimum of two independent directors on its board of directors. For purposes of this section, "independent director" shall mean a person other than an officer or employee of the issuer or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

3. Audit Committee. Each issuer shall establish and maintain an audit committee, a majority of the members of which shall be independent directors.

4. Shareholder Meetings. Each issuer shall hold an annual meeting of shareholders and shall provide notice of such meeting to the NASD.

5. Quorum. Each issuer shall provide for a quorum as specified in its by-laws for any meeting of the holders of common stock; provided, however, that in no case shall such quorum be less than 33 1/3 percent of the outstanding shares of the issuer's common voting stock.

6. Solicitation of Proxies. Each issuer shall solicit proxies and provide proxy statements for all meetings of shareholders and shall provide copies of such proxy solicitation to the NASD.

7. Conflicts of Interest. Each issuer shall conduct an appropriate review of all related party transactions on an ongoing basis and shall use the issuer's audit committee or a comparable body for the review of potential conflict of interest situations where appropriate.

8. Shareholder Approval Policy. Each issuer shall require shareholder approval of a plan or arrangement under a. below or, prior to the issuance of designated securities under b., c., or d. below, when:

a. A stock option or purchase plan is to be established or other arrangement made pursuant to which stock may be acquired by officers or directors, except for warrants or rights issued generally to security holders of the issuer or broadly based plans or arrangements including other employees (e.g. ESOP's). In a case where the shares are issued to a person not previously employed by the issuer, as an inducement essential to the individual's entering into an employment contract with the issuer, shareholder approval will generally not be required.

The establishment of a plan or arrangement under which the amount of securities which may be issued does not exceed the lesser of 1% of the number of shares of common stock, 1% of the voting power outstanding, or 25,000 shares will not generally require shareholder approval.

b. The issuance will result in a change of control of the issuer.

c. In connection with the acquisition of the stock or assets of another company if:

(1.) any director, officer or substantial shareholder of the issuer has a 5% or greater interest (or such

persons collectively have a 10% or greater interest), directly or indirectly, in the company or assets to be acquired or in the consideration to be paid in the transaction or series of related transactions and the present or potential issuance of common stock, or securities convertible into or exercisable for common stock, could result in an increase in outstanding common shares or voting power of 5% or more; or

(2.) in the case of the present or potential issuance of common stock, or securities convertible into or exercisable for common stock, other than in a public offering for cash, where the common stock has or will have upon issuance voting power equal to or in excess of 20% of the voting power outstanding before the issuance of stock or securities convertible into or exercisable for common stock, or the number of shares of common stock to be issued is or will be equal to or in excess of 20% of the number of shares of common stock outstanding before the issuance of the stock or securities.

d. In connection with a transaction other than a public offering involving:

(1.) the sale or issuance by the issuer of common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value which together with sales by officers, directors or substantial shareholders of the issuer equals 20% or more of common stock or 20% or more of the voting power outstanding before the issuance; or

(2.) the sale or issuance by the company of common stock (or securities convertible into or exercisable for common stock) equal to 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance for less than the greater of book or market value of this stock.

e. Exceptions may be made upon application to the NASD when:

(1.) the delay in securing shareholder approval would seriously jeopardize the financial viability of the issuer and

(2.) reliance by the issuer on this exception is expressly approved by the issuer's audit committee or a comparable body.

A company relying on this exception must mail to all shareholders not later than ten days before issuance of the securities a letter alerting them to its omission to seek the shareholder approval that would otherwise be required and indicating that the issuer's audit committee of the Board or a comparable body has expressly approved the exception.

f. Only shares actually issued and outstanding (excluding treasury shares or shares held by a subsidiary) are to be used in making any calculation provided for in this paragraph 8. Unissued shares reserved for issuance upon conversion of securities or upon exercise of options or warrants will not be regarded as outstanding.

g. Voting power outstanding as used in this paragraph 8 refers to the aggregate number of votes which may be cast by holders of those securities outstanding which entitle the holders thereof to vote generally on all matters submitted to the issuer's security holders for a vote.

h. An interest consisting of less than either 5% of the number of shares of common stock or 5% of the voting power outstanding of an issuer or party shall not be considered a substantialinterest or cause the holder of such an interest to be regarded as a substantial security holder.

E. Voting Rights.

1. The NASD rules shall provide as follows: No rule, stated policy, practice, or interpretation shall permit the authorization for designation on the NASDAQ/National Market System ("authorization"), or the continuance of authorization, of any common stock or other equity security of a domestic issuer, if, on or after July 1, 1989, the issuer of such security issues any class of security, or takes other corporate action, with the effect of nullifying, restricting, or disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock of such issuer registered pursuant to Section 12 of the Securities Exchange Act of 1934.

2. For the purposes of paragraph 1. of this Section, the following shall be presumed to have the effect of nullifying, restricting, or disparately reducing the per share voting rights of an outstanding class or classes of common stock:

a. Corporate action to impose any restriction on the voting power of shares of the common stock of the issuer held by a beneficial or record holder based on the number of shares held by such beneficial or record holder;

b. Corporate action to impose any restriction on the voting power of shares of the common stock of the issuer held by a beneficial or record holder based on the length of time such shares have been held by such beneficial or record holder;

c. Any issuance of securities through an exchange offer by the issuer for shares of an outstanding class of the common stock of the issuer, in which

the securities issued have voting rights greater than or less than the per share voting rights of any outstanding class of the common stock of the issuer;

d. Any issuance of securities pursuant to a stock dividend, or any other type of distribution of stock, in which the securities issued have voting rights greater than the per share voting rights of any outstanding class of the common stock of the issuer.

3. For the purpose of paragraph 1. of this Section, the following, standing alone, shall be presumed not to have the effect of nullifying, restricting, or disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock:

a. The issuance of securities pursuant to an initial registered public offering;

b. The issuance of any class of securities, through a registered public offering, with voting rights not greater than the per share voting rights of any outstanding class of the common stock of the issuer;

c. The issuance of any class of securities to effect a bona fide merger or acquisition, with voting rights not greater than the per share voting rights of any outstanding class of the common stock of the issuer;

d. Corporate action taken pursuant to state law requiring a state's domestic corporation to condition the voting rights of a beneficial or record holder of a specified threshold percentage of the corporation's voting stock on the approval of the corporation's independent shareholders.

4. Definitions. The following terms shall have the following meanings for purposes of this Section, and the rules of the NASD shall include such definitions for the purposes of the prohibition in paragraph 1. of this Section:

a. The term "common stock" shall include any security of an issuer designated as common stock and any security of an issuer, however designated, which, by statute or by its terms, is a common stock (e.g., a security which entitles the holders thereof to vote generally on matters submitted to the issuer's security holders for a vote).

b. The term "equity security" shall include any equity security defined as such pursuant to Rule 3a11-1 under the Securities Exchange Act of 1934.

c. The term "domestic issuer" shall mean an issuer that is not a "foreign private issuer" as defined in Rule 3b-4 under the Securities Exchange Act of 1934.

d. The term "security" shall include any security defined as such pursuant to Section 3(a)(10) of the Securities Exchange Act of 1934, but shall exclude any class of security having a preference or priority over the issuer's common stock as to dividends, interest payments, redemption or payments in liquidation, if the voting rights of such securities only become effective as a result of specified events, not relating to an acquisition of the common stock of the issuer, which reasonably can be expected to jeopardize the issuer's financial ability to meet its payment obligations to the holders of that class of securities.

F. Maintenance Criteria. After authorization for designation of a security on the NASDAQ/National Market System, the security must meet the following criteria in order for such designation to continue in effect:

1. The issuer of the security has net tangible assets of at least:

a. $2,000,000 if the issuer has sustained losses from continuing operations and/or net losses in two of its three most recent fiscal years; or

b. $4,000,000 if the issuer has sustained losses from continuing operations and/or net losses in three of its four most recent fiscal years;

2. There are at least 200,000 publicly held shares;

3. There are at least 400 shareholders or at least 300 shareholders of round lots;

4. The aggregate market value of publicly held shares is at least $1,000,000.

G. The Commission may rescind this order pursuant to its authority under Section 13.1-523 of the Act, thereby revoking this rule, if the Commission determines that the requirements of the NASDAQ/National Market System have been so changed or insufficiently applied so that the protection of investors is no longer afforded.

H. The Commission shall have the authority to deny or revoke the exemption created by this Rule as to a specific issue or category of securities.

I. The NASD shall promptly notify the Commission when an issue of securities is removed from NASDAQ/National Market System designation.

STATE LOTTERY DEPARTMENT

DIRECTOR'S ORDER NUMBER TWENTY-EIGHT (92)

"PICK 4 DOUBLE PAYOUT DAYS," FINAL RULES FOR GAME OPERATION

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the "Pick 4 Double Payout Days" game rules for the Virginia Lottery Pick 4 promotional program to be conducted on December 30, 1992, January 2, 1993, January 6, 1993 and January 9, 1993. These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect until January 31, 1993, unless amended or rescinded by further Director's Order.

/s/ Kenneth W. Thorson
Date: December 8, 1992

PROPOSED REGULATION

Title of Regulation: **VR 447-02-2. On-Line Game Regulations.**

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Public Hearing Date: March 22, 1993 - 11 a.m. – Written comments may be submitted through this date.
(See Calendar of Events section
for additional information)

Summary:

The State Lottery Department is proposing changes to the On-Line Game Regulations that reduce the potential of the purchase of large blocks of on-line lottery tickets by stipulating that all playslips used must be manually marked.

VR 447-02-2. On-Line Game Regulations.

PART I.
ON-LINE GAMES.

§ 1.1. General definitions for on-line games.

The words and terms, when used in any of the department's regulations, shall have the same meaning, as defined in these regulations, unless the context clearly indicates otherwise. Definitions that relate to instant games are incorporated by reference in the On-Line Game Regulations (VR 447-02-2).

"Auto pick" means the same as "easy pick."

"Breakage" means the fraction of a dollar not paid out due to rounding down and shall be used exclusively to fund prizes.

"Cancelled ticket" means a ticket that (i) has been placed into the terminal, whereupon the terminal must read the information from the ticket and cancel the transaction or (ii) whose validation number has been manually entered into the terminal via the keyboard and cancelled.

"Certified drawing" means a drawing in which a lottery official and an independent certified public accountant attest that the drawing equipment functioned properly and that a random selection of a winning combination has occurred.

"Confirmation (or registration) notice" means the subscription notification letter or card mailed to the subscriber which confirms the game numbers for the game panel played, and the plan start date and number of draws.

"Drawing" means a procedure by which the lottery randomly selects numbers or items in accordance with the specific game rules for those games requiring random selection of number(s) or item(s).

"Duplicate ticket" means a ticket produced by any means other than by an on-line terminal with intent to imitate the original ticket.

"Easy pick" means computer generated numbers or items.

"Game panel" means the play(s) entered on a playslip by the player or by the subscriber on the subscription application.

"Game numbers" means the numbers designated by the player on the playslip or subscription application or the computer-generated numbers if easy pick is selected.

"Group-designated agent" means the individual listed on the back of a ticket or on the subscription application who is elected by the group of players to act as the representative or subscriber on the group's behalf in handling all correspondence and payment disbursements resulting from the group's activity.

"Number of draws" means the actual number of draws for which a multiple play or subscription is valid.

"On-line game" means a lottery game, the play of which is dependent upon the use of an on-line terminal in direct

communication with an on-line game main frame operated by or at the direction of the department.

"On-line lottery retailer" means a licensed lottery retailer who has entered an agreement with the department to sell on-line tickets at a specific location.

"On-line system" means the department's on-line computer system consisting of on-line terminals, central processing equipment, and a communication network.

"On-line terminal" means the department's computer hardware through which a combination of numbers or items is selected or generated and through which on-line tickets are generated and claims may be validated.

"On-line ticket" means a computer-generated ticket issued by an on-line lottery retailer to a player as a receipt for the number, numbers, or items or combination of numbers or items the player has selected.

"Person" means a natural person and may extend and be applied to groups of persons as well as corporations, companies, partnerships, and associations, unless the context indicates otherwise.

"Plan" means the duration of the subscription as determined by the number of draws designated by the subscriber on the subscription application or renewal notice.

"Play" means a wager on a single set of selected numbers.

"Player-selected item" means a number or item or group of numbers or items selected by a player in connection with an on-line game. Player-selected items include selections of items randomly generated by the computer on-line system. Such computer-generated numbers or items are also known as "auto picks," "easy picks" or "quick picks."

"Playslip" means an optically readable card issued by the department, used in marking a player's game plays.

"Present at the terminal" means that a player remains physically present at the on-line lottery terminal from the time the player's order for the purchase of on-line lottery tickets is paid for and accepted by the lottery retailer until the processing of the order is completed and the tickets are delivered to the player at the licensed on-line retailer terminal location.

"Quick pick" means the same as "easy pick."

"Registration" means the process of entering subscripton information concerning the subscriber, plan and selected numbers into the central computer system.

"Retailer," as used in these on-line game regulations, means a licensed on-line lottery retailer, unless the context clearly requires otherwise.

"Roll stock" or *"ticket stock"* means the paper roll placed into the lottery retailer terminals from which a unique lottery ticket is generated by the computer, displaying the player selected item(s) or number(s).

"Share" means a percentage of ownership in a winning ticket or subscription plan.

"Start date" means the first draw date for which a multiple play or subscription is effective.

"Subscriber" means the individual designated on the subscription application whose entry has been entered into the department's central computer system and who has received confirmation from the department of his designated numbers and includes the group-designated agent for a group, organization, family unit, or club.

"Subscription" means a method to play a lottery on-line game by purchasing subscription plays, using a designated set of numbers, for a specific period of time, and for which the player is automatically entered in each drawing or game during the period for which the subscription is effective.

"Subscription application" means the form(s) used by an individual or group-designated agent to play lottery games by subscription.

"Subscription renewal" means the process by which a subscription plan is renewed by the subscriber in accordance with procedures established by the department.

"Winning combination" means two or more items or numbers selected by a drawing.

§ 1.2. Development of on-line games.

The director shall select, operate, and contract for the operation of on-line games which meet the general criteria set forth in these regulations. The board shall determine the specific details of each on-line lottery game after consultation with the director. These details include, but are not limited to:

1. The type or types of on-line lottery games,

2. Individual prize amounts and overall prize structure,

3. Types of noncash prizes, if any,

4. The amount and type of any jackpot or grand prize which may be awarded and how awarded, and

5. Chances of winning.

§ 1.3. Prize structure.

The prize structure for any on-line game shall be

designed to return to winners approximately 50% of gross sales.

A. The specific prize structure for each type of on-line game shall be determined in advance by the board.

B. From time to time, the board may determine temporary adjustments to the prize structure to account for breakage or other fluctuations in the anticipated redemption of prizes.

§ 1.4. Drawing and selling times.

A. Drawings shall be conducted at times and places designated by the director and publicly announced by the department.

B. On-line tickets may be purchased up to a time prior to the drawing as specified in the on-line drawing rules. That time will be designated by the director.

§ 1.5. Ticket price.

A. The sale price of a lottery ticket for each game will be determined by the board. These limits shall not operate to prevent the sale of more than one lottery play on a single ticket. Unless authorized by the board, lottery retailers may not discount the sale price of on-line game tickets or provide free lottery tickets as a promotion with the sale of on-line tickets. This section shall not prevent a licensed retailer from providing free on-line tickets with the purchase of other goods or services customarily offered for sale at the retailer's place of business; provided, however, that such promotion shall not be for the primary purpose of inducing persons to participate in the lottery. (see § 1.9)

B. This section shall not apply to the redemption of a winning on-line game ticket the prize for which is another free ticket.

§ 1.6. Ticket cancellation.

A ticket may be cancelled and a refund of the purchase price obtained at the request of the bearer of the ticket under the following conditions:

1. To be accepted for cancellation, the ticket must be presented to the lottery retailer location at which the ticket was sold, prior to the time of the drawing and within the same business day it was purchased.

2. Cancellation may only be effected by the following two procedures:

a. Inserting the ticket into the lottery terminal, whereupon the terminal must read the information from the ticket and cancel the transaction.

b. After first determining that the preceding procedure cannot be utilized successfully to cancel the ticket, the terminal operator may cancel the ticket by manually entering the ticket validation number into the terminal via the keyboard.

Any ticket which cannot be cancelled by either of these procedures remains valid for the drawing for which purchased. Any ticket which is mutilated, damaged or has been rendered unreadable, and cannot be inserted into or read by the lottery terminal or whose validation number cannot be read and keyed into the terminal, cannot be cancelled by any other means.

3. The cancelled ticket must be surrendered by the bearer to the retailer.

4. On a case-by-case basis, credit may be provided to retailers for tickets which could not be cancelled by either of the two methods described in § 1.6 2. Such credit may be given provided unusual, verifiable circumstances are present which show that the department's computer system could not accept the cancellation within the same day the ticket was purchased or that the ticket was produced by an unusual retailer error or if the ticket was issued by another lottery-approved device. The retailer must notify the department's Hotline prior to the time of the drawing and within the same business day the ticket was purchased.

5. The director may approve credit for other cancellation requests not described in this section.

6. The lottery's internal auditor will audit cancelled tickets on a sample basis.

§ 1.7. Chances of winning.

The director shall publicize the overall chances of winning a prize in each on-line game. The chances may be printed in informational materials.

§ 1.8. Licensed retailers' compensation.

A. Licensed retailers shall receive 5.0% compensation on all net sales from on-line games. "Net sales" are gross sales less cancels.

B. The board shall approve any bonus or incentive system for payment to retailers. The director will publicize any such system by administrative order. The director may then award such cash bonuses or other incentives to retailers. Retailers may not accept any compensation for the sale of lottery tickets other than compensation approved under this section, regardless of the source.

§ 1.9. Retailers' conduct.

A. Retailers shall sell on-line tickets at the price fixed by the board, unless the board allows reduced prices or ticket give-aways.

B. All ticket sales shall be for cash, check, cashier's check, traveler's check or money order at the discretion of and in accordance with the licensed retailer's policy for accepting payment by such means. A ticket shall not be purchased with credit cards, food stamps or food coupons.

C. All ticket sales shall be final. Retailers shall not accept ticket returns except as allowed by department regulations or policies, or with the department's specific approval.

D. Tickets shall be sold during all normal business hours of the lottery retailer when the on-line terminal is available unless the director approves otherwise. Retailers shall give prompt service to lottery customers present and waiting at the terminal to purchase tickets for on-line games. Prompt service includes interrupting processing of on-line ticket orders for which the customer is not present at the terminal. Failure to render prompt service to lottery customers may result in administrative action by the director including but not limited to license suspension or revocation or disabling the on-line terminal so that it will not process transactions.

E. Tickets shall be sold only at the location listed on each retailer's license from the department. For purposes of this section, the sale of an on-line lottery ticket at the licensed location means a lottery transaction in which all elements of the sale between the licensee and the player shall take place on site at the lottery terminal including the exchange of consideration, the exchange of the playslip if one is used, and the exchange of the ticket. No part of the sale may take place away from the lottery terminal.

F. On-line retailers must offer for sale all lottery products offered by the department.

G. An on-line game ticket shall not be sold to, purchased by, given as a gift to or redeemed from any individual under 18 years of age, and no prize shall be paid on a ticket purchased by or transferred to any person under 18 years of age. The transferee of any ticket by any person ineligible to purchase a ticket is ineligible to receive any prize.

H. On-line retailers shall furnish players with proper claim forms provided by the department.

I. On-line retailers shall post winning numbers prominently.

J. On-line retailers and employees who will operate on-line equipment shall attend training provided by the department and allow only trained personnel to operate terminals.

K. Unsupervised retailer employees who sell or otherwise vend lottery tickets must be at least 18 years of age. Employees not yet 18 but at least 16 years of age may sell or vend lottery tickets so long as they are supervised by the manager or supervisor in charge at the location where the tickets are being sold.

L. Federal Internal Revenue Code, 26 U.S.C. 60501 requires lottery retailers who receive more than $10,000 in cash in one transaction, two or more related transactions in the aggregate, or a series of connected transactions exceeding $10,000 in the aggregate, from a single player or his agent, to file a Form 8300 with the Internal Revenue Service. IRS encourages retailers to report all suspicious transactions, even if they do not meet the $10,000 threshold. "Cash" includes coin and currency only and does not include bank checks or drafts, traveler's checks, wire transfers, or other negotiable or monetary instruments not customarily accepted as money.

§ 1.10. End of game; suspension.

The director may suspend or terminate an on-line game without advance notice if he finds that this action will serve and protect the public interest.

PART II.
LICENSING OF RETAILERS FOR ON-LINE GAMES.

§ 2.1. Licensing.

The director may license persons as lottery retailers for on-line games who will best serve the public convenience and promote the sale of tickets and who meet the eligibility criteria and standards for licensing.

For purposes of this part on licensing, "person" means an individual, association, partnership, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals. "Person" also means all departments, commissions, agencies and instrumentalities of the Commonwealth, including its counties, cities, and towns.

§ 2.2. Eligibility.

A. Eighteen years of age and bondable.

Any person who is 18 years of age or older and who is bondable may be considered for licensure, except no person may be considered for licensure:

1. Who will be engaged primarily in the business of selling lottery tickets;

2. Who is a board member, officer or employee of the State Lottery Department or who resides in the same household as board member, officer or employee of the department; or

3. Who is a vendor to the department of instant or on-line lottery tickets or goods or data processing services, whose tickets, goods or services are provided directly to the lottery department, or whose business

is owned by, controlled by, or affiliated with a vendor of instant or on-line lottery tickets or goods or data processing services whose tickets, goods or services are provided directly to the lottery department.

B. Form submission.

The submission of forms or data for licensure does not in any way entitle any person to receive a license to act as an on-line lottery retailer.

§ 2.3. General standards for licensing.

A. Selection factors for licensing.

The director may license those persons who, in his opinion, will best serve the public interest and public trust in the lottery and promote the sale of lottery tickets. The director will consider the following factors before issuing or renewing a license:

1. The financial responsibility and integrity of the retailer, to include:

a. A credit and criminal record history search or when deemed necessary a full investigation of the retailer;

b. A check for outstanding delinquent state tax liability;

c. A check for required business licenses, tax and business permits; and

d. An evaluation of physical security at the place of business, including insurance coverage.

2. The accessibility of his place of business to public, to include:

a. The hours of operation compared to the on-line system selling hours;

b. The availability of parking including ease of ingress and egress to parking;

c. Public transportation stops and passenger traffic volume;

d. The vehicle traffic density, including levels of congestion in the market area;

e. Customer transaction count within the place of business;

f. Other factors indicating high public accessibility and public convenience when compared with other retailers; and

g. Adequate space and physical layout to sell a high volume of lottery tickets efficiently.

3. The sufficiency of existing lottery retailers to serve the public convenience, to include:

a. The number of and proximity to other lottery retailers in the market area;

b. The expected impact on sales volume of potentially competing lottery retailers;

c. The adequacy of coverage of all regions of the Commonwealth with lottery retailers; and

d. The population to terminal ratio, compared to other geographical market areas.

4. The volume of expected lottery ticket sales, to include:

a. Type and volume of the products and services sold by the retailer;

b. Dollar sales volume of the business;

c. Sales history of the market area;

d. Sales history for instant tickets, if already licensed as an instant retailer;

e. Volume of customer traffic in place of business; and

f. Market area potential, compared to other market areas.

5. The ability to offer high levels of customer service to on-line lottery players, including:

a. A history demonstrating successful use of lottery product related promotions;

b. Volume and quality of point of sale display;

c. A history of compliance with lottery directives;

d. Ability to display jackpot prize amounts to pedestrians and vehicles passing by;

e. A favorable image consistent with lottery standards;

f. Ability to pay prizes of $600 or less during maximum selling hours, compared to other area retailers;

g. Commitment to authorize employee participation in all required on-line lottery training; and

h. Commitment and opportunity to post jackpot levels near the point of sale.

B. Additional factors for selection.

The director may develop and, by director's order, publish additional criteria which, in the director's judgment, are necessary to serve the public interest and public trust in the lottery.

C. Filing of forms with the department.

After notification of selection as an on-line lottery retailer, the retailer shall file required forms with the department. The retailer must submit all information required to be considered for licensing. Failure to submit required forms and information within the times specified in these regulations may result in the loss of the opportunity to become or remain a licensed on-line retailer. The forms to be submitted shall include:

1. Signed retailer agreement;

2. Signed EFT Authorization form with a voided check or deposit slip from the specified account; and

3. Executed bond requirement.

§ 2.4. Bonding of lottery retailers.

A. Approved retailer to secure bond.

A lottery retailer approved for licensing shall obtain a surety bond in the amount of $10,000 from a surety company entitled to do business in Virginia. If the retailer is already bonded for instant games, a second bond will not be required. However, the amount of the original bond must be increased to $10,000. The purpose of the surety bond is to protect the Commonwealth from a potential loss in the event the retailer fails to perform his responsibilities.

1. Unless otherwise provided under subsection C of this section, the surety bond shall be in the amount and penalty of $10,000 and shall be payable to the State Lottery Department and conditioned upon the faithful performance of the lottery retailer's duties.

2. Within 15 calendar days of receipt of the "On-Line License Approval Notice," the lottery retailer shall return the properly executed "Bonding Requirement" portion of the "On-Line License Approval Notice" to the State Lottery Department to be filed with his record.

B. Continuation of surety bond on annual license review.

A lottery retailer whose license is being reviewed shall:

1. Obtain a letter or certificate from the surety company to verify that the surety bond is being continued for the annual license review period; and

2. Submit the surety company's letter or certificate with the required annual license review fee to the State Lottery Department.

C. Sliding scale for surety bond amounts.

The department may establish a sliding scale for surety bonding requirements based on the average volume of lottery ticket sales by a retailer to ensure that the Commonwealth's interest in tickets to be sold by a licensed lottery retailer is adequately safeguarded. Such sliding scale may require a surety bond amount either greater or lesser than the amount fixed by subsection A of this section.

D. Effective date for sliding scale.

The sliding scale for surety bonding requirements will become effective when the director determines that sufficient data on lottery retailer ticket sales volume activity are available. Any changes in a retailer's surety bonding requirements that result from instituting the sliding scale will become effective only at the time of the retailer's next renewal action.

E. Limit on sales in excess of bond.

Under no circumstances shall the retailer allow total, weekly, net on-line and instant sales from a single location for the seven-day period ending at the close of the lottery fiscal week (normally Tuesday night) to exceed five times the amount of the bond for that licensed location, unless such retailer has first obtained written permission from the director. The director, in his sole discretion, may require additional bond or other security as a condition for continued sales, may accelerate the collection from the retailer of the net proceeds from the sale of lottery tickets, or may temporarily suspend the requirement that no retailer may sell lottery tickets in excess of five times the amount of the bond for that licensed location for all on-line lottery retailers or for individual retailers on a case-by-case basis.

§ 2.5. Lottery bank accounts and EFT authorization.

A. Approved retailer to establish lottery bank account.

A lottery retailer approved for licensing shall establish a separate bank account to be used exclusively for lottery business in a bank participating in the automatic clearing house (ACH) system. A single bank account may be used for both on-line and instant lottery business.

B. Retailer's use of lottery account.

The lottery account will be used by the retailer to make funds available to permit withdrawals and deposits initiated by the department through the electronic funds transfer (EFT) process to settle a retailer's account for funds owed by or due to the retailer from the sale of tickets and the payment of prizes. All retailers shall make payments to the department through the electronic funds transfer (EFT) process unless the director designates another form of payment and settlement under terms and conditions he deems appropriate.

C. Retailer responsible for bank charges.

The retailer shall be responsible for payment of any fees or service charges assessed by the bank for maintaining the required account.

D. Retailer to authorize electronic funds transfer.

Within 15 calendar days of receipt of the "On-Line License Approval Notice," the lottery retailer shall return the properly executed "On-Line Electronic Funds Transfer Authorization" portion of the "License Approval Notice" to the department recording the establishment of his account.

E. Change in retailer's bank account.

If a retailer finds it necessary to change his bank account from one bank account to another, he must submit a newly executed "Electronic Funds Transfer Authorization" form for the new bank account. The retailer may not discontinue use of his previously approved bank account until he receives notice from the department that the new account is approved for use.

F. Director to establish EFT account settlement schedule.

The director will establish a schedule for processing the EFT transactions against retailers' lottery bank accounts and issue instructions to retailers on how settlement of accounts will be made.

§ 2.6. Deposit of lottery receipts; interest and penalty for late payment; dishonored EFT transfers or checks.

A. Payment due date.

Payments shall be due as specified by the director in the instructions to retailers regarding the settlement of accounts.

B. Penalty and interest charge for late payment.

Any retailer who fails to make payment when payment is due will be contacted by the department and instructed to make immediate deposit. If the retailer is not able to deposit the necessary funds or if the item is returned to the department unpaid for a second time, the retailer's on-line terminal will be inactivated. The retailer will not be reactivated until payment is made by cashier's check, certified check or wire transfer, and if deemed a continuing credit risk by the department, not until an informal hearing is held to determine if the licensee is able and willing to meet the terms of his license agreement. Additionally, interest will be charged on the moneys due plus a $25 penalty. The interest charge will be equal to the "Underpayment Rate" established pursuant to § 6621(a)(2) of the Internal Revenue Code of 1954, as amended. The interest charge will be calculated beginning the date following the retailer's due date for payment through the day preceding receipt of the late payment by the department for deposit.

C. Service charge for dishonored EFT transfer or bad check.

In addition to the penalty authorized by subsection B of this section, the director will assess a service charge of $25 against any retailer whose payment through electronic funds transfer (EFT) or by check is dishonored.

D. Service charge for debts referred for collection.

If the department refers a debt of any retailer to the Attorney General, the Department of Taxation or any other central collection unit of the Commonwealth, the retailer owing the debt shall be liable for an additional service charge which shall be in the amount of the administrative costs associated with the collection of the debt incurred by the department and the agencies to which the debt is referred.

E. Service charge, interest and penalty waived.

The service charge, interest and penalty charges may be waived when the event which would otherwise cause a service charge, interest or penalty to be assessed is not in any way the fault of the lottery retailer. For example, a waiver may be granted in the event of a bank error or lottery error.

§ 2.7. License term and annual review.

A. License term.

A general on-line license for an approved lottery retailer shall be issued on a perpetual basis subject to an annual determination of continued retailer eligibility and the payment of an annual fee fixed by the board. A general on-line license requires the retailer to sell both on-line and instant lottery tickets.

B. Annual license review.

The annual fee shall be collected within the 30 days preceding a retailer's anniversary date. Upon receipt of the annual fee, the general license shall be continued so long as all eligibility requirements are met. The director may implement a staggered, monthly basis for annual license reviews and allow for the proration of annual license fees. This section shall not be deemed to allow for a refund of license fees when a license is terminated, revoked or suspended for any other reason.

C. Amended license term.

The annual fee for an amended license will be due on the same date as the fee for the license it replaced.

D. Special license.

The director may issue special licenses. Special licenses

shall be for a limited duration and under terms and conditions that he determines appropriate to serve the public interest. On-line game lottery retailers currently licensed by the department are not required to obtain an additional surety bond for the purposes of obtaining a special event license.

E. Surrender of license certificate.

If the license of a lottery retailer is suspended, revoked or not continued from year to year, the lottery retailer shall surrender the license certificate upon demand.

§ 2.8. License fees.

A. License fee.

The fee for a lottery retailer general license to sell on-line game tickets shall be $25. Payment of this fee shall entitle the retailer to sell both on-line and instant game tickets. The general license fee to sell on-line game tickets shall be paid for each location to be licensed. This fee is nonrefundable.

B. Annual license fee.

The annual fee for a lottery retailer general license to sell on-line game tickets shall be an amount determined by the board at its November meeting or as soon thereafter as practicable for all reviews occurring in the next calendar year. The fee shall be designed to recover all or a portion of the annual costs of the department in providing services to the retailer. The fee shall be paid for each location for which a license is. This fee is nonrefundable. The fee shall be submitted within the 30 days preceding a retailer's anniversary date.

C. Amended license fee.

The fee for processing an amended license for a lottery retailer general license shall be an amount as determined by the board at its November meeting or as soon thereafter as practicable for all amendments occurring in the next calendar year. The amended license fee shall be paid for each location affected. This fee is nonrefundable. An amended license shall be submitted in cases where a business change has occurred.

§ 2.9. Fees for operational costs.

A. Installation fee.

The fee for initial terminal telecommunications installation for the on-line terminal shall be $275 unless otherwise determined by the director. This fee may be subject to change based upon an annual cost review by the department.

1. If the retailer has purchased a business where a terminal is presently installed or telecommunication service is available, a fee of $25 per year shall be charged upon issuance of a new license.

2. No installation fee will be charged if interruption of service to the terminal has not occurred.

B. Weekly on-line telecommunications line charge.

Each retailer shall be assessed a weekly charge of $15 per week. This fee may be subject to change based upon an annual cost review by the department.

§ 2.10. Transfer of license prohibited; invalidation of license.

A. License not transferrable.

A license issued by the director authorizes a specified person to act as a lottery retailer at a specified location as set out in the license. The license is not transferrable to any other person or location.

B. License invalidated.

A license shall become invalid in the event of any of the following circumstances:

1. Change in business location;

2. Change in business structure (e.g., from a partnership to a sole proprietorship); or

3. Change in the business owners listed on the original personal data forms for which submission of a personal data form is required under the license procedure.

C. Amended personal data form required.

A licensed lottery retailer who anticipates any change listed in subsection B must notify the department of the anticipated change at least 30 calendar days before it takes place and submit an amended personal data form. The director shall review the changed factors in the same manner that would be required for a review of an original personal data form.

§ 2.11. Denial, suspension, revocation or of license.

A. Grounds for refusal to license.

The director may refuse to issue a license to a person if the person does not meet the eligibility criteria and standards for licensing as set out in these regulations or if:

1. The person has been convicted of a felony;

2. The person has been convicted of a crime involving moral turpitude;

3. The person has been convicted of any fraud or misrepresentation in any connection;

4. The person has been convicted of bookmaking or other forms of illegal gambling;

5. The person as been convicted of knowingly and willfully falsifying, or misrepresenting, or concealing a material fact or makes a false, fictitious, or fraudulent statement or misrepresentation;

6. The person's place of business caters to or is frequented predominantly by persons under 18 years of age;

7. The nature of the person's business constitutes a threat to the health or safety of prospective lottery patrons;

8. The nature of the person's business is not consonant with the probity of the Commonwealth; or

9. The person has committed any act of fraud, deceit, misrepresentation, or conduct prejudicial to public confidence in the state lottery.

B. Grounds for refusal to license partnership or corporation.

In addition to refusing a license to a partnership or corporation under subsection A of this section, the director may also refuse to issue a license to any partnership or corporation if he finds that any general or limited partner or officer or director of the partnership or corporation has been convicted of any of the offenses cited in subsection A of this section.

C. Appeals of refusal to license.

Any person refused a license under subsection A or B may appeal the director's decision in the manner provided by VR 447-01-02, Part III, Article 2, § 3.4.

D. Grounds for suspension, revocation or refusal to continue license.

The director may suspend, revoke, or refuse to continue a license for any of the following reasons:

1. Failure to properly account for on-line terminal ticket roll stock, for cancelled ticket, for prizes claimed and paid, or for the proceeds of the sale of lottery tickets;

2. Failure to file or maintain the required bond or the required lottery bank account;

3. Failure to comply with applicable laws, instructions, terms or conditions of the license, or rules and regulations of the department concerning the licensed activity, especially with regard to the prompt payment of claims;

4. Conviction, following the approval of the license, of any of the offenses cited in subsection A;

5. Failure to file any return or report or to keep records or to pay any fees or other charges as required by the state lottery law or the rules or regulations of the department or board;

6. Commission of any act of fraud, deceit, misrepresentation, or conduct prejudicial to public confidence in the state lottery;

7. Failure to maintain lottery ticket sales at a level sufficient to meet the department's administrative costs for servicing the retailer, provided that the public convenience is adequately served by other retailers. This failure may be determined by comparison of the retailer's sales to a sales quota established by the director;

8. Failure to notify the department of a material change, after the license is issued, of any matter required to be considered by the director in the licensing process;

9. Failure to comply with lottery game rules;

10. Failure to meet minimum point of sale standards;

11. The person's place of business caters to or is frequented predominantly by persons under 18 years of age;

12. The nature of the person's business constitutes a threat to the health or safety of prospective lottery patrons; or

13. The nature of the person's business is not consonant with the probity of the Commonwealth.

E. Notice of intent to suspend, revoke or deny continuation of license.

Before taking action under subsection C, the director will notify the retailer in writing of his intent to suspend, revoke or deny continuation of the license. The notification will include the reason or reasons for the proposed action and will provide the retailer with the procedures for requesting a hearing before the board. Such notice shall be given to the retailer at least 14 calendar days prior to the effective date of suspension, revocation or denial.

F. Temporary suspension without notice.

If the director deems it necessary in order to serve the public interest and maintain public trust in the lottery, he may temporarily suspend a license without first notifying the retailer. Such suspension will be in effect until any prosecution, hearing or investigation into possible violations is concluded.

G. Surrender of license and lottery property upon

revocation or suspension.

A retailer shall surrender his license to the director by the date specified in the notice of revocation or suspension. The retailer shall also surrender the lottery property in his possession and give a final accounting of his lottery activities by the date specified by the director.

§ 2.12. Responsibility of lottery retailers.

Each retailer shall comply with all applicable state and federal laws, rules and regulations of the department, license terms and conditions, specific rules for all applicable lottery games, and directives and instructions which may be issued by the director.

§ 2.13. Display of license.

License displayed in general view. Every licensed lottery retailer shall conspicuously display his lottery license in an area visible to the general public where lottery tickets are sold.

§ 2.14. Display of material.

A. Material in general view.

Lottery retailers shall display lottery point-of-sale material provided by the director in a manner which is readily seen by and available to the public.

B. Prior approval for retailer-sponsored material.

A lottery retailer may use or display his own promotional and point-of-sale material, provided it has been submitted to and approved for use by the department in accordance with instructions issued by the director.

C. Removal of unapproved material.

The director may require removal of any licensed retailer's lottery promotional material that has not been approved for use by the department.

§ 2.15. Inspection of premises.

Access to premises by department. Each lottery retailer shall provide access during normal business hours or at such other times as may be required by the director or state lottery representatives to enter the premises of the licensed retailer. The premises include the licensed location where lottery tickets are sold or any other location under the control of the licensed retailer where the director may have good cause to believe lottery materials or tickets are stored or kept in order to inspect the lottery materials or tickets and the licensed premises.

§ 2.16. Examination of records; seizure of records.

A. Inspection, auditing or copying of records.

Each lottery retailer shall make all books and records pertaining to his lottery activities available for inspection, auditing or copying as required by the director between the hours of 8 a.m. and 5 p.m., Mondays through Fridays and during the normal business hours of the licensed retailer.

B. Records subject to seizure.

All books and records pertaining to the licensed retailer's lottery activities may be seized with good cause by the director without prior notice.

§ 2.17. Audit of records.

The director may require a lottery retailer to submit to the department an audit report conducted by an independent certified public accountant on the licensed retailer's lottery activities. The retailer shall be responsible for the cost of only the first such audit in any one license term.

§ 2.18. Reporting requirements and settlement procedures.

Before a retailer may begin lottery sales, the director will issue to him instructions and report forms that specify the procedures for (i) ordering on-line terminal ticket roll stock; (ii) reporting receipts, transactions and disbursements pertaining to on-line lottery ticket sales; and (iii) settling the retailer's account with the department.

§ 2.19. Training of retailers and their employees.

Each retailer or anyone that operates an on-line terminal at the retailer's location will be required to participate in training given by the department for the operation of each game. The director may consider nonparticipation in the training as grounds for suspending or revoking the retailer's license.

§ 2.20. License termination by retailer.

The licensed retailer may voluntarily terminate his license with the department by first notifying the department in writing at least 30 calendar days before the proposed termination date. The department will then notify the retailer of the date by which settlement of the retailer's account will take place. The retailer shall maintain his bond and the required accounts and records until settlement is completed and all lottery property belonging to the department has been surrendered.

PART III.
ON-LINE TICKET VALIDATION REQUIREMENTS.

§ 3.1. Validation requirements.

To be valid, a Virginia lottery on-line game ticket shall meet all of the validation requirements listed here:

1. The original ticket must be presented for validation.

2. The ticket validation number shall be presented in its entirety and shall correspond using the computer validation file to the selected numbers printed on the ticket.

3. The ticket shall not be mutilated, altered, or tampered with in any manner. (see § 3.4)

4. The ticket shall not be counterfeited, forged, fraudulently made or a duplicate of another winning ticket.

5. The ticket shall have been issued by the department through a licensed on-line lottery retailer in an authorized manner.

6. The ticket shall not have been cancelled.

7. The ticket shall be validated in accordance with procedures for claiming and paying prizes. (see §§ 3.10 and 3.12)

8. The ticket data shall have been recorded in the central computer system before the drawing, and the ticket data shall match this computer record in every respect.

9. The player-selected items, the validation data, and the drawing date of an apparent winning ticket must appear on the official file of winning tickets and a ticket with that exact data must not have been previously paid.

10. The ticket may not be misregistered or defectively printed to an extent that it cannot be processed by the department.

11. The ticket shall pass any validation requirement contained in the rules published and posted by the director for the on-line game for which the ticket was issued.

12. The ticket shall pass all other confidential security checks of the department.

13. Any on-line lottery cash prize resulting from a ticket which is purchased by or claimed by a person ineligible to play the lottery game is invalid and reverts to the State Lottery Fund.

14. Playslips may be used to select a player's number or numbers to be played in an on-line game. If a playslip is used to select the player's number or numbers for an on-line game, the playslip number selections shall be manually marked and not marked by any electro-mechanical, electronic printing or other automated device. Any playslip marked by methods other than those authorized by these regulations is invalid and subject to seizure by the department if presented for play at any lottery terminal. Any tickets produced from the use of invalid playslips are also invalid and subject to seizure by the department. Nothing in this regulation shall be deemed to prevent a person with a physical handicap who would otherwise be unable to mark a playslip manually from using any device intended to permit such person to make such a mark.

§ 3.2. Invalid ticket.

An on-line ticket which does not pass all the validation requirements listed in these regulations and any validation requirements contained in the rules for its on-line game is invalid. An invalid ticket is not eligible for any prize.

§ 3.3. Replacement of ticket.

The director may refund the purchase price of an invalid ticket. If a defective ticket is purchased, the department's only liability or responsibility shall be to refund the purchase price of the defective ticket.

§ 3.4. When ticket cannot be validated through normal procedures.

If an on-line ticket is partially mutilated or if the ticket cannot be validated through normal procedure but can still be validated by other validation tests, the director may pay the prize for that ticket.

§ 3.5. Director's decision final.

All decisions of the director regarding ticket validation shall be final.

§ 3.6. Prize winning tickets.

Prize winning on-line tickets are those that have been validated in accordance with these regulations and the rules of the department and determined to be official prize winners. Criteria and specific rules for winning prizes shall be published for each on-line game and available for all players. Final validation and determination of prize winning tickets remain with the department.

§ 3.7. Unclaimed prizes.

A. Except for free ticket prizes, all claims for on-line game winning tickets must be postmarked or received for payment as prescribed in these regulations within 180 days after the date of the drawing for which the ticket was purchased. In the event that the 180th day falls on a Saturday, Sunday or legal holiday, a claimant may redeem his prize-winning ticket on the next business day only at a lottery regional office.

B. Any on-line lottery cash prize which remains unclaimed after 180 days following the drawing which determined the prize shall revert to the State Literary Fund. Cash prizes do not include free ticket prizes or other noncash prizes such as merchandise, vacations,

admissions to events and the like.

C. All claims for on-line game winning tickets for which the prize is a free ticket must be postmarked or received for redemption as prescribed in these regulations within 60 days after the date of the drawing for which the ticket was purchased. In the event that the 60th day falls on a Saturday, Sunday or legal holiday, a claimant may only redeem his prize-winning ticket for a free ticket at an on-line lottery retailer on or before the 60th day. Except for claims for free ticket prizes mailed to lottery headquarters and postmarked on or before the 60th day, claims for such prizes will not be accepted at lottery regional offices or headquarters after the 60th day. This section does not apply to the redemption of free tickets awarded through the subscription program. (see § 4.14)

D. In accordance with the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 App. U.S.C.A. § 525), any person while in active military service may claim exemption from the 180-day ticket redemption requirement. Such person, however, must claim his winning ticket or share as soon as practicable and in no event later than 180 days after discharge from active military service.

§ 3.8. Using winners' names.

The department shall have the right to use the names of prize winners and the city, town or county in which they live. Photographs of prize winners may be used with the written permission of the winners. No additional consideration shall be paid by the department for this purpose unless authorized by the director.

§ 3.9. No prize paid to people under 18.

No prize shall be claimed by, redeemed from or paid to any individual under 18 years of age, and no prize shall be paid on a ticket purchased by or transferred to any person under 18 years of age. The transferee of any ticket to any person ineligible to purchase a ticket is ineligible to receive any prize.

§ 3.10. Where prizes claimed.

Winners may claim on-line game prizes from any licensed on-line retailer or the department in the manner specified in these regulations. Licensed on-line retailers are authorized and required to make payment of all validated prizes of $600 or less.

§ 3.11. Validating winning tickets.

Winning tickets shall be validated by the retailer or the department as set out in these regulations and in any other manner which the director may prescribe in the specific rules for each type of on-line game.

§ 3.12. How prize claim entered.

A prize claim shall be entered in the name of an individual person or legal entity. If the prize claimed is $601 or greater, the person or entity also shall furnish a tax identification number.

A. An individual shall provide his social security number if a claim form is required by these regulations. A nonresident alien shall furnish their Immigration and Naturalization Service Number. This I.N.S. number begins with an A and is followed by numerical data.

B. A claim may be entered in the name of an organization only if the organization is a legal entity and possesses a federal employer's identification number (FEIN) issued by the Internal Revenue Service. If the department or these regulations require that a claim form be filed, the FEIN must be shown on the claim form.

C. A group, family unit, club or other organization which is not a legal entity or which does not possess a FEIN may file Internal Revenue Service (IRS) Form 5754, "Statement by Person(s) Receiving Gambling Winnings," with the department. This form designates to whom winnings are to be paid and the person(s) to whom winnings are taxable.

D. A group, family unit, club or other organization which is not a legal entity or which does not possess a FEIN and which does not file IRS Form 5754 with the department shall designate the individuals in whose names the claim shall be entered and those persons' social security numbers shall be furnished.

E. A group, family unit, club or other organization wishing to divide a jackpot prize shall complete an "Agreement to Share Ownership and Proceeds of Lottery Ticket" form. The filing of this form is an irrevocable election which may only be changed by an appropriate judicial order.

§ 3.13. Right to prize not assignable.

No right of any person to a prize shall be assignable, except that:

1. The director may pay any prize according to the terms of a deceased prize winner's beneficiary designation or similar form filed with the department or to the estate of a deceased prize winner who has not completed such a form, and

2. The prize to which a winner is entitled may be paid to another person pursuant to an appropriate judicial order.

§ 3.14. No accelerated payments.

The director shall not accelerate payment of a prize for any reason.

§ 3.15. Liability ends with prize payment.

All liability of the Commonwealth, its officials, officers and employees, and of the department, the board, the director and employees of the department, terminates upon final payment of a lottery prize.

§ 3.16. Delay of payment allowed.

The director may refrain from making payment of the prize pending a final determination by the director, under any of the following circumstances:

1. If a dispute occurs or it appears that a dispute may occur relative to any prize;

2. If there is any question regarding the identity of the claimant;

3. If there is any question regarding the validity of any ticket presented for payment; or

4. If the claim is subject to any set-off for delinquent debts owed to any agency eligible to participate in the Set-Off Debt Collection Act if the agency has registered such debt with the Virginia Department of Taxation and timely notice of the debt has been furnished by the Virginia Department of Taxation to the State Lottery Department.

No liability for interest for any such delay shall accrue to the benefit of the claimant pending payment of the claim. The department is neither liable for nor has it any responsibility to resolve disputes between competing claimants.

§ 3.17. When installment prize payment may be delayed.

The director may, at any time, delay any installment in order to review a change in circumstance relative to the prize awarded, the payee, the claim, or any other matter that has been brought to the department's attention. All delayed installments shall be brought up to date immediately upon the director's confirmation. Delayed installments shall continue to be paid according to the original payment schedule after the director's decision is given. No liability for interest for such delay shall accrue to the benefit of the claimant pending payment of the claim.

§ 3.18. Ticket is bearer instrument.

A ticket that has been legally issued by a licensed lottery retailer is a bearer instrument until the ticket has been signed. The person who signs the ticket is considered the bearer of the ticket.

§ 3.19. Payment made to bearer.

Payment of any prize will be made to the bearer of the validated winning ticket for that prize upon submission of a prize claim form, if one is required, unless otherwise delayed in accordance with these regulations. If a validated winning ticket has been signed, the bearer may be required to present proper identification.

§ 3.20. Marking tickets prohibited; exceptions.

Marking of tickets in any way is prohibited except by a player to claim a prize or by the department or a retailer to identify or to void the ticket.

§ 3.21. Penalty for counterfeit, forged or altered ticket.

Forging, altering or fraudulently making any lottery ticket or knowingly presenting a counterfeit, forged or altered ticket for prize payment or transferring such a ticket to another person to be presented for prize payment is a Class 6 felony in accordance with the state lottery law.

§ 3.22. Lost, stolen, destroyed tickets.

The department is not liable for lost, stolen or destroyed tickets.

The director may honor a prize claim of an apparent winner who does not possess the original ticket if the claimant is in possession of information which demonstrates that the original ticket meets the following criteria and can be validated through other means. The exception does not apply to an on-line game ticket the prize for which is a free ticket.

1. The claim form and a photocopy of the ticket, or photocopy of the original claim form and ticket, are timely filed with the department;

2. The prize for which the claim is filed is an unclaimed winning prize as verified in the department's records;

3. The prize has not been claimed within the required redemption period; and

4. The claim is filed within 180 days of the drawing or within the redemption period, as established by game rules.

§ 3.23. Retailer to pay all prizes of $600 or less.

Prizes of $600 or less shall be paid by any licensed on-line retailer, or by the department at the option of the ticket holder, or by the department when the ticket cannot be validated by the retailer.

§ 3.24. Retailers' prize payment procedures.

Procedures for prize payments by retailers are as follows:

1. Retailers may pay cash prizes in cash, by certified check, cashier's check, business check, or money order, or by any combination of these methods.

2. If a check for payment of a prize by a retailer to a claimant is denied for any reason, the retailer is subject to the same service charge for referring a debt to the department for collection and penalty payments that would apply if the check were made payable to the department. A claimant whose prize check is denied shall notify the department to obtain the prize.

3. Retailers shall pay claims for all prizes of $600 or less during all normal business hours of the lottery retailer when the on-line terminal is operational and the ticket claim can be validated.

4. Prize claims shall be payable only at the location specified on the license.

5. The department will reimburse a retailer for prizes paid up to 180 days after the drawing date.

§ 3.25. When retailer cannot validate ticket.

If, for any reason, a retailer is unable to validate a prize winning ticket, the retailer shall provide the ticket holder with a department claim form and instruct the ticket holder on how to file a claim with the department.

§ 3.26. No reimbursement for retailer errors.

The department shall not reimburse retailers for prize claims a retailer has paid in error.

§ 3.27. Retailer to void winning ticket.

After a winning ticket is validated and signed by the ticket holder, the retailer shall physically void the ticket to prevent it from being redeemed more than once. The manner of voiding the ticket will be prescribed by the director.

§ 3.28. Prizes of $600 or less.

A retailer shall pay on-line prizes of $600 or less won on tickets validated and determined by the department to be official prize winners, regardless of where the tickets were sold. The retailer shall display special informational material provided by or approved by the department informing the public that the retailer pays all prizes of $600 or less.

§ 3.29. When prize shall be claimed from the department.

The department will process claims for payment of prizes in any of the following circumstances:

1. If a retailer cannot validate a claim which the retailer otherwise would pay, the ticket holder shall present the signed ticket and a completed claim form to the department regional office or mail both the signed ticket and a completed claim form to the department central office.

2. If a ticket holder is unable to return to any on-line retailer to claim a prize which the retailer otherwise would pay, the ticket holder may present the signed ticket at any department regional office or mail both the signed ticket and a completed claim form to the department central office.

3. If the prize amount is $601 or more, the ticket holder may present the signed ticket and a completed claim form at any department regional office or mail both the signed ticket and a completed claim form to the department central office.

§ 3.30. Prizes of $25,000 or less.

Prizes of $25,000 or less may be claimed from any of the department's regional offices. Regional offices will pay prizes by check after tickets are validated and after any other applicable requirements contained in these regulations are met.

§ 3.31. Prizes of more than $25,000.

Prizes of more than $25,000 and noncash prizes other than free lottery tickets may be claimed from the department's central office in Richmond. The central office will pay cash prizes by check, after tickets are validated and after any other applicable requirements contained in these regulations are met.

§ 3.32. Grand prize event.

If an on-line game includes a grand prize or jackpot event, the following general criteria shall be used:

1. Entrants in the event shall be selected from tickets which meet the criteria stated in specific game rules set by the director consistent with § 1.1 of these regulations.

2. Participation in the drawing(s) shall be limited to those tickets which are actually purchased by the entrants on or before the date announced by the director.

3. If, after the event is held, the director determines that a ticket should have been entered into the event, the director may place that ticket into a grand prize drawing for the next equivalent event. That action is the extent of the department's liability.

4. The director shall determine the date(s), time(s) and procedures for selecting grand prize winner(s) for each on-line game. The proceedings for selection of the winners shall be open to members of the news media and to either the general public or entrants or both.

§ 3.33. When prize payable over time.

Unless the rules for any specific on-line game provide

otherwise, any cash prize of $100,001 or more will be paid in multiple payments over time. The schedule of payments shall be designed to pay the winner equal dollar amounts in each year, with the exception of the first, until the total payments equal the prize amount.

§ 3.34. Rounding total prize payment.

When a prize or share is to be paid over time, except for the first payment, the director may round the actual amount of the prize or share to the nearest $1,000 to facilitate purchase of an appropriate funding mechanism.

§ 3.35. When prize payable for "life."

If a prize is advertised as payable for the life of the winner, only an individual may claim the prize. If a claim is filed on behalf of a group, company, corporation or any other type of organization, the life of the claim shall be 20 years.

§ 3.36. When claims form required.

A claim form for a winning ticket may be obtained from any department office or any licensed lottery retailer. A claim form shall be required to claim any prize from the department's central office. A claim form shall be required to claim any prize of $601 or more from the department's regional offices. This section does not apply to the redemption of prizes awarded through a subscription plan as identified in § 4.14.

§ 3.37. Department action on claims for prizes submitted to department.

The department shall validate the winning ticket claim according to procedures contained in these regulations.

1. If the claim is not valid, the department will promptly notify the ticket holder.

2. If the claim is mailed to the department and the department validates the claim, a check for the prize amount will be mailed to the winner.

3. If an individual presents a claim to the department in person and the department validates the claim, a check for the prize amount will be presented to the bearer.

§ 3.38. Withholding, notification of prize payments.

A. When paying any prize of $601 or more, the department shall:

1. File the appropriate income reporting form(s) with the Virginia Department of Taxation and the Federal Internal Revenue Service; and

2. Withhold federal and state taxes from any winning ticket in excess of $5,001.

B. Additionally, when paying any prize of $101 or more, the department shall withhold any moneys due for delinquent debts listed with the Commonwealth's Set-Off Debt Collection Program.

§ 3.39. Director may postpone drawing.

The director may postpone any drawing to a certain time and publicize the postponement if he finds that the postponement will serve and protect the public interest.

PART IV.
SUBSCRIPTION PLAN.

§ 4.1. Development of subscription.

In addition to regulations set forth in this part, the conduct of subscriptions is subject to all applicable rules and regulations of the department.

§ 4.2. Subscriptions.

Subscriptions may be purchased for periods specified by the department in rules applicable to the lottery game to which the subscription applies.

§ 4.3. Subscription price.

The sale price of a subscription shall be determined by the board.

§ 4.4. Subscription cancellation.

A. A subscription entered into the department's central computer system cannot be cancelled by a subscriber or group-designated agent except when a subscriber or group-designated agent becomes employed by the lottery as an employee, board member, officer or employee of any vendor to the lottery of lottery on-line or instant ticket goods or services working directly with the department on a contract for such goods or services, or any person residing in the same household as any such board member, officer or employee during the subscription period.

B. A subscription cannot be assigned by a subscriber or group-designated agent to another person.

C. Funds remitted to the department as payment for the subscription are not refundable to the subscriber or group-designated agent unless provisions identified in subsection A of this section are present.

§ 4.5. Effective date.

The subscription shall be effective on the start date indicated in the confirmation notice for that subscription.

§ 4.6 Retailer compensation.

Active licensed lottery retailers shall receive 5.0%

compensation on sales of subscriptions. The compensation shall be based on all subscriptions purchased at any active licensed lottery retailer location as well as on all subscription applications mailed or delivered to the department's central office with payment and bearing a valid licensed lottery retailer number. In addition, active licensed lottery retailers shall be compensated for renewals of subscriptions which originated at their retailer location. Retailer compensation for a subscription shall be cancelled in the event the tender for the subscription payment is not honored by the payor institution or if the licensed lottery retailer does not provide the retailer number.

§ 4.7. Validation requirements.

Only those subscriptions entered into the department's central computer system and which are confirmed are valid entries eligible for prizes. Otherwise, game numbers selected on a subscription application are not eligible to win a prize in any drawing.

§ 4.8. Purchase of subscription.

A. Subscription applications may be distributed through the department's central office, any department regional office, any licensed lottery retailer, or any other means as determined by the department.

B. An individual, group, family unit, club, or other organization otherwise eligible to purchase lottery tickets may purchase a subscription by mail from the department's central office or from other locations as determined by the department.

C. In order to purchase a subscription, an individual, group, family unit, club, or other organization must furnish a valid Virginia street address or Virginia post office box, as required by U.S. postal regulations.

D. After receipt of the subscription at the department's central office, the subsequent entry of data into the central computer system, and the bank clearance of the subscriber's method of payment, the department shall mail a confirmation notice to the subscriber or group-designated agent at the address provided on the subscription application.

§ 4.9. Subscription application requirements.

A. A subscription application must meet the following requirements in order to be accepted for entry:

1. The numbers selected by the player must contain the prescribed number of unduplicated game numbers from numbers available for play in the game. If permitted by the rules of the game, numbers may be duplicated;

2. The subscription application must contain a valid Virginia street address or Virginia post office box, as required by U.S. postal regulations;

3. If a subscription is entered for a group, corporation, family unit or club, one individual must be designated as the group agent;

4. The subscription application must be an official department application; and

5. The designated numbers selected by the player or group-designated agent for a subscription shall remain unchanged for the duration of the subscription once the designated numbers are entered into the department's central computer system and confirmed by the player. If any easy pick option is selected by the player, the randomly-selected numbers shall remain unchanged for the duration of the subscription.

B. A subscription application will be rejected for any of the following reasons:

1. If a subscription application is received by the department on an unofficial subscription form;

2. If no numbers are designated in a selected game panel and an available easy pick option is not selected;

3. If more or fewer than the prescribed set of numbers are selected;

4. If numbers are duplicated within the game panel, unless permitted by game rules;

5. If both a prescribed set of numbers and easy pick is designated in the same game panel;

6. If payment is not for the correct amount and is not made payable to the "Virginia Lottery," if a check or money order is returned unpaid, if a third-party check is remitted for payment, or if remittance is dishonored, the registration and the confirmation notice are void automatically for all drawings including those which may have occurred prior to the remittance being dishonored;

7. If the application contains an out-of-state address;

8. If the application is not signed;

9. If an individual (subscriber, group-designated agent or recipient) is under the age of 18, according to birth date recorded on the application; or

10. If an individual is found to be a Virginia Lottery Department employee, vendor employee, or household member, otherwise prohibited from playing any lottery game.

C. If the subscription is rejected by the department, both the subscription application and subscription payment will

be returned to the subscriber or group-designated agent with a letter of explanation and no prize will be paid on any play appearing on the rejected subscription application for any drawing deriving from that subscription application.

These regulations assume that an easy pick option is available. If not available in a subscription plan, the criteria for accepting or rejecting a subscription application is modified accordingly.

§ 4.10. Subscription gifts.

A. Any recipient of a subscription gift must have a valid Virginia address or Virginia post office box.

B. Numbers selected by the subscriber for the recipient cannot be cancelled or reselected.

C. All other provisions of these regulations shall apply to subscription gifts, subscription purchasers and subscription recipients.

§ 4.11. Subscription renewals.

A. Approximately six weeks prior to the end of a subscription, a renewal notice will be mailed to a subscriber or group-designated agent at the address on file with the department. Subscribers or group-designated agents may renew the subscription by returning the renewal notice with payment to the department's central office. Renewal notices may be obtained from the department's central office or other locations as determined by the lottery. Renewal notices shall not be mailed to subscribers or group-designated agents who no longer have a valid Virginia address or Virginia post office box.

B. Renewals will not be accepted unless the individual subscriber or group-designated agent furnishes a valid Virginia address or Virginia post office box.

§ 4.12. Change of name.

In the event a subscriber or group-designated agent's name changes during the subscription period, he may notify the department in writing of such change. Proof of name change may be required by the department at any time. The department reserves the right to refuse to change a name registered as a subscriber.

§ 4.13. Change of address.

In the event a subscriber or group-designated agent moves out of state during the subscription period and notifies the department of the change of address, the subscription will remain in effect until the number of draws for that subscription plan has expired. The subscriber or group-designated agent will not be eligible to receive a subscription renewal notice.

§ 4.14. Payment of prizes.

A. Before any prize of $601 or greater can be paid, the department must be provided with the subscriber's taxpayer identification number, if it has not already been provided on the subscription application. The department will make reasonable efforts to obtain the missing taxpayer identification number. Payment will be delayed until the number is provided. Prizes for which no taxpayer identification number has been furnished within 180 days of the date of the drawing in which the prize was won will be forfeited.

B. The department will monitor subscriptions and mail nonannuitized prize payments to subscription winners without the necessity of a claim form being filed by the subscription winners. Prizes shall be subject to payment of any taxes and Set-Off Debt Collection Act amounts due and the department shall deduct applicable taxes and set-off debt amounts prior to mailing prize payments.

C. Subscribers winning a free play will receive a check as payment of free ticket prize(s) from the department at the end of their subscription(s). In lieu of awarding free tickets to a subscriber or group-designated agent, the check will pay the cumulative value of all free tickets won during the subscription plan. The value of free play tickets won on a subscription shall be the same as the purchase price for a single-play, on-line ticket in the same game as determined by the board.

D. The department will notify subscription winners of annuitized prizes by certified mail or telephone, at the address or telephone number shown on the subscription application on file with the department, and request that they come to the department's central office to receive the first prize payment. Subsequent checks will be mailed to subscription winners. Claim forms for annuitized prizes will not be required.

E. Prize payments will be processed in the name of an individual or group-designated agent according to information furnished on the subscription application.

1. A group, family unit, club or other organization which is not a legal entity or which does not possess a Federal Employer's Identification Number (FEIN) may file Internal Revenue Service (IRS) Form 5754, "Statement by Person(s) Receiving Gambling Winnings," with the department. This form designates to whom winnings are to be paid and are taxable.

2. If the prize winner does not furnish a social security number or taxpayer identification number, the prize will be deemed unclaimed and the department will not pay the prize. Failure to furnish the social security number or taxpayer identification number may expose the prize winner(s) to the risk that the prize will remain unclaimed after 180 days from the date of the drawing and will be forfeited.

F. If for any reason a payment is returned by the U.S. Postal Service and a new address cannot be located, such payments will be held by the department under the state's unclaimed property laws and transferred to the state if not claimed within 180 days following the drawing. Thereafter the department shall not be liable for payment and winners who make claims after this time period will be referred to the Unclaimed Property Division, Virginia Department of the Treasury.

G. Any subscription cash prize which remains unclaimed for any reason other than the preceding subsection after 180 days following the drawing which determined the prize shall revert to the State Literary Fund. This includes, but is not limited to, failure or refusal to furnish a taxpayer identification number to complete the claim for a prize won.

§ 4.15. Player responsibility.

A. The department is not liable for department or licensed lottery retailer employee errors.

B. The player(s) assumes responsibility for any delays resulting from the choice of method of forwarding a subscription application to the department.

C. The subscriber or group-designated agent is responsible for verifying the accuracy of the lottery game data as recorded on the confirmation notice mailed to the subscriber or group-designated agent by the department.

D. The player shall notify the department if an error has been made. Notification shall be postmarked within 10 business days of date of the confirmation notice.

E. Player-requested corrections are not effective until entry of the corrected data into the department's central computer system and a corrected confirmation notice is mailed to the subscriber by the department. Such corrections are not retroactive. Any errors in lottery game data remain valid for all drawings occurring while the erroneous data remains effective but such erroneous game data is no longer valid for drawings occurring after the erroneous data is corrected and a corrected confirmation notice is issued.

§ 4.16. Department responsibility.

A. The department is responsible for entering the subscription data, including authorized corrections, on the department's central computer system within a reasonable period of time from receipt of the subscription application and clearance of remittance or receipt of the Request for Corrections notice.

B. If for any reason a subscription play is not accepted, the liability of the department and its retailers is limited to a refund of the purchase price for that play.

§ 4.17. Disputes.

A. The department is neither liable for nor has it any responsibility to resolve disputes among group members for group subscriptions.

B. The decision of the director shall be final.

NOTICE: The forms used in administering the State Lottery Department On-Line Game Regulations are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the State Lottery Department, 2201 West Broad Street, Richmond, Virginia, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia.

On-Line Game Survey (SLD-120)
Retailer Data Collection
Lottery Retailer Surety Bond
Retailer Agreement Form (SLD-0064, 10/92, revised)
Virginia Lottery Licensed Retailer Certificate (4/90)
Things to Do
Commonwealth of Virginia Lottery Bond Application
Special Notice on Bonding for Lottery Retailers
Virginia Lottery On-Line Play Center; Agreement/Order Form (SLD-0136, 4/89)
On-Line Authorization Agreement for Preauthorized Payment
On-Line Ticket Stock Return (X-0120, 6/89)
On-Line Weekly Settlement Envelope (SLD-0127)
Weekly Settlement Form
A/R Online Accounting Transaction Form (X-0105, 6/89)
Cash Tickets Envelope/Cancelled Tickets Envelope
Ticket Problem Report
Winner Claim Form (SLD-0007, 3/89)
Winner-Gram
We're Sorry But.....
Subscription Playslip
Confirmation Letter
Statement by Person(s) Receiving Gambling Winnings (Form 5754)
Report of Cash Payments Over $10,000 Received in a Trade or Business (Form 8300, 3/92)
Agreement to Share Ownership and Proceeds of Lottery Ticket

EXECUTIVE ORDER NUMBER FORTY-THREE (92) (REVISED)

CREATING THE GOVERNOR'S COMMISSION ON DEFENSE CONVERSION AND ECONOMIC ADJUSTMENT

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and, including, but not limited to, Section 2.1-51.36 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby create the Governor's Commission on Defense Conversion and Economic Adjustment.

Spending by the United States Department of Defense, amounting in Virginia to over seventeen billion dollars in 1990, is a prominent factor in the State's economy. Per capita defense expenditures are higher in Virginia than in any other state, leading many experts to believe that Virginia is especially vulnerable to sudden reductions in defense expenditures. Due to the end of the Cold War, defense-related expenditures are expected to decline significantly during the balance of this decade.

Recognizing the adverse consequences that may be suffered by Virginia businesses and the State's economy as a result of the anticipated reductions, the Secretary of Economic Development established an inter-agency task force in March, 1990 to review, analyze, and monitor defense-related issues and to recommend steps that should be taken by Virginia government to reduce these adverse impacts. During the summer of 1991, the Commonwealth, in cooperation with the National Governors' Association, conducted a pilot program to develop a strategy for mobilizing state government resources to aid Virginia businesses in this regard. The inter-agency task force has conducted research on Virginia's defense industry, produced analytical reports on defense procurement spending, developed the capability to perform economic impact analyses on defense expenditure reductions as they occur, and has begun to implement the recommendations of the pilot program.

Having begun to fully mobilize state government resources to meet the conversion needs of our businesses, it is now appropriate to take additional measures to coordinate state efforts and to work in partnership with the Virginia business community.

Accordingly, the Governor's Commission on Defense Conversion and Economic Adjustment is created as a public and private sector partnership to expand the work heretofore done and, more particularly, to do the following:

1. Conduct and supervise research to develop a better understanding of the defense industry, including the collection of data to assess the impact of defense expenditure reductions on the economy of Virginia and its substate areas.

2. Initiate community education programs to inform defense-dependent communities of the availability of technical and financial assistance from the federal and state governments and other sources.

3. Coordinate state programs that provide direct assistance to defense-impacted firms, workers, and communities and exploring the need for new initiatives.

4. Make recommendations to the federal government for increased and effective support of conversion efforts in Virginia.

5. Coordinate conversion efforts with the appropriate authorities of the federal government and governments of other states.

6. Make recommendations for removal of superfluous regulations by the federal, state, and local governments that impede free enterprise, especially by firms attempting to convert to non-defense business activities.

7. Prepare a report and recommendations for the Secretary of Education and the Secretary of Economic Development, consistent with House Joint Resolution 325 as passed by the 1992 session of the General Assembly of Virginia, on how the Commonwealth can best assist military personnel in their transition to civilian employment and on how to encourage partnerships between the Commonwealth and the military to foster research and development in the Commonwealth.

The Commission shall pay special attention to the needs of small businesses, particularly minority and women owned enterprises, which are expected to be adversely affected in a disproportionate way by defense cutbacks.

It is recognized that a number of existing agencies, boards and commissions of the Commonwealth share responsibility for portions of the work assigned to the Governor's Commission on Defense Conversion and Economic Adjustment. Therefore, it is my intent that the Commission work in close cooperation with appropriate state boards, including the Governor's Economic Advisory Council, the Governor's Advisory Board of Economists, the Governor's Advisory Council on Revenue Estimates, the Industrial Development Services Advisory Board and the Small Business Advisory Board.

Members of the Commission shall be appointed by the Governor and shall serve at his pleasure. The Commission shall consist of no more than 17 members and may include, among others, leaders in business, industry, labor and the general citizenry. The Chairperson and Vice Chairperson shall be appointed by the Governor, and too, shall serve in such capacity at the pleasure of the Governor.

All agencies of the Commonwealth are expected to cooperate with and provide assistance to the Commission to the fullest extent allowed by law and to the extent that such cooperation does not conflict with the missions of the various agencies. The Commission shall consult with and seek guidance from others in private industry, local government and agencies of the federal government as needed.

Such funding as is necessary for the fulfillment of the Commission's business during the term of its existence will be provided by such executive branch agencies as the Governor may from time to time designate. Total expenditures to support the Commission's work are estimated to be $19,000.

Such staff support as is necessary for the conduct of the Commission's business during the term of its existence will be provided by the Virginia Employment Commission and such other executive branch agencies as the Governor may from time to time designate. An estimated 5,000 hours of staff support will be required to assist the Commission.

Members of the Commission shall serve without compensation and shall not receive any expenses incurred in the discharge of their official duties.

The Commission shall meet at the call of the Chairperson and make its first report to the Governor no later than November 1, 1992. It may issue interim reports and make recommendations at any time it deems necessary.

This Executive Order shall become effective upon its signing and shall remain in full force and effect until March 24, 1993, unless amended or rescinded by further executive order.

This Executive Order rescinds Executive Order Number Forty-Three (92) issued the 25th day of March, nineteen hundred and ninety-two.

Given under my hand and under the Seal of the Commonwealth of Virginia this 9th day of December, 1992.

/s/ Lawrence Douglas Wilder
Governor

EXECUTIVE ORDER NUMBER FIFTY-EIGHT (92)

JOB TRAINING PARTNERSHIP ACT

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and including, but not limited to, Sections 2.1-704, 2.1-707, and 2.1-710 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby assign authority for carrying out the State's responsibilities under the federal Job Training Partnership Act, PL 97-300 as amended by PL 102-367 (hereafter referred to as the Act).

The purpose of programs funded under the Act is to prepare youth and adults facing serious barriers to employment for participation in the labor force by providing job training and other services that will result in increased employment and earnings, increased educational and occupational skills, and decreased welfare dependency, thereby improving the quality of the workforce and enhancing the productivity and competitiveness of the nation.

GOVERNOR'S JOB TRAINING COORDINATING COUNCIL

The Governor's Job Training Coordinating Council is hereby continued as an advisory body in accordance with Section 2.1-704 of the Code of Virginia and the provisions of the Act, as hereinafter provided. The Secretary of Health and Human Resources will provide policy guidance and direction for the Council.

The Council's primary duty shall be to recommend a coordinated state policy for all job training programs, that shall result in better job opportunities, improved program coordination, and reduced duplication of services and activities. The Council shall have the following specific advisory responsibilities:

1. To identify, in concert with appropriate state agencies, the Commonwealth's employment and training and vocational education needs, and to assess the extent to which employment and training, vocational education, rehabilitation services, public assistance, economic development, and other federal, state and local programs and services represent a consistent, integrated, and coordinated approach to meeting those needs;

2. To recommend to the Governor a coordination and special services plan, as required by the Act;

3. To recommend to the Governor substate service delivery areas, to plan resource allocations not subject to Section 202(b) or 262(b) of the Act, to provide management guidance and review for all programs in the state funded by the Act, to develop appropriate linkages with other employment and training programs, to coordinate activities with private industry councils established under the Act, to develop the Governor's Coordination and Special Services Plan and to recommend variations in performance standards;

4. To advise the Governor and local entities on job training plans and substate plans and to certify the consistency of such plans with criteria under the Governor's Coordination and Special Services Plan for coordinating activities under the Act with other federal, state and local employment-related programs, including programs operated in urban enterprise zones designated in accordance with Section 59.1-274 of the Code of Virginia;

5. To review the operation of programs conducted in each service delivery area, including the availability, responsiveness and adequacy of state services;

6. To recommend to the Governor, state agencies, appropriate chief elected officials, private industry councils, service providers, the General Assembly, and the general public ways to improve the effectiveness of programs or services provided under the Act;

7. To make an annual report to the Governor which shall be a public document, and to issue such other studies, reports, or documents as it deems advisable to assist service delivery areas in carrying out the purposes of the Act;

8. To review plans of all state agencies that provide employment and training, and related services, including the state plan developed pursuant to Section 8(b) of the federal Wagner-Peyser Act and the plan required pursuant to Section 114 of the federal Carl D. Perkins Vocational Education Act; and to provide comments and recommendations to the Governor, the General Assembly and the appropriate state and federal agencies on appropriateness and effectiveness of employment and training and related services delivery systems in the Commonwealth; and

9. To provide advice to the Governor regarding the use of funds under Title III, including advice on the designation of substate areas and substate grantees, and the procedures for the selection of representatives within such areas under Section 312 and the methods for allocation and reallocation of funds including the method for distribution of funds reserved under Section 302(c)(2) and funds subject to reallocation under Section 303(d).

All reports, recommendations, reviews, and plans prepared by the Council shall be transmitted to the Secretary of Health and Human Resources and the Secretary of Economic Development, who jointly will advise the Governor on appropriate actions to be taken with respect to such submissions.

All state agencies, institutions, and collegial bodies are instructed to cooperate and assist the Council in the performance of its duties when requested to do so. The Council may seek advice and assistance from any available source. The Council may establish such ad hoc advisory committees as it deems necessary and appropriate for the performance of its duties. Local government officials and community leaders throughout the Commonwealth are requested and urged to advise and assist the Council in the performance of its duties.

The Council shall consist of thirty members appointed by the Governor and serving at his pleasure. The Governor shall appoint the chairman of the Council, who shall be a nongovernmental member. The Council shall consist of representatives of the groups listed below.

1. Nine members shall be private sector representatives from private for-profit companies or other major nongovernmental employers. One member from this group shall represent agricultural interests. Three of the private sector members shall represent private sector organizations with 500 or fewer employees.

2. Seven state officials, or their designees, shall be appointed as follows:

One member of the General Assembly of Virginia,

The Commissioner of the Virginia Employment Commission,

The Commissioner of the Department of Rehabilitative Services,

The Commissioner of the Department of Social Services,

A community college president, appointed from nominations of the Advisory Council of Community College Presidents,

The Director of Workforce Services of the Department of Economic Development, and

The Division Chief for Adolescent Education of the Department of Education.

3. One member shall be a representative of units of general local government or consortia thereof and shall represent administrative entities or grantees under the Act, and shall be appointed from nominations of the chief elected officials of such units or consortia.

4. One member shall be a representative of local educational agencies who shall be appointed from nominations by the Virginia Association of School Administrators.

5. Nine members shall be representatives of organized labor and community-based organizations.

6. Three members shall be appointed from the general public.

Members of the Council will be eligible for reimbursement for their travel expenses in accordance with state travel regulations.

GOVERNOR'S EMPLOYMENT AND TRAINING DEPARTMENT

In accordance with Section 2.1-708 of the Code of Virginia, the Governor's Employment and Training Department receives all federal funds allocated under Titles II and III of the Act and is responsible for

implementing Titles I, II, and the substate part of Title III.

In accordance with Section 2.1-707 of the Code of Virginia, the Department, under the direction of its Executive Director, shall provide assistance to the Council. Such staff support as is deemed necessary by the Executive Director for the conduct of the Council's business is to be furnished by the Governor's Employment and Training Department. Such funding as is deemed necessary by the Executive Director for the Council's operation is to be provided from funds appropriated to the Department.

The Governor's Employment and Training Department and each other state agency that administers employment and training programs shall coordinate their planning and develop means to assure the best quality job training and placement programs for participants in programs funded under the Act.

The administrative entities of the service delivery areas have been designated by the Governor as the substate grantees under the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA). Oversight of the substate grantees and reporting requirements shall be the shared responsibility of the Governor's Employment and Training Department and the Virginia Employment Commission as outlined in a memorandum of understanding between the Department and the Commission.

VIRGINIA EMPLOYMENT COMMISSION

In accordance with Section 2.1-710 of the Code of Virginia, the Virginia Employment Commission is designated as the agency responsible for administering and managing the following programs authorized by PL 97-300 as amended by PL 102-367:

Dislocated Worker Unit under the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA); and

Labor Market Information (Title IV, Part E).

The Commission will continue to operate the Title III Dislocated Worker Program through completion and closeout, to include National Reserve Discretionary Projects.

The Commission will receive the state program allocation through the Governor's Employment and Training Department for the purpose of implementing the responsibilities of the Dislocated Worker Unit.

DEPARTMENT OF EDUCATION

In accordance with Section 2.1-710 of the Code of Virginia, the Virginia Department of Education is designated as the agency responsible for administering the state education grants authorized by Section 123 of the Act. The Department of Education will receive appropriate funds granted under the Act through the Governor's Employment and Training Department. In addition to those funds, the Department of Education will arrange for matching funds as required by the Act to provide education and training programs for eligible participants through agreements with administrative entities in service delivery areas in Virginia and, where appropriate, local education agencies. Funds available for program coordination will be used in conformity with the adopted Governor's Coordination and Special Services Plan.

DEPARTMENT FOR THE AGING

In accordance with Section 2.1-710 of the Code of Virginia, the Virginia Department for the Aging is designated as the agency responsible for administering training programs for older individuals authorized by Section 204(d) of the Act. The Department for the Aging will receive appropriate funds granted under the Act through the Governor's Employment and Training Department. Programs for eligible individuals shall be developed in conjunction with service delivery areas in Virginia and shall be consistent with the plan for each service delivery area prepared and submitted in accordance with the provisions of the Act.

These programs shall be designed to assure the training and placement of older individuals in employment opportunities with private business concerns. Wherever possible, these programs shall train participants for jobs in growth industries and jobs that reflect the use of new technological skills. Funds available for program coordination will be allocated in conformity with the adopted Governor's Coordination and Special Services Plan.

This Executive Order will become effective upon its signing and will remain in full force and effect until June 30, 1994, unless amended or rescinded by further executive order.

This Executive Order rescinds Executive Order Number Sixteen (90) issued the 5th day of May, nineteen hundred and ninety.

Given under my hand and under the Seal of the Commonwealth of Virginia this 23rd day of November, 1992.

/s/ Lawrence Douglas Wilder
Governor

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.12:9.1 of the Code of Virginia)

DEPARTMENT OF TAXATION

Title of Regulation: **VR 630-3-442. Consolidated and**

Combined Returns.

Governor's Comment:

I do not object to the initial draft of these regulations. However, I do reserve the right to comment on the final package, including any changes made as a result of public hearings and comments, before promulgation. I recommend that the Department of Taxation consider the suggestions made by the Department of Planning and Budget to clarify language in the proposal.

/s/ Lawrence Douglas Wilder
Governor
Date: December 17, 1992

DEPARTMENT OF WASTE MANAGEMENT

Title of Regulation: **VR 672-30-1. Virginia Regulations Governing the Transportation of Hazardous Materials.**

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public hearings and comments, before promulgation.

/s/ Lawrence Douglas Wilder
Governor
Date: December 21, 1992

STATE WATER CONTROL BOARD

Title of Regulation: **VR 680-01-01. Fees for Permits and Certificates.**

Governor's Comment:

I have reviewed the State Water Control Board's permit fee regulations. I reserve the right to comment following consideration of comments received from the public. However, I am concerned about the impact of these fees on homeowners and ask the Board to take special note of comments from the public on this issue.

/s/ Lawrence Douglas Wilder
Governor
Date: December 21, 1992

The Legislative RECORD

vol. II / no. 7 Published in the Commonwealth of Virginia december 1992

DIVISION OF LEGISLATIVE SERVICES

SJR 104: Joint Subcommittee to Study Cost-Effective Measures Which Will Enable Virginia to Comply with the 1990 Clean Air Act

◆

November 9, 1992, Richmond

The joint subcommittee is concentrating on measures addressing air pollution caused by motor vehicle emissions. Focusing on proposed vehicle emissions inspection programs and proposals mandating the sale of low emissions vehicles (LEVs) in Northern Virginia, the subcommittee heard testimony from over 40 witnesses representing industries and interest groups affected by these proposed compliance measures.

The 1990 legislation and recently finalized EPA regulations require Northern Virginia and Richmond to achieve significant air pollution reductions: for Northern Virginia, 15% by 1996 and 3% per year thereafter, and for Richmond, 15% by 1996. The EPA has determined that these areas fail to meet federal standards for ozone (Richmond and Northern Virginia) and carbon monoxide (Northern Virginia) levels. Richmond's air quality nonattainment for ozone is classified as "moderate" under the federal standards; Northern Virginia's is "serious."

The primary sources of pollution in these urban and suburban areas are motor vehicle (mobile source) and industrial (stationary source) emissions. Richmond and Northern Virginia have few "smokestack" industries, thus motor vehicle emissions are the primary target. These areas must introduce programs mandating periodic inspection and maintenance (I/M) of motor vehicle pollution control equipment. If I/M and other mobile source programs (e.g., stage II vapor recovery, reformulated gasoline, old-

vehicle scrappage) alone fail to achieve mandatory air quality levels, however, additional industrial emissions controls will be necessary.

I/M Programs

Richmond must implement a "basic" I/M program, while Northern Virginia's mandatory "enhanced" program requires more comprehensive inspections. EPA rules prohibit states from permitting facilities conducting enhanced inspections to perform required repairs, unless states can demonstrate that a "test and repair" system will be equally effective in achieving "test only" performance results. Basic programs can permit test and repair facilities, similar to what is currently permitted in Virginia's automobile safety inspection program, without limitation.

EPA rules encourage "enhanced, test only" programs by granting attainment credits to those areas selecting this emissions inspection option. These rules also permit states to enlarge the EPA-designated nonattainment areas for purposes of mandating pollution-control strategies. Consequently, emissions inspections requirements for Northern Virginia and Richmond can be expanded to include adjacent areas, particularly those whose automobiles are part of the designated area's commuter traffic.

Low-Emissions Motor Vehicles

Virginia's Department of Air Pollution Control (DAPC) believes that Northern Virginia is unlikely to meet federal air quality standards through an enhanced I/M program alone, however. DAPC has endorsed a proposal requiring all new motor vehicles sold in Northern Virginia to conform to LEV specifications. The LEV (also known as the "California Car") is not required under the 1990 amendments. However, states can use it as part of their strategy to meet Clean Air Act requirements.

The DAPC believes that a combined I/M and LEV strategy is necessary in Northern Virginia to achieve air quality attainment and thus to avoid EPA-imposed stationary source emissions controls for business and industry. The automobile manufacturing industry strenuously opposes the LEV option. Their representatives—and those representing automobile dealers, petroleum refiners, and gasoline dealers—told the subcommittee that the pollution control technology required to manufacture LEVs is still in its infancy and thus unproved. They also question the legality of mandating LEVs without also requiring the sale of the special low-emissions fuel (the so-called "green gas") said to be an essential component in the LEV program.

Automobile dealers are especially opposed to LEVs. They testified that interdealer vehicle purchases—a common and necessary practice, often done interstate—would be chaotic if some areas required LEV vehicles and others did not. Moreover, they added, requiring LEVs in Northern Virginia alone would create additional hardships in Virginia's statewide automobile market.

LEV opponents also say LEV equipment could add as much as $500 to $1,000 to an automobile's sticker price. An LEV cost-benefit analysis was presented to the subcommittee to show that a nominal amount of pollution reduction is achieved relative to LEV technology's high cost. The Virginia Lung Association countered with its own consultant's analysis said to show that (i) LEVs would significantly reduce total emissions and (ii) the reductions would result in significant health care savings that must be factored into any LEV cost-benefit analysis.

LEVs are supported by environmental groups, such as the Chesapeake Bay Foundation, and the natural gas industry. Natural gas industry representatives say that LEVs are an important step toward establishing markets for natural gas-powered and other low-emissions, alternative-fuels vehicles.

Selecting a Virginia Strategy

While many of the 1990 Clean Air Act amendments leave states with no other option than compliance (failing which, transportation fund penalties will be imposed), states are given some latitude in electing some compliance strategies. It is to these elections that the subcommittee will now turn.

Fundamental issues before the subcommittee concerning the amendment's implementation in Northern Virginia are as follows:

- Should Northern Virginia's mandatory enhanced I/M program be implemented through a centralized, inspection-only system?
- Should the I/M program be supplemented by LEVs?
- Should any pollution-reduction requirements be extended to adjacent localities (e.g., the City of Fredericksburg and Fauquier County)?

Key issues concerning Richmond's compliance strategy include:

- Should Richmond opt for the enhanced I/M program over the federally mandated basic program?
- Should Richmond select a centralized test only system even if it chooses a basic program?
- Should the geographic region covered by the Richmond strategy be expanded to include the adjacent City of Petersburg and Charles City County?

The subcommittee learned that the DAPC recently requested the EPA to redesignate Richmond as an attainment area. The application is based on data showing that Richmond's air quality currently meets federal standards and suggesting that it will continue to do so in the foreseeable

future. The redesignation strategy, in DAPC's view, is intended to give Richmond greater flexibility in designing its current and future air quality strategies, relieving Richmond of mandatory I/M program obligations, for example. Part of the redesignation application proposal must, however, include a proposed I/M plan intended for implementation in the event redesignation is denied.

The subcommittee plans to meet on December 9 to review these key issues and to determine what courses of action it will recommend to the Governor and the 1993 General Assembly.

◆

The Honorable Elmo G. Cross, Jr., *Chairman*

Legislative Services contact: Arlen K. Bolstad

HJR-147: Subcommittee Study of Proposed Repeal or Revision of UCC Article 6, Bulk Transfers Act

◆

December 1, 1992, Richmond

The Joint Subcommittee Examining Proposed Changes to the Uniform Commercial Code met to respond to recent action by the National Conference of Commissioners on Uniform State Laws concerning UCC Article 6, the Bulk Transfers Act. The Virginia General Assembly generally responds favorably to conference proposals: new Article 2A governing commercial leases was adopted in 1990; new Article 4A addressing electronic funds transfers between financial institutions was approved in 1991; and significant revisions to Article 3A governing negotiable instruments were enacted in 1992.

Bulk Transfers Act

The Bulk Transfers Act is intended to protect business creditors from the risk that a merchant will acquire stock in trade on credit, sell the entire inventory "in bulk" to an unsuspecting third party, and then flee with the proceeds (often across state lines), leaving creditors unpaid. Apparently this swindle was common around the turn of the century. The act aims to prevent this fraud by (i) requiring notice to creditors before bulk sales are conducted and (ii) empowering creditors to void sales that do not conform to the act's requirements. Purchaser ignorance or innocence does not diminish this exceptional creditors' remedy.

The act's critics say its provisions are unnecessary in the current business environment and that it has fallen into disuse. Today, electronic credit services help businesses identify individuals or entities with checkered credit histories (or worse), thereby reducing the likelihood of inventory-sale fraud. Moreover, "long-arm statutes" have virtually eliminated what little protection state lines may once have afforded fast-moving, bulk-sales artists. Additionally, inventory financing under UCC Article 9 (Secured Transactions) permits creditors to bypass Article 6 in favor of Article 9 protections. These technological and legal advances, say critics, minimize bulk-sale fraud risk. Thus, some contend, the act's burden on bulk sellers and purchasers alike is disproportionate to the risk.

The conference is on record favoring repeal. However, since repeal may not be acceptable to all state legislatures, it provided a revised Article 6 as an alternative. Key features in the revision include the following:

- The act applies only when the buyer has notice that the seller will not continue to operate the same or similar kind of business after the sale.
- When the seller is indebted to a large number of creditors, the buyer does not have to send individual notice to every person, but instead may give notice by filing.
- A buyer who makes a good faith effort to comply with the requirements of Article 6 is not liable for noncompliance.

Action in Other States

The conference reports that 16 states have repealed Article 6, four doing so in their 1992 Sessions. Five states have adopted the Article 6 revision (Arizona, California, Hawaii, Oklahoma, and Utah); at last report, Wisconsin's legislature was considering a bill to repeal the act.

Bar Committee Action

The Virginia State Bar Association and the Virginia State Bar were asked to review the conference's Article 6 alternatives and to furnish recommendations to this subcommittee. The UCC study subcommittees solicit the Bar's participation because the UCC influences the conduct of business in the Commonwealth and elsewhere.

A UCC Study Committee, comprised of the Virginia Bar Association Business Law Section members, met in October to discuss the current act's utility in Virginia practice, and to review the conference's proposals. Chairman David Greenberg reported the committee's recommendation: repeal the current act without replacement.

The Bar study committee concluded that fraudulent bulk sales do not occur frequently enough to justify regulation of all bulk sales, including the vast majority that are conducted in good faith. The committee also noted that Article 6's disuse is reflected in its widespread absence from law school curriculums and that Article 6's requirements are usually bypassed or avoided in daily practice. Many parties simply agree to waive compliance. The Bar study committee further concluded the revision was no improvement over the current article and, in some respects, further burdened the parties to bulk sales.

Subcommittee Action

HJR 147 directed the subcommittee to review the conference's recommendations, and to make recommendations to the General Assembly concerning this proposal. The subcommittee had three policy options: (i) repeal existing Article 6, (ii) enact revised Article 6, or (iii) make no change in existing law, retaining the current article. Subcommittee members expressed some reservation about any action that might impair notice of an impending bulk sale to unsecured creditors. However, after weighing the current burden imposed by the act on bulk purchasers and sellers alike, the subcommittee endorsed the conference's recommendation to repeal and will report that recommendation to the 1993 legislative session.

Future Subcommittee Activity

Virginia's conference representative, Carlyle Ring, told the subcommittee that additional UCC revisions may be ready for legislative review by 1993, including Article 5 (letters of credit) and Article 8 (investment securities).

Mr. Ring also said that the conference has recently authorized revision projects addressing UCC Articles 2 (sales) and 9 (secured transactions). Additionally, a conference study committee has been appointed to look at whether Article 2 should be further revised in order to cover computer services contracts.

◆

The Honorable George H. Heilig, Jr., *Chairman*

Legislative Services contact: Arlen K. Bolstad

HJR 100: Joint Subcommittee Studying the Use of Vehicles Powered by Clean Transportation Fuels

◆

November 30, 1992, Richmond

The main business of the meeting was the consideration of two pieces of draft legislation for possible recommendation to the 1993 Session of the General Assembly. The first was a proposal to provide for display of additional signs (no larger than 4 3/4 inches by 3 1/4 inches) on alternatively fueled school buses. The purpose of this measure was to promote public awareness of alternative fuels and thus encourage the increased use of alternatively fueled vehicles generally. Following a brief discussion, the subcommittee unanimously endorsed the proposal.

The second proposal, presented by the Department of Air Pollution Control, provided for a Clean Fuels Fleet Program in Northern Virginia, as required by Part C of Title II of the federal Clean Air Amendments of 1990.

The effect of this proposal would be to require that, beginning with the 1998 model year, at least a certain minimum percentage of fleet vehicles purchased by owners of most centrally fueled fleets of 10 or more vehicles operating in the Northern Virginia ozone nonattainment area be required to be "clean fuel vehicles." For light-duty trucks (gross vehicle weight ratings up to 6,000 pounds) and other light-duty vehicles, this minimum percentage would be 30% for the 1998 model year, 50% for the 1999 model year, and 70% for the 2000 model year. For heavy-duty trucks (gross vehicle weight ratings over 8,500 pounds), this minimum percentage would be 50% for the 1998, 1999, and 2000 model years. (Through an oversight, the final version of the federal act did not specify percentages for vehicles with gross vehicle weight ratings falling between 6,000 and 8,500 pounds. At least for the present, these medium-duty vehicles would be treated the same as light-duty vehicles.) Clean fuel vehicles would have to be powered by neat ethanol, neat methanol, reformulated gasoline, diesel, natural gas, liquified petroleum gas, hydrogen, or electricity. Some fleet vehicles (e.g., emergency vehicles and military vehicles) would be exempt.

After listening to comments from representatives of the Department of Air Pollution Control, Mobil Oil Corporation, and the natural gas industry, the subcommittee directed staff to redraft the proposed legislation to (i) state more completely the basic requirements of the federal act in the bill (rather than relying simply on cross-references to the federal act), (ii) provide a list of vehicles exempted under the federal act, and (iii) provide for additional exemptions by regulation (to the extent permitted in the federal act). The revised draft will be the subject of a public hearing at the subcommittee's next meeting.

The subcommittee also received reports from representatives of Prince William Public Schools, Fairfax County Public Schools, and the Virginia Department of Transportation on the status of their alternative fuels programs.

◆

The Honorable Arthur R. Giesen, Jr., *Chairman*

Legislative Services contact: Alan B. Wambold

SJR 103: Joint Subcommittee Studying Pollution Prevention

◆

November 5, 1992, Richmond

The third meeting of the joint subcommittee featured an analysis of recommendations previously presented by the Virginia Manufacturers Association (VMA), overviews of pollution prevention laws adopted in three other states, and recommendations by several environmental organizations.

At the close of the joint subcommittee's prior meeting, the VMA introduced a white paper outlining economic and noneconomic incentives to assist the private sector in overcoming some of the existing barriers to the implementation of pollution prevention activities and to stimulate voluntary waste reduction efforts. Economic incentives included tax credits for investments in pollution prevention projects, rapid depreciation of property used in a pollution prevention project, exemptions from state and local sales and use taxes for personal property used in pollution prevention projects, and state loans and grants. Noneconomic incentives proposed by the VMA included establishing education and technical assistance programs with state agencies to assist the regulated community, providing pollution prevention audits at no cost to appropriate segments of industry, allowing greater regulatory flexibility by agencies in environmental permitting, creating pilot programs for waste separation and other waste minimization activities, expanding the Governor's Award Program, and establishing industry advisory groups by appropriate state agencies.

Analysis of Industry Incentives

Harry I. Gregori and Sharon Kenneally-Baxter of the Department of Waste Management presented an analysis of the incentives offered by VMA. With regard to the economic incentives, they made no recommendations because their fiscal impact cannot be quantified. Mr. Gregori added that if the subcommittee makes any specific recommendations for economic incentives, his department would conduct such an analysis at that time.

Ms. Kenneally-Baxter referred to a 1985 study prepared for California suggesting that effective tax benefit programs must set allowances as high as 50% in order to affect investment decisions. She cautioned that providing tax incentives for equipment purchases rather than for emissions reductions achieved might prompt firms to invest in equipment changes rather than such alternative methods of waste reduction as process changes, feedstock substitution, or product reformulation.

Calculating the fiscal impact of any sales or use tax exemption for pollution prevention projects may be difficult. Such an exemption would at least partially overlap with the exemption for industrial materials, machinery, and tools used directly in manufacturing. Unlike the exemption for certified pollution control equipment, however, machinery and tools used in a pollution prevention project would not automatically be exempt from local property taxation. The fiscal impact of tax exemptions for pollution prevention projects will depend on the definitions adopted. Unlike clearly identifiable scrubbers and other pollution control equipment, there is no clearly established category of pollution prevention projects. For example, if a company elects to close an old, inefficient plant that generates many fugitive emissions and build a new, more productive and less-polluting factory in its place, questions could arise involving the portions of the new plant that are eligible for tax credits or exemptions.

Despite these difficulties, Mr. Gregori voiced support for the concept of tax incentives for pollution prevention in order to place waste reduction on the same footing as the pollution control approach. Providing tax exemptions only for certified pollution control equipment skews decision-making inappropriately by inducing factory operators to use control equipment rather than adopting waste reduction strategies. If possible, a tax credit should be tied to the amount of waste reduced rather than on the price of the equipment used.

Several of the noneconomic incentives identified by VMA are already in place, albeit on a limited basis, in the Commonwealth. The existing Waste Reduction Assistance Program conducts seminars and conferences, some of which are aimed at specific industries such as ship repair and furniture making. A continued and expanded education and technical assistance program will require increased program resources. Waste audits, or on-site technical assistance, could be expanded through a combination of additional full-time staff, students, and retired engineers.

The VMA proposal suggests that regulatory flexibility offers much promise in overcoming barriers to implementation of pollution prevention activities. Mr. Gregori noted that regulatory flexibility can only be implemented by state environmental agencies to the extent allowed by federal regulations. Regulatory integration of pollution prevention could be implemented through the use of multimedia permits and by incorporating pollution prevention into facility inspections, enforcement settlement agreements, and regulations.

The "Pollution Prevention Partnership" concept was offered as one approach to build-

ing cooperation and consensus for the development of these types of regulatory integration. The Pollution Prevention Partnership would be an alliance of state government leadership, industry, public interest groups, and government regulatory programs. The efforts of the partnership would focus on research and development of technologies to reduce the toxicity and volume of chemical inputs in industry, the development of on-site waste control programs as an alternative to off-site management, and facility siting programs consistent with Virginia's Capacity Assurance Plan.

The department also offered the following recommendations based on the VMA proposals:

- Encouraging demonstration source reduction programs for business, local government, and households at the local government or planning district level;
- Increasing the prominence of pollution prevention in the Governor's Environmental Excellence Awards Program;
- Reestablishing the Waste Minimization Advisory Committee as a technical advisory committee to explore such issues as regulatory flexibility and the use of innovative technology; and
- Encouraging and expanding pollution prevention research within the state government, industry, and universities.

Mr. Gregori concluded with a recommendation that the subcommittee adopt the definition of pollution prevention developed by the Environmental Protection Agency. The EPA defines it as source reduction and other practices that reduce or eliminate the creation of pollutants through (i) increased efficiency in the use of raw materials and other resources or (ii) protection of natural resources by conservation. The federal Pollution Prevention Act defines "source reduction" as any practice that reduces the amount of any pollutant entering a waste stream or otherwise released into the environment prior to recycling, treatment, or disposal, and reduces the hazards to public health and the environment associated with such releases.

Programs in Other States

Twenty-seven states have enacted some form of pollution prevention laws since 1987. Eight of the state programs foster waste reduction through nonregulatory programs providing technical assistance, grants, and other incentives. Nineteen states go further by requiring or encouraging generators to produce facility-wide pollution prevention plans, which are intended to assist generators in isolating pollution prevention opportunities. The subcommittee heard officials from Connecticut, Minnesota, and New York describe their pollution prevention programs.

Connecticut

The Connecticut Technical Assistance Program (ConnTAP) offers technical assistance in the form of site visits to businesses, an information and referral hotline, a newsletter, and conferences and workshops. ConnTAP also provides financial assistance through matching grants of up to $7,500 each to help recipients identify and evaluate pollution prevention opportunities and through the Environmental Assistance Revolving Loan Fund, which provides up to $250,000 for ConnTAP-approved projects.

ConnTAP is a program of the Connecticut Hazardous Waste Management Service, a nonregulatory, quasi-public organization founded in 1983 with statutory responsibility to promote the appropriate management of hazardous waste. Dominic Forcella, executive officer of the service, reported that its status as an independent office, not connected to the state Department of Environmental Protection, is favored by Connecticut's business sector. Funding for ConnTAP is provided from the state's general fund.

Minnesota

Kevin McDonald of the Minnesota Office of Waste Management discussed his state's Toxic Pollution Prevention Act of 1990. The act establishes a state policy encouraging the prevention of toxic pollution through techniques and processes that reduce the generation of waste at its source and minimize its transfer from one environmental medium to another. A dozen staff members provide technical assistance to help companies identify and implement pollution prevention measures such as process or product modification, inventory controls, feedstock substitutions, and improved efficiency of machinery. The act provides about $150,000 in matching grants for projects that assess the feasibility of pollution prevention technologies.

In addition, Minnesota requires each facility reporting toxic chemical releases under the Community Right to Know Act (SARA Title III) to develop a plan establishing goals for reducing or eliminating toxic pollutant releases. The plans remain confidential, and facilities are not penalized if they fail to achieve their goals. However, each facility must submit an annual progress report based on its plan. The progress reports are available for public review, and if the report does not contain the required information, the company may be subject to enforcement action. The program is funded by an annual fee on companies filing reports required by SARA Title III. The fees, based on the number and amounts of toxic pollutants released, will raise approximately $1.2 million annually.

Mr. McDonald presented the results of an industry survey, in which 85% of the respondents rated the program as effective in encouraging steps to prevent pollution, and 80% said it is worthwhile to prepare facility plans. Despite the program's spending over $1 million annually with a staff of 21, 85% of the companies agreed that more nonregulatory assistance should be provided.

New York

The New York Hazardous Waste Management Act offers an interesting comparison to the Minnesota program. Though both require facilities to prepare pollution prevention plans, New York's program differs in the following aspects:

- Facility plans are submitted for state review, and remain confidential only if labelled so by the company. If the department rejects a plan as being inadequate, the facility will not be able to obtain a manifest to transport its waste off-site.
- Rather than being a multi-media law covering air and water emissions, the New York program is limited to hazardous solid waste.
- Technical assistance is limited to providing a guidance manual for facilities required to submit plans and conducting conferences. Grants and loans are not available.
- Funding for the program is provided by general fund appropriations and fines, rather than by a fee on emissions.
- The act establishes a statewide numeric goal of a 50% reduction in hazardous waste over the next 10 years.

Dennis Lucia of the Division of Hazardous Substance Regulation described the New York program via teleconference. The facility planning requirement is being phased in over several years based on the amount of waste generated. The nine people staffing the program have reviewed 110 plans submitted by the largest generators and expect to review over 500 additional plans as smaller generators are required to submit them within the next three years.

Chesapeake Bay Foundation

Joseph Maroon, Virginia executive director of the Chesapeake Bay Foundation, urged the subcommittee to institutionalize pollution prevention in Virginia. He reminded the listeners that the regional Chesapeake Bay Program recognized the benefits of pollution prevention in 1991, when Governor Wilder and his counterparts adopted a statement that it should be the preferred first step in the hierarchy of environmental protection measures. A shift in emphasis from pollution control to actual prevention is appropriate, because after 20 years of regulation, Virginia still produces significant quantities of toxic pollutants. Over 103 million pounds of the chemicals reported on the Toxics Release Inventory were released or transferred in Virginia in 1990. A recent ranking of states by the Green Index placed Virginia 50th in the nation in nerve-damaging toxics released on a per capita basis, 49th in pounds of toxics released to surface water, and 46th in pounds of toxics released by industry to the air.

Ann Powers, vice president and general counsel of the Chesapeake Bay Foundation, noted that a pollution prevention approach can help U.S. industries be more competitive. Compared to the United States, Japan produces one fifth, and European countries produce one half, of the waste per $1 of goods produced.

In order to take advantage of the benefits offered by pollution prevention activities, the foundation offered the following recommendations:

1. Adopt a statutory definition of "pollution prevention" that focuses on source reduction, substitution, and elimination of pollutants;

2. Establish a target goal of a 50% decrease over four years in the use and release of toxic substances;

3. Incorporate facility planning into Virginia's pollution prevention initiative;

4. Include methods to measure actual reductions in the use or release of pollutants;

5. Establish an assistance unit within state government and/or at universities to assist small business;

6. Review the implementation plan for the new Department of Environmental Quality to ensure that a separate pollution prevention unit, with responsibility for implementing and promoting pollution prevention activities for all state agencies and their clients, is created; and

7. Continue the joint subcommittee next year in order to devote further study to pollution prevention opportunities.

Other Environmental Groups

Nikki Roy of the Environmental Defense Fund stressed that there is no single "silver bullet" to promote pollution prevention; rather, a comprehensive approach is appropriate. A comprehensive program would include a facility planning requirement that encompasses the 620 chemicals covered by CERCLA. Planning should address the use, rather than only the releases, of toxic chemicals. The U.S. Public Interest Research Group submitted a statement echoing Mr. Roy's position that toxics use reduction should be the preferred pollution prevention strategy.

Mr. Roy noted that the states with facility planning programs tend to view their programs either as a type of permitting process or as a structured technical assistance program. He voiced support for the latter view, adding that it is preferable to give industries as much flexibility in preparing plans as possible. The benefit of facility planning lies in making companies examine how much current waste treatment, control, and disposal is costing them and having them examine less costly alternatives. For this reason, planning should include an analysis of "overhead costs." Other requirements include allowing pollution prevention measures to be an optional remedy in environmental enforce-

ment actions and providing technical assistance to businesses.

The Center for Policy Alternatives in Washington, D.C. provided the final speaker at the meeting. Richard Regan summarized his organization's 1991 rating of 10 state pollution prevention laws. Features of programs favored by Mr. Regan include requirements for annual accounting of use of toxic chemicals, worker and community involvement, and program funding through devoted fees or taxes on the use of toxics. A program should also require facility planning and provide technical assistance to industry. Finally, he advocated the setting of a statewide goal of a percentage reduction in the use and release of toxics.

The joint subcommittee will hold its next meeting in December, at which the members will attempt to determine whether consensus exists on any recommendations.

◆

The Honorable R. Edward Houck, *Chairman*
Legislative Services contact: Franklin D. Munyan

HJR 178: Study of the Necessity for Improvements in Erosion and Sediment Control Programs

◆

November 12, 1992, Williamsburg

The joint subcommittee's fourth business meeting consisted of a work session to discuss comments and proposals offered at previous meetings and public hearings. Delegate W. Tayloe Murphy, Jr., led the subcommittee in a discussion of these issues with members of the advisory council. The course of the discussion followed a questionnaire previously distributed to members of the subcommittee and the advisory council, which solicited the opinions of members on a wide range of issues regarding perceived problems and possible solutions to the current structure of Virginia's erosion control measures.

The subcommittee and advisory council agreed that erosion and sediment control (E&S) programs are not being uniformly administered across the Commonwealth, and that while some exceed the minimum standards established by state law and regulation, others do not satisfy these minimum standards.

The participants were unanimous in their belief that the Division of Soil and Water Conservation should provide expanded education and training assistance to localities. Most members also agreed that the state should be able to take some action to ensure that local E&S programs meet minimum statewide standards where enhanced education and other forms of technical assistance have not resolved program deficiencies. The point was made by Robert Stout of the advisory council that the determination of a local program's adequacy should be based on an objective rating of its performance. Carolyn Lowe urged that the state should be charged with making the determination of whether a program is being adequately administered.

John Burton of Northumberland County, an advisory council member, stated the sentiment of the members that where a locality has shown a complete disregard of its responsibility to administer its E&S program, then the local program should forfeit its prior approval by the Soil and Water Conservation Board. In such a case, the members reached a general consensus that responsibility for E&S program administration should shift to the soil and water conservation district if it has the desire and the ability to take over the program. If the soil and water conservation district is unwilling or lacks the resources to administer a program for the locality, then the state would be responsible for administering a program in the locality. Members also agreed that the state should not be able to decertify a local E&S program until the Soil and Water Conservation Board has found that implementation has not met minimum performance standards, and the locality has had an opportunity to challenge the board's decision in court.

The members also discussed the administration of erosion and control measures for land-disturbing activities conducted by state agencies. Currently, state projects are required to be conducted in accordance with minimum standards applicable statewide, though the locality in which a project is being conducted may have adopted more stringent standards. The members acknowledged that granting localities jurisdiction over state projects may not be feasible. Most members agreed that a possible solution would be to leave administrative responsibilities over state projects with the Division of Soil and Water Conservation, but require that local standards be enforced in those political subdivisions with standards that are more stringent than the statewide minimum.

The discussion encompassed proposed solutions to several categories of complaints about E&S programs received by the division, including local

ordinances that do not conform with current state law or regulations. James Cox of the Division of Soil and Water Conservation stated that in a survey of all 171 local programs, approximately 50% of the ordinances had not been updated to reflect the 1988 amendments to the state's E&S statutes. After discussing the advantages and disadvantages of requiring the adoption of a model E&S ordinance, the members concluded that ordinance adoption should be one of the factors to be reviewed in evaluating the compliance of a program with minimum performance standards.

One option discussed as a possible solution to inadequate E&S plan review and inspections was to require that personnel be certified as meeting minimum standards for education and experience. Currently, the division offers a voluntary certification program. Some sentiment was expressed that if local building code inspectors are required to be certified by the state, then E&S plan reviewers and inspectors should also have a mandatory certification requirement. Regulations of the Board of Housing and Community Development currently require building inspectors employed by local governments to be certified within three years of starting employment and to be recertified every three years thereafter.

An approach adopted in several other states breaks E&S programs down into separate components covering plan review and approvals, inspections, enforcement, and training and provides that localities may exercise jurisdiction over all or any lesser number of these elements. The subcommittee and advisory council rejected such a piecemeal approach to E&S program administration on grounds that fragmenting programs would be inefficient.

The members divided sharply over the issue of whether the division should have the ability to bring enforcement actions (such as issuing stop-work orders and obtaining injunctions) against developers who violate a local program when the locality has failed to institute enforcement proceedings. Several members felt that the state agency's sole method of assuring that localities adequately implement their programs is to seek to decertify programs that do not meet minimum standards, and that direct state enforcement would create confusion. Others countered that individuals damaged by E&S program violations should be able to call in the state to enforce the E&S program when the local officials fail to act. There may also be instances where program violations may not be sufficiently widespread to justify decertification of a local program, and an injured individual's only recourse may be to bring an expensive and uncertain lawsuit.

Public Hearing

Following the business meeting, the subcommittee heard from 20 speakers on the subject of the necessity for improvements in E&S programs. Several speakers complained that the current system does not adequately prevent soil erosion and sedimentation. Specific complaints include the reluctance of local government to exercise remedies against developers who violate E&S guidelines; the propriety of the existing exemption for forestry, including small-scale urban logging operations; the lack of authority of the division to levy fines and institute legal proceedings against developers who violate local program requirements; disregard of local ordinances by the officials responsible for administering the ordinances; conflicts of interest between developers and local government officials; and the burdensome nature of current procedural requirements in issuing stop-work orders and other enforcement actions.

Specific recommendations of proponents of greater enforcement of local E&S programs included more education of both staff and the public; granting the division the power to fine violators and take other enforcement actions; requiring contractors to retain an employee certified in E&S practices; establishing a toll-free line to report violations; streamlining the process for issuance of stop-work orders; raising the $1,000 cap on plan review fees to help defray the cost of program administration; and increasing the limit on civil penalties from $100 to $300 per violation.

Not all speakers concurred that corrective steps were appropriate. A representative of the Peninsula Homebuilders Association warned that requiring increases in the implementation of E&S measures could increase the cost of housing and noted that a great deal of the nutrient pollution in the Chesapeake Bay results from air emissions from the midwest. Representatives from James City County and the City of Chesapeake objected to giving the division the ability to prosecute violators of E&S programs at the local level. Other speakers also defended the existing exemptions of agriculture and forestry from the state E&S law. Opponents of greater state authority to institute enforcement actions recommended that the subcommittee focus its attention on providing assistance and educating contractors.

The joint subcommittee announced plans to meet on December 11, 1992, in House Room 1 of the State Capitol. After a one-hour public hearing, the joint subcommittee will continue its discussion of possible recommendations.

◆

The Honorable W. Tayloe Murphy, Jr.,
Chairman

Legislative Services contact:
Franklin D. Munyan

HJR 244: Joint Subcommittee on Enhancing End-use Recycling Markets

◆

November 17, 1992, Richmond

The third meeting of the Joint Subcommittee on Enhanced Recycling Markets featured a presentation of the results of a survey by the Virginia Recycling Coalition, reports on market capacity for recyclable materials, and a presentation on the potential development of small-scale recycling markets in rural areas.

Options for Enhancing Markets

Staff outlined the four characteristics of successful recycling market programs: (i) one agency responsible for market development, (ii) adequate funding and staff for implementation, (iii) partnership between the public and private sectors, and (iv) development of different strategies for each material.

The options presented were broken down into five categories: (i) government procurement of recycled products, (ii) transportation incentives, (iii) state technical assistance, (iv) grants and loans, and (v) tax incentives. A wide range of options, programs, and incentives was presented in each of the five categories.

Survey of End-use Markets

Gwyn Rowland of the Virginia Recycling Association (VRA) outlined the results of a survey regarding end-use markets. The survey was returned by 76 of VRA's 184 members, made up of local governments, businesses, and citizens involved in various aspects of recycling. The survey indicated that municipalities found that revenue-generating markets exist for some localities for 22 of the 26 commodities listed in the survey. The availability of these markets throughout the state, however, appears to be uneven. For example, 68.75% of the municipalities responding receive revenues for scrap metal. However, a small percentage of the government respondents stated that they have no markets for scrap metal or must pay markets to take the material.

Ms. Rowland indicated that it is apparent from the survey that the predominant response was for demand-side, not supply-side, solutions to the recycling market situation in Virginia. The survey results indicated that the following governmental actions are needed to create end markets: (i) state and local governments should implement "buy recycled" programs; (ii) a recycling procurement training program should be established for state and local procurement agents; (iii) state and local purchases should be monitored to assure maximum procurement of recycled products; and (iv) procurement agencies should be required to report their progress.

Respondents also made a variety of suggestions regarding legislative and nonlegislative initiatives the state should consider. Suggestions fell into the following four categories: taxes, tax incentives, governmental procurement, and recycled content for paper, packaging, and other materials..

Materials Markets

Aluminum

An official of Reynolds Aluminum Recycling Co. discussed the status of aluminum recycling. He indicated that the industry has more capacity to recycle than it is receiving in recovered material. The aluminum can recycling rate has grown from 50% in 1981 to 63% today, with projections of 70% by 1995. There is an extremely high demand for recovered aluminum, yet there is still capacity to melt 1 million pounds more per year. There is therefore a great deal of room for expansion of aluminum collection.

Glass

A major concern of the glass recycling industry is the presence of contaminants such as metal or ceramics in the cullet (the sorted and crushed glass), which end up in the final product and render it useless. The industry is color sensitive in that if a local plant produces a certain color glass bottle for example, other colored glass is of little use. A major factor in using recovered material in the glass industry appears to be the location of processing facilities, which accept the glass and turn it into cullet. There are 14 processing plants in the four states of Virginia (2), West Virginia (2), North Carolina (4), and Pennsylvania (6). Regionalization of collection and processing would be helpful. It was indicated that Northern Virginia could be a good place for a processing facility and that a facility is being built in Chesterfield County. The glass industry's use of reclaimed material is a function of price. Therefore, help with infrastructure and transportation would be a benefit to the industry's ability to use recovered glass.

Good progress has been made in the recycling of glass. Plants have increased their purchase of post consumer cullet by 82% since 1987, and the overall glass recycling rate grew from 22% in 1988 to 31% in 1991.

Steel Cans

A representative of the Steel Can Recycling Institute made suggestions on what would be beneficial to his industry's recycling efforts. He

indicated that before any commodity is processed or sent to the consumer, an infrastructure must be established. The infrastructure in his industry's case includes collection or drop-off centers and a method to get the material to a processing center. In 1990 there were only two processing centers for steel cans in Virginia; there are now 25. Sixty-six percent of the municipalities and counties with recycling programs collect steel cans. More effort is needed to encourage regional cooperation between counties, because such cooperation makes securing markets easier. Public/private ventures are desirable and provide for long-term markets in good and bad conditions. Regional processing centers are essential for rural counties to participate in recycling. Such regional centers would encourage businesses and industries to recycle and purchase recycled materials as well as entice other industries to locate in Virginia. Educational programs are also essential, and such programs should be aimed at businesses, as well as the general public, in order to spur the purchase and use of recycled materials.

Plastics

Representatives of the American Plastics Council (APC) and the National Association for Plastic Container Recovery (NAPCOR) made presentations regarding the plastic recycling industry. APC promotes recycling of a wide range of plastics, while NAPCOR's purpose is focused on PET. Although there are only two reclaimers of plastic (those who actually clean the containers, versus "handlers" who only pick up and bail the containers) in Virginia, the state is a relatively good location for developing markets for reclaimed plastics, because within a 400-mile radius there are adequate facilities and demands to handle and utilize the material. Nationwide, recycling plants are working well below capacity, ranging from 29.1% below for PET to 76% below for polystyrene. PET collection is lagging behind demand, and infrastructure is needed to sort, handle, and process the material to assure that it is clean. It is expected that the post consumer PET market will increase its demand for 285 million pounds in 1991 to 640 million pounds in 1993.

Paper

Thirty-one million tons of paper were recycled last year; technological advances have made recycling of paper easier; and $ 3 billion is being spent to expand the capacity to handle recovered paper and turn it into usable material. Notwithstanding a public perception that there is a glut of old newsprint, a shortage of old newsprint is possible by 1995. Contaminants in newsprint present much less of a problem than in the past because of a shift to new types of ink. The use of heavy metals in ink to produce brighter colors in some magazines is starting to reappear as a problem. The recycling market for paper would be enhanced through such strategies as a clearinghouse on markets and treating paper as a commodity, rather than as solid waste, when it comes to regulation (in effect taking it out of the definition of solid waste). Incentives would have to be long-term in order to help the market.

Scrap Metal

Between 350,000 and 400,000 tons of scrap metal are recovered in Virginia each year. The industry, which used to look for scrap, now finds it plentiful, because (i) a product of equal quality can be made from scrap at a lower cost; (ii) manufacturers represent a dependable market for scrap; and (iii) there is little loss when recycling scrap (one ton of scrap equals one ton of product). In order to assure continued success, it was suggested that metals used in products should be recyclable, use of recyclable material should be promoted, consumers should be made aware that products made from scrap are of equal quality to those made from virgin material, and buyers and sellers need to be brought together with a "recognizable product" and assurance that markets will continue to exist.

Recycling Oil Filters

Most oil filters are not being drained and crushed to extract oil in them before the filters are disposed of, resulting in vast quantities of oil being placed into our landfills. It was suggested that such oil filters be banned from landfills and that they, as well as the oil they contain, be recycled. This would save landfill space, protect the environment from oil seeping from landfills, and increase the amount of recycled oil.

Development of Small Markets in Rural Areas

The final presentation, by Ms. Pat Therrien of the Appalachian Regional Recycling Consortium, dealt with the rural viewpoint on recycling and the creation of markets for those areas. A decreasing population trend and higher than average unemployment in rural areas make it even more important that these areas not export materials and jobs. Ms. Therrien expressed concern that the recycling industry has ignored rural areas and that market development has focused on large urban areas and large markets. She outlined a program that involved development of industries already present in the rural areas through assistance with increased recycled material usage, development of small-scale recycling markets for rural areas, assistance with transportation problems, technical assistance programs, development of enterprise zones, and guarantees for markets when small-scale recycling industries and recycled material users start up business. The development of innovative local uses for components of the waste stream was also seen as important.

Future Meetings

The subcommittee will hold its next meeting at 10 a.m. in House Room 4 on January 12, 1993, at which time it expects to formulate its legislative recommendations.

◆

The Honorable Kenneth R. Plum, *Chairman*
Legislative Services contact: Shannon Varner

State Water Commission

◆

November 13, 1992, Richmond

The State Water Commission heard presentations regarding problems posed by the exemption of small water supply systems from Health Department regulations and by the failure of some developers and homeowners associations to maintain and upgrade water systems they are responsible for. A final report, pursuant to HJR 460, was presented by the State Water Control Board and the State Board of Health. The meeting concluded with a report by the Division of Consolidated Laboratory Services on the burden of testing water samples.

Problems with Small Drinking Water Supply Systems

The Virginia Housing Study Commission and the Department of Housing and Community Development (DHCD) outlined problems associated with small water supply systems, defined as those that have fewer than 15 connections or serve an average of 25 or fewer individuals. Because these systems are exempt from requirements of the waterworks regulations, the Department of Health has no authority to regulate, monitor, or require abatement of contamination problems at these systems. There are apparently many hundreds, perhaps thousands, of water supply systems in the Commonwealth that serve 2 to 25 individuals. Many, if not most, of these systems serve manufactured home parks (MHPs). Complaints have been increasing in the past few years regarding contamination in these water supplies.

Nearby states, including Maryland, North Carolina, Georgia, and West Virginia, set the same limit for monitoring small systems as Virginia. Two states, South Carolina and Washington, have lowered the regulatory threshold to systems that supply more than a single residence. In Washington, systems with four or fewer connections serving residences on the same farm also are excluded.

Two alternatives were suggested to regulate smaller systems. First, the definition of waterworks could be expanded to include MHPs. Second, the threshold level for regulation could be lowered to include all water supply systems except those serving a single family home or with four or fewer connections all serving residences on the same farm.

Eric Bartsch of the Department of Health (VDH) reported on the projected cost of adopting an expanded definition of waterworks as proposed by the Housing Study Commission. There are approximately 1,000 MFPs and 6,000 small water systems in the state, serving an estimated 30,000 households. The cost of testing these supplies for a limited number of potential contaminants could exceed $18 million, and the cost to the agency in staff time for a basic surveillance program would be approximately $1 million. Furthermore, it does not appear that the Division of Consolidated Laboratory Testing, which does all of the testing for the state, has the resources to deal with this increased workload. The VDH suggested that, if the definition of waterworks were changed to include smaller systems, it should be done by creating a separate classification rather than by amending existing *Code* provisions. The existing waterworks regulatory scheme is affected by the definition of waterworks, and a new definition of "waterworks" would have a rippling effect throughout the entire program. Mr. Bartsch suggested that a separate set of requirements could be established to cover manufactured home park water systems and semi-public water systems. Such requirements could be less stringent than those required of other larger systems.

The related problem of the lack of maintenance or upgrading of water supply systems owned by developers or homeowners associations was brought up by Delegate John J. Davies III. Many developers once viewed the systems as money-making ventures but now are finding them to be a liability. Some developers are abandoning them, or are failing to keep them up, due to lack of funds. Homeowners associations are unprepared financially to deal with the cost of maintenance and upgrading systems, and the systems are falling into disrepair or are not being maintained to keep up with new mandates of the Safe Drinking Water Act.

Delegate Victor Thomas raised a concern regarding waste water sewage lagoons, known as LHS 120's. The cost of upgrading these systems can be very high. In the early 1970s, before enactment of the Federal Water Pollution Control Act (FWCPA), regulation of sewage lagoons was delegated by the State Water Control Board to the Department of Health. Eric Bartsch of the Health Department stated that after passage of the FWCPA in 1972, it became apparent that such facilities needed National Pollution Discharge Elimination System (NPDES) permits. Since that time the state has been phasing out those facilities and has begun issuing NPDES permits as needed. Richard Burton of the State Water Control Board (SWCB) reported that most of the lagoons have been dealt with throughout the state, except for the Roanoke area, where approximately 100 remain.

HJR 460 Report by the State Board of Health

HJR 460 (1992) directed the State Board of Health and the SWCB to examine the application and enforcement of regulations for treatment of water and wastewater. Both boards made initial reports to the commission

last year and made final reports at this meeting.

HJR 460 specifically requests the Board of Health to address staffing, monitoring, and testing requirements, sludge handling requirements, and treatment required for drinking water. Eric Bartsch, who directs the Office of Water Programs for the State Health Commissioner, reported on the topics in the context of sewage and drinking water programs.

Two recommendations presented by the Board of Health relate to the sewage program. First, the VDH supports the adoption and implementation of proposed Sewage Collection and Treatment (SCAT) regulations, which will replace the current Sewage Regulations jointly adopted by the SWCB and the State Board of Health in 1977. The promulgation of the SCAT regulations results from the enactment of HB 1449 (1991), which revised sections of the *Code of Virginia* relating to the construction of sewage treatment plants. The new regulations are basically revised sewerage regulations but provide for the issuance of construction and operation permits solely by the VDH through the Office of Water Programs after the SWCB has issued a discharge permit. The SWCB will monitor the activity and the VDH will only become reinvolved if requested by the SWCB. The new regulations outline technical design standards, including material specifications for conventional and nonconventional processes. The Attorney General's office is reviewing the final draft of the SCAT regulations. Following that review there will be a public hearing process pursuant to the Administrative Process Act.

The second recommendation for the sewage program favored a state regulatory program to enforce land-based sewage sludge management operations through site-specific permits. The proposed EPA Sludge Management program, which uses NPDES permits to regulate land application of sludge, will not address local concerns and, according to VDH, may result in the adoption of restrictive local ordinances. This situation will be avoided by the Board of Health's promulgation of the SCAT regulations, which require that the VDH issue operating permits to sewage treatment plant operators for land application of their sludge. The operating permits will contain site-specific standards more detailed than those in the proposed federal EPA regulations. Under the scenario outlined by Mr. Bartsch, both federal and state standards for land application of sewage sludge will be implemented through two permits—a VPDES permit issued by the SWCB and an operation permit issued by the VDH. The existing VPA permits issued by the SWCB for land application of sludge management in Virginia under EPA 503 regulations will not be necessary if the SCAT Regulations are implemented.

In the area of drinking water programs, Mr. Bartsch testified that the passage of HB 236 by the 1992 Session has allowed the VDH to retain primacy over Virginia's drinking water program while providing a source of fee revenue. Nonetheless, the problems of funding drinking water projects have not been resolved. The annual appropriation for construction from the Virginia Water Supply Revolving Fund has not been increased beyond the current $100,000, though requests for $5.7 million have been received.

The Board of Health is in the process of preparing permanent regulations for fees for waterworks as authorized by HB 236. VDH has begun collecting fees of $1.50 per hookup in community systems and $60 per year for nontransient systems under emergency regulations that went into effect on July 1, 1992. Proposed fees to start July 1, 1993, would be $2.40 per hookup in community systems and $100 per year for nontransient systems. These proposed fees would raise $2.8 million, up from the $1.7 million sought by the current fee schedule. Comments during the regulation-writing process reveal support for primacy, but also indicate that general funds should be used to pay for it, and that the $160,000 cap on the fee that can be assessed on a waterworks be removed.

HJR 460 Report by the State Water Control Board

Richard Burton, director of the SWCB, delivered a supplemental report on HJR 460 covering seven issues relating to regulation of the Commonwealth's water.

Groundwater Management

HB 488 (1992) repealed the Groundwater Management Act of 1973 and established a new management system based on demonstrated need for water. Under the Groundwater Management Act of 1992, permits for the withdrawal of groundwater will no longer be based on the size of the pump or a well's design capacity. Permits issued under the 1973 Act accounted for nearly 90% of the authorized withdrawals in some management areas. By limiting permitted withdrawals to a demonstrated need, additional authorized capacity will be available, which will allow economic growth while providing increased acquifer protection. Applicants can receive increased allocations for withdrawals greater than their historic use if they can demonstrate a need and submit a water use and conservation plan. Proposed regulations will be presented at the December meeting of the SWCB, will be available for public comment during the winter, and may be implemented July 1, 1993.

Surface Water Management and Water Protection Permit Programs

Two new regulatory programs have been developed as a result of changes in the State Water Control Law made in 1989. These programs deal with Surface Water Management Areas and Virginia Water Protection Permits.

The aim of the Surface Water Management Areas (SWMA) legislation is to protect instream flows from excessive withdrawals for offstream uses. The regulations to implement

the program became effective June 3, 1992. Six months must pass before SWMAs may be designated. Areas may be designated when declines in the level or supply of surface water could adversely affect the public welfare, safety, and health. Four requests for the designation of SWMAs have been received. A list of potential SWMAs will be presented to the SWCB in the spring. It is hoped that the program will be in place by the fall of 1993, so that it can be used to help deal with any droughts that could occur in 1994.

The Virginia Water Protection Permit Program replaces the water quality certificate issued under section 401 of the Clean Water Act. The conditions of the 401 permits were only enforceable by the federal government. Now that the state issues its own permit, it can enforce permit conditions on its own authority. Regulations became effective May 20, 1992. Both water withdrawal projects and activities affecting wetlands are covered by this program, which has resulted in the department's reviewing an additional 2,000 permits. Withdrawals are allowed based on a consideration of in-stream recreation, wildlife needs, and out-of-stream needs such as drinking water.

Toxics

When Congress amended the Clean Water Act in 1987, it included a requirement that the states adopt numerical standards for a list of toxic discharges. The SWCB adopted standards complying with section 303 of the Clean Water Act in March 1992, which have been approved by the EPA. Mr. Burton acknowledged that the standards are strict but added that they are not as strict as what the EPA would have imposed upon the Commonwealth if the SWCB had not adopted these standards. The department has held training sessions and produced guidance documents to aid the regulated community.

Stormwater

Prior to 1987 EPA did not have a policy requiring that stormwater discharges have a NPDES permit. In 1987, following a lawsuit brought by environmental groups, the court ruled that such discharges did fall within the coverage of the Clean Water Act and needed NPDES permits. Congress in that same year amended the Clean Water Act to cover such discharges but allowed until October 1992 for permits to be issued. EPA came out with sample permits in September of 1992. The SWCB did not adopt the EPA permit and is in the process of developing its own. By October 1, 1992, dischargers covered by the new permit requirement were required to file a Notice of Intent to be covered by a stormwater permit in the future. The board estimates that 6,000 such permits will be required. There are presently about 4,000 NPDES permits issued in the state for nonstormwater discharges, and thus the impact on SWCB resources will be large.

A three-step process will take place over a period of several years to deal with stormwater discharges. First, the stormwater discharge sites will be located and identified. Next, a representative sample of the discharges will be taken. Finally, a determination will be made as to what, if any, treatment will be required of the various discharges.

Underground Storage Tanks

The SWCB was authorized to administer the federal Underground Storage Tank Program in 1987. The SWCB has thus far identified 71,000 such tanks at 25,000 facilities. More than 4,600 of the tanks are known to have leaked. The board is working with the owners to secure cleanup. This is a lengthy, complicated, and expensive undertaking. Program staffing has increased from 12 to between 70 and 80 personnel. It is expected that the needs of the program will increase, and resources are being diverted to deal with a backlog in cleanup reports. Over $2 million has been reimbursed to owners/operators for corrective action costs from the Virginia Petroleum Storage Tank Fund since June 1991. In the past two years, the SWCB has provided clean drinking water to 120 homes and businesses affected by leaking tanks.

Oil Discharge Program

The 1990 Session of the General Assembly required the SWCB to regulate above-ground storage tanks and vessels transporting petroleum products on the Chesapeake Bay. The program sought to ensure that if a release did occur, from either a vessel or storage tank, a contingency plan is in place to deal with the cleanup of the spill. The board has received plans from approximately 600 storage tanks and 300 vessels. There are probably 2,400 storage tank owners who have yet to submit plans.

In 1992 the legislature put the SWCB in the business of preventing leaks and spills at above-ground storage tanks. Regulations must be in place by July 1, 1993. Mr. Burton anticipates that draft regulations will be presented to the SWCB in December, that public hearings will be held in January and February, and that the regulations will be in place by July 1993. The regulations will include groundwater monitoring, early warning devices, and testing of the integrity of the structures to assure that they will not leak.

Permit Fees

The SWCB was required by statute to develop fees for the permits and certificates it issues to cover part of the cost it incurs in issuing those documents. Regulations for implementation of those fees have been presented to the SWCB, and public hearings are planned for December. The planned fees in most cases are below the maximums set by the legislature and compare favorably with those required in other states. The board will propose a budget amendment for $1,657,700, the anticipated revenue from the fees in FY 1994, for the hiring of 30 new staff members. The ability of the board to spend that money will be tied to how much money it actually brings in through fees.

Cost of Water Sample Testing by CLS

The final speaker was Ed LeFebvre, deputy director for chemistry in the Division of Consolidated Laboratory Services (CLS), which performs all of the laboratory testing required by the state. Mr. LeFebvre suggested that this program is not always considered when other programs, which rely on CLS's services, are expanded. The CLS tests samples for the SWCB in its implementation of the Clean Water Act and the VDH in its implementation of the Safe Drinking Water Act, at no cost to these agencies. As EPA's testing requirements increase, so does the burden on CLS, creating a situation where the lab is in need of more staff and equipment. Examples of increased demand include (i) the addition of 25 new substances every three years for monitoring under the SDWA, (ii) the lead and copper rule, which will result in 58,000 samples to be tested each year by 1993, (iii) total coliform bacterial analyses to be conducted monthly rather than quarterly, and (iv) testing for asbestos in drinking water in 1995.

Mr. LeFebvre stated that CLS does not have the capacity to support the burdens imposed by these federally mandated testing requirements. In 1993, over 2,000 small utilities will be required to begin sampling, and many will rely on CLS to conduct these tests. CLS has financed some needed equipment purchases through a $1 million treasury loan but lacks funding for personnel to conduct the testing. Specific recommendations included additional support in fiscal year 1993 of $44,000 for the lead-copper rule and $46,490 for Federal Water Quality mandates and restoration of $122,285 for nutrient analysis to continue the Commonwealth's commitments under the Clean Water Act and for the restoration of the Chesapeake Bay.

◆

The Honorable Lewis W. Parker, Jr., *Chairman*
Legislative Services contact: Shannon R. Varner

Coal and Energy Commission Energy Preparedness Subcommittee

◆

October 7, 1992, Richmond

The Virginia Coal and Energy Commission's Energy Preparedness Subcommittee met in October to discuss statewide energy policies and developments. The subcommittee reviewed the current status of the Wilder administration's Virginia Energy Plan and the current operational and funding status of statewide energy assistance programs. The subcommittee was also briefed on the construction of an 800 megawatt power generating facility currently underway in Southside Virginia near the town of Clover.

Virginia Energy Plan

Kathy Reynolds, from the Department of Mines, Minerals and Energy, updated the subcommittee on current developments in the Virginia Energy Plan. Concluding its first year of operation, the plan's objective is to help ensure an energy-efficient future for Virginia by achieving energy efficiency and conservation in state and local government operations. Additionally, public outreach to business, industry, and consumers is part of the plan.

Ms. Reynolds cited the plan's key accomplishments in year one, including (i) implementing energy management plans in each state agency, with the objective of reducing agency energy consumption by 25% in 1998; (ii) converting 50 Department of Transportation fleet vehicles to compressed natural gas, an alternative fuel; (iii) development of financing options for energy efficiency projects in state facilities; (iv) technical assistance grants to schools and hospitals for implementing energy conservation measures; and (v) establishing a computer-driven home energy rating system for new and existing Virginia homes.

Energy Rated Homes of Virginia

Energy Rated Homes of Virginia, Inc. (ERHVI) was established to bring the home energy rating system into the marketplace. ERHVI's executive director, Christine Taylor, said the rating system is designed to improve the overall housing stock efficiency in Virginia. To that end, software has been customized for Virginia consisting of field-collected data on house type, conditioned floor area, insulation levels, air leakage, window size, orientation, shading solar gain, roof color, water heater efficiency, and space heating and cooling efficiencies.

A numerical score on a 1-100 scale is produced for each home rated. This numerical score is then translated into a one-to-five star rating. The rating sheet also provides information on projected annual energy use in BTUs and an annual estimated energy cost by fuel types. ERHVI's three-year operating goals include rating 10,000 homes, establishing a statewide network of certified raters, and showing that 500 - 1,000 homeowners qualified for higher debt-to-income loan ratios because of this home rating system.

LIHEAP

The Low-Income Home Energy Assistance Program (LIHEAP) is an energy-assistance program administered by the Virginia Department of Social Services (DSS) and funded by federal appropriations and oil overcharge monies. In fiscal year 1992, the program spent over $28 million on fuel assistance to qualifying low-income households and over $2 million on a variety of energy-related crisis assistance. Cathy Olivis, a DSS energy specialist, told the subcommittee that nearly 125,000 Virginia households were assisted by LIHEAP in fiscal year 1992. The majority had household incomes under $8,000 and nearly half had children under age 16. Ms. Olivis reported that while federal oil overcharge dollars will be depleted at the end of fiscal year 1993, alternative funding mechanisms should keep this program fully funded for the foreseeable future.

Weatherization Assistance Program

The Weatherization Assistance Program (WAP) provides home weatherization assistance to qualifying low-income households. In fiscal year 1991, 3,635 Virginia households received an average $1,648 in weatherization (e.g., insulation, weather-stripping, etc.) through this program. Alice Fascitelli, of the Department of Housing and Community Development, the program's administering agency, advised the subcommittee that scheduled phase-outs of federal oil overcharge funding will reduce the program's future budget. A $7.9 million budget was available in FY 91; only $3.7 million is available in FY 92. A further reduction to $3.2 million is anticipated in 1993.

Clover Project

Old Dominion Electric Cooperative (ODEC) and Virginia Power are jointly constructing a twin-unit, 786 megawatt generating facility near Clover, in Halifax County. Thomas Dick, representing the Virginia, Maryland, and Delaware Association of Electric Cooperatives, told the subcommittee that this project will produce significant base load for Virginia's fast-growing cooperative service territory. The first unit will be on line in 1995 and the second in 1996.

The Clover generators combine coal, a native fuel source, with advanced scrubber and fly-ash-disposal technology to produce a system whose emissions specifications exceed those established in the 1990 federal Clean Air Act Amendments, according to John Lee, ODEC spokesman. The $1.2 billion project features a $400 million pollution control system expected to remove over 99% of the fly ash and at least 94% of sulfur dioxide emissions.

Mr. Lee also emphasized the project's positive economic impact for Southside Virginia: 900-1400 employed during construction—most residing within a 100-mile radius of the site — and 225 permanent employees (with a projected $5 million payroll) residing in the community when the project is fully operational. Most importantly, he noted, ODEC will become more energy independent, replacing over 300 megawatts of purchased power with its own production.

◆

The Honorable James F. Almand, *Chairman*
Legislative Services contact: Arlen K. Bolstad

SJR 14: Unemployment Compensation Trust Fund Subcommittee

◆

September 14, October 6, and October 9, 1992, Richmond

The joint subcommittee studying the Unemployment Insurance (UI) Trust Fund and related matters met in September and October. The subcommittee examined the trust fund's current operation and projected solvency. The subcommittee also reviewed proposed changes concerning employer UI taxes and employee UI benefits. Finally, the subcommittee looked at UI legislation carried over from the 1992 Session and referred to this subcommittee for review and comment.

The UI trust fund is the source of unemployment compensation benefits paid to unemployed Virginians. It is generated primarily by employer-paid taxes on employee wages up to $8,000. The current rate of taxation ranges from .1 % to 6.2%, depending on each employer's experience rating. The rate of taxation is proportionate to UI benefit payments attributable to each employer. Put another way, the more lay-offs, the higher the tax rate. One exception: new employers are charged a minimum 2.5% for three years. Experience rating can push this rate up, but it cannot go lower during that period.

Employers are also charged a "pool" tax sufficient to cover certain benefits paid out of the fund that are not charged to specific employers. Pool costs include benefits paid resulting from firms going out of business and the difference between taxes paid by maximum-rated employers (6.2%) and the cost of benefits attributable to them. Commissioner Ralph Cantrell of

the Virginia Employment Commission (VEC) told the subcommittee that pool costs have been 20-50% of total benefits for the past six years. The pool tax amount is offset, however, by interest earned by the trust fund whenever solvency exceeds 50%.

Finally, employers are called on to pay a fund-building tax of .2% (added to their experience-based rate) whenever the fund's solvency drops below 50%. The aggregation of all trust fund taxes results in an average per-employee tax of $70 per year.

Commissioner Cantrell told the subcommittee that VEC analysts project a $428 million trust fund balance by December 31, 1992. Solvency stood at 66.8% at the end of 1992's second quarter. However, each employer's cost per employee increased 25.7% from 1991 to 1992. Moreover, the average tax is projected to increase 37.5% in 1993 for three reasons: declining trust fund solvency, worsening employers' experience, and adding a pool tax of .06 % to all employers' tax rates.

The VEC projects that with no changes in the current tax or benefits structure, the trust fund's solvency is adequate. While it is expected to dip down to 59% in 1993, it is projected to begin an upward climb, reaching 86% solvency in 1996. These projections rest on one key assumption: a declining unemployment rate. The VEC projects an average Virginia unemployment rate of 6.7% for 1992; 5.4% in 1993; and 4.5% in 1994-1996. The VEC recommended no changes in taxes or benefits relative to solvency.

Advisory Board Recommendations

The VEC is assisted by two advisory groups: the nine-member State Advisory Board (VEC Board), and the Trust Fund Advisors. The former has three representatives from each of the following categories: business, labor, and the public. Commissioner Cantrell reported three recommendations from the advisory groups.

Both groups recommended that the new-employer tax rate's (2.5%) duration be reduced from three to two years. If implemented, new employers' taxes would be reduced by as much as 80% after the second year, from approximately $200 per employee to $40. The recommendation apparently rested on hope that it would help attract new business to the Commonwealth. However, the VEC reported, information received from the Department of Economic Development suggested that unemployment tax rates are, at best, a marginal factor in business site selection. The VEC also concluded this proposal would cost the trust fund an estimated $2.4 million annually in lost revenue.

The VEC Board further recommended amending the pool-tax provisions in the Virginia *Code* to offset pool costs with trust-fund generated interest whenever solvency exceeds 75%. Currently, 50% solvency triggers the interest offset. The VEC reported that this fund-building proposal would generate significant amounts of additional trust fund revenue. A 75% threshold in 1992, for example, would have created an additional $38 million in employer-paid taxes.

Finally, the VEC Board recommended lowering the minimum benefit from $65 per week to $30. The Trust Fund Advisors, in contrast, recommended lowering the minimum to $50. Both groups recommended that the change in minimum commence in 1994. Assuming a constant 16% wage replacement at the lower benefit levels, the $30 benefit would lower qualifying two-quarter earnings to $1,500; the $50 benefit lowers it to $2,500.

Both advisory groups apparently felt that the growing number of minimum-wage workers regularly employed in jobs providing fewer than 40 hours per week warranted lowering the minimum benefit. However, business representatives reminded the subcommittee that the current benefit tables presume greater workplace attachment than that built into either advisory group's proposal. For example, to qualify for the $30 benefit, a minimum-wage employee could earn the qualifying $1500 two-quarter earnings by working 14 hours per week for 26 weeks or 15 hours per week for 24 weeks. VEC representatives also noted that each $1 reduction in the minimum benefit amount results in an annual $500,000 trust fund cost increase.

The subcommittee took no action on any of the advisory groups' proposals, tabling them for this year.

Carry-Over Legislation

SB 420 proposes to index the maximum weekly unemployment compensation benefit to 60% of the Commonwealth's average weekly wage. The VEC's analysis of SB-420's trust-fund impact showed additional benefit outlays resulting from this proposal would increase annually to $61 million in 1998, with a commensurate drop in trust fund solvency. The bill was supported by labor and opposed by business community representatives. The subcommittee recommended that the Senate Commerce and Labor Committee vote to PBI the bill.

HB 774 eliminates current statutory provisions limiting the VEC's ability to offset employer-paid severance pay against unemployment compensation benefits. Under current law, severance pay offsets are permitted only to the extent severance pay is received within the first 30 days following employment termination. Any severance pay received thereafter cannot be used to reduce benefits. VEC analysis showed that eliminating the 30-day bar would increase trust fund revenues by approximately $200,000 annually. The subcommittee suggested a technical amendment to the bill, but will return it to the House Labor and Commerce Committee without formal recommendation.

HB 773 modifies the one-week waiting period currently provided by statute. Current law provides no payment of benefits during an individual's first week of eligibility. HB 773 permits individuals who are furloughed from their jobs for less than one week at a time to credit accumulated days off without pay against the waiting-week requirement. The subcommittee learned that the proposal would generate significant administrative work for the VEC. However, the subcommittee also learned that the bill may be modified to introduce a concept permitted by federal law and currently in place in 17 other states: work sharing.

Work sharing authorizes extended periods of working hours reductions to be compensated through proportionate benefits payments. For example, if an employer reduced his workforce's hours by 20%, the employees could receive 20% of the UI benefits they would be entitled to receive for actual unemployment. The subcommittee voted to recommend that the House Labor and Commerce Committee PBI HB-773 as introduced.

◆

The Honorable Elliot S. Schewel, *Chairman*
Legislative Services contact: Arlen K. Bolstad

Commission on Early Childhood and Child Day Care Programs

◆

October 12, 1992, Richmond

The third meeting of the Commission on Early Childhood and Child Day Care Programs was opened with remarks by the chairman announcing the establishment of a subcommittee to review the carry-over legislation, HB 1035, and Secretary Cullum's proposal for regulating child day programs. The subcommittee will provide an opportunity for comments from patrons and the public and will submit recommendations to the commission.

Secretary of Health and Human Resources Howard M. Cullum presented his proposal for regulating child day programs in Virginia, which addressed the following issues:

- Definition of child day care,
- Exemption of programs from licensure,
- Number of children or relationships exempted from family day care program licensure,
- Caretaker screening and qualifications,
- Adequacy of sanctions, and
- Costs of regulation to the provider, consumer, and state.

To resolve the issues, Secretary Cullum recommended that the commission:

- Adopt definitions, as proposed, for "child day program," "child day care center," "family day care center," and "family day care home;"
- Implement the major provisions of HB 1035 as currently in the *Code of Virginia*;
- Continue current religious exemptions and strengthen the oversight of such facilities by developing basic health and safety standards and requiring on-site verification of compliance with applicable standards and criminal records checks;
- Not extend exemptions to local parks and recreation child care programs;
- Authorize the Department of Education to regulate before- and after-school day care programs;
- Provide for the voluntary registration of child day care programs not required to be licensed;
- Authorize the Commissioner of Social Services to impose certain sanctions to ensure compliance and protect the health and safety of children;
- Provide quality improvements by expanding the resource and referral support from the Child Development Block Grant and increase provider training and funding;
- Establish a certification program to permit localities to serve as the state's licensing or regulatory agent;
- Provide for the incremental implementation of new licensing requirements: for child care centers, family day homes with more than eight children, and the voluntary registration program — July 1, 1994; full implementation of new licensing requirements — July 1, 1996.

Secretary Cullum noted that, currently, funds were not available to provide for full implementation of new licensing requirements next year.

Following Secretary Cullum's presentation, Marion Houck, representing the Chairman of the Virginia Council on Child Day Care and Early Childhood Programs, read a statement supporting Secretary Cullum's proposal for regulating child day care.

Robert Anotozzi, director of the Fredericksburg Department of Parks and Recreation, and representing the Virginia Association of Parks and Recreation, indicated that a questionnaire was developed to survey local governments to determine which local parks and recreation programs would be subject to the new licensing requirements. The results of the survey will be presented to the commission's subcommittee for consideration.

The chairman directed the Carry-Over and Regulations Subcommittee to meet as quickly as possible and to report its recommendations to the commission on November 25, 1992.

◆

November 25, 1992, Richmond

Following opening remarks by the chairman, Delegate Joan Munford presented the recommendations of the Subcommittee on Carry-Over Legislation and Regulations. Based on a proposal by Howard M. Cullum, Secretary of Health and Human Resources, to amend HB 1035, the subcommittee made recommendations in the following areas:

- that a definition of child day programs be adopted;
- that additional sanctions be available for enforcement of regulations, including notifying parents of serious violations, reducing capacity, suspending admissions, mandating training, and withdrawing public funds;
- that the current religious exemption continue but that religiously exempted facilities be inspected according to expanded health and safety requirements;
- that Fairfax, Alexandria, Falls Church, and Arlington be allowed to regulate all child day facilities in their jurisdictions if their local governments receive certification from the Commissioner of Social Services; and
- that support for quality improvements be expanded, including funding for resources and referral services, for provider training, and for an expansion of the voluntary registration program to accommodate the new definitions of family day homes.

The commission adopted the recommendations of the subcommittee to be effective on July 1, 1993, and asked the Department of Social Services to develop an implementation plan to be presented at the commission's December 16th meeting. The subcommittee recommended the modified version of Secretary Cullum's proposal as an alternative to the carry-over legislation.

In addition to the subcommittee's recommendations, the commission considered a substitute for carry-over HB 1026 at the request of the patron. The bill would exempt from licensure preschools and nursery schools operated by a private school accredited by a recognized accrediting organization. The schools would be subject to health and safety inspections and required criminal records checks for employees. Following a discussion, the commission declined to recommend adoption of the bill. Larry D. Jackson, Commissioner of Social Services, stated that his agency and the private schools had been negotiating and were close to agreement. Mr. Jackson agreed to mail a progress report to the commission members prior to the December meeting.

Chairman Walker reminded commission members that public hearings on the commission's recommendations will be held in Fairfax, Roanoke, Norfolk, and Richmond beginning on December 8, 1992. After considering public comments, the commission plans to adopt final recommendations and approve a draft report at its December 16th meeting, which will be held at 10:00 a.m. in Senate Room B of the General Assembly Building in Richmond.

◆

The Honorable Stanley C. Walker, *Chairman*

Legislative Services contact:
Brenda H. Edwards

HJR 13: Joint Rules Subcommittee Studying the Development of Legislation

◆

November 10, 1992, Richmond

The Joint Rules Subcommittee Studying the Development of Legislation was established by the Joint Rules Committee to examine legislative activities having a substantial impact on how the General Assembly operates during the interim. Issues discussed during the meeting included how to encourage members to prefile legislation, how to improve and clarify carry-over procedures, and how to regulate the growth of studies.

Earlier Requests and Prefiling

Current law provides that legislation may be prefiled 60 days before a session following the election of members of the House and 180 days prior to other regular sessions. The subcommittee agreed that the advantages of prefiling are numerous. Prefiling gives members an opportunity to review legislation prior to the session, so they can begin substantive committee work earlier. In addition, when a substantial portion of bills are drafted before the session, more care can be taken in the preparation of legislation requested after the session convenes.

Although prefiling has been permitted since 1969, statistics show that only two percent of all the measures introduced are prefiled. While members of the subcommittee agreed that legislators needed to prefile their bills, they were not convinced that sending out more reminders or increasing the time for prefiling would make any difference. The subcommittee concluded that stronger incentives would be needed to encourage prefiling.

Following the lead of the former Commission on the Legislative Process, which in the early 1970s recommended earlier filing deadlines for certain classes of bills, such as charters, the subcommittee recommended requiring an earlier request deadline for agency measures. Such measures are easily distinguishable and constitute a considerable number of bills introduced each year. Under the subcommittee's proposal, agencies would have to submit their requests for legislation by December 20— the same date the Governor has to submit his budget plan to the General Assembly. By this date, agencies should be aware of what legislation is needed and is consistent with the administration's fiscal policies.

Carry-Over Legislation

During the even-year regular sessions, standing committees are permitted to carry over legislation on their dockets until the following regular session. Committees may then meet between sessions to review and act on carry-overs so that any reported measures can be considered by the General Assembly immediately upon its return. However, very few standing committees meet between sessions to act on carry-overs, and only 13% of the bills carried over are passed at the following session.

To encourage standing committees to take a more active role during the interim, the subcommittee recommended that all carry-over legislation must be acted upon by December 20. If a committee fails to act by this date, the carry-over legislation is considered permanently left in that committee and may not be considered during the short session. The subcommittee concluded that clearing committee dockets in this manner should enable those committees to concentrate on new matters earlier during the short session.

Specific Recommendations Affecting Interim Activities :

- Amend §30-28.10 of the *Code of Virginia* to impose a December 20 deadline for agencies to submit their requests, redrafts, and corrections to Legislative Services.
- Request standing committees, beginning after the 1994 session, to meet before December 20 to act on all carry-overs on their dockets. If the committees do not act by this date, such carry-over legislation shall be recorded as permanently left in committee and shall not be considered during the short session.
- Require a three-fourths vote of the members elected of each house to create a new legislative study. Members introducing study proposals and the Rules Committees are encouraged to allocate new studies to standing committees, existing legislative studies, and executive agencies.

JANUARY 1993

SUN	MON	TUES	WED	THUR	FR I	SAT
					1	2
3	4	5	6	7	8	9
10	11	12	13 (1) General Assembly convenes (noon) Joint Assembly Last day to file charter, claims, sales & property tax exemption bills	14 (2)	15 (3)	16 (4)
17 (5)	18 (6)	19 (7)	20 (8) All requests for drafts, redrafts, & corrections to Legislative Services by 5:00 p.m.	21 (9)	22 (10) All committees to finish work on carried over bills by 11:59 p.m.	23 (11)
24 (12) 31 (19)	25 (13)	26 (14) Last day to file bills & joint resolutions	27 (15)	28 (16)	29 (17)	30 (18)

DIVISION OF LEGISLATIVE SERVICES

FEBRUARY 1993

SUN	MON	TUES	WED	THUR	FRI	SAT
	1 (20)	2 (21)	3 (22)	4 (23) Revenue committees to finish work by midnight	5 (24)	6 (25)
7 (26) Committees responsible for appropriation bills to finish work on such bills by midnight	8 (27)	9 (28) Last day for each house to act on its own legislation (except appropriation bills); amendments on appropriation bills available by noon	10 (29)	11 (30) Houses of introduction to complete work on appropriation bills	12 (31) Last day to confirm gubernatorial appointments made during the recess	13 (32)
14 (33)	15 (34)	16 (35) Last day for each house to act on revenue and appropriation bills of the other house and appoint conferees by midnight	17 (36)	18 (37)	19 (38) Last day to begin to fill certain judicial vacancies	20 (39) First conference on revenue bills to finish by midnight
21 (40)	22 (41) Last day for any committee action on legislation; revenue conference report available by noon	23 (42) First conference on appropriation bills to finish by midnight	24 (43)	25 (44) Budget conference report available by noon; last day to put bills in conference.	26 (45) Only conference reports & certain joint resolutions may be considered	27 (46) Adjournment sine die
28			NOTE: April 7, 1993—Reconvened Session			

DIVISION OF LEGISLATIVE SERVICES

Interim Schedule and Proliferation of Studies

The subcommittee also examined reports that the number of subcommittees, task forces, and commissions were consuming a considerable amount of legislators' time during the interim and causing conflicts between members' public and private responsibilities. As a means to control the growth of these studies, the subcommittee first recommended increasing the required vote to create a new legislative study to three-fourths of the elected membership of each house. Second, the subcommittee urged that whenever possible, members and the Rules Committees should assign studies to existing standing committees, joint subcommittees, and commissions in order to fully utilize the expertise of these entities.

The Joint Rules Committee is expected to consider the subcommittee's full report at a future meeting.

◆

The Honorable C. Richard Cranwell, *Chairman*

Legislative Services contact: Ginny Edwards

HJR 13 Joint Subcommittee Studying Changes in the Legislative Sessions

◆

December 1, 1992, Richmond

1993 Procedural Resolution

During its second meeting, the Joint Rules Subcommittee Studying Changes in the Legislative Sessions considered the procedural resolution for the coming session. The calendar on pages 21 and 22 represents the schedule recommended by the subcommittee and adopted by the members of the Joint Rules Committee on December 1. The resolution was prefiled on December 4.

Reconvened Sessions

Chairman Andrews reminded members of the subcommittee that any legislation proposing a constitutional amendment to clarify or revise Article V, Section 6, concerning the reconvened session would need to be introduced at the 1993 Session to become effective by 1995. Constitutional amendments must first be considered and approved at two legislative sessions with an intervening House of Delegates election before being proposed to the voters in November.

◆

The Honorable Hunter B. Andrews, *Chairman*

Legislative Services contact: Ginny Edwards

Ad Hoc Subcommittee Studying the Use of Social Security Numbers for Transaction Identification

◆

November 10, 1992, Richmond

At the subcommittee's public hearing, representatives from a number of state agencies that routinely use social security numbers for identification purposes as well as representatives from the private sector were invited to attend and address allegations that the widespread use of social security numbers creates a high risk of security breeches, fraud through unauthorized access to customer accounts, and invasions of privacy.

Public and Private Use of Numbers

Michael Brown, secretary of the State Board of Elections, informed the Subcommittee that both the Virginia Constitution and the *Code* require that social security numbers be used to register voters. This use is designed to decrease the possibility of voter fraud. According to Mr. Brown, voter registration lists, which also contain social security numbers, may be obtained by candidates in general elections for the areas in which they are running, by nonprofit groups attempting to increase participation in elections, and by political parties. He indicated it would be technically possible to delete social security numbers from lists given to such individuals and groups, or such persons could be prohibited from disclosing any numbers they are given.

Walter Ayers, representing the Virginia Bankers' Association, testified that no major banks use social security numbers for cash access cards, although individuals could select a portion of their social security number as their

access number. He did not feel there are banking abuses that result directly from the use of social security numbers and pointed out that banks are required by federal law to get social security numbers for tax and other purposes when opening customer accounts. Banks do not give out these numbers, as they are restricted from doing so by the Virginia Privacy Protection Act.

The director of the State Department of Consumer Affairs, Betty Blakemore, indicated that her office receives many complaints involving telemarketing lists containing social security numbers. Other individuals testified that the federal and state privacy protection acts are not being enforced. These individuals requested that Virginia not require a social security number for voter eligibility and that DMV not use social security numbers on driver's licenses.

Karen Chappel appeared for the Department of Motor Vehicles and explained that DMV uses social security numbers as universal identifiers to eliminate confusion, cut down on the possibility of fraud, and make interstate transfers easier. She cited §§ 42.2-323 and 46.2-342 as well as the Commercial Driver's License Act as instances in which the *Code* requires DMV to use social security numbers. She assured subcommittee members that DMV limits its usage of these numbers and makes great efforts to stay in compliance with federal and state privacy protection acts. DMV does disseminate social security numbers with driver's records, but rules have been in place since 1977 restricting release of this information. Generally, insurance companies, employers, the court system, and other similar groups have access to driver's records. No invasion of privacy action has ever been filed against DMV for release of social security numbers. Additionally, all DMV employees are required to sign security pledges, and other controls are in place or being formulated. Ms. Chappel said that an alternative number identification system would come at a high cost in time and money, such a system taking up to seven years to implement and costing approximately eight and a half million dollars.

The subcommittee noted that 34 states do not require their departments of motor vehicles to use social security numbers but rather use unique control numbers. DMV's preference, however, would be to continue using social security numbers, to which their computers are geared.

Lieutenant Lewis Vass spoke for the Department of State Police and indicated that arrest records have for many years required social security numbers. However, with respect to arrest records and also firearms criminal record checks, social security numbers are used only as backup identifiers to name, sex, race, and date of birth. The State Police have found these numbers to be less reliable as identifiers in view of the fact that some individuals have been found to have up to 15 social security numbers.

The Department of Social Services was represented by Peggy J. Friedenberg, who noted that the department is required by the federal government to use social security numbers for all public assistance programs. The purpose for such use is to prevent duplication and fraud. Disclosure of social security numbers is "extremely limited" as required by state and federal privacy acts.

Dangers of Universal Use

Robert J. Stratton, a computer security engineer with InterCon Systems Corporation, testified that the concept of social security numbers as unique identifiers is invalid. These numbers are tailor-made for fraud due to the methods of assigning such numbers, which are relatively easy to ascertain. He explained that Maryland uses a 12-to-14 digit number based on a number of factors, which yields a high degree of security. He indicated that national information data bases containing large volumes of personal information are frighteningly insecure, allowing real estate brokers and automobile dealers, among others, to get vast amounts of information they do not need.

Mr. Stratton suggested using maximum security numbers rather than social security numbers if universal identifiers are necessary. He indicated that the use of social security numbers in both the public and private sectors makes it much more difficult for an individual to maintain privacy. Mr. Stratton explained that social security numbers do not fit computer realities of today, these numbers being inherently poorly suited as universal identifiers.

Mark Rosenberg, representing Computer Professionals for Social Responsibility, contended that national ID cards are a bad idea, particularly between governmental entities, due to the ease of computer matching and entry into multiple data bases. Consequently, building a very detailed dossier on someone, including credit history, work history, and income and medical records, or locating a party anywhere in the United States is very easy. He recommended that social security numbers be taken off driver's licenses and not be disseminated. He opposed requiring these numbers in order to vote. Mr. Rosenberg also suggested that the subcommittee may wish to consider recommending establishment of a data protection board, which most other countries have. He said that Germany's data protection board works particularly well.

Marc Greidinger, who has filed suit against the State Board of Elections, questioned the legitimacy of governments' requiring social security numbers at all, alleging that better means of identification are available. As long as governments continue to use social security numbers as identifiers, these numbers should not be disseminated. Mr Grininger also urged enforcement of existing privacy protection laws.

Micky Berry, an attorney with InterCon Corporation, explained to the subcommittee that social security numbers open a lot of doors. Attorneys have access to data bases in the judicial system if they have an individual's social security number.

Subcommittee Concerns

Subcommittee members were concerned over the apparent lack of security for information data bases and were perplexed over the difficulty of providing adequate security. They requested that drafts be prepared to restrict dissemination of voter social security numbers and also to prohibit DMV from printing social security numbers on driver's licenses. In each case such numbers would continue to be used internally. The subcommittee also expressed interest in determining whether other states have data protection boards or whether there is model legislation creating such boards.

A final meeting of this ad hoc subcommittee will be held prior to the 1993 Session to consider introduction of legislation or, possibly, to recommend creation of a more comprehensive study next year to explore questions that were raised during this study.

◆

The Honorable James F. Almand,
Acting Chairman

Legislative Services contact:
Oscar R. Brinson

Ad Hoc Study of Legal Ethics, Client Fraud and Embezzlement

◆

September 30, 1992, Richmond

This special subcommittee is investigating the circumstances surrounding the far-reaching fraud and embezzlement schemes perpetrated by David M. Murray (which culminated in his suicide earlier this year). Phil Hatchett, Michael Mares, and Stephen Buis appeared before the subcommittee in their capacities as special receivers and/or administrators of the David Murray estate to provide background and explain, from their perspective, what happened and how it happened.

Background of the Murray Case

Following in the footsteps of his father, who was a renowned real estate attorney in Tidewater, Virginia, David Murray had an impeccable reputation at the time of his death. Although Mr. Murray's position as an attorney influenced his ability to secure funds, it appears the great majority of those who entrusted him with their money were not legal clients. He apparently had an uncanny ability to secure the trust of those around him.

David Murray had four primary sources of funds: (i) traditional loans from financial institutions; (ii) money from estates and trusts where he served as fiduciary (only 10% of total); (iii) individuals who invested money in his corporations (Mr. Murray served as officer, director, and shareholder in approximately 27 corporations, the majority of which were owned solely by him. However, it is difficult to determine his exact role in most of these businesses.); and (iv) notes from individuals representing loans to Murray or to his corporations. (Most of these notes paid 18 - 20% annual interest. These payments continued until shortly before his death. As all investors were receiving very high interest rates, they had no indications of problems.)

David Murray had no malpractice insurance, although he informed the State Bar that he did carry such insurance. In any event, malpractice insurance would have covered few victims of his schemes. The receivers of the Murray estate testified that all of his financial dealings are plagued with problems and that it is extremely difficult to trace funds or assess where Murray's position as an attorney ended and his role as financial advisor and confidence man began. There are indications that securities laws violations occurred, and the FBI is investigating. Also, Mr. Murray deposited funds from five separate estates into one account, which was $4 million in debt as of the date of his death.

As long as Murray paid monthly interest checks to his many investors, no one complained or questioned his actions. Apparently his overzealousness and a worsening economy caught up with him during the latter part of 1991. His operation was run "out of his hat," with no involvement of any accomplices. It is unlikely that commissioners of accounts or other overseers, including the Virginia State Bar, could have done much to detect or prevent his wrongdoings.

There were approximately 550 investors in various Murray transactions. Their claims average approximately $60,000 each.

State Bar Regulations

Michael L. Rigsby, Virginia State Bar counsel, reviewed applicable existing State Bar standards and regulations. He pointed out that, with certain exceptions, the Bar's rules apply only to lawyers acting as lawyers, which was essentially not the case in the Murray situation. The State Bar did become involved in April

1991, when Murray's trust account was overdrawn. The Bar asked for an explanation and was satisfied with Murray's response. A second overdraft resulted in an investigation, and all persons interviewed said that they were simply investors. The Bar concluded that no attorney-client relationship existed in these cases. Even though his account was not strictly a fiduciary trust account, the Bar continued its investigation and informed the FBI of potential problems late in 1991. At the time of Murray's suicide, the Bar was in the process of setting up a disciplinary hearing.

Mr. Rigsby stressed that most of Murray's wrongdoings could not have been detected by the Bar, as his actions were in the role of counselor, friend, and advisor, but not attorney-related. He noted that the ABA's Model Rule 5.7 once forbade attorneys from engaging in ancillary businesses. However, this rule was repealed some time ago. He also noted that the Bar does not conduct random audits of attorney trust accounts, and even if such audits were routine, they would not have turned up wrongdoings in the Murray situation.

State Bar Ethics Committee

Walter H. Horsley, chairman of the Virginia State Bar committee reviewing legal ethics, informed subcommittee members that in the one other multimillion dollar case of attorney fraud in Virginia, the perpetrator's large law firm covered resulting client loses. In a small firm or a one-man operation, investors or clients run a substantially greater risk of loss.

Mr. Horsley indicated that actions by attorneys can be regulated by either prior restraints or a system of checks and balances. However, many clients do not like the probate system and wish to avoid or minimize probate costs and attorney fees. Consequently, they establish inter vivos trusts, which are not court supervised and do not require court accountings. The number of lawyers who serve as trust fiduciaries is small, and often such attorneys are family members. He views much of the problem in the Murray situation as resulting from a lack of concern, oversight, and intelligence on the part of investors, who should have realized that Murray's promises were "too good to be true."

Mr. Horsley testified that his committee would be holding two meetings later in the fall and hopes to report its findings and recommendations to the special subcommittee at its final meeting on December 17, 1992. Among the proposals his committee will be considering are the following:

1. Legislation to prohibit fiduciaries from commingling trust account funds. Such commingling makes fund tracing very difficult. In the Murray situation, he could make any individual trust account balance at a given time, and then use the same funds in another estate to give the appearance of no deficit in either estate.

2. Establishment of uniform accounting periods. (There is much opposition to this idea.)

3. Mandatory malpractice insurance. (Though there is no current requirement that attorneys carry liability insurance, such insurance would not have covered the great bulk of Murray's wrongdoings.)

4. Client security fund. ($500,000 now exists in this fund, with a $25,000 cap per individual. This money, again, will not cover most lawsuits incurred in the Murray case due to the absence of an attorney-client relationship.)

5. Umbrella liability policy. (Although the committee is considering such a policy, the cost would seem to be prohibitive, necessitating assessing every lawyer in Virginia $165.00 to provide $100,000 coverage with no deductible.)

6. Mandatory fidelity bonding of attorneys. (This is an idea being actively reviewed by the Bar's subcommittee. Such bonding would require a $10 to $12 annual assessment from each of Virginia's 28,000 attorneys and would establish a lump sum pool from which to pay claims. This concept would establish a dishonesty bond, which would cover all embezzlement situations by attorneys and would not be limited to fiduciary or attorney-client situations. If this concept comes to fruition, the State Bar may request that the General Assembly increase Bar fees to provide the bonding necessary to cover business/lawyer fraud.)

7. Establishment of a probate court system. (Such a system could be established only at great expense, and would be opposed by both the State Bar and its members.)

8. Requirement that fiduciaries not waive sureties on bonds.

9. Upgrade standards and qualifications for commissioners of accounts to provide uniformity. (This proposal would be costly and intrusive and, if in place, would not have prevented most of the loses in the Murray situation.)

10. Random checks of attorney trust accounts.

11. Promulgate a Bar resolution cautioning Virginia attorneys with respect to conducting investment counseling services.

Next Meeting

The special subcommittee requested that Senators Holland and Scott and Delegates Almand and Murphy meet with the Bar committee during its deliberations. Mr. Horsley expressed the hope that his committee will have written recommendations and a final report to be shared with the special subcommittee at its December 17, 1992, meeting, which will serve both as a work session and a public hearing.

◆

The Honorable Robert C. Scott, *Chairman*
Legislative Services contact: Oscar R. Brinson

HB 961 and 962: Ad Hoc Joint Subcommittee on Medical Malpractice

◆

November 6, 1992, Richmond

Delegate Woodrum called the second meeting to order by reminding those present that the committee had been created to address issues raised by bills seeking repeal of the limitation on recovery in medical malpractice cases and repeal of the procedures involving provisions implementing the medical malpractice review panels.

Medical Malpractice Review Panels

Gordon McLean, president of the Virginia Insurance Reciprocal (TVIR), addressed the issue of medical malpractice review panels by reminding the committee of the results of the studies previously undertaken by Dr. Nelson and Professor Daugherty (See HD 21, 1985). Each study concluded that the panels were achieving the desired goals. Mr. McLean noted that TVIR had recently reviewed 72 of their claims for which a panel had been requested in 1990 or 1991. In 86% of those claims a panel decision was rendered for the defendant and in slightly over half those cases (51%), that was the end of the claim. Mr. McLean, on behalf of TVIR, asserted that the panels weed out nonmeritorious claims and thereby control the cost of insurance.

Comparison with North Carolina

Mr. McLean had been asked to provide the committee with information on TVIR's experience relative to a comparison of premium rates for Virginia health care providers and North Carolina health care providers. North Carolina does not have a cap on recovery. By letter of September 25, W. Scott Johnson advised the committee that TVIR writes only hospital coverage in North Carolina and that hospital rates in North Carolina are "significantly higher" than in Virginia.

In testimony, Mr. McLean explained that base rates for hospitals are 45% higher in North Carolina. If the cap on recovery is removed, not only will base rates increase but, according to Mr. McLean, needed coverage limits would also increase. Currently, 92% of the Virginia doctors insured by TVIR have coverage of $1 million or less and 63% of their hospitals have similar coverage. If the cap is removed, Mr. McLean believes health care providers would need to purchase at least $3 million coverage. The overall increase to Virginia health care providers (i.e., the increase in base rates plus the cost of purchasing additional coverage) resulting from removal of the cap would be approximately 55%. Currently, the rate paid by Virginia hospitals is 97% of the 1987 rate. In North Carolina, hospitals are paying 105% more than they were for the same coverage in 1987.

In response to questions from the committee, Mr. McLean agreed to provide more data from North Carolina, specifically how many hospitals are carrying more than $1 million in coverage and the percentage of OB-GYNs in North Carolina carrying more than $1 million. He will also provide TVIR's premium history and its costs for reinsurance above $1 million.

VMS Proposal

Allen Goolsby, representing the Virginia Medical Society (VMS), discussed the proposal presented on behalf of the VMS and the Virginia Hospital Association (VHA) as an alternative to repeal of the cap and the review panels. This proposal had been provided to the members of the committee and other interested parties prior to the meeting. Mr. Goolsby explained that, upon request of a subcommittee of the Senate Courts of Justice Committee in 1990, VMS coordinated an effort to develop an alternative to the traditional system for dealing with the most severe types of injuries resulting from medical malpractice (i.e., those cases in which the cap causes the most hardship to the victim). Both VMS and the VHA have agreed, as organizations, to support the proposal submitted.

Under the VMS proposal, if a verdict or settlement for the plaintiff of $1 million or more is obtained, all medical expenses incurred above a $400,000 threshold and up to a maximum of $3 million would be paid as incurred and net of any collateral source benefits received by the plaintiff. Disagreements over entitlement to payment under the proposal would be resolved by the Workers' Compensation Commission. Payments to the plaintiff would be made under a rider to the health care provider's malpractice insurance coverage. Mr. Goolsby estimates that the VMS proposal will cost health providers an additional 5% in premium. If the cap were adjusted for inflation to $1.8 to 1.9 million, Mr. Goolsby believes that premium rates would increase by at least 13%. (In subsequent testimony, representatives of the Virginia Trial Lawyers asserted that the cap would be $2.46 million if adjusted for inflation.) He believes that health care providers would accept the increase and costs under the VMS proposal rather than any increase resulting from repeal of the cap, because under this proposal the money would go directly to the injured party.

The proposal generated considerable discussion. In response to questions from the committee, Mr. Goolsby indicated that lost wages, particularly those actually suffered by a "productive adult," could be included in the

proposal and that the collateral source provision could be eliminated or modified to allow plaintiff to recoup at least some of the cost incurred to secure the collateral benefit. He cautioned, however, that these types of changes will necessarily increase the costs of the proposal. For example, he estimates that if collateral source benefit reimbursement were excluded from the $400,000 threshold, the cost would increase 6%. In response to questioning, Mr. Goolsby stated that currently 3.4% of a health care provider's gross income goes to payment of malpractice insurance, but cautioned that this did not include the "high risk" specialties, such as OB-GYNs and anesthesiologists, who pay significantly more.

Mr. Goolsby agreed to modify the proposal prior to the next meeting and circulate the revisions and supporting data.

Trial Lawyers

Mary Lynn Tate and Bob Hall spoke on behalf of the Virginia Trail Lawyers Association (VTLA), which opposes both the cap and the panels. They were critical of the VMS proposal because (i) lost wages are not covered by the extended cap although these losses may be devastating to a plaintiff whose actual medical expenses are relatively low (e.g., in cases of blindness); (ii) the definition of medical expenses does not include medical insurance premiums paid by the plaintiff, thereby shifting the burden of payment from the wrongdoer to the insurance industry, and excludes medicaid and medicare; (iii) the proposal would require the plaintiff to litigate causation and reasonableness issues continually if a medical bill is contested by the insurer, resulting in additional hardship to the plaintiff and a significant increase in the workload of the Workers' Compensation Commission; and (iv) an innocent victim of malpractice must pay $400,000 out-of-pocket before the increased limits apply.

As an alternative to either repeal of the cap or adoption of the VMS proposal, the VTLA suggests modification of the cap to apply only to damages for pain and suffering, excluding quantifiable damages for deformity or disfigurement, and application of the cap to each defendant, not to the total claim. Figures on the cost of this alternative were not provided. It was suggested, however, that even a 15% increase in premiums would not be unreasonable. The VTLA believes that there is no correlation between the cap and unjustifiable verdicts and that the cap is patently unfair to those most severely injured by another's wrongdoing.

With regard to the panels, the VTLA believes they should be repealed because they are duplicative and dilatory. Additionally, the panel scheme creates artificial procedural barriers.

Finally, Mr. Hall suggested that rather than repeal the collateral source rule as suggested by the VMS and the VHA, the collateral source should be given a statutory right of subrogation against the wrongdoer.

House Bills 961 and 962

Delegate Bernard S. Cohen, the chief patron on HB 961 and HB 962, was the final speaker. Mr. Cohen believes that the cap on recovery is immoral. He told the committee that the data do not support the need for a cap. According to a New England Journal of Medicine study of 31,000 patient records in New York, less than 2% of medical malpractice victims sue. In one instance cited by Mr. Cohen, an OB-GYN in North Carolina was paying $30,795 for $1 million in coverage to Medical Mutual, while an OB-GYN in Virginia was paying $30,595 for the same coverage. The cap, he argued, is not saving health care providers in Virginia any significant money and is costing innocent victims a lot.

Next Meeting

As noted, Mr. Goolsby agreed to provide alternative modifications to the VMS proposal for consideration at the next meeting. The committee expressed its hopes that a compromise could be reached. It was generally agreed that if nothing else is done, a cost of living adjustment to the cap is needed. The committee agreed to meet again in December.

◆

The Honorable Clifton A. Woodrum, *Chairman*

Legislative Services contact: Mary P. Devine

HJR 24: Commission on Capital Financing

◆

November 30, 1992, Richmond

Public Hearings

Staff briefed the commission on two public hearings held in Abingdon on October 30 and in Farmville on November 6. Combined, there were approximately 14 speakers at the hearings, most of whom run or are trying to start a small business. Several of the speakers were from area economic development agencies or small business development centers.

One remark, repeated several times throughout the hearings, was the need for a toll-free hotline to answer questions for those involved in small businesses or act as a clearinghouse for information. The type of information needed, according to some of the speakers, includes general paperwork assistance, tax help, the types of licenses required, and other information needed to get a business started.

A number of speakers described the difficulty in obtaining capital financing from their local banks, whether large regional banks or small community banks, and the overemphasis on the requirement for collateral. It was stated that banks are no longer able to deal with people but look only at numbers, with no regard for the importance of a business to a community or other unique circumstances. It was also stated that the application process was too cumbersome and complicated. In response to questions from commission members, several speakers noted that they felt that the availability of credit at market or above-market rates was more important than loan subsidies or grants.

Current Regulatory Climate

According to Commissioner Sidney A. Bailey of the Bureau of Financial Institutions, the widely reported credit crunch does exist to some extent, but it has been exaggerated. He noted that the difficulty in obtaining credit arises not from a lack of available capital, but from stricter examination standards enforced by the federal government. He further stated that he believes that the prospects for sound businesses to obtain loans are very good. In response to a question, Mr. Bailey stated that the current trend of bank mergers has resulted in a transfer of capital from rural areas. He explained that it is more profitable for a regional bank to make a smaller number of large loans in a large metropolitan area than to make a greater number of small loans in rural areas.

Ed Morrissett, president of VEDCORP, also addressed the commission. VEDCORP is a private, for-profit entity that makes equity investments in small businesses located in certain areas of Virginia. Mr. Morrissett told the commission that VEDCORP has closed only one loan in its two years of existence but has 12 proposals outstanding and has handled 375 inquiries. While expressing disappointment with these figures, Mr. Morrissett stated that VEDCORP has been going through an incubation period, which was not completely unexpected for a start-up business. He believes that if VEDCORP expands its territory to include the entire state, and if the economy starts to improve, VEDCORP is in a position to become much more active.

Hugh Keogh, executive vice president of the Virginia Chamber of Commerce, expressed the Chamber's continued support of VEDCORP. He further commented that Virginia businesses are going to need greater access to capital financing in the future, due in part to the needs of companies that will be required to find new products and customers due to cutbacks by the federal government in national defense.

Alternatives to Traditional Financing Programs

Wayne G. Strickland, executive director of the Fifth Planning District Commission in Roanoke, addressed the ongoing feasibility study for establishing a Blue Ridge region development bank. Such a bank would be designed to address the needs of small or marginal borrowers who are not profitable to banks. Characteristics differentiating a development bank from other financial institutions include (i) targeting its lending to nontraditional borrowers and depressed areas, (ii) increasing its outreach and lending capital through partnerships with public sector programs, private sector capital, and community-based organizations, (iii) providing technical assistance to borrowers, and (iv) taking more risks in its lending, to the extent prudent as a regulated financial institution.

Other speakers addressed the need for flexible manufacturing networks to bring small businesses together and help them find market niches, the economic development needs of rural communities, and the need for continued support for rural businesses. The Small Corporation Offering Registration (SCOR) program, a streamlined fill-in-the-blanks registration process allowing small firms to raise up to $1 million in a 12-month period, is in place or planned in 30 states. Virginia, according to one speaker, does not offer a SCOR program.

Future Meeting

The commission plans a work session to discuss recommendations and develop proposed legislation on December 16, 1992, at 1:00 p.m. in the Sixth Floor Conference Room of the General Assembly Building in Richmond.

◆

The Honorable Clarence E. Phillips,
Chairman

Legislative Services contact: Jeffrey F. Sharp

SJR 1: Emissions from Coal-Carrying Railroad Cars

◆

November 23, 1992, Richmond

The Joint Subcommittee Studying Measures to Reduce Emissions from Coal-Carrying Railroad Cars convened to hear from citizens and businesses affected by coal dust emissions and to receive an update on a study initiated by Norfolk Southern Corporation.

Background

The catalyst for establishing the joint subcommittee was legislation introduced during the 1991 Session of the General Assembly: SB 566 and HB 1163, which would have required railroad cars transporting coal to be covered so that their contents would not escape.

The two identical bills were authorized for subcommittee study by the chairmen of the Senate Commerce and Labor Committee and the House Roads and Internal Navigation Committee. During the 1991 interim, the subcommittees met jointly and heard extensive testimony on the nature of the fugitive coal dust problem for some citizens living along the tracks. The subcommittees recommended that they continue their study as a joint subcommittee, and SJR 1 was subsequently adopted by the 1992 Session.

Continued Citizen Concerns

Concerns previously expressed at a public hearing in Roanoke were reiterated in Richmond. According to Marianna Fillmore, a Blacksburg citizen, problems from blowing coal dust "have not abated in the least." Testimony indicated that, at a minimum, coal dust emissions are a nuisance that require residents to close windows, wash motor vehicles repeatedly, and keep children indoors. Exceptional cases have caused citizens to file claims with Norfolk Southern to pay for the cleaning of their homes. The company has reimbursed homeowners in many such cases. Concern was also expressed about the potential health effects of prolonged exposure to coal dust that blows off of trains.

Stan Goldsmith, Altavista's town manager, informed the subcommittee that the Central Virginia Planning District Commission recently adopted a resolution in support of "the need for a positive approach to resolving this problem on behalf of the citizens of the Commonwealth." Mr. Goldsmith testified that the effects of coal dust emissions are "destructive and detrimental" to Altavista's citizens and businesses.

Dan Johnson, representing Altavista employer Ross Laboratories, stated that the company has had to periodically clean its roof at a cost of $3,000 per cleaning because it is being discolored by coal dust. He told the subcommittee that Ross Laboratories has spent over $1.3 million during the past three years to upgrade its facility roofing system and is working with the manufacturer "to determine if the coal dust will result in premature material failure." In addition, Mr. Johnson commented that a constant complaint among employees is that coal dust accumulates on their vehicles in the company's parking areas.

Norfolk Southern Study Delayed

In 1991, Norfolk Southern representatives informed the subcommittee that the company had hired a consultant to determine the extent of the fugitive coal dust problem, to isolate potential causes, including seasonal and weather-related effects, to conduct test-site evaluations, and to examine potential remedies.

W. Bruce Wingo, representing the rail company, told the reconstituted subcommittee that a major component of the study had been delayed. He stated that a water spray test facility—set up to test the effects of spraying certain cars with water—was late in being constructed because the company did not receive the required permit until July. The subcommittee learned that the facility, which took six months to construct at a cost of $380,000, will be operational this December.

Several witnesses pointed out that problems from blowing coal dust are most severe during the hot and humid summer months and, as a consequence, the study needs to encompass that period. "Summer," stated Mr. Wingo, "will be the real crucial time." Several speakers, however, expressed doubt that spraying the coal with water will greatly reduce the

amount of fugitive coal dust, particularly as the cars move further and further away from the test facility.

Subcommittee Comments and Action

Delegate Mayer suggested that Norfolk Southern incorporate a citizen-reporting component—such as a "1-800 number" hotline—into its study. Mr. Wingo stated that knowing precisely the day and the time of dusting incidents would indeed be helpful information. Senator Marye asked Norfolk Southern representatives to go forward with a permitting process so that the company would be in position to allow the coal to be sprayed with a crusting agent in the event that water is not an effective control technique.

It was the unanimous recommendation of the subcommittee to continue its work in order to receive the results of Norfolk Southern's study and to make appropriate recommendations to the General Assembly.

◆

The Honorable Elliot S. Schewel, *Chairman*
Legislative Services contact: Mark C. Pratt

Special Subcommittee to Review Virginia's Firearms Laws

◆

November 9, 1992, Wytheville

At the special subcommittee's third public hearing, an audience of 600 to 700 persons was present, and approximately 70 speakers addressed the subcommittee. All speakers fervently opposed any modification of Virginia's firearms statutes and much of the testimony was repetitious.

Following is a representative sampling of comments heard by the subcommittee:

- Laws restricting gun ownership in any way are unnecessary and counterproductive.
- Existing laws must be more vigorously enforced, through longer sentences for illegal use of firearms, more effective requirements for proof of residency, and greater emphasis on the connection between illicit drugs and the criminal use of firearms.
- Criminals do not observe existing laws, and they will continue to ignore or subvert any new gun laws, which will only infringe on the constitutional rights of law-abiding gun owners.
- Gun control laws, no matter how limited and well-meaning, will lead inevitably to legislation abolishing the right to own guns.
- Virginia's reputation as a "gun-running" state is greatly exaggerated by the press.

December 1, 1992, Fairfax

Many speakers among the approximately 650 people attending the public hearing were concerned over the laxity of our criminal justice system and felt that harsher treatment of criminals would negate the necessity for tightening Virginia's existing firearms statutes. Also, there was a consensus that much of the gun-running problem stems from the ease with which out-of-state criminals can secure a Virginia driver's license.

December Meeting

The special subcommittee planned to present its findings to the Militia and Police Committee at a meeting to be held on December 8, 1992.

◆

The Honorable Gladys B. Keating, *Chairman*

Legislative Services contact:
Oscar R. Brinson

Symbol Key †
† Indicates entries since last publication of the Virginia Register

GENERAL NOTICES

NOTICE

Notices of Intended Regulatory Action are published as a separate section at the beginning of each issue of the Virginia Register.

† Notice to the Public

RT Associates has published a Virginia Register Deskbook, a cumulative index of Volumes 1 through 8 (Issue 13). For more information contact RT Associates, P.O. Box 36416, Baltimore, Maryland 21286.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

† Notice to the Public

Guidelines for Enforcement of the Virginia Code Relating to Motor Fuels and Lubricating Oils.

Civil Penalty Assessment Decision Matrix

Statement of basis and statutory authority: §§ 59.1-149 through 59.1-157, 59.1-163, and 59.1-165 through 59.1-167.1 and Chapter 12 (§ 59.1-167.2 et seq.) of Title 59.1 of the Code of Virginia.

Statement of purpose: This guideline provides direction to the Agency personnel in determining the amount of the penalty that shall be considered to be appropriate for various violations. It is designed to insure, to the extent practicable, that similar violations will be assessed generally comparable penalties in as uniform manner as possible.

1.1 Definitions.

The following words and terms, when used in these guidelines, shall have the following meanings, unless the context clearly indicates otherwise:

"Board" means the Board of Agriculture and Consumer Services.

"Previous violation" means any violation of any section of the Code of Virginia specified above, or regulations adopted pursuant thereto, cited within the two-year period preceding the current violation.

"Repeat violation" means another violation following the first violation of the same provision of the Code of Virginia, or regulations adopted pursuant thereto, committed within a two-year period commencing with the date of official notification of the first violation of the provision.

1.2 Provision for Civil Penalties Generally.

Any person violating any section of the Code of Virginia, as specified above, or regulations adopted thereunder, may be assessed a civil penalty by the Board in an amount not to exceed $1,000.

1.3 Assessment of separate violations.

A. Each violation of any section of the Code of Virginia, as specified above, or regulations adopted pursuant thereto, shall be assessed separately for the purpose of determining the total civil penalty assessment.

B. In cases of continued violation, a civil penalty may be assessed separately for each day of violation beginning with the day of notification of the violations and ending with the date of abatement.

1.4 Penalty Point System.

The point system described in this section shall be used to determine the amount of the civil penalty.

A. Type of Violation.

A person or firm in violation of any section of the Code of Virginia, as specified above, or regulations adopted pursuant thereto, shall be assigned up to 10 points for the type of violation described in one of the following categories:

Points .....Type of Violation

2 - 4 Sell, offer, or expose for sale motor fuel not meeting minimum specifications.

2 - 4 Failure to register petroleum products as required by law or regulations.

4 - 6 Failure to retain records as required by law or regulation.

4 - 6 Failure to label dispensers as required.

4 - 6 Failure to provide documentation of deliveries as required by law or regulations.

6 - 10 Selling or attempting to sell motor fuels which do not meet the octane or cetane rating as specified on the dispenser.

7 - 10 Dispose of petroleum products in a manner contrary to law or regulations.

8 - 10 Attempting to sell or selling non-complying gasoline in the control area during a control period.

8 - 10 Attempting to sell or selling defective motor fuel and lubrication oil prohibited from sale by the Commissioner.

8 - 10 Selling or attempting to adulterate or attempting to sell adulterated motor fuel that does not meet the requirements of the law or regulation.

10 Violate a stop sale, use, or removal order.

10 Interfere with the Commissioner or his duly authorized agents in the performance of duties.

10 Impersonate any federal, state, inspector or official.

B. Seriousness of Violation.

A person of firm in violation of any section of the Code of Virginia, as specified above, or regulations adopted pursuant thereto, shall be assigned up to 10 points for the seriousness of the violation, taking into consideration any one of the following factors:

(a) Potential monetary consequences.

(b) Potential of impact to competitors.

(c) Degree of inconvenience or deception to a buyer or prospective buyer.

(d) Degree of disregard for the law.

Points.....Serious Category

1 - 3 Minor violations; those having minimal impact on the consumer or competitors.

4 - 6 Moderate violations; those having a measurable impact on the consumer or competitors.

7 - 10 Serious violation; those having an adverse impact on the consumer or competitors.

C. Culpability.

A person or firm in violation of any section of the Code of Virginia, as specified above, or regulations adopted pursuant thereto, shall be assigned up to 6 points, from one of the following categories, based on the degree of fault of the person to whom the violation is attributed:

Points.....Culpability Category

0 No fault attributed; an inadvertent violation which was unavoidable by the exercise of reasonable care.

1 - 2 Lack of knowledge; a violation which is the result of the individual being unaware of the statutory requirements.

3 - 4 Negligent.

5 - 6 Knowing; aware of actions.

D. Repeat Violation.

The period of time in determining the frequency of violations shall be 24 months. If a person or firm has not committed the same violation in 24 months, the next offense shall be considered as a first violations. However, a person or firm that has committed the same violation three times in a five year period shall not be protected by the 24 month limitation.

A person or firm found to have repeated a violation of any section of the Code of Virginia, as specified above, or regulations adopted pursuant thereto, shall be assigned up to 10 points from one of the following categories:

Points ..... Repeat Violation Category

5 - 7 Second occurrence of violation.

8 - 10 Third occurrence of a violation, or violations following this occurrence.

E. Credit for good faith in attempting to achieve compliance.

The demonstrated good faith of the person or firm in attempting to achieve rapid compliance after notification of the violation shall be taken into consideration in determining penalty points. Up to four points shall be deducted from the total points assigned under Subsection A, B, C, and D, based on the following categories:

Points ..... Good Faith Credit Category

3 - 4 Immediate action taken to abate the violation, and correct any conditions resulting from the violation, in the shortest possible amount of time.

1 - 2 Prompt and diligent efforts made to abate the violation, and correct any conditions resulting from the violation, within a reasonable period of time.

0 No points deducted.

F. Determination of base civil penalty.

The total penalty point amount shall be determined by adding the points assigned under Subsections A, B, C, and D, and subtracting from that subtotal the points assigned under Subsection E of this Section. The resulting total penalty point amount is converted to a dollar amount, according to the following schedule:

Points	Dollars
1-3	0
4-6	25
7-9	70
10	75
11	100
13	250
14	325
15	425
16	525
17	625
18	750
20	1,000

G. Consideration of previous violations; reduction of penalty.

All previous violations of a person or firm shall be taken into consideration in determining the base civil penalty. In the case of a less than serious violation where no previous violation exists, the base civil penalty may be reduced by 20 percent. In the case of a serious violation or a repeat violation the base civil penalty shall not be reduced.

1.5 Waiver of Use of Formula to Determine Civil Penalty.

A. The Virginia Board of Agriculture and Consumer Services may waive the use of the formula contained in Section 1.4 to set the civil penalty, if the Board determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. The basis for every waiver shall be fully explained and documented in the records of the case.

B. If the Board waives the use of the formula, it shall give a full written explanation of the basis for any penalty assessment to the person or firm found in violation.

GUIDELINES FOR ENFORCEMENT OF THE VIRGINIA CODE RELATING TO MOTOR FUELS AND LUBRICATING OILS.
- CIVIL PENALTY ASSESSMENT DECISION MATRIX

VIOLATION NUMBER:_____

OFFICE OF WEIGHTS AND MEASURES
PENALTY MATRIX WORKSHEET

NAME OF ALLEGED VIOLATOR:_____

LICENSE/CERTIFICATE NO:_____ DATE OF VIOLATION:___/___/___

VIOLATION:_____

_____

	CONSIDERATIONS	POINTS
A.	Type of Violation	_____
B.	Seriousness of Violation	_____
C.	Culpability	_____
D.	Repeat Violation	_____
	TOTAL POINTS (A + B + C + D) =	_____
E.	Good Faith Credit for Prompt Compliance (-)	_____
F.	Determine Base Penalty Points (TOTAL (-) E) =	_____
G.	Base Penalty (from Table F in Matrix)	$_____
H.	No Past Violations (2 yrs.) (deduct 20% of base penalty)	- _____ (20% of base)
	ADJUSTED BASE PENALTY =	$_____
	TOTAL PENALTY AMOUNT	$_____

Additional information: _____

_____

Recommendation: Assess as Calculated _____
Negotiated Settlement _____

Compliance Officer:_____Date____/____/____

COUNCIL ON THE ENVIRONMENT

† Notice to the Public

In compliance with Federal regulations, the Council on the Environment is submitting additions and updates of the following state laws and agency regulations to the Federal Office of Ocean and Coastal Resource Management (OCRM), National Oceanic and Atmospheric Administration, for its review and inclusion into the Virginia Coastal Resources Management Program.

1. Amendments to Virginia Code Title 10.1, Chapter 5, Article 4, which change:

Erosion and Sediment Control Law of 1973

Erosion and Sediment Control Regulations adopted by The Virginia Soil and Water Conservation Board on July 11, 1990, which supersede:

Chapter III of the 1980 Virginia Erosion and the Sediment Control Handbook

The purpose of this program change is to update the existing nonpoint source water pollution control regulatory program of the Virginia Coastal Resources Management Program by incorporating the amendments to the Erosion and Sediment Control Law during the period 1988-1992, as authorized by the Virginia General Assembly and the resulting Erosion and Sediment Control Regulations adopted by the Virginia Soil and Water Conservation Board. The objective of the changes is the more effective control of soil erosion, sediment deposition and non-agricultural runoff to protect the unreasonable degradation of properties, stream channels, waters and other natural resources of the Commonwealth.

2. Inclusion of VR 450-01-0058 Barrier Island Policy, which updates:

Coastal Primary Sand Dunes Guidelines: Barrier Island Policy of 1986

The purpose of this program change is to incorporate into the Virginia Coastal Resources Management Program the 1990 revisions of the Barrier Island Policy. This regulation gives greater acknowledgment to the fragile and transient nature of barrier islands as landform features, their inherent value as natural heritage resources in their natural state, and their importance as habitat to certain threatened or endangered species. The revised Policy is designed to minimize impacts associated with low-density, single-family and recreational development as well as to allow for consideration of both cumulative and secondary impacts in a permit decision.

OCRM will review these changes to determine whether they constitute amendments to the Virginia Coastal Resources Management Program for the purposes of ensuring federal consistency with that program.

In 1972, the United States Congress passed the Coastal Zone Management Act (CZMA). The Act's passage demonstrated the national interest in the effective management, protection, development, and beneficial use of the nation's coastal resources. One policy of the CZMA was to encourage the states to adopt their own management programs in order to meet the goals of the Act. Consequently, the states were provided Federal assistance to develop and administer their programs. The Commonwealth of Virginia, through the Council on the Environment, developed a coastal management program, which received Federal approval in 1986.

Since the program's inception, Virginia has accepted Federal assistance through grants awarded by the National Oceanic and Atmospheric Administration. To be eligible to receive these grants, states must abide by Federal regulations.

One condition, found in 15 CFR 923.80-923.84, requires states to submit any amendments to their programs to OCRM so that it may determine if the program, after the change, is still approvable. Federal rules define amendments as "Substantial changes in, or substantial changes to enforceable policies or authorities related to: boundaries; uses subject to the management program; criteria or procedures for designating or managing areas for preservation or restoration; and consideration of the national interest involved in the planning for and in the siting of facilities which are necessary to meet requirements which are other than local in nature." (15 CFR 923.80(c))

A state is not required to go through the amendment process if a change is a routine program implementation (RPI). An RPI is defined as "Further detailing of a state's program that is the result of implementing provisions approved as part of a state's approved management program that does not result in the type of action described in 15 CFR 923.80(c)" (above).

Based on these Federal criteria, the Commonwealth of Virginia has determined that none of the changes listed in this notice constitutes an amendment to the Virginia Coastal Resources Management Program. All of the changes were made following extensive public notice and hearings and official enactment or formal adoption proceedings.

These changes will be submitted to OCRM in summary form, copies of which can be obtained from Jeannie Lewis Smith of the Council on the Environment, 902 N 9th Street, Richmond, Virginia 23219, or by calling (804) 786-4500.

The submittal date to OCRM will be January 11, 1993. The office has thirty days from that date for its review. Any comments on whether the change is a routine program

implementation may be submitted to OCRM by February 1, 1993, at the following address:

Mr. Joshua Lott
NOAA/NOS
1825 Connecticut Avenue NW
Room 721
Washington, DC 20235

DEPARTMENT OF HEALTH

Alternative Discharging Regulations

The Virginia Department of Health is soliciting public comment on the Alternative Discharging Sewage Treatment Regulations, VR 355-34-400 adopted July 30, 1992. Five public hearings were held between May 18, 1992 and June 10, 1992 on these regulations. During this time the Department of Health heard and responded to many concerns of citizens and special interest groups.

After the public comment period, it became increasingly apparent that several specific issues in the regulations may not have been resolved as completely as possible. In particular, the Department of Health is soliciting additional comment on the following areas:

1. How recreational waters should be defined and what standards should be applied to measure health risks associated with the recreational use of waters receiving wastewater effluent.

2. What mechanisms should be applied to assure the continued proper operation, maintenance and repair of discharging systems after they are installed. How can these mechanisms be assured when a property is sold?

Comments concerning any other aspect of these regulations will also be accepted. Comments must be received by the Health Department prior to 4:00 p.m. on January 29, 1993. Comments should be sent to Donald J. Alexander, Director, Division of Onsite Sewage and Water Services, Virginia Department of Health, P.O. Box 2448, Suite 117, Richmond, Virginia 23218.

VIRGINIA CODE COMMISSION

NOTICE TO STATE AGENCIES

Mailing Address: Our mailing address is: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you do not follow-up with a mailed copy. Our FAX number is: 371-0169.

FORMS FOR FILING MATERIAL ON DATES FOR PUBLICATION IN THE VIRGINIA REGISTER OF REGULATIONS

All agencies are required to use the appropriate forms when furnishing material and dates for publication in the Virginia Register of Regulations. The forms are supplied by the office of the Registrar of Regulations. If you do not have any forms or you need additional forms, please contact: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

FORMS:

NOTICE of INTENDED REGULATORY ACTION - RR01
NOTICE of COMMENT PERIOD - RR02
PROPOSED (Transmittal Sheet) - RR03
FINAL (Transmittal Sheet) - RR04
EMERGENCY (Transmittal Sheet) - RR05
NOTICE of MEETING - RR06
AGENCY RESPONSE TO LEGISLATIVE OR GUBERNATORIAL OBJECTIONS - RR08
DEPARTMENT of PLANNING AND BUDGET (Transmittal Sheet) - DPBRR09

Copies of the Virginia Register Form, Style and Procedure Manual may also be obtained at the above address.

ERRATA

DEPARTMENT OF AIR POLLUTION CONTROL

Title of Regulation: VR 120-01. Regulations for the Control and Abatement of Air Pollution -- Documents Incorporated by Reference.

Publication: 9:5 VA.R. 630-647, November 30, 1992.

Corrections to Final Regulation:

Page 630, under Subpart A, add a comma after "record keeping"; delete the word "and" that occurs before the word "reconstruction."

Page 630, under Subpart D, insert a comma after the following phrase: "fossil-fuel fired steam generating units of more than 250 million Btu per hour heat input rate"

Page 631, under Subpart Na, insert a close parenthesis at the end of the last sentence.

Page 645, under (82) Appendix C, add "Rate Change" after "Determination of Emission"

Page 647, under F.1., revise the paragraph to appear as follows:

The following document from the ACGIH is incorporated herein by reference: ~~ACGIH Handbook~~ -

~~Threshold Limit Values for Chemical Substances in the Work Environment Adopted by ACGIH with Intended Changes for 1990-1991~~ *1991-1992 Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices (ACGIH Handbook).*

Page 647, under f.2, insert "-4438" after "45211"

CALENDAR OF EVENTS

Symbols Key
† Indicates entries since last publication of the Virginia Register
♿ Location accessible to handicapped
☎ Telecommunications Device for Deaf (TDD)/Voice Designation

NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the Virginia Register deadline may preclude a notice of such cancellation.

For additional information on open meetings and public hearings held by the Standing Committees of the Legislature during the interim, please call Legislative Information at (804) 786-6530.

VIRGINIA CODE COMMISSION

EXECUTIVE

BOARD FOR ACCOUNTANCY

January 19, 1993 - 10 a.m. – Public Hearing
Department of Commerce, 3600 West Broad Street, Third Floor, Room 395, Richmond, Virginia.

February 12, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Accountancy intends to amend regulations entitled: **VR 105-01-2. Board for Accountancy Regulations.** The proposed regulations (i) establish professional limited liability companies; (ii) amend the education requirement to sit for the CPA examination effective in the year 2000; (iii) amend the conditioning requirements for passing the CPA examination to accommodate format changes to the exam; (iv) amend reinstatement procedures; and (v) clarify the CPE requirement.

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

Contact: Roberta L. Banning, Assistant Director, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590.

† **January 19, 1993 - 8 a.m.** – Open Meeting
† **January 20, 1993 - 8 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, 5th Floor, Richmond, Virginia. ♿

1. Review applications for CPA Certificate, CPA License and CPA Certificate by endorsement.

2. Review correspondence.

3. Attend Public Hearing regarding proposed regulations at 10 a.m. on January 19, 1993.

4. Review and disposition of enforcement cases.

5. Routine board business.

Contact: Roberta L. Banning, Assistant Director, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

† **May 19, 1993 - 2 p.m.** – Public Hearing
1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.

March 15, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to consider amending regulations entitled **VR 115-05-01. Regulations Governing Grade "A" Milk.** The proposed regulation will continue certain authority contained in the existing regulation governing the production, processing, and sale of Grade "A" pasteurized milk and Grade "A" pasteurized milk products and certain milk products. The purpose of the present regulatory action is to review the regulation for effectiveness and continued need. The proposed regulation has been drafted to include provisions of the existing regulation and to enhance its effectiveness. In addition, certain new provisions have been established which affect milk plants, receiving station, transfer stations, producers and industry laboratories specifying: drug screening requirements of Grade "A" raw milk for pasteurization prior to processing; minimum penalties for violation of the drug residue requirements; new standards for temperature, somatic cell counts and cryoscope test; requirements to receive and retain a permit; sanitation requirements for Grade "A" raw milk for pasteurization; and sanitation requirements for Grade "A" pasteurized milk.

STATEMENT

Basis: Sections 3.1-530.1 through 3.1-530.9 of the Code of Virginia.

Purpose: The proposed regulation will continue certain authority contained in the existing regulation governing the production, processing, and sale of Grade "A" pasteurized milk and Grade "A" pasteurized milk products and certain milk products. The intent of the existing and proposed regulation is to ensure a safe and wholesome milk supply to the citizens of the Commonwealth of Virginia.

The purpose of the present regulatory action is to review the regulation for effectiveness and continued need. The proposed regulation has been drafted to include provisions of the existing regulation and to enhance its effectiveness. In addition, certain new provisions have been established which affect milk plants, receiving stations, transfer stations, producers and industry laboratories specifying: drug screening requirements of Grade "A" raw milk for pasteurization prior to processing; minimum penalties for violation of the drug residue requirements; new standards for temperature, somatic cell counts and cryoscope test; requirements to receive and retain a permit; sanitation requirements for Grade "A" raw milk for pasteurization; and sanitation requirements for Grade "A" pasteurized milk.

Substance: The Virginia Department of Agriculture and Consumer Services is responsible for ensuring that the regulations and enforcement procedures used to govern the production, processing, and sale of Grade "A" pasteurized milk and Grade "A" pasteurized milk products and certain other milk products are by requirement of the Grade "A" Pasteurized Milk Ordinance – 1978 recommendations of the United States Public Health Service/Food and Drug Administration (hereafter PMO), 1978 Edition (1989 revision), "substantially equivalent" to the provisions of the PMO. The PMO establishes minimum requirements and quality standards that must be maintained in order to receive satisfactory Interstate Milk Shippers' sanitation and enforcement ratings. Periodically, the Board of Agriculture and Consumer Services must review its regulations for effectiveness and continued need in relation to the current, revised edition of the PMO.

Existing statute of the Commonwealth of Virginia requires any regulations adopted for the purpose of sanitation and to prevent deception, to conform with recommendations of the United States Department of Health, Education and Welfare and Department of Agriculture. The definitions and standards so promulgated may conform, so far as practical, to the definitions and standards promulgated or recommended by the Secretary of the United States Department of Health, Education and Welfare.

Issues: Drug residues in milk and milk products have become a food safety issue for the consuming public in recent years. In order to deal with this situation new drug screening tests have been required to be performed on all Grade "A" raw milk for pasteurization prior to processing. These changes have been incorporated into the PMO and are requirements to maintain an Interstate Milk Shippers' sanitation and enforcement rating.

It is important that the regulations be "substantially equivalent" to the PMO. There have been three Interstate Milk Shippers' conferences held since the 1985 revision of the PMO was adopted as part of the Virginia regulations. Each of these conferences amended parts of the PMO during their sessions. The 1991 Interstate Milk Shippers' conference adopted a new appendix titled Appendix N, Drug Residue Monitoring And Farm Surveillance, the provisions of which are unenforceable in Virginia because they have not been embodied in regulation. The proposed regulation incorporates these provisions into the regulation.

Impact:

1. Number and types of regulated entities or persons affected: There are 1247 Grade "A" dairy farms and 14 Grade "A" dairy processing plants in Virginia that are and that will continue to be affected by these regulations.

2. Projected cost to regulated entities (and to the Public, if Applicable) for implementation and compliance: There are no projected costs for implementation and compliance to the 1247 Grade "A" dairy farms. Grade "A" dairy farms are already in compliance with the requirements being considered for adoption that affect them.

Cost to the 14 Grade "A" processors would include the purchase of approved animal drug-screening tests, training and certification of personnel performing animal drug-screening tests, and reporting all tests results to the agency. These costs would be somewhat offset by a reduction in the number of tests currently performed by processors. With the exception of three small processors, all processors are already testing in a manner that exceeds proposed requirements. The major additional costs would be for training and certification of personnel and reporting data. These costs are projected to be between $1,000 and $3,000 annually per company laboratory depending on the size of the company.

The cost of not complying could far exceed the cost to comply, with the economic burden falling principally on Grade "A" dairy farm producers. Grade "A" dairy farm producers whose production comprises a rated supply of Grade "A" raw milk would lose the ability to market their milk as Grade "A" should they fail an Interstate Milk Shippers' rating until they could be re-rated. The milk supply could not be re-rated before the lapse of 15 days and might not be re-rated before the end of 30 days. During this time milk from the producers affected could be marketed for manufacturing purposes only. This would result in sales that are approximately $3.00 per hundredweight

below what they could have received if sold for Grade "A" use. The three largest cooperatives in Virginia individually market in excess of 1 million pounds of Grade "A" raw milk each day. At $3.00 per hundredweight lost, any one of these cooperatives would lose $30,000 per day in income and $450,000 over a 15-day suspension period. Milk producers for a Maryland cooperative failed an Interstate Milk Shippers' rating in 1982 at a cost of $250,000 in lost income over a 15-day suspension period.

3. Projected cost to agency for implementation and enforcement: Enforcement of the provisions of the proposed regulation relating to testing for animal drugs in milk would require the agency to inspect and monitor industry laboratories to ensure proper drug screening methods were used and sample results reported. Quarterly inspections to determine compliance with the proposed regulations by industry laboratories could be performed during other routine visits to these facilities. Records required to be kept by the agency would be maintained with existing personnel and resources. The agency may be required to confirm positive drug screening tests results for drugs which can not be confirmed by certified methods used in industry laboratories. In these situations the agency would utilize the Division of Consolidated Laboratory Services to confirm drug screening tests results. Currently, the Division of Consolidated Laboratory Services does not charge the agency for these services.

4. Source of funds: Cost to implement the proposed regulation would be absorbed into the current 1992-1994 budget approved to operate the Dairy Services program.

Statutory Authority: § 3.1-530.1 of the Code of Virginia.

Contact: J. A. Beers, Program Manager, P.O. Box 1163, Richmond, VA 23209, telephone (804) 786-1453.

Pesticide Control Board

January 14, 1993 - 10 a.m. – Open Meeting
Washington Building, 1100 Bank Street, Richmond, Virginia. ♿

Committee meetings.

January 15, 1993 - 9 a.m. – Open Meeting
Washington Building, 1100 Bank Street, Richmond, Virginia. ♿

A general business meeting. Portions of the meeting may be held in closed session, pursuant to § 2.1-344 of the Code of Virginia. The public will have an opportunity to comment on any matter not on the Pesticide Control Board's agenda at 9 a.m.

Contact: Dr. Marvin A. Lawson, Program Manager, Office of Pesticide Management, P.O. Box 1163, Room 401, Richmond, VA 23209, telephone (804) 371-6558.

Virginia Winegrowers Advisory Board

January 13, 1993 - 10 a.m. – Open Meeting
Virginia Department of Agriculture and Consumer Services, Washington Building, 1100 Bank Street, Richmond, Virginia. ♿

The board will hear committee and project monitor reports and review old and new business.

Contact: Wendy Rizzo, Secretary, 1100 Bank St., Suite 1010, Richmond, VA 23219, telephone (804) 371-7685.

DEPARTMENT OF AIR POLLUTION CONTROL

† **January 20, 1993 - 6:30 p.m.** – Public Hearing
Mary Bethune Office Complex, Cowford Road, 2nd Floor Public Meeting Room, Halifax, Virginia. ♿

A public hearing to consider an application from R.W. Power Partners to operate a diesel-electric cogeneration facility capable of producing 3,600 kilowatts per hour of electricity from recycled oil. The facility will be located in the Halifax Co./South Boston Industrial Park. An informational briefing will be conducted before the hearing, starting at 6:30 p.m. The public hearing will begin at 7 p.m.

Contact: Keith Sandifer, Environmental Engineer Senior, Department of Air Pollution Control, 7701-03 Timberlake Road, Lynchburg, VA 24502, telephone (804) 582-5120.

† **February 2, 1993 - 2 p.m.** – Public Hearing
Virginia Museum of Fine Arts, 2800 Grove Avenue, Reynolds Lecture Hall, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A hearing to allow public comment on proposed amendment to the Commonwealth of Virginia State Implementation Plan. The proposed amendment consists of a determination that thermal oxidation is reasonably available control technology (RACT) for the control of volatile organic compound (VOC) emissions to the atmosphere from Philip Morris USA's Manufacturing Center lcoated at 3601 Commerce Road in Richmond, Virginia.

Contact: James E. Kyle, P.E., 9210 Arboretum Parkway, #250, Richmond, VA 23236-3472, telephone (804) 323-2409.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS

† **January 14, 1993 - 9 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street,

Richmond, Virginia.

Land Surveyor Board quarterly section meeting. Regular business will be conducted.

† **January 21, 1993 - 9 a.m.** – Open Meeting
† **January 22, 1993 - 9 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, 5th Floor, Richmond, Virginia.

Board for Architects quarterly meeting. Regular business and interviews will be conducted.

Contact: Willie Fobbs, III, Assistant Director, Department of Commerce, 3600 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 367-8514.

ASAP POLICY BOARD - VALLEY

January 11, 1993 - 8:30 a.m. – Open Meeting
Augusta County School Board Office, Fishersville, Virginia.

A regular meeting of the local policy board which conducts business pertaining to the following:

1. Court referrals.
2. Financial report.
3. Director's report.
4. Statistical reports.

Contact: Rhoda G. York, Executive Director, Holiday Court, Suite B, Staunton, VA 24401, telephone (703) 886-5616 or (703) 943-4405.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

January 13, 1993 - 9:30 a.m. – Open Meeting
Brookfield Center Office Park, 6606 West Broad Street, Richmond, Virginia.

A board meeting.

Contact: Meredyth P. Partridge, Executive Director, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-7390.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

† **February 25, 1993 - 10 a.m.** – Open Meeting
Virginia Housing Development Authority, 601 South Belvidere Street, Conference Room #2, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The board will conduct general business, including review of local Chesapeake Bay Preservation Area programs. A tentative agenda will be available from the Chesapeake Bay Local Assistance Department by February 18, 1993.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD

CHILD DAY-CARE COUNCIL

† **January 14, 1993 - 9:30 a.m.** – Open Meeting
Holiday Inn Central, 3207 North Boulevard, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to discuss issues, concerns and programs that impact child care centers, camps, school age programs and preschool/nursery schools. The public comment period will begin at 2 p.m. Please call ahead of time for possible changes in meeting time.

† **January 22, 1993 - 8 a.m.** – Open Meeting
† **January 29, 1993 - 8 a.m.** – Open Meeting
Koger Executive Center, West End, 1603 Santa Rosa Road, Tyler Building, Conference Room, 2nd Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to discuss legislation affecting child care centers, camps, school age programs, and preschool/nursery schools. 0BL2★ **Contact:** Peggy Friedenberg, Legislative Analyst, Office of Governmental Affairs, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

INTERDEPARTMENTAL REGULATION OF RESIDENTIAL FACILITIES FOR CHILDREN

Coordinating Committee

† **January 15, 1993 - 8:30 a.m.** – Open Meeting
† **February 19, 1993 - 8:30 a.m.** – Open Meeting
Office of Coordinator, Interdepartmental Regulation, Tyler Building, Suite 208, 1603 Santa Rosa Road, Richmond, Virginia.

† **March 19, 1993 - 8:30 a.m.** – Open Meeting
Office of Coordinator, Interdepartmental Regulation, Blair Building, Conference Room B, 8007 Discovery Drive, Richmond, Virginia.

A regularly scheduled meeting to consider such administrative and policy issues as may be presented to the committee. A period for public comment is provided at each meeting.

Contact: John J. Allen, Jr., Coordinator, Interdepartmental Regulation, Office of the Coordinator, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-7124.

BOARD OF COMMERCE

NOTE: CHANGE IN MEETING DATE
February 8, 1993 - 10 a.m. – Open Meeting
Virginia Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ♿

A regular quarterly meeting of the board. Agenda items likely to include a report and discussion of current General Assembly bills with an impact upon agency operations; reports of subcommittees on occupational and professional continuing education, and citizen members of regulatory boards at the agency.

Contact: Alvin D. Whitley, Staff Assistant to the Board, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8564.

STATE BOARD FOR COMMUNITY COLLEGES

† **January 26, 1993 - 2:30 p.m.** – Open Meeting
James Monroe Building, 101 North 14th Street, 15th Floor, Richmond, Virginia.

Committee meetings will be held.

† **January 27, 1993 - 9 a.m.** – Open Meeting
James Monroe Building, 101 North 14th Street, 15th Floor, Richmond, Virginia.

A regularly scheduled meeting.

Contact: Joy S. Graham, Assistant Chancellor of Public Affairs, Virginia Community College System, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2126 or (804) 371-8504/TDD ☎

DEPARTMENT OF CONSERVATION AND RECREATION

Falls of the James Scenic River Advisory Board

January 15, 1993 - Noon – Open Meeting
City Hall, Planning Commission Conference Room, Fifth Floor, Richmond, Virginia.

A review of river issues and programs.

Contact: Richard G. Gibbons, Environmental Program Manager, Division of Planning and Recreation Resources, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132 or (804) 786-2121/TDD ☎

BOARD FOR CONTRACTORS

January 13, 1993 - 9 a.m. – Open Meeting
3600 West Broad Street, Richmond, Virginia. ♿

A regular quarterly meeting of the board to address policy and procedural issues, review and render decisions on applications for contractors' licenses, and review and render case decisions on matured complaints against licensees. The meeting is open to the public; however, a portion of the board's business may be discussed in Executive Session.

Contact: Florence R. Brassier, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8557.

VIRGINIA COUNCIL ON COORDINATING PREVENTION

† **January 15, 1993 - 10 a.m.** – Open Meeting
Koger Center, 1503 Santa Rosa Road, Nelson Building, Room 211, Richmond, Virginia.

A quarterly meeting of the council. Discussion of recommendations of the Department of Planning and Budget's Study of Prevention and Early Intervention. Review of pending legislative activity relating to prevention and other business to be determined by the council.

Contact: Sharyl Adams, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-1530.

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

January 13, 1993 - 10 a.m. – Open Meeting
February 10, 1993 - 10 a.m. – Open Meeting
Board of Corrections, Board Room, 6900 Atmore Drive, Richmond, Virginia. ♿

A regular monthly meeting to consider such matters as may be presented to the board.

Contact: Vivian T. Toler, Secretary to the Board, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

* * * * * * * *

January 30, 1993 – Written comments may be submitted through this date.

February 10, 1993 - 10 a.m. – Public Hearing
6900 Atmore Drive, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Corrections intends to **repeal** regulations entitled **VR 230-01-003, Regulations Governing the Certification Process,** and **adopt** regulations entitled **VR**

230-01-003:1, Regulations Governing the Certification Process. The proposed regulation establishes guidelines for certification evaluation, frequency, appeals and types of certification awarded the program. These standards will replace VR 230-01-003, Rules and Regulations Governing the Certification Process.

Statutory Authority: §§ 53.1-5, 53.1-68, 53.1-141, 53.1-178 and 53.1-182 of the Code of Virginia.

Contact: Cynthia J. Evans, Certification Analyst, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3237.

* * * * * * * *

January 30, 1993 – Written comments may be submitted through this date.

February 10, 1993 - 10 a.m. – Public Hearing
6900 Atmore Drive, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Corrections intends to **repeal** regulations entitled **VR 230-30-004, Standards for Adult Community Residential Services,** and **adopt** regulations entitled **VR 230-30-004:1, Standards for Community Residential Programs.** The proposed regulation establishes the minimum standards that must be met for a facility or program to be properly certified to operate. These standards will replace VR 230-30-004, Adult Community Residential Services Standards.

Statutory Authority: §§ 53.1-5 and 53.1-178 of the Code of Virginia.

Contact: R.M. Woodard, Regional Manager, 302 Turner Road, Richmond, VA 23225, telephone (804) 674-3732.

Liaison Committee

January 14, 1993 - 9:30 a.m. - Open Meeting
6900 Atmore Drive, Richmond, Virginia.

The committee will continue to address and discuss criminal justice issues.

Contact: Vivian T. Toler, Secretary to the Board, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

BOARD FOR COSMETOLOGY

† **January 25, 1993 - 10 a.m.** – Open Meeting
† **January 26, 1993 - 10 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia.

A regular business meeting to include regulatory review of Cosmetology and Nail Technician Regulations. NOTE: A meeting on January 26 will only be held if necessary to carry over from January 25.

Contact: Demetra Y. Kontos, Assistant Director, Board for Cosmetology, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500.

CRIMINAL JUSTICE SERVICES BOARD

† **January 13, 1993 - 11 a.m.** – Open Meeting
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to consider matters relating to the board's responsibilities for criminal justice training and improvement of the criminal justice system. Public comments will be heard before adjournment of the meeting.

Contact: Paula Scott Dehetre, Executive Assistant, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-8730.

Committee on Training

† **January 13, 1993 - 9 a.m.** – Open Meeting
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to discuss matters related to training for criminal justice personnel.

Contact: Paula Scott Dehetre, Executive Assistant, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-8730.

BOARD OF DENTISTRY

January 13, 1993 - 8:30 a.m. – Open Meeting
6606 West Broad Street, 4th Floor, Richmond, Virginia. ♿

Informal conferences. This meeting is open to the public. No comment will be taken.

January 14, 1993 - 8 a.m. – Open Meeting
January 15, 1993 - 8 a.m. – Open Meeting
January 16, 1993 - 8 a.m. – Open Meeting
Cascades Conference Center, 104 Visitor Center Drive, Williamsburg, Virginia. ♿

A full board meeting to receive Legislative/Regulatory and Continuing Education Committee reports. These meetings are open to the public. No public comment will be taken.

Contact: Nancy Durrett, Acting Executive Director, 6606

W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906.

DEPARTMENT OF EDUCATION (BOARD OF)

January 15, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Education intends to amend regulations entitled: **VR 270-01-0002. Regulations Governing the Educational Program for Gifted Students.** This proposed regulation amends the existing regulations governing the educational program for gifted learners in Virginia. The changes reflect the most current literature and research relative to the identification of and programming for gifted students. These regulations are being promulgated to ensure that gifted students in kindergarten through grade 12 are identified and provided with an education program that will enable them to achieve to their abilities.

Statutory Authority: § 22.1-253.13:1 of the Code of Virginia.

Contact: Valerie Barrett, Associate Specialist, Gifted Programs, P.O. Box 2120, 20th Floor, Richmond, VA 23216, telephone (804) 225-2652.

† **January 28, 1993 - 8 a.m.** – Open Meeting
† **February 25, 1993 - 8 a.m.** – Open Meeting
† **March 25, 1993 - 8 a.m.** – Open Meeting
James Monroe Building, 101 North 14th Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The Board of Education and the Board of Vocational Education will hold a regularly scheduled meeting. Business will be conducted according to items listed on the agenda. The agenda is available upon request.

Contact: Dr. Ernest W. Martin, Assistant Superintendent, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2073.

LOCAL EMERGENCY PLANNING COMMITTEE - CHESTERFIELD COUNTY

February 4, 1993 - 5:30 p.m. – Open Meeting
Chesterfield County Administration Building, 10,001 Ironbridge Road, Room 502, Chesterfield, Virginia. ♿

A meeting to meet requirements of Superfund Amendment and Reauthorization Act of 1986.

Contact: Lynda G. Furr, Assistant Emergency Services Coordinator, Chesterfield Fire Department, P.O. Box 40, Chesterfield, VA 23832, telephone (804) 748-1236.

LOCAL EMERGENCY PLANNING COMMITTEE - ROANOKE VALLEY

January 20, 1993 - 9 a.m. – Open Meeting
Salem Civic Center, Room C, 1001 Roanoke Boulevard, Salem, Virginia 24153. ♿

A meeting to (i) receive public comment, (ii) receive report from community coordinators, and (iii) receive report from standing committees.

Contact: Danny W. Hall, Fire Chief/Coordinator of Emergency Services, 105 S. Market St., Salem, VA 24153, telephone (703) 375-3080.

VIRGINIA EMPLOYMENT COMMISSION

State Advisory Board

February 9, 1993 - 11 a.m. – Open Meeting
February 10, 1993 - 8 a.m. – Open Meeting
Virginia Employment Commission, 703 East Main Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting to conduct general business.

Contact: Nancy L. Munnikhuysen, 703 E. Main St., Richmond, VA 23219, telephone (804) 371-6004.

COUNCIL ON THE ENVIRONMENT

January 12, 1993 - 7:30 p.m. – Open Meeting
Department of Transportation Auditorium, 1401 East Broad Street, Richmond, Virginia. ♿

This is the annual environmental legislation review meeting of the Council on the Environment. There will be a discussion of environmental legislation and issues before the 1993 General Assembly by state legislators and council members. The council will also discuss and vote on final public participation guidelines (VR 305-01-001:1). The meeting is open to the public. An opportunity for citizens to present concerns and comments on environmental issues will be provided during the meeting.

Contact: Hannah Crew, Special Projects Coordinator, 202 N. 9th St., Suite 900, Richmond, VA 23219, telephone (804) 786-4500.

BOARD OF FORESTRY

January 14, 1993 - 9:30 a.m. – Open Meeting
Marriott Hotel, 500 East Broad Street, Richmond, Virginia. ♿

General business.

Contact: Barbara A. Worrell, Administrative Staff Specialist, P.O. Box 3758, Charlottesville, VA 22903, telephone (804) 977-6555/TDD ☎

BOARD OF GAME AND INLAND FISHERIES

January 27, 1993 - 6 p.m. – Open Meeting
To be determined by the Virginia Wildlife Society.

Board members will be invited to attend a reception and banquet being hosted by the Virginia Wildlife Society.

January 28, 1993 - 9 a.m. – Open Meeting
4010 West Broad Street, Richmond, Virginia.

At 7:30 a.m. board members will attend the Virginia Wildlife Society's legislative breakfast. At 9 a.m. the Liaison Committee, Wildlife and Boat Committee, Finance Committee, Planning Committee and Law and Education Committee will meet, with each committee discussing those items appropriate to its authority. Discussion topics will include the agency's 1994-96 capital outlay budget, any known introduced legislation affecting the agency, and other general and administrative matters that might be necessary. The board has also received a request that it permit a discussion on the topic of fallow deer farming.

January 29, 1993 - 9 a.m. – Open Meeting
4010 West Broad Street, Richmond, Virginia.

A meeting to take action on any matters introduced through the committees, including the 1994-96 capital outlay budget.

Contact: Belle Harding, Secretary to Bud Bristow, 4010 W. Broad St., Richmond, VA 23230, telephone (804) 367-1000.

DEPARTMENT OF GENERAL SERVICES

February 12, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of General Services intends to adopt regulations entitled **VR 330-03-02. Aggressive Air Sampling Standards to be Utilized in Final Clearance Inspections for Asbestos Projects in Local Education Agencies and Public Agencies and Public Colleges and Universities in the Commonwealth of Virginia.** The purpose of the proposed regulation is to establish a safe, effective, and standard methodology for obtaining aggressive air samples to monitor air for clearance and area reoccupancy after a removal, encapsulation or enclosure project invoking asbestos-containing material in local education agencies and public colleges and universities.

Statutory Authority: § 2.1-526.14:1 of the Code of Virginia.

Contact: Henry G. Shirley, Director, Bureau of Capital Outlay Management, 805 E. Broad St., 8th Floor, Richmond, VA 23219, telephone (804) 786-3581.

BOARD OF GEOLOGY

† **February 4, 1993 - 10 a.m.** – Open Meeting
† **February 5, 1993 - 9 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Conference Room 1, Richmond, Virginia. ♿

A general board meeting.

Contact: Nelle P. Hotchkiss, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595.

HAZARDOUS MATERIALS EMERGENCY RESPONSE ADVISORY COUNCIL

January 14, 1993 - 10 a.m. – Open Meeting
Sheraton Park South, 9901 Midlothian Turnpike, Richmond, Virginia.

The business of the meeting will consist of an update of response and training programs and a briefing on the Hazardous Materials Transportation Uniform Safety Act (HMTUSA) Grant Application.

Contact: Addison E. Slayton, Jr., State Coordinator, Department of Emergency Services, 310 Turner Rd., Richmond, VA 23225, telephone (804) 674-2497.

VDH VIRGINIA DEPARTMENT OF HEALTH
Protecting You and Your Environment

DEPARTMENT OF HEALTH (STATE BOARD OF)

January 29, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to **repeal** regulations entitled **VR 355-11-02. Rules and Regulations Governing the Detection and Control of Phenylketonuria (PKU),** and **adopt** regulations entitled **VR 355-11-200. Regulations Governing Newborn Screening and Treatment Program.** The purpose of the proposed Rules and Regulations Governing the Newborn Screening and Treatment Program is to clarify the respective responsibilities of the Department of Health, Division of Consolidated Laboratory Services, physicians,

midwives, nurses, administrators of hospitals and other agencies, and persons in the Commonwealth in the detection, control, and treatment of newborn infants identified with diseases as specified in § 32.1-65 of the Code of Virginia.

Statutory Authority: § 32.1-12 and Article 7 (§ 32.1-65 et seq.) of Chapter 2 of Title 32.1 of the Code of Virginia.

Contact: Alice Linyear, MD, MPH, Director, Division of Maternal and Child Health, P.O. Box 2447, Suite 136, Richmond, VA 23218, telephone (804) 786-7367.

* * * * * * * *

January 31, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to adopt regulations entitled **VR 355-40-600. Regulations for the Conduct of Human Research.** Chapter 603 of the 1992 Acts of Assembly (House Bill 220) requires the Board of Health to develop regulations for human research to be conducted or authorized by the Department of Health or any facilities or other entities operated, funded or licensed by the department. In accordance with the legislation, the proposed regulations define requirements for obtaining informed consent and require the establishment of human research committees by institutions or agencies conducting or proposing to conduct or authorize human research. The proposed regulations require annual reporting of human research committees to the State Health Commissioner. Human research which is subject to federal regulations is exempt from the regulations.

Statutory Authority: § 32.1-12.1 and Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 of the Code of Virginia.

Contact: Roseanne Kolesar, Health Programs Analyst, Department of Health, 1500 E. Main St., Room 213, Richmond, VA 23219, telephone (804) 786-4891.

* * * * * * * *

March 1, 1993 - 2 p.m. – Public Hearing
1500 East Franklin Street, Suite 115, Richmond, Virginia.

March 5, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to **repeal** regulations entitled **VR 355-01-01. Public Participation Guidelines in the Development and Formation of Regulations** and **adopt** regulations entitled **VR 355-01-100. Public Participation Guidelines.** The Public Participation Guidelines outline the methods used to solicit input from the public in the formation and development of regulations.

Statutory Authority: §§ 9-6.14:7.1 and 32.1-12 of the Code of Virginia.

Contact: Susan R. Rowland, Assistant to the Commissioner, 1500 E. Main St., Suite 214, Richmond, VA 23219, telephone (804) 786-3564.

BOARD OF HEALTH PROFESSIONS

† **January 19, 1993 - 11 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Room 2, Richmond, Virginia.

A regular quarterly meeting.

Contact: Richard D. Morrison, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9904 or (804) 662-7197/TDD

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

February 23, 1993 - 9:30 a.m. – Open Meeting
2015 Staples Mill Road, Richmond, Virginia.

A regular monthly meeting.

Contact: Marcia A. Melton, Executive Secretary Senior, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

BOARD FOR HEARING AID SPECIALISTS

† **January 11, 1993 - 8:30 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia.

A meeting to (i) administer examinations to eligible candidates; (ii) review enforcement cases; (iii) conduct regulatory review; and (iv) consider other matters which may require board action.

Contact: Geralde W. Morgan, Board Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

† **January 12, 1993 - 9:30 a.m.** – Open Meeting
James Monroe Building, 101 North 14th Street, 9th Floor, Council Conference Room, Richmond, Virginia.

A general business meeting.

Contact: Anne M. Pratt, Associate Director, 101 N. 14th St.,

Monroe Bldg., 9th Floor, Richmond, VA 23219, telephone (804) 225-2629.

* * * * * * * *

† **March 18, 1993 - 1 p.m.** – Public Hearing
James Monroe Building, 101 North 14th Street, 9th Floor Conference Room, Richmond, Virginia.

March 12, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Council of Higher Education for Virginia intends to **repeal** regulations entitled **VR 380-03-02. Virginia Work-Study Program Regulations,** and **adopt** regulations entitled **VR 380-03-02:1. Virginia Work-Study Program Regulations.** Section 23-38.70 of the Code of Virginia authorizes the Council of Higher Education to develop regulations and procedures for the operation of the Virginia-Work Study Program (VWSP). The proposed VWSP regulations, if adopted, will replace the existing regulations which are outdated and, in places, ambiguous. The major provisions are institutional application procedures, distribution of funds, student eligibility, restrictions on student placement and compensation, and responsibilities of involved parties.

STATEMENT

Substance and issues: The proposed regulations contain the following major changes:

1. Enhanced Controls Over Disbursements of Funds to Institutions: Institutions are prohibited from investing VWSP funds and, if funds are invested, the income reverts to the Commonwealth of Virginia. Institutions are required to deposit VWSP funds into a separate account, and funds from the account may be disbursed only to student accounts receivable or the council.

2. Statutory Change: Students who are enrolled on a least a half-time basis are now eligible to participate.

3. Institutional Application Process: Section 2 of the regulations was substantially revised. Institutions are still required to apply to participate in the VWSP each year. However, the revised section is much less restrictive. Institutions completed the requirements under the current regulations when they began initial participation in the program. The proposed regulations make the application process much less burdensome and time-consuming for the institutions and the council.

4. Definition of Public Service Job: The definition was broadened so that on-campus positions are eligible positions.

5. Definition of Eligible Course of Study: The definition was changed to prohibit participation in the VWSP by students enrolled in 39.xxxx services (theological education) programs, as classified by the National Education Center for Educational Statistic's Classification of Instructional Programs (CIP).

6. Priority Positions: Priority positions were eliminated. Off-campus public service positions are emphasized by having those positions receiving a higher percentage of state matching funds.

Basis: Section 23-38.70 of the Code of Virginia authorizes the council to promulgate regulations governing the program.

Purpose: The proposed regulations replace the existing regulations governing the Virginia Work-Study Program (VWSP). The proposed regulations are being promulgated to ensure that the operation of the VWSP is uniform for all participating institutions of higher education.

Estimated impact:

1. Entities affected: Thirty-four institutions of higher education participate in the VWSP, and each will be affected by the proposed regulations. The regulations govern the campus operation of the VWSP.

2. Fiscal impact:

a. Costs of affected entities: The proposed regulations will reduce costs to the participating institutions. Institutions will have more flexibility in employing students in on-campus public service positions. The result is that institutions are more likely to utilize their total allocation, and they reduce their cost of wages. The proposed regulations also reduce the administrative costs associated with the operation of the VWSP.

b. Costs to agency: There will be a minimal cost incurred by the council to reproduce and mail the new regulations to participating institutions. No additional enforcement costs are anticipated because compliance with the regulations are monitored as a part of the council's normal institutional review process.

c. Source of agency funds: The minimal costs projected to be incurred for reproducing and mailing the revised regulations will be absorbed through the council's operating budget for financial aid programs.

Statutory Authority: § 23-38.70 of the Code of Virginia.

Contact: Stephen Merritt, Coordinator, Financial Aid Programs, Council of Higher Education, James Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2623.

VIRGINIA HISTORIC PRESERVATION FOUNDATION

† **January 13, 1993 - 10:30 a.m.** – Open Meeting
James Monroe Building, 101 North 14th Street, Treasury Board Conference Room, 3rd Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A general business meeting.

Contact: Margaret Peters, Information Director, Department of Historic Resources, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143 or (804) 786-1934/TDD ☎

HOPEWELL INDUSTRIAL SAFETY COUNCIL

February 2, 1993 - 9 a.m. – Open Meeting
Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. ♿ (Interpreter for deaf provided upon request)

A Local Emergency Preparedness Committee meeting on emergency preparedness as required by SARA Title III.

Contact: Robert Brown, Emergency Service Coordinator, 300 N. Main St., Hopewell, VA 23860, telephone (804) 541-2298.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

January 18, 1993 - 10 a.m. – Public Hearing
State Water Control Board Room, 4900 Cox Road, Glen Allen, Virginia.

February 12, 1993 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled **VR 394-01-4. Virginia Amusement Device Regulations.** The proposed amendments add requirements for bungee jumping activities.

Statutory Authority: § 36-98.3 of the Code of Virginia.

Contact: Carolyn R. Williams, Building Code Supervisor, Code Development Office, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7170.

† **January 21, 1993 - 9 a.m.** – Open Meeting
The Jackson Center, 501 North Second Street, 2nd Floor Conference Room, Richmond, Virginia. ♿

A meeting to review and discuss regulations pertaining to the construction, maintenance, operation and inspection of amusement devices by the Board of Housing and Community Development.

Contact: Jack A. Proctor, CPCA, Deputy Director, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7150 or (804) 371-7089/TDD ☎

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

† **January 19, 1993 - 11 a.m.** – Open Meeting
601 South Belvidere Street, Richmond, Virginia. ♿

A regular meeting of the Board of Commissioners to (i) review and, if appropriate, approve the minutes from the prior monthly meeting; (ii) consider for approval and ratification mortgage loan commitments under its various programs; (iii) review the authority's operations for the prior month; and (iv) consider such other matters and take such other actions as it may deem appropriate. Various committees of the Board of Commissioners may also meet before or after the regular meeting and consider matters within their purview. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 782-1986.

COUNCIL ON INFORMATION MANAGEMENT

January 29, 1993 - 9 a.m. – Open Meeting
1100 Bank Street, Suite 901, Richmond, Virginia. ♿

A regular business meeting.

Contact: Linda Hening, Administrative Staff Specialist, 1100 Bank St., Suite 901, Richmond, VA 23219, telephone (804) 225-3622 or (804) 225-3625/TDD ☎

STATE COUNCIL ON LOCAL DEBT

† **February 17, 1993 - 11 a.m.** – Open Meeting
† **March 17, 1993 - 11 a.m.** – Open Meeting
James Monroe Building, 101 North 14th Street, 3rd Floor, Treasury Board Conference Room, Richmond, Virginia. ♿

A regular meeting subject to cancellation unless there are action items requiring the council's consideration. Persons interested in attending should call one week prior to meeting date to ascertain whether or not the meeting is to be held as scheduled.

Contact: Gary Ometer, Debt Manager, Department of the Treasury, P.O. Box 6-H, Richmond, VA 23215, telephone (804) 225-4928.

COMMISSION ON LOCAL GOVERNMENT

January 11, 1993 - 10 a.m. – Open Meeting
State Capitol, House Room 1, Richmond, Virginia.

A regular meeting of the commission to consider such matters as may be presented. Persons desiring to participate in the commission's meeting and requiring special accommodations or interpreter services should contact the commission's office by Friday, January 8, 1993.

Contact: Barbara Bingham, Administrative Assistant, 702 8th Street Office Bldg., Richmond, VA 23219, telephone (804) 786-6508 or (804) 786-1860/TDD ☎

LONGWOOD COLLEGE

Student Affairs/Academic Affairs Committees

January 20, 1993 - 4:30 p.m. – Open Meeting
Longwood College, Ruffner Building, Board Room, Farmville, Virginia. ♿

A meeting to conduct routine business.

Contact: William F. Dorrill, President, Longwood College, 201 High St., Farmville, VA 23909, telephone (804) 395-2001.

STATE LOTTERY BOARD

January 25, 1993 - 10 a.m. – Open Meeting
2201 West Broad Street, Richmond, Virginia. ♿

A regular monthly meeting of the board. Business will be conducted according to items listed on the agenda which has not yet been determined. Two periods for public comment are scheduled.

Contact: Barbara L. Robertson, Lottery Staff Officer, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-9433.

* * * * * * * *

† **March 22, 1993 - 11 a.m.** – Public Hearing
Fairfax Regional Office, 8550 Arlington Boulevard, Fairfax, Virginia.

March 22, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Lottery Board intends to consider adopting regulations entitled **VR 447-02-2. On-Line Game Regulations.** The purpose of the proposed amendment is to reduce the potential of the purchase of large blocks of on-line lottery tickets by stipulating that all playslips used must be manually marked.

STATEMENT

Basis and authority: Section 58.1-4007 of the Code of Virginia grants to the State Lottery Board the power to adopt regulations governing the establishment and operation of a lottery.

Purpose: The purpose of the proposed regulatory change is to reduce the potential of the purchase of large blocks of on-line lottery tickets by stipulating that all playslips used must be manually marked.

Summary and analysis: The proposed regulatory change affects § 3.1 of the On-Line Game Regulations (VR 447-02-2) by adding an additional on-line lottery ticket validation requirement.

Impact: This change will promulgate an emergency regulation currently in effect. The impact on the general public is negligible.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Contact: Barbara L. Robertson, Lottery Staff Officer, State Lottery Department, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-9433.

ADVISORY COMMITTEE ON MAPPING, SURVEYING AND LAND INFORMATION SYSTEMS

January 14, 1993 - 10 a.m. – Open Meeting
1100 Bank Street, Suite 901, Richmond, Virginia. ♿

A regular business meeting.

Contact: Chuck Tyger, Computer Systems Chief Engineer, Council on Information Management, 1100 Bank St., Suite 901, Richmond, VA 23219, telephone (804) 225-3622 or (804) 225-3624/TDD ☎

MATERNAL AND CHILD HEALTH COUNCIL

† **January 29, 1993 - 1 p.m.** – Open Meeting
Ninth Street Office Building, 202 North 9th Street, 6th Floor Cabinet Conference Room, Richmond, Virginia. ♿
(Interpreter for the deaf provided upon request)

The meeting will focus on improving the health of the Commonwealth's mothers and children by promoting and improving programs and service delivery systems related to maternal and child health.

Contact: Nancy C. Ford, MCH Nurse Consultant, Virginia Department of Health, Division of Maternal and Child Health, 1500 E. Main Street Station, Suite 137, P.O. Box 2448, Richmond, VA 23218-2448, telephone (804) 786-7367.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

January 15, 1993 – Written comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled **VR 460-01-79.7, 460-02-3.1100, 460-02-3.1200, 460-03-3.1100, 460-03-3.1105, 460-02-4.1920. Amount, Duration, and Scope of Services: Discontinue Coverage of Certain Optional Drugs and Fertility Services.** The purpose of these proposed regulations is to (i) conform with federal requirements for rebates on certain drugs; (ii) redefine family planning services to exclude the coverage of certain fertility drugs and services; (iii) discontinue coverage of certain optional drugs; and (iv) modify the method of the payment of pharmaceutical dispensing fees to allow for more or less frequent dispensing as is appropriate per drug.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Written comments may be submitted until 5 p.m. on January 15, 1993, to Rebecca Miller, Pharmacy Consultant, Division of Policy and Research, DMAS, 600 E. Broad St., Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

Legislative and Public Affairs Committee

† **January 11, 1993 - 1:30 p.m.** – Open Meeting
600 East Broad Street, Board Room, Suite 1300, Richmond, Virginia.

A meeting to discuss issues pertinent to the committee and board.

Contact: Patricia Sykes, Policy Analyst, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7958 or toll-free 1-800-343-0634/TDD ☎

BOARD OF MEDICINE

February 4, 1993 - 8 a.m. – Open Meeting
February 5, 1993 - 8 a.m. – Open Meeting
February 6, 1993 - 8 a.m. – Open Meeting
February 7, 1993 - 8 a.m. – Open Meeting
Location to be announced.

The Board of Medicine will meet on Thursday, February 4, 1993, in open session, to conduct general board business, receive committee and board reports, and discuss any other items which may come before the board. The board will also meet on Thursday, Friday, Saturday and Sunday, February 4, 5, 6, and 7, to review reports, interview licensees, and make case decisions on disciplinary matters. The president may entertain brief public comments at the beginning of the meeting.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923.

Informal Conference Committee

January 11, 1993 - 8:30 a.m. – Open Meeting
January 12, 1993 - 8:30 a.m. – Open Meeting
January 13, 1993 - 8:30 a.m. – Open Meeting
Marriott Waterside, 235 East Main Street, Norfolk, Virginia.

† **January 13, 1993 - 10 a.m.** – Open Meeting
Marriott, 2801 Hershberger Road, N.W., Roanoke, Virginia.

† **January 14, 1993 - 9:30 a.m.** – Open Meeting
Holiday Inn, 6531 West Broad Street, Richmond, Virginia.

† **January 22, 1993 - 9 a.m.** – Open Meeting
Fort Magruder, I-64 to Route 199 to Route 60, Williamsburg, Virginia.

A meeting to inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 of the Code of Virginia. Public comment will not be received.

Contact: Karen W. Perrine, Deputy Executive Director, Disc., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908 or (804) 662-9943/TDD ☎

Credentials Committee

February 5, 1993 - 8:15 p.m. – Open Meeting
Location to be announced.

The Credentials Committee will meet in open and closed session to conduct general business, interview and review medical credentials of applicants applying for licensure in Virginia and discuss any other items which may come before the committee. The committee will receive public comments of those persons appearing on behalf of candidates.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., Richmond, VA 23233, telephone (804) 662-9923.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES (STATE BOARD)

† **January 27, 1993 - 10 a.m.** – Open Meeting
Department of Mental Health, Mental Retardation and Substance Abuse Services, 101 North 14th Street, James Madison Building, Richmond, Virginia.

A regular monthly board meeting. Agenda to be published on January 20. Agenda can be obtained by calling Jane Helfrich.

Tuesday: Informal Session - 8 p.m.
Wednesday: Committee Meetings - 9 a.m.
Regular Session - 10 a.m.

See agenda for location.

Contact: Jane V. Helfrich, Board Administrator, State MHMRSAS Board, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3921.

* * * * * * * * *

February 15, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Mental Health, Mental Retardation and Substance Abuse Services Board intends to **repeal** regulations entitled **VR 460-06-01. Rules and Regulations to Assure the Protection of the Subjects of Human Research** and **adopt** regulations entitled **VR 470-06-01:1. Regulations to Assure the Protection of Participants in Human Research.** These regulations respond to Chapter 603 of the 1992 Acts of Assembly (HB 220), passed by the General Assembly, which limits the scope of the DMHMRSAS' oversight responsibility for human research to the department and institutions operated, funded or licensed by the DMHMRSAS. Current regulations require all human research be conducted in compliance with regulations promulgated by DMHMRSAS. The regulations further require that all organizations conducting human research forward reports of their reviews and any violations pertaining to the conduct of human research to the Commissioner of the DMHMRSAS. Other proposed changes to the regulations are intended to increase consistency with federal regulations (i.e., 45 CFR Part 46).

Written comments may be submitted through February 15, 1993, to J. Randy Koch, Director of Research and Evaluation, P.O. Box 1797, Richmond, Virginia 23214.

Statutory Authority: §§ 37.1-10 and 37.1-24.01 of the Code of Virginia.

Contact: Rubyjean Gould, Director of Administrative Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3915.

State Human Rights Committee

† **January 22, 1993 - 9 a.m.** – Open Meeting
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia.

A regular meeting to discuss business relating to human rights issues. Agenda items are listed for the meeting.

Contact: Elsie D. Little, State Human Rights Director, DMHMRSAS, Madison Bldg., 109 Governor St., Richmond, VA 23219, telephone (804) 786-3988.

VIRGINIA MILITARY INSTITUTE

Board of Visitors

† **February 13, 1993 - 8:30 a.m.** – Open Meeting
Virginia Military Institute, Smith Hall, Lexington, Virginia.

A regular meeting to (i) receive committee reports; (ii) consider 1993-1994 budget; and (iii) receive reports on visits to academic departments.

Contact: Col. Edwin L. Dooley, Jr., Secretary, Board of Visitors, Virginia Military Institute, Superintendent's Office, Lexington, VA 24450, telephone (703) 464-7206.

DEPARTMENT OF MINES, MINERALS AND ENERGY

February 3, 1993 - 10 a.m. – Public Hearing
Department of Mines, Minerals and Energy Office Building, Mountain Empire Community College, Big Stone Gap, Virginia.

February 3, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Mines, Minerals and Energy intends to amend regulations entitled **VR 480-03-19. Virginia Coal Surface Mining Reclamation Regulations.** The purpose of the proposed amendments is to be consistent with changes in corresponding federal rules, as required by law. The amendments (i) establish requirements for operations where the weight of coal is 16 2/3% or less of the total tonnage of mineral mined; (ii) clarify the applicability of certain reclamation operations; (iii) clarify the notice and permitting requirements for exploration for coal; (iv) establish additional protection for prime farmland; (v) clarify the definition of "road" and identify plans and descriptions to be included in the permit application for the road system

for the permit area; (vi) enhance public safety by changing requirements for the operation of impoundments; (vii) clarify the revegetation success standards and provide for the planting of wildlife enhancement shrubs; (viii) clarify the applicability of preparation plants not at the mine site; (ix) delete the definition of support facilities; and (x) make changes for consistency in numbering.

Statutory Authority: §§ 45.1-1.3(4) and 45.1-230 of the Code of Virginia.

Contact: Bill Edwards, Policy Analyst, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-6855 or toll-free 1-800-552-3831/TDD ☎

DEPARTMENT OF MOTOR VEHICLES

Medical Advisory Board

January 13, 1993 - 1 p.m. – Open Meeting
2300 West Broad Street, Richmond, Virginia. ♿

A regular business meeting open to the public.

Contact: Karen Ruby, Manager, 2300 W. Broad St., Richmond, VA 23269, telephone (804) 367-0481.

VIRGINIA MUSEUM OF NATURAL HISTORY

Board of Trustees

† **January 27, 1993 - 9 a.m.** – Open Meeting
The Jefferson Hotel, Franklin and Adams Streets, Richmond, Virginia. ♿

The meeting will include reports from the executive, finance, marketing, outreach, personnel, planning/facilities, and research and collections committees. Public comment will be received following approval of the minutes of the October meeting.

Contact: Rhonda J. Knighton, Executive Secretary, Virginia Museum of Natural History, 1001 Douglas Ave., Martinsville, VA 24112, telephone (703) 666-8616 or (703) 666-8638/TDD ☎

NORFOLK STATE UNIVERSITY

Board of Visitors

† **January 12, 1993 - 2 p.m.** – Open Meeting
† **January 13, 1993 - 10 a.m.** – Open Meeting
Norfolk State University, Harrison B. Wilson Hall Administration Building, Board Room, Norfolk, Virginia.

Committee meetings will be held as follows:

1. Academic Affairs will meet at 2 p.m. on January 12.

2. Student Affairs will meet at 3 p.m. on January 12.

3. Audit and Finance will meet at 8:30 a.m. on January 13.

The full board will meet at 10 a.m. on January 13.

Contact: Geralde D. Tyler, Norfolk State University, 2401 Corprew Ave., Wilson Hall-S340, Norfolk, VA 23504, telephone (804) 683-8373.

BOARD OF NURSING

January 26, 1993 - 8:30 a.m. – Open Meeting
January 29, 1993 - 8:30 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, Conference Room 1, 5th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A panel of the Board of Nursing will conduct formal hearings. Public comment will not be received.

January 27, 1993 - 9 a.m. – Open Meeting
January 27, 1993 - 1:30 p.m. – Public Hearing
January 28, 1993 - 9 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting to consider matters relating to nursing education programs, discipline of licensees, licensure by examination and endorsement and other matters under the jurisdiction of the board. At 1:30 p.m. on January 27, 1993, the board will conduct a public hearing to receive comments on the existing Board of Nursing Regulations.

Contact: Corinne F. Dorsey, R.N., Executive Director, 6606 W. Broad St., Fourth Floor, Richmond, VA 23230-1717, telephone (804) 662-9909 or (804) 662-7197/TDD ☎

BOARD OF NURSING HOME ADMINISTRATORS

January 19, 1993 - 10 a.m. – Open Meeting
Brookfield Office Park-Southern States Building, Room 6, 6606 West Broad Street, Richmond, Virginia. ♿

Informal conferences.

January 20, 1993 - 10 a.m. – Open Meeting
Brookfield Office Park-Southern States Building, Rooms 1 and 2, 6606 West Broad Street, Richmond, Virginia. ♿

Formal conferences and board meeting.

January 21, 1993 - 10 a.m. – Open Meeting

Brookfield Office Park-Southern States Building, Rooms 1 and 2, 6606 West Broad Street, Richmond, Virginia.

A meeting of the board.

Contact: Meredyth P. Partridge, Executive Director, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9111.

BOARD FOR OPTICIANS

† **February 2, 1993 - 9 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia.

A meeting to (i) review applications; (ii) conduct regulatory review; and (iii) consider other matters which may require board action.

Contact: Geralde W. Morgan, Board Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

BOARD OF OPTOMETRY

† **February 17, 1993 - 9 a.m.** – Open Meeting
Department of Health Professions, Board Room 1, 6606 West Broad Street, Richmnd, Virginia.

A general board meeting.

Contact: Carol Stamey, Administrative Assistant, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9910.

BOARD OF PHARMACY

† **January 20, 1993 - 9 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, Conference Room 2 South, Richmond, Virginia.

A board meeting to consider and adopt proposed regulations on VR 530-01-1, Regulations of the Virginia Board of Pharmacy, and VR 530-01-2, Regulations for Practitioners of the Healing Arts to Sell Controlled Substances pursuant to biennial review of all regulations of the Board of Pharmacy.

Contact: Scotti W. Milley, Executive Director, Virginia Board of Pharmacy, 6606 W. Broad St., Suite 400, Richmond, VA 23230, telephone (804) 662-9911.

POLYGRAPH EXAMINERS ADVISORY BOARD

† **March 23, 1993 - 10 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia.

A meeting to administer the Polygraph Examiners Licensing Examination to eligible polygraph examiner interns and to consider other matters which may require board action.

Contact: Geralde W. Morgan, Board Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

PREVENTION PROMOTION ADVISORY COUNCIL

January 21, 1993 - 10 a.m. – Open Meeting
Madison Building, 109 Governor Street, 13th Floor Board Room, Richmond, Virginia.

A quarterly business meeting.

Contact: Harriet M. Russell, Director, Prevention, DMHMRSAS, Office of Prevention, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-1530 or (804) 371-8977/TDD

PRIVATE SECURITY SERVICES ADVISORY BOARD

† **January 26, 1993 - 9:30 a.m.** – Open Meeting
Virginia State Police Academy, 7700 Midlothian Turnpike, Richmond, Virginia.

A meeting to discuss business.

Contact: Paula Scott Dehetre, Executive Assistant, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-8730.

BOARD OF PROFESSIONAL COUNSELORS

January 11, 1993 - 10 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia.

Task Force on Substance Abuse and regulatory review. Public comments will not be heard.

January 15, 1993 - 9 a.m. – Open Meeting
January 16, 1993 - 9 a.m. – Open Meeting
† **February 11, 1993 - 9 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, Conference Room 1, Richmond, Virginia.

A formal hearing. Public comments will not be heard.

Contact: Evelyn B. Brown, Director, or Bernice Parker, Program Support Technician, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-7328.

BOARD OF PSYCHOLOGY

January 12, 1993 - 9:30 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia.

A meeting to (i) conduct general board business; (ii) approve applicants for licensure recommendations; and (iii) approve applicants to sit for written examinations. There will be no public comment.

Contact: Evelyn B. Brown, Executive Director, or Jane Ballard, Administrative Assistant, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9913.

VIRGINIA PUBLIC TELECOMMUNICATIONS BOARD

January 14, 1993 - 2 p.m. – Teleconference
Department of Information Technology, 110 South 7th Street, 1st Floor, Richmond, Virginia 23219.

The board will hold a joint Legislative Executive Committee by audio teleconference to deal with any matters raised for the 1993 Session of the General Assembly. Parties wishing to participate should contact Florence Strother to obtain an audio bridge number.

January 29, 1993 - 10 a.m. – Open Meeting
Radisson Hotel, 555 East Canal Street, Richmond, Virginia.

A quarterly board meeting will include legislative update, director's report and other topics of interest. At 1 p.m. the board will hold a joint meeting with the Council on Information Management.

Contact: Florence M. Strother, Acting Executive Secretary, 110 S. 7th St., 1st Floor, Richmond, VA 23219, telephone (804) 344-5552.

REAL ESTATE APPRAISER BOARD

Complaints Committee

† **January 12, 1993 - 10 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia.

An organizational meeting.

Contact: Demetra Y. Kontos, Assistant Director, Real Estate Appraiser Board, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500.

REAL ESTATE BOARD

January 14, 1993 - 9 a.m. – Open Meeting
Richmond Marriot Hotel, 500 East Broad Street, Richmond, Virginia.

A meeting to conduct board business including review of applications, disciplinary cases, correspondence, etc. The board will also consider publishing a notice of intent to commence regulatory review.

Contact: Joan L. White, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

January 15, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Social Services intends to adopt regulations entitled **VR 615-01-48. General Relief Program - Deeming Income From Alien Sponsors.** This regulation makes policy in the General Relief Program consistent with policy in the Aid to Families with Dependent Children Program which requires considering the income and resources of the alien's sponsor for three years after the alien's entry into the U.S. as a permanent resident when determining program eligibility.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Written comments may be submitted through January 15, 1993, to Diana Salvatore, Program Manager, Medical Assistance Unit, 8007 Discovery Dr., Richmond, VA 23229.

Contact: Peggy Friedenberg, Legislative Analyst, Bureau of Governmental Affairs, Division of Planning and Program Review, 8007 Discovery Dr., Richmond, VA 23229, telephone (804) 662-9217.

* * * * * * * *

January 19, 1993 - 5:30 p.m. – Public Hearing
Koger Center, West End, Wythe Building, Conference Room A, 1604 Santa Rosa Road, Richmond, Virginia.

January 20, 1993 - 5:30 p.m. – Public Hearing
Virginia Beach Public Library (Central), Auditorium, 4100 Virginia Beach Boulevard, Virginia Beach, Virginia.

January 21, 1993 - 5:30 p.m. – Public Hearing
Albemarle County Office Building, Meeting Room 7, 2nd Floor, 401 McIntire Road, Charlottesville, Virginia.

February 12, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to adopt regulations entitled **VR**

615-34-01. Voluntary Registration of Small Family Day Care Homes - Requirements for Contracting Organizations. The proposed regulation sets forth the requirements for organizations that shall administer the voluntary registration program for small family day care homes on behalf of the Commissioner of Social Services.

Written comments may be submitted through February 12, 1993, to Mary Zoller, Department of Social Services, Division of Licensing Programs, 8007 Discovery Drive, Richmond, Virginia 23229.

Statutory Authority: §§ 63.1-25 and 63.1-196.04 C of the Code of Virginia.

Contact: Peggy Friedenberg, Legislative Analyst, 8007 Discovery Dr., Richmond, VA 23229, telephone (804) 662-9217.

* * * * * * * * *

January 19, 1993 - 5:30 p.m. – Public Hearing
Koger Center, West End, Wythe Building, Conference Room A, 1604 Santa Rosa Road, Richmond, Virginia.

January 20, 1993 - 5:30 p.m. – Public Hearing
Virginia Beach Public Library (Central), Auditorium, 4100 Virginia Beach Boulevard, Virginia Beach, Virginia.

January 21, 1993 - 5:30 p.m. – Public Hearing
Albemarle County Office Building, Meeting Room 7, 2nd Floor, 401 McIntire Road, Charlottesville, Virginia.

February 12, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to adopt regulations entitled **VR 615-35-01. Voluntary Registration of Small Family Day Care Homes - Requirements for Providers.** The proposed regulation sets forth registration procedures and general information for providers operating small family day care homes who voluntarily register.

Written comments may be submitted through February 12, 1993, to Alfreda Redd, Department of Social Services, Division of Licensing Programs, 8007 Discovery Drive, Richmond, Virginia 23229.

Statutory Authority: §§ 63.1-25 and 63.1-196.04 C of the Code of Virginia.

Contact: Peggy Friedenberg, Legislative Analyst, 8007 Discovery Dr., Richmond, VA 23229, telephone (804) 662-9217.

* * * * * * * * *

February 12, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Social Services intends to adopt regulations entitled **VR 615-01-50. Food Stamp Program - Income Conversion Method.** The income conversion method of multiplying weekly income by 4.3 and bi-weekly amounts by 2.15 will be required to determine eligibility for food stamp benefits.

Written comments may be submitted through February 12, 1993, to Burt Richman, Food Stamp Program Manager, 8007 Discovery Drive, Richmond, Virginia 23229-8699.

Statutory Authority: §§ 63.1-25 and 63.1-110 of the Code of Virginia.

Contact: Peggy Friedenberg, Legislative Analyst, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

* * * * * * * * *

February 14, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Social Services intends to adopt regulations entitled **VR 615-37-01. Regulations for Criminal Records Checks for Homes for Adult Day Care Centers.** The purpose of the proposed regulation is to protect adults in licensed homes for adults and adult day care centers from persons charged or convicted of certain crimes. The proposed regulation will require a sworn disclosure statement prior to employment and a criminal record check within 30 days of employment for all compensated employees. The sworn disclosure statement indicates that the individual has neither a conviction nor pending charges in or outside the Commonwealth of Virginia of those crimes which act as barriers to employment. The criminal record check is conducted to ensure that the employee does not have any convictions of barrier crimes.

Written comments may be submitted through February 14, 1993, to Cheryl Worrell, Department of Social Services, 8007 Discovery Drive, Richmond, Virginia 23229.

Statutory Authority: § 63.1-174 of the Code of Virginia.

Contact: Peggy Friedenberg, Legislative Analyst, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

* * * * * * * * *

March 1, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to adopt regulations entitled **VR 615-01-43. Aid to Families with Dependent Children (AFDC) Program - Fifth Degree Specified Relative.** The purpose of the proposed regulation is to revise the AFDC policy to expand the definition of specified relative to include caretakers who are of fifth degree kinship to the dependent child.

Statutory Authority: §§ 63.1-25 and 63.1-110 of the Code of Virginia.

Written comments may be submitted through March 1, 1993, to Guy Lusk, Director, Division of Benefit Programs, 8007 Discovery Drive, Richmond, Virginia 23229-8699.

Contact: Peggy Friedenberg, Legislative Analyst, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF) AND CHILD DAY-CARE COUNCIL

February 14, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Social Services and the Child Day-Care Council intend to repeal regulations entitled **VR 615-32-02. Regulations for Criminal Record Checks: Licensed Child Caring Institutions and VR 175-04-01. Criminal Record Checks for Licensed Child Care Centers.** These regulations are proposed for repeal while concurrently promulgating Criminal Record Checks for Child Welfare Agencies.

Written comments may be submitted through February 14, 1993, to Cheryl Worrell, Department of Social Services, 8007 Discovery Drive, Richmond, Virginia 23229.

Statutory Authority: § 63.1-202 of the Code of Virginia.

Contact: Peggy Friedenberg, Legislative Analyst, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

* * * * * * * *

February 14, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Social Services and the Child Day-Care Council intend to adopt regulations entitled **VR 615-36-01 and VR 175-10-01. Regulations for Criminal Record Checks for Child Welfare Agencies.** The proposed regulations replace VR 615-32-02 and VR 175-04-01 and apply to all licensed or registered child welfare agencies. The regulations incorporate statutory changes made during the 1992 General Assembly session.

Written comments may be submitted through February 14, 1993, to Cheryl Worrell, Department of Social Services, 8007 Discovery Drive, Richmond, Virginia 23229.

Statutory Authority: § 63.1-202 of the Code of Virginia.

Contact: Peggy Friedenberg, Legislative Analyst, 8007 Discovery Dr., Richmond, VA 23229, telephone (804) 662-9217.

BOARD OF SOCIAL WORK

January 28, 1993 - 9 a.m. – Open Meeting
January 28, 1993 - 1 p.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia. ♿

Informal conferences. Public comments will not be heard.

January 29, 1993 - 10 a.m. – Open Meeting
6606 West Broad Street, 4th Floor, Richmond, Virginia. ♿

A meeting to conduct general board business and respond to correspondence.

Contact: Evelyn B. Brown, Executive Director, or Bernice Parker, Program Support, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9914.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS

† **February 8, 1993 - 10 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Conference Room 1, Richmond, Virginia. ♿

A general board meeting.

Contact: Nelle P. Hotchkiss, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD ☎

VIRGINIA COUNCIL ON TEEN PREGNANCY PREVENTION

February 4, 1993 - 11 a.m. – Open Meeting
Virginia Housing Development Authority, 601 Belvidere Street, Richmond, Virginia. ♿

A quarterly business meeting.

Contact: Jeanne McCann, Coordinator, Office of Prevention, DMHMRSAS, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-1530 or (804) 371-8977/TDD ☎

COMMONWEALTH TRANSPORTATION BOARD

January 27, 1993 - 2 p.m. – Open Meeting
Virginia Department of Transportation, 1401 East Broad Street, Board Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A work session of the board and Department of Transportation staff.

January 28, 1993 - 10 a.m. – Open Meeting
Virginia Department of Transportation, 1401 East Board Street, Board Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A monthly meeting of the board to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval. Public comment will be received at the outset of the meeting on items on the meeting agenda for which the opportunity for public comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The board reserves the right to amend these conditions.

Contact: John G. Milliken, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-6670.

TRANSPORTATION SAFETY BOARD

† **January 28, 1993 - 10:30 a.m.** – Open Meeting
The Berkeley Hotel, 12th and Cary Streets, Christopher Newport Room, Richmond, Virginia.

A meeting to discuss various topics relating to the area of transportation safety.

Contact: William H. (Bill) Leighty, Deputy Commissioner, DMV, 2300 W. Broad St., Richmond, VA 23269, telephone (804) 367-6614 or (804) 367-1752/TDD ☎

TREASURY BOARD

January 20, 1993 - 9 a.m. – Open Meeting
† **February 17, 1993 - 9 a.m.** – Open Meeting
† **March 17, 1993 - 9 a.m.** – Open Meeting
James Monroe Building, 101 North 14th Street, Treasury Board Room, 3rd Floor, Richmond, Virginia. ♿

A regular meeting of the board.

Contact: Linda F. Bunce, Administrative Assistant to the Treasurer, Department of the Treasury, 101 N. 14th St., 3rd Floor, Richmond, VA 23219, telephone (804) 225-2142.

VIRGINIA RACING COMMISSION

† **January 12, 1993 - 9:30 a.m.** – Open Meeting
Richmond Plaza Building, 110 South 7th Street, Fourth Floor Auditorium, Richmond, Virginia. ♿

A regular commission meeting including discussion of satellite wagering regulations.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

VIRGINIA VOLUNTARY FORMULARY BOARD

January 14, 1993 - 10:30 a.m. – Open Meeting
1100 Bank Street, Washington Building, 2nd Floor Board Room, Richmond, Virginia.

A meeting to consider public hearing comments and review new product data for products pertaining the Virginia Voluntary Formulary.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, 109 Governor St., Room B 1-9, Richmond, VA 23219, telephone (804) 786-4326.

VIRGINIA WAR MEMORIAL FOUNDATION

January 14, 1993 - 3 p.m. – Open Meeting
Virginia War Memorial, 621 South Belvidere Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

First meeting of the foundation.

Contact: Nathan I. Broocke, Director, Department of General Services, Division of Engineering and Buildings, 805 E. Broad St., Room 101, Richmond, VA 23219, telephone (804) 786-3263 or (804) 786-6152/TDD ☎

BOARD FOR THE VISUALLY HANDICAPPED

† **February 3, 1993 - 2:30 p.m.** – Open Meeting
397 Azalea Avenue, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting to receive reports from department staff and other information that may be presented to the board.

Contact: Joseph A. Bowman, Assistant Commissioner, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140/TDD ☎

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

January 11, 1993 - 2 p.m. – Public Hearing
Headquarters Branch, Roanoke County Library, 3131 Electric Road, Roanoke, Virginia.

February 9, 1993 - 2 p.m. – Public Hearing
Department of Commerce, 3600 West Broad Street, Richmond, Virginia.

February 18, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Waste Management Facility Operators intends to adopt regulations entitled **VR 674-01-02. Waste Management Facility Operators Regulations.** The purpose of the proposed regulations is to establish standards, certification qualifications and fees for individuals acting as waste management facility operators.

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

Contact: Nelle P. Hotchkiss, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595.

January 29, 1993 - 8:30 a.m. – Open Meeting
Department of Commerce, 3600 West Broad Street, Conference Room 3, Richmond, Virginia.

A general board meeting.

Contact: Nelle P. Hotchkiss, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD

DEPARTMENT OF WASTE MANAGEMENT (VIRGINIA WASTE MANAGEMENT BOARD)

February 1, 1993 - 7 p.m. – Public Hearing
Charles City County Community Center, 10600 Courthouse Road, Charles City, Virginia.

Pursuant to the requirements of Part VII, Virginia Solid Waste Management Regulations (SWMR), Permitting of Solid Waste Management Facilities, the Department of Waste Management will hold a public hearing on the draft permit amendment for the Charles City County Landfill and proposed by Chambers Development Inc. for a change in the financial assurance for the facility. The permit was drafted by the Department of Waste Management for Chambers Development Inc. in accordance with Part VII of the SWMR. The purpose of the public hearing will be to solicit comments regarding the technical merits of the permit issues. The public comment period will extend until February 11, 1993. Copies of the proposed draft permit may be obtained from Paul Farrell of the Department of Waste Management. Comments concerning the draft permit must be in writing and directed to Aziz Farahmand, Department of Waste Management, 11th Floor, Monroe Bldg., 101 N. 14th St., Richmond, VA 23219.

Contact: Paul Farrell, Environmental Engineer Senior, Monroe Bldg., 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 371-2974.

† **February 11, 1993 - 7 p.m.** – Public Hearing
Franklin County High School, 109 Bernard Road, Rocky Mount, Virginia.

Pursuant to the requirements of the Virginia Solid Waste Management Regulations (Permitting of Solid Waste Management Facilities), the draft Solid Waste Disposal Facility Permit for the development of an industrial landfill proposed by Shredded Products Corporation is available for public review and comment. The permit allows the proposed facility to accept only authorized, nonhazardous wastes which results from the operations of Shredded Products Corporation. The proposal incorporates a design modification which utilizes a double-sided geotextile/geonet composite drainage layer on 3:1 base side slopes, which is not provided for in the regulations. Shredded Products Corporation petitioned for this feature pursuant to the requirements of Part IX of the regulations (Rulemaking Petitions and Procedures), and the Department of Waste Management has made a tentative decision to grant approval.

Contact: Donald H. Brunson, III, Environmental Engineer Senior, Department of Waste Management, Monroe Building, 101 N. 14th Street, 11th Floor, Richmond, VA 23219, telephone (804) 371-0520.

STATE WATER CONTROL BOARD

January 27, 1993 - 2 p.m. – Open Meeting
Prince William County Board of Supervisors Room, 1 County Complex, McCourt Building, 4850 Davis Ford Road, Prince William, Virginia.

January 28, 1993 - 2 p.m. – Open Meeting
Harrisonburg City Council Chambers, Municipal Building, 345 South Main Street, Harrisonburg, Virginia.

February 2, 1993 - 2 p.m. – Open Meeting
James City County Board of Supervisors Room, Building C, 101C Mounts Bay Road, Williamsburg, Virginia.

February 4, 1993 - 2 p.m. – Open Meeting
Municipal Office, Multi-Purpose Room, 150 East Monroe Street, Wytheville, Virginia.

A meeting to receive views and comments and to answer questions of the public on Notices of Intended

Regulatory Action on the adoption of a Virginia Pollutant Discharge Elimination System Permit Regulation (VR 680-14-01:1) and a Virginia Pollution Abatement Permit Regulation (VR 680-14-21) and the repeal of the Permit Regulation (VR 680-14-01) and the Toxics Management Regulation (VR 680-14-03).

Contact: Richard Ayers, Office of Water Resources Management, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5059.

January 29, 1993 - 2 p.m. – Open Meeting
State Water Control Board Office, Innsbrook Corporate Center, Board Room, 4900 Cox Road, Glen Allen, Virginia.

A meeting to receive views and comments and answer questions of the public on the Notice of Intended Regulatory Action on the adoption of a General Permit Regulation for Nonmetallic Mineral Mining (VR 680-14-20).

Contact: Richard Ayers, Office of Water Resources Management, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5059.

February 4, 1993 - 2 p.m. – Open Meeting
Roanoke County Administration Center, 3738 Brambleton Avenue, S.W., Community Room, Roanoke, Virginia.

February 8, 1993 - 2 p.m. – Open Meeting
James City County Board of Supervisors Room, 101C Mounts Bay Road, Building C, Williamsburg, Virginia.

February 10, 1993 - 2 p.m. – Open Meeting
State Water Control Board Office, Innsbrook Corporate Center, 4900 Cox Road, Glen Allen, Virginia.

A meeting to receive views and comments and to answer questions of the public on Notices of Intended Regulatory Action on the adoption of General Permits for Storm Water Discharges from Heavy Manufacturing Facilities (VR 680-14-16); from Light Manufacturing Facilities (VR 680-14-17); from Transportation Facilities, Landfills, Land Application Sites and Open Dumps, Materials Recycling Facilities; and Steam Electric Power Generating Facilities (VR 680-14-18), and from Construction Sites (VR 680-14-19).

Contact: Cathy Boatwright, Office of Water Resources Management, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5316 or (804) 527-4261/TDD ☎

* * * * * * * *

† **February 22, 1993 - 7 p.m.** – Public Hearing
Route 208 at Spotsylvania Courthouse, County Administration Building, Spotsylvania County Board of Supervisors Room, Spotsylvania, Virginia.

† **February 23, 1993 - 7 p.m.** – Public Hearing
101C Mounts Bay Road, Building C, James City County Board of Supervisors Room, Williamsburg, Virginia.

† **February 24, 1993 - 7 p.m.** – Public Hearing
Eastern Shore Community College, Route 13, Lecture Hall, Melfa, Virginia.

March 15, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to repeal regulations entitled **VR 680-13-01. Rules of the Board and Standards for Water Wells.** The purpose of the proposed action is to repeal the Rules of the Board and Standards for Water Wells concurrently with the adoption of new regulations implementing the Ground Water Act of 1992.

An informal question and answer period has been scheduled before each hearing. At that time staff will answer questions from the public on the proposal. The question and answer period will begin 1/2 hour before the scheduled public hearing. The hearings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Jackson at the address below or by telephone at (804) 527-5163 or (804) 527-4261/TDD. Persons needing interpreter services for the deaf must notify Ms. Jackson no later than Monday, January 25, 1993. The board seeks comments on the proposal and the costs and benefits of the proposal. In addition, the agency has performed certain analyses on the proposed amendments related to the purpose, need, impacts and alternatives which are available to the public upon request.

STATEMENT

Subject: The subject of the proposed regulatory action is the repeal of the regulation entitled Rules of the Board and Standards for Water Wells that was adopted by the State Water Control Board on June 10, 1974. This regulation was adopted to implement the provisions of the Ground Water Act of 1973 that was repealed by the 1992 session of the Virginia General Assembly.

Substance: This proposed regulatory action will repeal the regulation entitled Rules of the Board and Standards for Water Wells.

Impact: There are approximately 330 persons who hold certificates of ground water right or permits to withdraw ground water that have been issued under the provisions of this regulation. These persons will now be subject to the requirements of proposed VR 680-13-07 Ground Water Withdrawal Regulations that are being promulgated concurrently with the repeal of this regulation.

Issues: All issues related to the regulation of ground water

withdrawals that were included in Rules of the Board and Standards for Water Wells are being considered in the concurrent promulgation of VR 680-13-07 Ground Water Withdrawal Regulations.

Basis: The basis for this proposed regulatory action is the repeal of the Ground Water Act of 1973, Chapter 3.4 (§§ 62.1-44.83 through 62.1-44.107) of Title 62.1 of the Code of Virginia.

Purpose: This proposed regulatory action will repeal regulations for which there is no longer legislative authority.

Written comments may be submitted through March 15, 1993, to Lori Jackson, State Water Control Board, P.O. Box 11143, Richmond, VA 23230.

Statutory Authority: § 62.1-44.92 (Repealed) of the Code of Virginia.

Contact: Terry Wagner, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5203.

* * * * * * * * *

† **February 9, 1993 - 2 p.m.** – Public Hearing
Virginia Highlands Community College, State Route 372 off Route 140, Lecture Auditorium, Abingdon, Virginia.

† **February 10, 1993 - 2 p.m.** – Public Hearing
Roanoke County Administration Center, 3738 Brambleton Avenue, S.W., Community Room, Roanoke, Virginia.

† **February 12, 1993 - 3 p.m.** – Public Hearing
State Water Control Board, Innsbrook Corporate Center, 4900 Cox Road, Board Room, Glen Allen, Virginia.

† **February 18, 1993 - 7 p.m.** – Public Hearing
Norfolk City Council Chambers, 1006 City Hall Building, 810 Union Street, Norfolk, Virginia.

† **February 23, 1993 - 2 p.m.** – Public Hearing
McCourt Building, 4850 Davis Ford Road, 1 County Complex, Prince William County Board Room, Prince William, Virginia.

March 15, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to consider amending regulations entitled **VR 680-13-03. Petroleum Underground Storage Tank Financial Responsibility Requirements.** The purpose of the the proposed amendment is to incorporate the new sliding scale for financial responsibility established by the 1992 General Assembly, establish a simplified test for self-insurance and revised compliance dates, and delete requirements for the Fund.

An informal question and answer period has been scheduled before each hearing. At that time staff will answer questions from the public on the proposal. The question and answer period will begin 1/2 hour before the scheduled public hearing. The hearings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton at the address below or by telephone at (804) 527-5162 or (804) 527-4261/TDD. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, January 25, 1993. The board seeks comments on the proposal and the costs and benefits of the proposal. In addition, the agency has performed certain analyses on the proposed amendments related to the purpose, need, impacts and alternatives which are available to the public upon request.

STATEMENT

Subject: The subject of this proposed regulation is the requirement that owners, operators and vendors of petroleum underground storage tanks (USTs) maintain specific amounts of financial responsibility for the purpose of conducting corrective actions and satisfying third party claims associated with releases from petroleum USTs. The Virginia Petroleum Storage Tank Fund (Fund) would be used to provide assurance for owners and operators above their per occurrence sliding scale financial responsibility requirement up to the federal requirement of $1 million per occurrence.

Substance: This proposed regulation would ensure that funds will be available for cleanups and third party claims associated with releases from petroleum USTs. There are approximately 60,000 reported federally regulated USTs and some 10,000 state regulated USTs. Of this total there are 1,665 hazardous chemical USTs and approximately 3,000 regulated state and federally owned tanks both of which do not require demonstration of financial responsibility. This proposed regulation requires the owners or operators of petroleum USTs and petroleum storage tank vendors to maintain demonstration of financial responsibility. The required level of financial responsibility for owners and operators of USTs to be established by this regulation is based upon a sliding scale and is determined by the total gallons of petroleum pumped on an annual basis into all petroleum USTs owned and operated by a person in Virginia. The annual aggregate sliding scale amounts in state law and the proposed regulation are as follows:

Annual Aggregate Requirement	Gallons Pumped Annually
$20,000	1 to 600,000
$40,000	600,001 to 1,200,000
$80,000	1,200,001 to 1,800,000
$150,000	1,800,001 to 2,400,000
$200,000	over 2,400,000

The law and proposed regulation also require all petroleum storage tank vendors and other owners and operators to maintain $200,000 of annual aggregate financial responsibility.

Financial responsibility assurance can be shown using insurance, self-insurance, surety bonds, letters of credit, guarantees, insurance pools, trust funds, and state funds. This proposed amendment creates a new simplified state financial test for self insurance to be used in lieu of the federal test.

Impact: There are approximately 13,000 owners of the 70,000 reported regulated USTs located at 24,000 facilities in the Commonwealth. These owners and operators would benefit from this amended regulation since the requirements for demonstration of financial assurance would be reduced in many cases. Compliance with this amended regulation would ensure consideration for access to the Virginia Petroleum Storage Tank Fund above the appropriate sliding scale amounts and thus a reduction in the costs the regulated community would incur for releases from USTs. The cost of this proposed amended regulation to Virginia petroleum UST owners and operators would be less than that required by the federal regulation.

Issues: An issue under consideration is the amount and type of documentation necessary to establish the amount of petroleum pumped on an annual basis. This would be required to determine the level of financial responsibility required for owners and operators.

The federal UST financial regulation became effective on January 24, 1989, and applies to federally defined petroleum USTs nationwide. A key question is whether the state should have an UST regulatory program that will be as stringent, less stringent or more stringent than the federal regulation. Less stringent state requirements would preclude delegation of the federal program to Virginia, thus creating two UST financial responsibility programs in the state. Current state law appears to be as stringent as the federal law by requiring financial responsibility at levels equal to the federal when the state fund is used to demonstrate assurance.

One of the mechanisms for demonstration of financial responsibility is insurance. The cost of insurance has been extremely high or not available in recent years due to increasing cleanup costs and discovery of UST releases. Approximately 15,000 of the 70,000 USTs in Virginia are over 25 years old and many insurance companies will not insure tanks over 15 years old due to the likelihood of a release. When insurance is available it requires proof that the USTs are not leaking and costs a minimum of $2,500 per year for the federally required $1 million policy. It is difficult to say at this time if insurance companies would substantially reduce premiums based on the proposed amended sliding scale amounts. In fact, discussions with insurers have indicated they may continue to refuse to carry a lower rate policy since their risk exposure in many cases may still be substantial. This proposed amendment allows self-insurance for owners and operators with tangible net worth equal to the annual aggregate requirement. Thus, in accordance with the sliding scale, many would be able to self-insure with as little as $20,000 tangible net worth.

Basis: The basis for this proposed amendment is § 62.1-44.34:10-12 of the Code of Virginia. Further statutory authority for the adoption of regulations can be found in § 62.1-44.15(10) of the State Water Control Law.

Purpose: This proposed amendment is designed to incorporate into regulation revisions to the financial responsibility requirements for owners, operators and vendors as a result of legislation enacted by the 1992 General Assembly.

Written comments may be submitted through March 15, 1993, to Doneva Dalton, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

Statutory Authority: §§ 62.1-44.34:10, 62.1-44.34:11, 62.1-44.34:12, and 62.1-44.15 (10) of the Code of Virginia.

Contact: Mary-Ellen Kendall, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230, telephone (804) 527-5195.

* * * * * * * * *

† **February 9, 1993 - 2 p.m.** – Public Hearing
Virginia Highlands Community College, State Route 372 off Route 140, Lecture Auditorium, Abingdon, Virginia.

† **February 10, 1993 - 2 p.m.** – Public Hearing
Roanoke County Administration Center, 3738 Brambleton Avenue, S.W., Community Room, Roanoke, Virginia.

† **February 12, 1993 - 3 p.m.** – Public Hearing
State Water Control Board, Innsbrook Corporate Center, 4900 Cox Road, Board Room, Glen Allen, Virginia.

† **February 18, 1993 - 7 p.m.** – Public Hearing
Norfolk City Council Chambers, 1006 City Hall Building, 810 Union Street, Norfolk, Virginia.

† **February 23, 1993 - 2 p.m.** – Public Hearing
McCourt Building, 4850 Davis Ford Road, 1 County Complex, Prince William County Board Room, Prince William, Virginia.

March 15, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled **VR 680-13-06. Virginia Petroleum Storage Tank Fund.** The purpose of the proposed regulation is to describe the requirements for the Virginia Petroleum Storage Tank Fund.

An informal question and answer period has been scheduled before each hearing. At that time staff will answer questions from the public on the proposal. The question and answer period will begin 1/2 hour before the scheduled public hearing. The hearings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton at the address below or by telephone at (804) 527-5162 or (804) 527-4261/TDD. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, January 25, 1993. The board seeks comments on the proposal, the issues including specifically the appropriateness of July 1, 1992, or December 22, 1989, being the effective date for access to the Fund for UST releases, and the costs and benefits of the proposal. In addition, the agency has performed certain analyses on the proposed amendments related to the purpose, need, impacts and alternatives which are available to the public upon request.

STATEMENT

Subject: The subject of this proposed regulation is the administration of the Virginia Petroleum Storage Tank Fund (Fund). The proposed regulation establishes requirements for access to the Fund for reimbursement of corrective action costs for certain classes of aboveground and underground storage tanks, access to the Fund by owners or operators of regulated petroleum USTs for third party claims and requirements for agency managed cleanups.

Substance: This proposed regulation provides funds for reimbursement of corrective action costs incurred by owners and operators of regulated petroleum underground storage tank (UST) systems, operators of facilities with oil aboveground storage tanks, operators of farm or residential motor fuel USTs having a capacity of 1,100 gallons or less and operators of underground and aboveground storage tanks containing heating oil with a capacity of 5,000 gallons or less. The proposed regulation also allows access to the Fund by owners or operators of petroleum USTs for third party claims for bodily injury and property damage. Access levels to the Fund for these classes of tanks are established in Article 10 of the State Water Control Law and are incorporated into the proposed regulation. The proposed regulation also establishes requirements for agency cleanup of sites where an emergency exists, where the responsible party is unknown or financially incapable or where it is more practical for the agency to conduct the cleanup.

Impact: This proposed regulation establishes requirements for access to the Fund for 60,000 federally regulated petroleum USTs; approximately 10,000 heating oil regulated USTs specifically defined under state law; approximately 10,000 aboveground storage tank facilities containing oil; and approximately 3 million farm/residential motor fuel underground storage tanks and home heating oil aboveground and underground storage tanks.

The federal financial responsibility regulation for owners and operators of petroleum USTs requires a demonstration of financial assurance of $1 million per occurrence and an annual aggregate of $1 or $2 million for corrective action and third party claims for bodily injury and property damage. This proposed regulation in conjunction with the proposed Petroleum Underground Storage Tank Financial Responsibility Requirements (VR 630-13-03) will enable regulated petroleum UST owners or operators to continue to meet the federal requirement. The Fund will be used to demonstrate costs above the state financial responsibility requirements (sliding scale: total of $20,000 to $200,000 for per occurrence and annual aggregate) and thereby comply with federal requirements for demonstration of financial responsibility.

There would be no negative financial impact imposed on the regulated community as a result of this proposed regulation replacing the current regulatory requirements.

Issues: Currently, there are approximately 4,500 reported leaking USTs throughout the state. The agency estimates this number will double over the next three to five years. In addition, it is anticipated that the number of releases from facilities with oil aboveground storage tanks will increase as the new requirements associated with Article 11 of State Water Control Law are implemented.

In accordance with state law changes, the proposed regulation reestablishes requirements which must be met prior to the agency conducting a cleanup at contaminated underground and aboveground storage tank sites.

The proposed regulation establishes requirements for access to the Fund for subsequent property owners who discover or purchase abandoned USTs located on their property.

Public participation to date has raised the issue of whether July 1, 1992, or December 22, 1989, should be the effective date for access to the Fund for UST releases. The overwhelming majority of those who commented sought the December 22, 1989, date. The proposed regulation allows reimbursement from the Fund to owners and operators of regulated petroleum UST systems, operators of farm or residential motor fuel USTs having a capacity of 1,100 gallons or less and operators of aboveground and underground storage tanks containing heating oil with a capacity of 5,000 gallons or less for moneys expended for corrective action after July 1, 1992. Operators of aboveground storage tanks facilities containing oil are, by law, only allowed reimbursement from the Fund for moneys expended for corrective action after January 29, 1992.

Basis: The basis for this proposed regulation is §§ 62.1-44.34:10, 62.1-44.34:11 and 62.1-44.34:12 of the Code of Virginia. Further statutory authority for the adoption of regulations can be found in § 62.1-44.15(10) of the State

Water Control Law.

Purpose: This proposed regulation is designed to administer the Virginia Petroleum Storage Tank Fund to ensure the effective use of the Fund to clean up petroleum and oil contamination associated with releases from underground and aboveground storage tanks.

Written comments may be submitted through March 15, 1993, to Doneva Dalton, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

Statutory Authority: §§ 62.1-44.34:10, 62.1-44.34:11, 62.1-44.34:12, and 62.1-44.15(10 of the Code of Virginia.

Contact: Mary-Ellen Kendall, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5195.

* * * * * * * * *

† **February 22, 1993 - 7 p.m.** – Public Hearing
Route 208 at Spotsylvania Courthouse, County Administration Building, Spotsylvania County Board of Supervisors Room, Spotsylvania, Virginia.

† **February 23, 1993 - 7 p.m.** – Public Hearing
101C Mounts Bay Road, Building C, James City County Board of Supervisors Room, Williamsburg, Virginia.

† **February 24, 1993 - 7 p.m.** – Public Hearing
Eastern Shore Community College, Route 13, Lecture Hall, Melfa, Virginia.

March 15, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled **VR 680-13-07. Ground Water Withdrawal Regulations.** The purpose of the proposed regulation is to establish procedures for the declaration of ground water management areas and the subsequent issuance of ground water withdrawal permits and special exceptions within those areas.

An informal question and answer period has been scheduled before each hearing. At that time staff will answer questions from the public on the proposal. The question and answer period will begin 1/2 hour before the scheduled public hearing. The hearings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Jackson at the address below or by telephone at (804) 527-5163 or (804) 527-4261/TDD. Persons needing interpreter services for the deaf must notify Ms. Jackson no later than Monday, January 25, 1993. The board seeks comments on the proposal and the costs and benefits of the proposal. In addition, the agency has performed certain analyses on the proposed amendments related to the purpose, need, impacts and alternatives which are available to the public upon request.

STATEMENT

Subject: The subject of the proposed regulation is the implementation of the Ground Water Management Act of 1992 (Act). The Act requires that the Board declare ground water management areas and requires that any person who uses more than 300,000 gallons of ground water per month within such areas first obtain a ground water withdrawal permit from the board. Groundwater withdrawals in these areas will be managed to conserve, protect and beneficially utilize the ground water resources of the Commonwealth and to ensure the preservation of the public welfare, safety and health.

Substance: This proposed regulation will: (1) establish procedures for the declaration of ground water management areas and the issuance of ground water withdrawal permits to persons who hold certificates of ground water right or permits to withdraw ground water in existing ground water management areas established under the provisions of the Ground Water Act of 1973; (2) establish procedures for the issuance of ground water withdrawal permits to persons who are withdrawing ground water within a newly declared ground water management area; (3) establish procedures for the issuance of ground water withdrawal permits and special exceptions to persons who wish to initiate or expand a ground water withdrawal in excess of 300,000 gallons per month in a ground water management area; and (4) establish enforcement procedures to assure compliance with the provisions of the regulation and the Act.

Impact: There are approximately 330 persons who hold certificates of ground water right or permits to withdraw ground water within existing ground water management areas that will be required to file an application for a ground water withdrawal permit. In addition, any ground water user who wishes to develop a new ground water withdrawal in excess of 300,000 gallons per month in existing ground water management areas will be required to obtain a permit by this regulation. Finally, any existing users (or persons who wish to initiate a new withdrawal) in ground water management areas that are declared in the future will be required to obtain a permit. Separate permit fee regulations that are currently being promulgated will require a permit fee from the applicant for the issuance of any ground water withdrawal permit.

Issues: All issues related to the implementation of the Ground Water Management Act of 1992 are open for consideration. Specific issues under consideration include methodologies to determine historic ground water withdrawals from wells that were not metered, methodologies to determine the amount of ground water needed annually for drought relief wells, information necessary to document water withdrawal savings achieved

by water conservation, information necessary to document additional ground water needed (in addition to existing use) during the term of a permit, strategies to assure that the maximum amount of ground water is preserved and protected for future beneficial uses, strategies for prioritizing types of water use when evaluating withdrawal applications, and establishment of criteria for the issuance of denial of ground water withdrawal permits. The Ground Water Management Act of 1992 requires that previously unregulated agricultural ground water withdrawers obtain ground water withdrawal permits. The board has decided to rely on the provisions contained in the Act to regulate agricultural ground water withdrawals at this time and has not included specific requirements in this proposed regulation to regulate agricultural withdrawals. An Agricultural Ground Water Withdrawal Advisory Committee will be formed to provide the agency with guidance on the regulation of agricultural withdrawers. This committee will meet during the period of time during which this proposed regulation is going through the administrative adoption process. As soon as possible after these proposed regulations are adopted they will be amended to include specific requirements for the regulation of agricultural ground water withdrawals. Any person who wishes to apply for a new agricultural ground water withdrawal permit prior to the inclusion of specific requirements for agricultural withdrawal may apply under the proposed regulation. Comments are specifically sought from all parties regarding the regulation of agricultural ground water withdrawals.

Basis: The basis for this proposed regulation is §§ 62.1-254 through 62.1-270 of the Code of Virginia. Specifically, § 62.1-256 8 authorizes the board to adopt such regulations as it deems necessary to administer and enforce the provisions of the Act.

Purpose: This proposed regulation is designed to conserve, protect and beneficially utilize the ground water resources of the Commonwealth and to ensure the preservation of the public welfare, safety and health, through the application of appropriate controls on ground water withdrawals.

Written comments may be submitted through March 15, 1993, to Lori Jackson, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

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

Contact: Terry Wagner, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5203.

* * * * * * * * *

† **February 9, 1993 - 7 p.m.** – Public Hearing
Virginia Highlands Community College, State Route 372 off Route 140, Lecture Auditorium, Abingdon, Virginia.

† **February 10, 1993 - 7 p.m.** – Public Hearing
Roanoke County Administration Center, 3738 Brambleton Avenue, S.W., Community Room, Roanoke, Virginia.

† **February 12, 1993 - 10 a.m.** – Public Hearing
State Water Control Board, Innsbrook Corporate Center, 4900 Cox Road, Board Room, Glen Allen, Virginia.

† **February 18, 1993 - 2 p.m.** – Public Hearing
Norfolk City Council Chambers, 1006 City Hall Building, 810 Union Street, Norfolk, Virginia.

† **February 23, 1993 - 7 p.m.** – Public Hearing
McCourt Building, 4850 Davis Ford Road, 1 County Complex, Prince William County Board Room, Prince William, Virginia.

March 15, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled **VR 680-14-12. Facility and Aboveground Storage Tank Registration Requirements.** The purpose of the proposed regulation is to compile an inventory of facilities and aboveground storage tanks within the Commonwealth.

An informal question and answer period has been scheduled before each hearing. At that time staff will answer questions from the public on the proposal. The question and answer period will begin 1/2 hour before the scheduled public hearing. The hearings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Dalton at the address below or by telephone at (804) 527-5162 or (804) 527-4261/TDD. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, January 25, 1993. The board seeks comments on the proposal, the issues and the costs and benefits of the proposal. In addition, the agency has performed certain analyses on the proposed amendments related to the purpose, need, impacts and alternatives which are available to the public upon request.

STATEMENT

Basis: Under the authority of § 62.1-44.34:19.1 of the Code of Virginia, the State Water Control Board is authorized to compile an inventory of facilities with an aboveground storage capacity of more than 1,320 gallons of oil or individual aboveground storage tanks having a storage capacity of more than 660 gallons of oil within the Commonwealth. To accomplish this task, the board has developed regulations regarding registration requirements. Registration shall be renewed every five years or whenever title to a facility or an aboveground storage tank is transferred, whichever first occurs.

Section 62.1-44.34:19.1 authorizes the State Water Control

Board to assess a fee, according to a schedule based on the size and type of facility or tank, not to exceed $100 per facility or $50 per tank. This regulation establishes a schedule of fees for this registration.

Substance: It is the intent of the State Water Control Board with the promulgation of this draft regulation to develop an inventory of facilities with an aboveground storage capacity of more than 1,320 gallons of oil or individual aboveground storage tanks having a storage capacity of more than 660 gallons of oil within the Commonwealth.

Impact: This regulation could potentially affect a great number of facility operators within the Commonwealth. An inventory of these facilities and aboveground storage tanks has not been compiled in the past so the board does not have a firm number of facilities to be impacted. These regulations are administrative in nature and should require minimal effort on the part of small operators to comply.

Issues: The content of the proposed regulation should not cause concern on the part of the regulated community. The requirements of this regulation are administrative in nature with the information required being readily available. In accordance with § 62.1-44.34:19.1 of the Code of Virginia, the State Water Control Board is authorized to assess a fee, according to a schedule based on the size and type of facility or tank, not to exceed $100 per facility or $50 per tank. This regulation establishes a schedule of fees for this registration. This fee is minimal and is to be submitted every five years upon renewal of the required registration.

Written comments may be submitted through March 15, 1993, to Doneva Dalton, State Water Control Board, P.O. Box 11143, Richmond, Virginia.

Statutory Authority: §§ 62.1-44.34:19 and 62.1-44.15 (10) of the Code of Virginia.

Contact: David Ormes, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5197.

* * * * * * * *

† **February 9, 1993 - 7 p.m.** – Public Hearing
Virginia Highlands Community College, State Route 372 off Route 140, Lecture Auditorium, Abingdon, Virginia.

† **February 10, 1993 - 7 p.m.** – Public Hearing
Roanoke County Administration Center, 3738 Brambleton Avenue, S.W., Community Room, Roanoke, Virginia.

† **February 12, 1993 - 10 a.m.** – Public Hearing
State Water Control Board, Innsbrook Corporate Center, 4900 Cox Road, Board Room, Glen Allen, Virginia.

† **February 18, 1993 - 2 p.m.** – Public Hearing
Norfolk City Council Chambers, 1006 City Hall Building, 810 Union Street, Norfolk, Virginia.

† **February 23, 1993 - 7 p.m.** – Public Hearing
McCourt Building, 4850 Davis Ford Road, 1 County Complex, Prince William County Board Room, Prince William, Virginia.

March 15, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled **VR 680-14-13. Aboveground Storage Tanks Pollution Prevention Requirements.** The purpose of the proposed regulation is to establish standards and procedures to be followed by facility operators to prevent the discharge of oil to state waters, lands and storm drain systems from new and existing aboveground storage tanks.

An informal question and answer period has been scheduled before each hearing. At that time staff will answer questions from the public on the proposal. The question and answer period will begin 1/2 hour before the scheduled public hearing. The hearings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Dalton at the address below or by telephone at (804) 527-5162 or (804) 527-4261/TDD. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, January 25, 1993. The board seeks comments on the proposal, the issues and the costs and benefits of the proposal. In addition, the agency has performed certain analyses on the proposed amendments related to the purpose, need, impacts and alternatives which are available to the public upon request.

STATEMENT

Basis: Under the authority of § 62.1-44.34:15.1 of the Code of Virginia, the State Water Control Board is authorized to adopt regulations and develop procedures necessary to prevent pollution of state waters, lands and storm drain systems from the discharge of oil from new and existing aboveground storage tanks. The statute places more stringent requirements on aboveground storage tanks at facilities with an aggregate capacity of 1 million gallons or greater than on an aboveground storage tank at a facility of less than 1 million gallons but more than 25,000 gallons of oil.

Substance and purpose: It is the intent of the State Water Control Board with the promulgation of this regulation to develop standards and procedures necessary to prevent the discharge of oil to state waters, lands and storm drain systems from new and existing aboveground storage tanks. These standards and procedures were required to be developed in substantial conformity with the current codes and standards recommended by the National Fire Protection Association. Section 62.1-44.34:15.1 also required

the board to incorporate accepted industry practices contained in the American Petroleum Institute publications and other accepted industry standards. The board has incorporated accepted industry practice to the extent they are consistent with the board's program for regulating aboveground storage tanks.

Impact: This regulation could potentially impact approximately 3,000 facility operators within the Commonwealth. The aboveground storage tanks at these facilities will be required to inspect and test in accordance with the regulations. The statute places more stringent requirements on aboveground storage tanks at facilities with an aggregate capacity of 1 million gallons or greater than on an aboveground storage tank at a facility of less than 1 million gallons but more than 25,000 gallons of oil.

Issues: The content of the proposed regulation will cause concern on the part of the regulated community since a requirement for periodic tests and inspections of aboveground storage tanks did not exist prior to this regulation. However, the smaller facilities with an aboveground storage capacity of less than 1 million gallons of oil are not required by statute to conduct formal tank inspections unless a significant inventory variation is observed. The larger facilities with an aboveground storage capacity of greater than 1 million gallons will be required to adhere to a regular schedule of external and internal tank inspections. The board has identified approximately 100 facilities located within the Commonwealth with an aboveground storage capacity of greater than 1 million gallons of oil.

Written comments may be submitted through March 15, 1993, to Doneva Dalton, State Water Control Board, P.O. Box 11143, Richmond, Virginia.

Statutory Authority: §§ 62.1-44.34:15.1 and 62.1-44.15 (10) of the Code of Virginia.

Contact: David Ormes, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5197.

* * * * * * * *

† **February 9, 1993 - 7 p.m.** – Public Hearing
Virginia Highlands Community College, State Route 372 off Route 140, Lecture Auditorium, Abingdon, Virginia.

† **February 10, 1993 - 7 p.m.** – Public Hearing
Roanoke County Administration Center, 3738 Brambleton Avenue, S.W., Community Room, Roanoke, Virginia.

† **February 12, 1993 - 10 a.m.** – Public Hearing
State Water Control Board, Innsbrook Corporate Center, 4900 Cox Road, Board Room, Glen Allen, Virginia.

† **February 18, 1993 - 2 p.m.** – Public Hearing
Norfolk City Council Chambers, 1006 City Hall Building, 810 Union Street, Norfolk, Virginia.

† **February 23, 1993 - 7 p.m.** – Public Hearing
McCourt Building, 4850 Davis Ford Road, 1 County Complex, Prince William County Board Room, Prince William, Virginia.

March 15, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled **VR 680-14-14. Facility Financial Responsibility Requirements.** The purpose of the proposed regulation is to establish requirements for financial responsibility on the part of operators of facilities having a maximum aboveground storage capacity of 25,000 gallons of oil or having an average daily throughput of 25,000 gallons or more of oil.

An informal question and answer period has been scheduled before each hearing. At that time staff will answer questions from the public on the proposal. The question and answer period will begin 1/2 hour before the scheduled public hearing. The hearings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Dalton at the address below or by telephone at (804) 527-5162 or (804) 527-4261/TDD. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, January 25, 1993. The board seeks comments on the proposal, the issues and the costs and benefits of the proposal. In addition, the agency has performed certain analyses on the proposed amendments related to the purpose, need, impacts and alternatives which are available to the public upon request.

STATEMENT

Purpose: The purpose of this regulation is to provide guidance for operators of facilities in the Commonwealth to comply with the financial responsibility requirements. Financial responsibility may be demonstrated by self insurance, insurance, guaranty or surety, or any other method approved by the board, or a combination thereof.

Basis: Section 62.1-44.34:21 of the Code of Virginia authorizes the State Water Control Board to assess a fee sufficient to meet, but not exceed, the cost of the board related to implementation of § 62.1-44.34:16 as to an operator seeking acceptance of evidence of financial responsibility. The board shall take into account the fees charged in neighboring states, the importance of not placing existing or prospective industries in the Commonwealth at a competitive disadvantage. Within six months of receipt of any federal moneys that would offset the cost of implementing Article 11, the board shall review the amount of fees set by regulation to determine the amount of fees that should be refunded. Such refunds shall only be required if the fees plus the federal moneys

received for the implementation of the program under Article 11 as it applies to facilities exceed the actual cost to the board of administering the program.

Substance: It is the intent of the State Water Control Board with the promulgation of this regulation to provide guidance to operators of facilities with an aggregate aboveground storage capacity of more than 25,000 gallons of oil as to compliance with the requirements to demonstrate financial responsibility. Acceptance of the submitted demonstrations of financial responsibility by the board is a condition of operation.

Impact: This regulation could potentially affect approximately 3,000 facilities within the Commonwealth. Although this regulation will place an additional burden on the operator, it will also provide a benefit in that each operator will be allowed to seek reimbursement from the Petroleum Storage Tank fund for costs of containment and cleanup in excess of the level of financial responsibility required to be demonstrated.

Issues: The content of this regulation should not cause concern on the operators of the affected facilities. Although it may place an additional financial burden initially, it will prove to be financially beneficial in the event of a discharge of oil at a facility. The cost of containment and cleanup of a discharge of oil to the environment is substantial and many operators of the smaller facilities could face being put out of business in this event. Each operator will be allowed to seek reimbursement from the Petroleum Storage Tank fund for costs of containment and cleanup in excess of the level of financial responsibility required to be demonstrated.

Section 62.1-44.34:21 authorizes the State Water Control Board to assess a fee sufficient to meet, but not exceed, the cost of the board related to implementation of § 62.1-44.34:16 as to an operator seeking acceptance of evidence of financial responsibility. The board shall take into account the fees charged in neighboring states, the importance of not placing existing or prospective industries in the Commonwealth at a competitive disadvantage. The fee imposed is minimal and is required to be submitted with the annual demonstration of financial responsibility.

Written comments may be submitted through March 15, 1993, to Doneva Dalton, State Water Control Board, P.O. Box 11143, Richmond, Virginia.

Statutory Authority: §§ 62.1-44.34:16 and 62.1-44:21 and 62.1-44.15 (10) of the Code of Virginia.

Contact: David Ormes, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5197.

* * * * * * * *

† **February 16, 1993 - 7 p.m.** – Public Hearing
Crewe Library and Conference Center, Corner of Tyler and Maryland Avenues, Conference Room, Crewe, Virginia.

March 12, 1993 – Written comments may be submitted through 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled **VR 680-16-03. Upper James River Basin Water Quality Management Plan.** The purpose of the proposed amendment is to increase the waste load allocation for the Town of Crewe's sewage treatment plant discharge to an unnamed tributary of Deep Creek.

An informal question and answer period has been scheduled before the hearing. At that time staff will answer questions from the public on the proposal. The question and answer period will begin 1/2 hour before the scheduled public hearing. The hearing is being held at a public facility believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facility should contact Ms. Dalton at the address below or by telephone at (804) 527-5162 or (804) 527-4261/TDD. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, January 25, 1993. The board seeks comments on the proposal, the issues and the costs and benefits of the proposal. In addition, the agency has performed certain analyses on the proposed amendments related to the purpose, need, impacts and alternatives which are available to the public upon request.

STATEMENT

Subject: Proposed amendment to VR 680-16-03, Upper James River Basin Water Quality Management Plan.

Basis and statutory authority: Section 62.1-44.15(13) of the Code of Virginia authorizes the State Water Control Board (Board) to develop comprehensive pollution abatement and water quality control plans on an area-wide or basin-wide basis. Section 62.1- 44.15(10) authorizes the board to adopt such regulations as it deems necessary to enforce the general water quality management program of the board in all or part of the Commonwealth. Section 62.1-44.15(3a) authorizes the board to establish such standards of quality and policies for any state waters consistent with the general policy set forth in the State Water Control Law, and to modify, amend, or cancel any such standards or policies established and to take all appropriate steps to prevent quality alteration contrary to the public interest or to standards or policies thus established.

Title 40, Parts 35 and 130 of the Code of Federal Regulations requires states to develop a continuing planning process of which water quality management plans (WQMP) are a part.

Substance and purpose: The purpose of the proposed amendment to the Upper James River Basin Water Quality Management Plan is to establish an allowable discharge of biological oxygen demanding material in the Town of

Crewe's discharge based on current stream conditions and water quality modeling practices. The proposed amendment will increase the allowable biological oxygen demand of 20 pounds per day to 50.1 pounds per day of carbonaceous biological oxygen demand.

Estimated impact: The proposed amendment will affect the Virginia Pollutant Discharge Elimination System (VPDES) permit for the Town of Crewe, which provides sewerage service to an estimated 2,300 people. The proposed amendment will enable the town to discharge near their current location using secondary wastewater treatment. The amendment will form the basis of effluent limitations for the town's planned plant upgrades, to be funded through the Virginia Revolving Loan Fund. Water quality in the unnamed tributary will be improved because the upgraded plant is expected to achieve effluent limitations which are significantly more stringent than the town can currently attain with their existing plant. By increasing the waste load allocation the town will save an estimated $477,000 in capital costs, thus allowing it to proceed to build the new plant much faster than it could afford to do if the current waste load allocation were maintained.

Issues: The Town of Crewe currently discharges into an unnamed tributary of Deep Creek. In order to meet the requirements of the National Municipal Policy, the plant needs to be upgraded, and the discharge must conform to the waste load allocation established in the Upper James River Basin Water Quality Management Plan. The agency has surveyed and evaluated the receiving stream, and determined that an increase in waste load allocation will adequately protect water quality. An issue is whether such an increase in waste load allocation is appropriate in this case.

The current water quality management plan also recommends that the Town of Crewe discharge location be moved to the main stem of Deep Creek, about two miles from the current discharge point. The agency does not feel that such a change is advantageous in terms of BOD waste assimilation due to the hydrologic characteristics in that segment of Deep Creek. An issue is whether or not the discharge location should be moved at this time.

Statutory Authority: § 62.1-44.15 (10) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on March 12, 1993, to Doneva Dalton, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Curt Linderman, Piedmont Regional Office, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5038.

* * * * * * * *

† **February 10, 1993 - 2 p.m.** – Public Hearing
State Water Control Board, Innsbrook Corporate Center, 4900 Cox Road, Board Room, Glen Allen, Virginia.

† **February 11, 1993 - 7 p.m.** – Public Hearing
Harrisonburg City Council Chambers, 345 South Main Street, Municipal Building, Harrisonburg, Virginia.

† **February 17, 1993 - 7 p.m.** – Public Hearing
University of Virginia, Southwest Center, Highway 19 North, Classroom 1 and 2, Abingdon, Virginia.

† **February 18, 1993 - 2 p.m.** – Public Hearing
Roanoke County Administration Center, 3738 Brambleton Avenue, S.W., Community Room, Roanoke, Virginia.

March 15, 1993 – Written comments may be submitted until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled **VR 680-21-00. Water Quality Standards.** The purpose of the proposed amendment is to update, clarify and correct sections VR 680-21-07.2 (Special Designations in Surface Waters, (VR 680-21-07.3 (Nutrient Enriched Waters) and VR 680-21-08 (River Basin Sections Tables).

An informal question and answer period has been scheduled before each hearing. At that time staff will answer questions from the public on the proposal. The question and answer period will begin 1/2 hour before the scheduled public hearing. The hearings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Mrs. Jackson at the address below or by telephone at (804) 527-5163 or (804) 527-4261/TDD. Persons needing interpreter services for the deaf must notify Mrs. Lori Jackson no later than Monday, January 25, 1993. The board seeks comments on the proposed amendments and the costs and benefits of the proposed amendments. In addition, the agency has performed certain analyses on the proposed amendments related to the purpose, need, impacts and alternatives which are available to the public upon request.

Opportunity for formal hearing: The Board will hold a formal hearing at a time and place to be established, if a petition for such a hearing is received and granted. Affected persons may petition for a formal hearing concerning any issue of fact directly relevant to the legal validity of the proposed action. Petitions must meet the requirements of § 1.23 (b) of the Board's Procedural Rule No. (1980), and must be received by the contact persons designated below by 4 p.m. on Thursday, February 11, 1993.

STATEMENT

Basis: Section 62.1-44.15 (3a) of the Code of Virginia authorizes the board to establish water quality standards and policies for any state waters consistent with the purpose and general policy of the State Water Control

Law, and to modify, amend, or cancel any such standards or policies established. Such standards shall be adopted only after a hearing is held and the board takes into consideration water quality issues, and the economic and social costs and benefits which can reasonably be expected to be obtained as a result of the standards as adopted, modified or cancelled. The proposed amendments are based on recommendations from the Department of Conservation and Recreation, Department of Game and Inland Fisheries, Department of Health and the State Water Control Board.

Purpose: The purpose of the proposed amendments is to modify the Water Quality Standards Regulation to ensure that beneficial water uses are updated, corrected and clarified. To accomplish this the board will consider amendments to the Special Designations in Surface Waters (VR 680-21-07.2), Nutrient Enriched Waters (VR 680-21-07.3), and River Basin Section Tables (VR 680-21-08).

Impact:

Environmental impact: If these parameters are adopted as standards, Virginia would be providing protection through the halogen ban to endangered species in 863 additional miles of stream. In addition, through these amendments all trout streams and public water supplies would be updated and correctly identified and thus will be provided an appropriate level of protection. Designation of Claytor Lake as a "nutrient enriched water" will require any future point source discharger of 50,000 gallons per day or larger to limit their average monthly total phosphorus discharge to 2 mg/L and thus reduce the contribution of nutrient to a water body beginning to show signs of enrichment.

Regulated community: The primary impact to the regulated community will be upon permittees discharging into one of the new endangered species waters. Certain requirements (VR 680-21-01.11.5) apply in these waters such that any permittee discharging into one of these streams either must use an alternate form of disinfection other than chlorine or add dechlorination depending on the volume of their discharge. Thirty-five permitted dischargers will be affected by the dechlorination requirements or the halogen ban at an approximate total cost of $997,256 for construction and an additional $19,771 in operation and maintenance each year. In addition, there are three facilities that discharge into areas proposed as new public water supplies. These facilities will now be required to meet human health standards for water and fish consumption. It is unknown what the cost to meet these human health standards will be until the quality of their effluent is determined. If no data are available at the time of their next permit issuance, each of these facilities may have monitoring requirements placed in their permit at a cost of approximately $2,500 for the life of the permit. Also, there is one stream (Dismal Creek in Buchanan County) that is being upgraded to a put and take trout stream where three dischargers are located; these dischargers may have to meet more stringent dissolved oxygen and/or ammonia limits. Each of these facilities also may have additional monitoring requirements placed in their permits at the time of their next issuance at a cost of approximately $420 - $600/year.

No additional State Water Control Board regulations will apply to permittees discharging to new Scenic Rivers (VR 680-21-07.2.A). The Scenic River designations are listed for informational purposes only.

Statutory Authority: § 62.1-44.15 (3a) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on March 15, 1993, to Lori Jackson, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Elleanore Daub, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5091.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

† **February 11, 1993 - 8:30 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia.

A meeting to consider revisions to its current regulations and other matters which may require board action.

Contact: Geralde W. Morgan, Board Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

VIRGINIA DEPARTMENT OF
YOUTH & FAMILY SERVICES
Youth Begins With You.

DEPARTMENT OF YOUTH AND FAMILY SERVICES (BOARD OF)

January 14, 1993 - 8:30 a.m. – Open Meeting
February 11, 1993 - 8 a.m. – Open Meeting
700 Centre Building, 7th and Franklin Streets, 4th Floor, Richmond, Virginia.

Committee meetings begin at 8:30 to be followed by a general meeting at 10 a.m. to (i) review programs recommended for certification or probation; (ii) consider adoption of draft policies; and (iii) take up other matters that may come before the board.

Contact: Donald R. Carignan, Policy Coordinator, P.O. Box 1110, Richmond, VA 23208-1110, telephone (804) 371-0692.

LEGISLATIVE

VIRGINIA COAL AND ENERGY COMMISSION

January 12, 1993 - 1 p.m. – Open Meeting
General Assembly Building, 910 Capital Street, House Room D, Richmond, Virginia.

An open meeting of the Virginia Coal and Energy Commission.

Contact: Thomas C. Gilman, Senate of Virginia, P. O. Box 396, Richmond, VA 23203, telephone (804) 786-3838, or Arlen K. Bolstad, Staff Attorney, Division of Legislative Services, 910 Capitol Street, Richmond, VA 23208, telephone (804) 786-3591.

COMMISSION ON POPULATION GROWTH AND DEVELOPMENT

† **January 14, 1993 - 9:30 a.m.** – Open Meeting
General Assembly Building, 910 Capitol Street, Sixth Floor Conference Room, Richmond, Virginia.

The purpose of the meeting will be to review a revised working draft of the Virginia Growth Strategies legislation.

Contact: Katherine L. Imhoff, Executive Director, General Assembly Bldg., 910 Capitol Street, Room 519B, Richmond, VA 23219, telephone (804) 371-4949.

CHRONOLOGICAL LIST

OPEN MEETINGS

January 11
† Hearing Aid Specialists, Board for
Local Government, Commission on
† Medical Assistance Services, Board of
- Legislative and Public Affairs Committee
Medicine, Board of
Professional Counselors, Board of
Valley ASAP Board

January 12
Audiology and Speech-Language Pathology, Board of
Coal and Energy Commission, Virginia
Council on the Environment
† Higher Education for Virginia, State Council of
Medicine, Board of
Psychology, Board of
† Real Estate Appraiser Board
- Complaints Committee
† Virginia Racing Commission

January 13
Contractors, Board for
Corrections, Board of
† Criminal Justice Services Board
- Committee on Training
Dentistry, Board of
† Historic Preservation Foundation, Virginia
Medicine, Board of
Motor Vehicles, Department of
- Medical Advisory Board
† Norfolk State University
- Board of Visitors
Virginia Winegrowers Advisory Board

January 14
Agriculture and Consumer Services, Department of
- Pesticide Control Board
† Child Day-Care Council
Corrections, Board of
- Liaison Committee
Dentistry, Board of
Forestry, Board of
Hazardous Materials Emergency Response Advisory Council, Virginia
Mapping, Surveying and Land Information Systems, Advisory Committee on
† Medicine, Board of
† Population Growth and Development, Commission on
Public Telecommunications Board, Virginia
Real Estate Board
Voluntary Formulary Board, Virginia
War Memorial Foundation, Virginia
Youth and Family Services, Board of

January 15
Agriculture and Consumer Services, Department of
- Pesticide Control Board
Conservation and Recreation, Department of
- Falls of the James Scenic River Advisory Board
† Coordinating Prevention, Virginia Council on
Dentistry, Board of
† Interdepartmental Regulation of Residential Facilities for Children, Coordinating Committee for
Professional Counselors, Board of

January 16
Dentistry, Board of
Professional Counselors, Board of

January 19
† Accountancy, Board for
† Health Professions, Board of
† Housing Development Authority, Virginia
Nursing Home Administrators, Board of

January 20
† Accountancy, Board for

Local Emergency Planning Committee - Roanoke Valley
Longwood College
-Student Affairs/Academic Affairs Commitees
Nursing Home Administrators, Board of
† Pharmacy, Board of
Treasury Board

January 21
† Housing and Community Development, Board of
- Amusement Device Technical Advisory Committee
Nursing Home Administrators, Board of
Prevention Promotion Advisory Council

January 22
† Child Day-Care Council
† Medicine, Board of
- Informal Conference Committee
† Mental Health, Mental Retardation and Substance Abuse Services, Department of
- State Human Rights Committee

January 25
† Cosmetology, Board for
Lottery Department, State
Nursing, Board of

January 26
† Cosmetology, Board for
† Community Colleges, State Board for
† Private Security Services Advisory Board

January 27
† Community Colleges, State Board for
Game and Inland Fishers, Board of
† Mental Health, Mental Retardation and Substance Abuse Services Board, State
† Museum of Natural History, Virginia
- Board of Trustees
Nursing, Board of
Transportation Board, Commonwealth
Water Control Board, State

January 28
† Education, Board of
Game and Inland Fisheries, Board of
Nursing, Board of
Social Work, Board of
Transportation Board, Commonwealth
† Transportation Safety Board
Water Control Board, State

January 29
† Child Day-Care Council
Game and Inland Fisheries, Board of
Information Management, Council on
† Maternal and Child Health Council
Nursing, Board of
Public Telecommunications Board, Virginia
Social Work, Board of
Waste Management Facility Operators, Board for
Water Control Board, State

February 2
Hopewell Industrial Safety Council
† Opticians, Board for
Water Control Board, State

February 3
† Visually Handicapped, Board for the

February 4
Local Emergency Planning Committee - Chesterfield County
† Geology, Board for
Medicine, Board of
Teen Pregnancy Prevention, Virginia Council on
Water Control Board, State

February 5
† Geology, Board for
Medicine, Board of

February 6
Medicine, Board of

February 7
Medicine, Board of

February 8
Commerce, Board of
† Professional Soil Scientists, Board for
Water Control Board, State

February 9
Employment Commission, Virginia
- State Advisory Board

February 10
Corrections, Board of
Employment Commission, Virginia
- State Advisory Board
Water Control Board, State

February 11
† Professional Counselors, Board of
† Waterworks and Wastewater Works Operators, Board for
Youth and Family Services, Board of

February 13
† Virginia Military Institute
- Board of Visitors

February 17
† Local Debt, State Council on
† Optometry, Board of
† Treasury Board

February 19
† Interdepartmental Regulation of Residential Facilities for Children

- Coordinating Committee

February 23
Health Services Cost Review Council, Virginia

February 25
† Chesapeake Bay Local Assistance Board
† Education, Board of

March 17

† Local Debt, State Council on
† Treasury Board

March 19
† Interdepartmental Regulation of Residential Facilities for Children
- Coordinating Committee

March 23
† Polygraph Examiners Advisory Board

March 25
† Education, Board of

PUBLIC HEARINGS

January 11
Waste Management Facility Operators, Board for

January 18
Housing and Community Development, Board of

January 19
Accountancy, Board for
Social Services, State Board of

January 20
† Air Pollution Control, Department of
Social Services, State Board of

January 21
Social Services, State Board of

January 27
Nursing, Board of

February 1
Waste Management Board, Department of

February 2
† Air Pollution Control, Department of

February 3
Mines, Minerals and Energy, Department of

February 9
Waste Management Facility Operators, Board for
† Water Control Board, State

February 10
Corrections, Department of
† Water Control Board, State

February 11
† Waste Management, Department of
† Water Control Board, State

February 12
† Water Control Board, State

February 16
† Water Control Board, State

February 17
† Water Control Board, State

February 18
† Water Control Board, State

February 22
† Water Control Board, State

February 23
† Water Control Board, State

February 24
† Water Control Board, State

March 1
Health, State Board of

March 18
† Higher Education for Virginia, State Council of

March 22
† Lottery Department, State

May 19
† Agriculture and Consumer Services, Department of