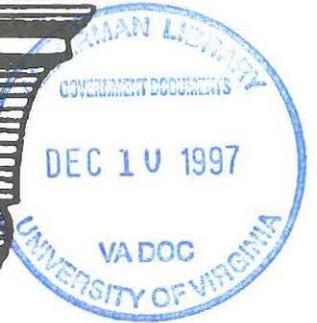
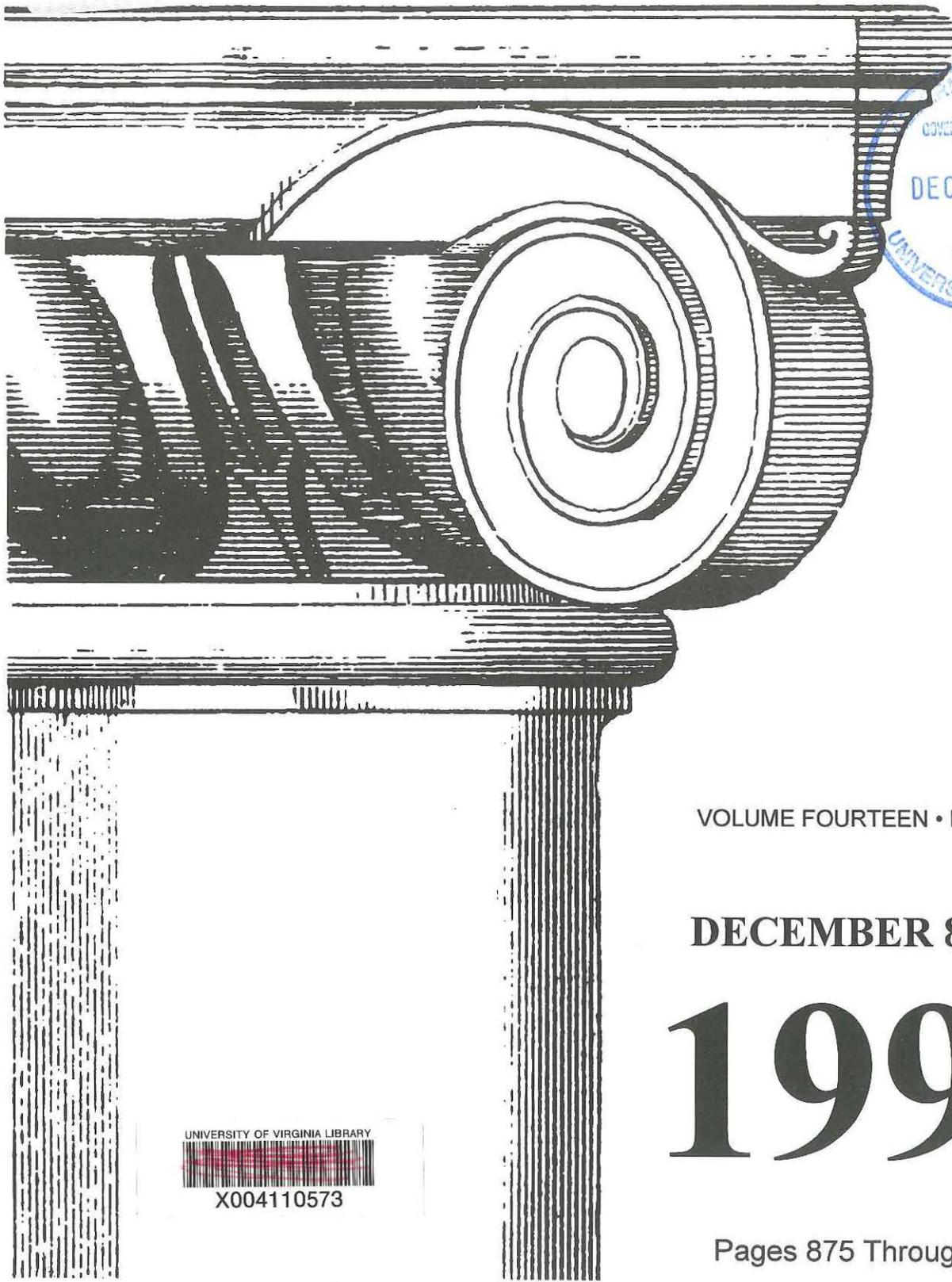


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THE VIRGINIA REGISTER

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THE VIRGINIA REGISTER INFORMATION PAGE

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 new and amended sections of regulations, both as proposed and as finally adopted, 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 and executive orders issued by the Governor, the Virginia Tax Bulletin issued periodically by the Department of Taxation, and notices of 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 intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

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

The 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 Registrar and the promulgating agency. The objection will be published in the *Virginia Register*. Within 21 days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative committee, and the Governor.

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

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate standing committees and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*. If the Governor finds that changes made to the proposed regulation have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*.

The agency shall suspend the regulatory process for 30 days when it receives requests from 25 or more individuals to solicit additional public comment, unless the agency determines that the changes have minor or inconsequential impact.

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

the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period.

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

EMERGENCY REGULATIONS

If an agency demonstrates that (i) there is an immediate threat to the public's health or safety; or (ii) Virginia statutory law, the appropriation act, federal law, or federal regulation requires a regulation to take effect no later than (a) 280 days from the enactment in the case of Virginia or federal law or the appropriation act, or (b) 280 days from the effective date of a federal regulation, it then requests the Governor's approval to adopt 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 to addressing specifically defined situations and may not exceed 12 months in duration. Emergency regulations are published as soon as possible in the *Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation; and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 9-6.14:7.1 et seq.) of Chapter 1.1:1 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. 12:8 VA.R. 1096-1106 January 8, 1996, refers to Volume 12, Issue 8, pages 1096 through 1106 of the *Virginia Register* issued on January 8, 1996.

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Staff of the Virginia Register: E. M. Miller, Jr., Acting Registrar of Regulations; Jane D. Chaffin, Deputy Registrar of Regulations.

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Symbol Key

† Indicates entries since last publication of the *Virginia Register*

TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Alcoholic Beverage Control Board intends to consider amending regulations entitled: **3 VAC 5-50-10 et seq. Retail Operations.** The purpose of the proposed action is to (i) simplify regulations on nonmember use of club facilities; (ii) simplify regulations establishing food inventory and sale qualifications for retail licensees; (iii) provide a process for the approval of employees with certain criminal convictions; (iv) clarify rules relating to lewd conduct; and (v) allow an exemption to happy hour regulations for educational tastings. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 4.1-111 of the Code of Virginia.

Public comments may be submitted until December 31, 1997.

Contact: W. Curtis Coleburn, Secretary, Department of Alcoholic Beverage Control, P.O. Box 27491, Richmond, VA 23261-9491, telephone (804) 213-4409 or FAX (804) 213-4411.

VA.R. Doc. No. R98-66; Filed October 8, 1997, 10:29 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Alcoholic Beverage Control Board intends to consider amending regulations entitled: **3 VAC 5-70-10 et seq. Other Provisions.** The purpose of the proposed action is to (i) clarify storage requirements for alcoholic beverages used for culinary purposes; (ii) eliminate certain reporting requirements for industrial and hospital permittees; (iii) increase the record retention period for licensees from two to three years; (iv) permit the use of electronic data interchange programs; (v) allow wholesalers to offer different prices to on-premises and off-premises retailers; (vi) allow manufacturers to make gifts of alcoholic beverages for certain public events; and (vii) provide a schedule of penalties for first violations of certain statutes or regulations. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 4.1-111 of the Code of Virginia.

Public comments may be submitted until December 31, 1997.

Contact: W. Curtis Coleburn, Secretary, Department of Alcoholic Beverage Control, P.O. Box 27491, Richmond, VA

23261-9491, telephone (804) 213-4409 or FAX (804) 213-4411.

VA.R. Doc. No. R98-66; Filed October 8, 1997, 10:29 a.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with §§ 9-6.14:4.1 C 12 and 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to consider adopting regulations entitled: **9 VAC 25-151-10 et seq. General VPDES Permit for Discharges of Storm Water Associated with Industrial Activity.** This rulemaking is proposed in order to continue to regulate discharges currently permitted under three existing general permits which expire on June 30, 1999. The general permit will establish requirements for discharges of storm water from industrial sites formerly covered under general permits for Heavy Manufacturing (9 VAC 25-150-10 et seq.), Light Manufacturing (9 VAC 25-160-10 et seq.) and Miscellaneous Industries (9 VAC 25-170-10 et seq.). Since these industrial sites will be governed in the future by a single regulation, the board intends to consider repealing regulations entitled: (i) **9 VAC 25-150-10 et seq. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Storm Water Discharges Associated with Industrial Activity from Heavy Manufacturing,** (ii) **9 VAC 25-160-10 et seq. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Storm Water Discharges Associated with Industrial Activity from Light Manufacturing Facilities,** and (iii) **9 VAC 25-170-10 et seq. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Storm Water Discharges Associated with Industrial Activity from Transportation Facilities, Landfills, Land Application Sites and Open Dumps, Material Recycling Facilities and Steam Electric Power Generating Facilities** to accommodate all of the industrial storm water categories.

The board also intends to consider amending regulations entitled: **9 VAC 25-180-10 et seq. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Storm Water Discharges from Construction Sites.** This rulemaking is proposed in order to reissue the existing general permit which expires on June 30, 1999.

Notices of Intended Regulatory Action

The intent of these general permit regulations 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 the general permits. Facilities will be required to implement the provisions of the plan as a condition of the permit.

A technical advisory committee will be formed to assist in the development of the regulations. The primary function of the committee will be to develop recommendations to the board for the content of the general permits through a process of negotiation and consensus. Persons who desire to be on the committee should notify the agency contact person in writing by 4:30 p.m. on Monday, January 12, 1998, and provide name, address, telephone number and the organization you represent (if any). Notification of the composition of the technical advisory committee will be sent to all applicants. Following publication of the draft general permit regulations in the Virginia Register, the board will hold at least one public hearing to provide opportunity for public comment.

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

Public comments are solicited on the content of the draft general permit regulations. Comments may be submitted until 4:30 p.m. on Monday, January 12, 1998.

Contact: Richard Ayers, Office of Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA, 23240, telephone (804) 698-4075, FAX (804) 698-4032.

VA.R. Doc. No. R98-104, R98-106, R98-107, R98-108; Filed November 17, 1997, 3:39 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with §§ 9-6.14:4.1 C 12 and 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to consider amending regulations entitled: **9 VAC 25-190-10 et seq. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nonmetallic Mineral Mining.** This rulemaking is proposed in order to reissue the existing general permit which expires on June 30, 1999. The general permit will establish limitations and monitoring requirements for discharges of wastewater from stone quarries and sand and gravel mines. 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 discharges. A technical advisory committee will be formed to assist in the development of the regulation. The primary function of the committee will be to develop recommendations to the board for the content of the reissued general permit through a process of negotiation and consensus. Persons who desire to be on the committee should notify the agency contact person in writing by 4:30 p.m. on Monday, January 12, 1998, and provide name, address, telephone number and the

organization you represent (if any). Notification of the composition of the technical advisory committee will be sent to all applicants. Following publication of the draft general permit regulation in the Virginia Register, the board will hold at least one public hearing to provide opportunity for public comment.

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

Public comments are solicited on the content of the draft general permit regulation. Comments may be submitted until 4:30 p.m. on Monday, January 12, 1998.

Contact: Michael Gregory, Office of Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA, 23240, telephone (804) 698-4065, FAX (804) 698-4032.

VA.R. Doc. No. R98-105; Filed November 17, 1997, 3:39 p.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-16.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled: **Utilization Review Criteria.** The purpose of the proposed action is to clarify the Department of Medical Assistance Services' role in utilization review policy and procedures and distinguish its role from that of the state survey and licensing agency for certain health care facilities and associated providers, agencies or providers. The agency does not intend to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until January 7, 1998.

Contact: Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850 or FAX (804) 371-4981.

VA.R. Doc. No. R98-95; Filed November 14, 1997, 11:15 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-16.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled: **12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care Services and 12 VAC 30-80-10 et seq. Methods and Standards for Establishing Payment Rate; Other Types of**

Notices of Intended Regulatory Action

Care. The purpose of the proposed action is to allow the bundling of services/supplies under a per diem reimbursement methodology for certain durable medical equipment/supplies and pharmacy services. The agency does not intend to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until December 24, 1997, to Linda Hamm, Division of Program Operations, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

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

VA.R. Doc. No. R98-88; Filed November 3, 1997, 3:06 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Dentistry intends to consider amending regulations entitled: **18 VAC 60-20-10 et seq. Virginia Board of Dentistry Regulations.** The purpose of the proposed action is to amend regulations in order to increase certain fees in compliance with § 54.1-113 of the Code of Virginia. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-113 and 54.1-2400 of the Code of Virginia.

Public comments may be submitted until January 7, 1998.

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906 or FAX (804) 662-9943.

VA.R. Doc. No. R98-100; Filed November 17, 1997, 12:04 p.m.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Funeral Directors and Embalmers intends to consider amending regulations entitled: **18 VAC 65-20-10 et seq. Regulations of the**

Board of Funeral Directors and Embalmers. The purpose of the proposed action is to amend regulations in order to increase certain fees in compliance with § 54.1-113 of the Code of Virginia. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-113 and 54.1-2400 of the Code of Virginia.

Public comments may be submitted until January 7, 1998.

Contact: Elizabeth Young Tisdale, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907 or FAX (804) 662-9943.

VA.R. Doc. No. R98-98; Filed November 17, 1997, 12:04 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Funeral Directors and Embalmers intends to consider amending regulations entitled: **18 VAC 65-40-10 et seq. Resident Trainee Program for Funeral Service.** The purpose of the proposed action is to amend regulations in order to increase certain fees in compliance with § 54.1-113 of the Code of Virginia. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-113 and 54.1-2400 of the Code of Virginia.

Public comments may be submitted until January 7, 1998.

Contact: Elizabeth Young Tisdale, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907 or FAX (804) 662-9943.

VA.R. Doc. No. R98-98; Filed November 17, 1997, 12:04 p.m.

BOARD OF HEALTH PROFESSIONS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-16.14:7.1 of the Code of Virginia that the Board of Health Professions intends to consider amending regulations entitled: **18 VAC 75-20-10 et seq. Regulations Governing Practitioner Self-Referral.** The purpose of the proposed action is to amend regulations on the procedures to be followed in the administration of the Practitioner Self-Referral Act. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400 and 54.1-2510 of the Code of Virginia.

Public comments may be submitted until December 24, 1997, to Elaine J. Yeatts, Deputy Executive Director, Board of

Notices of Intended Regulatory Action

Health Professions, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717.

Contact: Robert A. Nebiker, Executive Director, Board of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9919 or FAX (804) 662-9943.

VA.R. Doc. No. R98-85; Filed October 27, 1997, 12:31 p.m.

BOARD OF LICENSED PROFESSIONAL COUNSELORS, MARRIAGE AND FAMILY THERAPISTS AND SUBSTANCE ABUSE TREATMENT PROFESSIONALS

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-16.14:7.1 of the Code of Virginia that the Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals intends to consider amending regulations entitled: **18 VAC 115-30-10 et seq. Regulations Governing the Certification of Substance Abuse Counselors.** The purpose of the proposed action is to amend regulations in order to implement a statutory mandate for licensure of substance abuse treatment practitioners. Amendments will include qualifications for licensure, fees, standards of practice and a change in the title of this chapter. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400 and 54.1-3503 of the Code of Virginia.

Public comments may be submitted until January 7, 1998.

Contact: Janet Delorme, Deputy Executive Director, Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9912 or FAX (804) 662-9943.

VA.R. Doc. No. R98-97; Filed November 17, 1997, 12:04 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-16.14:7.1 of the Code of Virginia that the Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals intends to consider amending regulations entitled: **18 VAC 115-40-10 et seq. Regulations Governing the Certification of Rehabilitation Providers.** The purpose of the proposed action is to amend regulations in order to implement a statutory mandate to replace emergency regulations promulgated under provisions of Chapter 839 of the 1997 Acts of the Assembly. Chapter 839 more precisely defines the scope of practice for individuals that exercise professional judgment in the provision of vocational rehabilitation services, and clearly restricts the mandate for certification to those individuals. The agency

intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400, 54.1-3505 and 54.1-3515 of the Code of Virginia.

Public comments may be submitted until December 24, 1997, to Janet Delorme, Deputy Executive Director, Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717.

Contact: Evelyn B. Brown, Executive Director, Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9912 or FAX (804) 662-9943.

VA.R. Doc. No. R98-84; Filed October 27, 1997, 12:31 p.m.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Waterworks and Wastewater Works Operators intends to consider amending regulations entitled: **18 VAC 160-20-10 et seq. Board for Waterworks and Wastewater Works Operators Regulations.** The purpose of the proposed action is to amend existing regulations governing the licensure of waterworks and wastewater works operators to (i) modify the definition section, (ii) clarify the entry/experience requirements for licensure and modify the procedures and provisions regarding renewal and reinstatement, and (iii) establish an efficient staggered system for collection of renewal fees. The agency intends to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until December 29, 1997.

Contact: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD

VA.R. Doc. No. R98-91; Filed November 5, 1997, 11:21 a.m.

TITLE 19. PUBLIC SAFETY

DEPARTMENT OF STATE POLICE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of State Police intends to consider amending regulations entitled: **19 VAC 30-170-10 et seq. Regulations Governing the Operation and Maintenance of the Sex Offender Registry.** The purpose of the proposed action is to amend regulations governing the operation and maintenance of the Sex Offender and Crimes against Minors Registry to comply with statutory changes adopted during the 1997 Session of the General Assembly. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 19.2-298.1 and 19.2-390.1 of the Code of Virginia.

Public comments may be submitted until December 10, 1997.

Contact: Lt. Thomas W. Turner, Assistant Records Management Officer, Department of State Police, Safety Division, P.O. Box 27472, Richmond, VA 23261, telephone (804) 674-2022, FAX (804) 674-2105 or toll-free 1-800-553-3144/TDD ☎

VA.R. Doc. No. R98-74; Filed October 21, 1997, 12:42 p.m.

Public comments may be submitted until January 17, 1998. This date has been extended from December 10, 1997.

Contact: Leslie G. Hutcheson, Policy and Planning Manager, Department for the Deaf and Hard-of-Hearing, 1602 Rolling Hills Drive, Suite 203, Richmond, VA 23229-5012, telephone (804) 662-9703/TDD ☎, FAX (804) 662-9718 or toll-free 1-800-552-7917/TDD ☎

VA.R. Doc. No. R98-80; Filed October 21, 1997, 4:12 p.m.

TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR THE DEAF AND HARD-OF-HEARING

† Notice of Intended Regulatory Action Extension of Comment Period

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department for the Deaf and Hard-of-Hearing intends to consider amending regulations entitled: **22 VAC 20-30-10 et seq. Regulations Governing Interpreter Services for the Deaf and Hard of Hearing.** The purpose of the proposed action is to (i) improve clarity and reduce redundancy with statutory code language; (ii) add provisions for maintenance of Virginia Quality Assurance Screening (VQAS) levels; and (iii) add provisions for a consumer input and grievance procedure. In addition, the department will clarify language about the confidentiality of VQAS results and the availability of information about candidate levels to the public. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 63.1-85.4 and 63.1-85.4:1 of the Code of Virginia.

PUBLIC COMMENT PERIODS - PROPOSED REGULATIONS



PUBLIC COMMENT PERIODS REGARDING STATE AGENCY REGULATIONS

Effective July 1, 1995, publication of notices of public comment periods in a newspaper of general circulation in the state capital is no longer required by the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia). Chapter 717 of the 1995 Acts of Assembly eliminated the newspaper publication requirement from the Administrative Process Act. In *The Virginia Register of Regulations*, the Registrar of Regulations has developed this section entitled "Public Comment Periods - Proposed Regulations" to give notice of public comment periods and public hearings to be held on proposed regulations. The notice will be published once at the same time the proposed regulation is published in the Proposed Regulations section of the *Virginia Register*. The notice will continue to be carried in the Calendar of Events section of the *Virginia Register* until the public comment period and public hearing date have passed.

Notice is given in compliance with § 9-6.14:7.1 of the Code of Virginia that the following public hearings and public comment periods regarding proposed state agency regulations are set to afford the public an opportunity to express their views.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

January 14, 1998 - 10 a.m. – Public Hearing
Department of Environmental Quality, 629 East Main Street,
First Floor, Training Room, Richmond, Virginia.

February 6, 1998 - Public comments may be submitted until 4:30 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 Air Pollution Control Board intends to amend regulations entitled: **Regulations for the Control and Abatement of Air Pollution: 9 VAC 5-20-10 et seq. General Provisions; 9 VAC 5-50-10 et seq. New and Modified Stationary Sources; and 9 VAC 5-80-10 et seq. Permits for Stationary Sources.** The regulation applies to the construction or reconstruction of new stationary sources or expansions (modifications) to existing ones. Exemptions are provided for smaller facilities. With some exceptions, the owner must obtain a permit from the agency prior to the construction or modification of the source. The owner of the proposed new or modified source must provide information as may be needed to enable the agency to conduct a preconstruction review in order to determine compliance with applicable control technology and other standards and to assess the impact of the emissions from the facility on air quality. The regulation also provides the basis for the agency's final action (approval or disapproval) on the permit depending upon the results of the preconstruction review. The regulation provides a sourcewide perspective to determine applicability based solely upon the emissions changes directly resultant from the physical or operational change. The regulation provides for the use of a plantwide applicability limit (PAL). Under this concept, a source owner could make physical or operational changes to emissions units covered by the PAL without being subject to the permit program as long as the overall emissions did not exceed the PAL. Concurrent construction, i.e., construction while waiting for the permit to be issued, is allowed. Under this

arrangement the source owner would assume full liability should the permit not be issued. Provisions covering general permits are included. Procedures for making changes to permits are included. The regulation also allows consideration of additional factors for making Best Available Control Technology (BACT) determinations for sources subject to minor new source review. In addition, 9 VAC 5-80-10 (Permits - new and modified stationary sources) and 9 VAC 5-80-11 (Stationary source permit exemption levels) are to be repealed.

Request for Comments: The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

Localities Affected: There is no locality which will bear any identified disproportionate material air quality impact due to the proposed regulation which would not be experienced by other localities.

Location of Proposal: The proposal, an analysis conducted by the department (including: a statement of purpose, a statement of estimated impact and benefits of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, identification of and comparison with federal requirements, and a discussion of alternative approaches) and any other supporting documents may be examined by the public at the department's Office of Program Development (Eighth Floor), 629 East Main Street, Richmond, Virginia and the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.

Southwest Regional Office
Department of Environmental Quality
355 Deadmore Street
Abingdon, Virginia
Ph: (540) 676-4800

Public Comment Periods - Proposed Regulations

West Central Regional Office
Department of Environmental Quality
3019 Peters Creek Road
Roanoke, Virginia
Ph: (540) 562-6700

Lynchburg Satellite Office
Department of Environmental Quality
7705 Timberlake Road
Lynchburg, Virginia
Ph: (804) 582-5120

Valley Regional Office
Department of Environmental Quality
4411 Early Road
Harrisonburg, Virginia 22801
Ph: (540) 574-7800

Fredericksburg Satellite Office
Department of Environmental Quality
300 Central Road, Suite B
Fredericksburg, Virginia
Ph: (540) 899-4600

Northern Regional Office
Department of Environmental Quality
13901 Crown Court
Woodbridge, Virginia
Ph: (703) 583-3800

Piedmont Regional Office
Department of Environmental Quality
4949-A Cox Road
Glen Allen, Virginia
Ph: (804) 527-5020

Tidewater Regional Office
Department of Environmental Quality
5636 Southern Boulevard
Virginia Beach, Virginia
Ph: (757) 518-2000

Public comments may be submitted until 4:30 p.m. February 6, 1998, to the Director, Office of Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Contact: Mary E. Major, Environmental Program Manager, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4423 or toll-free 1-800-592-5482.



PROPOSED REGULATIONS

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.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Title of Regulations: Regulations for the Control and Abatement of Air Pollution (Revision YY).

9 VAC 5-20-10 et seq. General Provisions (adding 9 VAC 5-20-220 and 9 VAC 5-20-230).

9 VAC 5-50-10 et seq. New and Modified Stationary Sources (amending 9 VAC 5-50-250 and 9 VAC 5-50-260; adding 9 VAC 5-50-395).

9 VAC 5-80-10 et seq. Permits for Stationary Sources (adding Article 6: 9 VAC 5-80-1100 through 9 VAC 5-80-1330; repealing 9 VAC 5-80-10 and 9 VAC 5-80-11).

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

Public Hearing Date: January 14, 1998 - 10 a.m.

Public comments may be submitted until 4:30 p.m. on February 6, 1998.

(See Calendar of Events section for additional information)

Basis: Section 10.1-1308 of the Virginia Air Pollution Control Law (Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare.

Purpose: The purpose of the regulation is to provide a procedural and legal basis for the issuance of new source permits for proposed new or expanded facilities that will enable the agency to (i) conduct a preconstruction review in order to determine compliance with applicable control technology and other standards, (ii) assess the impact of the emissions from the facility on air quality, and (iii) provide a state and federally enforceable mechanism to enforce permit program requirements. The proposal is being made to bring the program requirements in line with current federal requirements and the state objectives for the permit program in order to protect public health and welfare.

Substance: The major provisions of the proposed regulation are summarized below:

1. The regulation applies to the construction, reconstruction, relocation or modification of any stationary source located throughout the Commonwealth of Virginia. Exemption levels for specific source categories are listed in 9 VAC 5-80-1320. If the emissions from a source are below the exemption levels then the source shall be exempt from the requirements

of Article 6. This exemption, however, does not relieve any owner of the responsibility to comply with any other applicable provisions of the board's regulations or other laws, ordinances and orders of the governmental entities having jurisdiction. If the emissions from the source are below the exemption levels in 9 VAC 5-80-1320 but exceed the applicability thresholds for any applicable emission standard in 9 VAC 5 Chapter 40 for an existing source or any applicable standard of performance in 9 VAC 5 Chapter 50, the source shall be subject to the more restrictive provisions. Fugitive emissions are not included in a determination of applicability to Article 6. Any facility subject to Rule 5-5 or 6-1 or any boiler, incinerator or industrial furnace subject to 9 VAC 20 Chapter 60 shall not be exempt from Article 6 except in the following cases: (i) sources that are exempt as a result of 9 VAC 5-80-1320, (ii) the facility would be subject only to recordkeeping or reporting at a stationary source which is permitted according to Rule 5-5 or 6-1, or (iii) the facility is constructed, reconstructed or modified at an existing source which is currently permitted under Rule 5-5 or 6-1. [9 VAC 5-80-1100]

2. In addition to the terms defined in 9 VAC 5-10-20, other terms having definitions unique to this article are defined. [9 VAC 5-80-1110]

3. Except as provided in 9 VAC 5-80-1130, no one shall begin actual construction of a stationary source without a permit. No relocation of an emissions unit is allowed without a permit. No reduction of a stack or chimney is allowed without a permit. Requirements for emissions units within a single stationary source may be contained in a single application. Plantwide applicability limits (PALs) shall only be authorized after the effective date of this regulation. [9 VAC 5-80-1120]

4. Construction of a modification may begin and be completed prior to receiving a permit required by this regulation provided that: (i) the owner has submitted an application for the modification with a notice to begin actual construction; (ii) the owner assumes all financial and other risks associated with his actions and that the board when reviewing a permit application will not consider any financial or other consequences of beginning construction without a permit; (iii) the owner has not been notified by the board that his actions cause any air quality concerns; (iv) the modification is constructed as described in the permit; and (v) the owner does not begin operation of the modification until receipt of the permit. [9 VAC 5-80-1130]

5. An application is required for each stationary source. It may include only a single emissions unit or, where several emissions units are included in one project, a

single application covering all units may be submitted. [9 VAC 5-80-1140]

6. Each application shall contain information as deemed appropriate by the board to determine compliance with air quality standards. [9 VAC 5-80-1150]

7. Within 30 days of receipt of the application, the board shall notify the owner of the status of the application including: which provisions of the new source review are applicable, the identification of any deficiencies, and whether the application contains adequate information for processing. Processing time for a complete application is normally 90 days. [9 VAC 5-80-1160]

8. A public notice shall be required for a major new stationary source or for a modification to a stationary source with a net emissions increase of 100 tons per year of a single pollutant. The following permit applications shall require a 30-day public comment period: applications for sources emitting of hazardous air pollutants; applications for major stationary sources, major modifications, and modifications to a major stationary source that result in significant net emissions increase of a single pollutant; and applications that any provision exceeds a good engineering practice stack height. A 30-day comment period and public hearing shall be held for applications that meet the following criteria: establish a plantwide applicability limit or have the potential for public interest, as determined by the board, based on whether the project is opposed by any person, has resulted in adverse media, or has generated adverse comment. [9 VAC 5-80-1170]

9. No permit shall be granted unless it is shown that the new source or modification shall not cause a violation of any applicable air quality standard, emission limits are enforceable as a practical matter, and emission levels are enforceable as a practical matter. [9 VAC 5-80-1180]

10. A review and analysis of the application on a source by source basis shall be conducted. There shall be a compliance determination and verification by performance testing for stationary sources. For sources of hazardous air pollutants, compliance with emission standards shall be determined in accordance with provisions 9 VAC 5-60-20 and 9 VAC 5-60-30. [9 VAC 5-80-1190 and 9 VAC 5-80-1200]

11. Permits granted under these provisions shall become invalid if: construction doesn't begin within 18 months after issuance; construction is terminated for more than 18 months or is not completed within a reasonable timeframe, a permittee knowingly makes misstatements in the application, fails to comply with the terms of the permit, fails to comply with any emission standard, or causes emissions from the stationary source which result in violations of any air quality standard. [9 VAC 5-80-1210]

12. A permit shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction. A source owner must comply with existing zoning ordinances and regulations in the locality of the source. [9 VAC 5-80-1220 and 9 VAC 5-80-1230]

13. No person shall transfer a permit from one location to another, or from one piece of equipment to another. In the case of a transfer of ownership or name change of a source, the new owner shall abide by any current permit issued to the previous owner or to the same owner under the previous source name and shall notify the board of the change in ownership or source name or both within 30 days of the transfer or name change. [9 VAC 5-80-1240]

14. The board may issue a general permit covering a source category containing numerous similar sources that meet certain criteria, which shall be specified in the permit. The board shall grant the general permit to sources that meet these criteria. The general permit may specify a reasonable time period after which a source that has submitted a complete application shall be deemed to be authorized to operate under the general permit. Sources covered under a general permit may be issued a document attesting that the source is covered by the general permit. The source shall be subject to enforcement action for operation without a permit if the source is later determined by the board or the administrator not to qualify for the conditions and terms of the general permit. [9 VAC 5-80-1250]

15. The permittee may initiate a change to a permit by submitting a written request to the board for an administrative permit amendment, a minor permit amendment, or a significant permit amendment. This request for a change shall include a statement of the reason for the proposed change. The board may initiate a change to a permit through the use of permit reopenings. [9 VAC 5-80-1260]

16. Administrative permit amendments shall be used for the correction of a typographical or other error which does not substantially affect the permit; change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source; change in ownership or operational control of a source; or the combining of permits. The board will normally take final action on a request for an administrative permit amendment no more than 60 days from receipt of the request, incorporating the changes without providing notice to the public. The owner may implement the changes requested immediately upon submittal of the request. [9 VAC 5-80-1270]

17. Minor permit amendment procedures shall be used for permit amendments that do not violate any applicable regulatory requirement; do not involve significant changes to existing monitoring, reporting, or

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recordkeeping requirements in the permit; do not require or change a case-by-case determination of an emission limitation or other standard; do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable regulatory requirement; are not modifications under the new source review program or under § 112 of the federal Clean Air Act; and are not required to be processed as a significant amendment or as an administrative permit amendment. Under certain conditions, minor permit amendment procedures may be used for permit amendments involving the use of economic incentives and emissions trading; to require more frequent monitoring or reporting by the permittee or to reduce the level of an emissions cap; or to rescind a provision of a permit. Normally within 90 days of receipt by the board of a request under minor permit amendment procedures, the board will issue the permit amendment as proposed; deny the permit amendment request; or determine that the requested amendment does not meet the minor permit amendment criteria and should be reviewed under the significant amendment procedures. The owner may make the change proposed in the minor permit amendment request immediately after the request is filed. Until the board takes action on the request, the source shall comply with the applicable regulatory requirements governing the change and the proposed permit terms and conditions. During this time, the owner need not comply with the existing permit terms and conditions he seeks to modify, but if he fails to comply with the proposed permit terms and conditions during this time, the existing permit terms and conditions he seeks to modify may be enforced against him. [9 VAC 5-80-1280]

18. Significant amendment procedures shall be used for permit amendments that involve significant changes to existing monitoring, reporting, or recordkeeping requirements; require or change a case-by-case determination of an emission limitation or other standard; or seek to establish or change a permit term or condition for which there is no corresponding underlying applicable regulatory requirement. The board normally will take final action on significant permit amendments within 90 days after receipt of a request. The owner shall not make the change applied for in the significant amendment request until the amendment is approved by the board. [9 VAC 5-80-1290]

19. A permit may be reopened and revised if additional regulatory requirements or changes to existing requirements become applicable to emissions units or pollutants covered by the permit; if the board determines that the permit contains a material mistake or that inaccurate statements were made in establishing the terms or conditions of the permit; or if the board determines that the permit must be revised to ensure compliance with the applicable regulatory requirements or that the conditions of the permit will not be sufficient to meet all applicable standards and requirements.

Proceedings to reopen and reissue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Reopenings shall not be initiated before a notice of intent is provided to the source by the board at least 30 days in advance of the date that the permit is to be reopened, except that the board may provide a shorter time period in the case of an emergency. [9 VAC 5-80-1300]

20. A plantwide applicability limit (PAL) for one or more pollutants may be granted by the board provided the following conditions are met: public comment has been obtained; the PAL may not be established for hazardous pollutants; the PAL shall only be valid for the specific stationary source identified; the PAL shall be established on either actual emissions or sourcewide limits on annual emissions; the PAL is enforceable as a practical matter; PALs do not relieve the owner of the responsibility to comply fully with any applicable control technology requirements. PALs may be modified, best available control technology (BACT) applies to each emissions unit that undergoes a physical or operational change and contributes to the emissions increase above the PAL. PALs are voluntary and therefore may be rescinded upon mutual consent by the board and the owner. [9 VAC 5-80-1310]

21. Permit exemption levels are identified for (i) the construction, reconstruction, relocation and modification of specific stationary sources and emissions units based on equipment size or potential emissions, (ii) the reconstruction of a stationary source or emissions unit if there is no emissions increase, (iii) the relocation of portable emissions units under certain conditions, and (iv) the reactivation of a stationary source or emissions unit under certain conditions. [9 VAC 5-80-1320]

22. Prior to three years after the effective date of the article, the department shall provide the board with an analysis assessing the effectiveness of, alternatives to, continuing need for, and clarity of the article. Upon review of the analysis, the board shall either continue, repeal, or amend the article. [9 VAC 5-80-1330]

23. The definition of best available control technology (BACT) is being changed to allow consideration of additional factors for making BACT determinations for sources subject to minor new source review program as opposed to the prevention of significant deterioration permit program. [9 VAC 5-50-250]

24. Emissions from a new stationary source shall conform to the levels established by the best available control technology (BACT) determination for the affected facility. Due to minor new review program changes that base the applicability of the program on the entire stationary source instead of each individual emissions unit, provisions have been added to specify which pollutants and which emissions units are subject to a BACT determination. For phased construction projects,

provisions have been added specifying that BACT shall be reviewed no later than 18 months prior to the commencement of construction of each independent phase of the project. [9 VAC 5-50-260]

25. Prior to three years after the effective date of the article, the department shall provide the board with an analysis assessing the effectiveness of, alternatives to, continuing need for, and clarity of the article. Upon review of the analysis, the board shall either continue, repeal, or amend the article. [9 VAC 5-50-395]

26. Upon a final decision by the board that a source is shut down permanently, the board shall revoke any permits, and the source shall not commence operation without a new permit being issued. Upon a determination that a source has not operated for a year or more, the board shall, after notification of and opportunity for response by the owner, declare the source to be shut down permanently. [9 VAC 5-20-220]

27. Specified documents submitted to the board shall be signed by a responsible official who shall certify the truth, accuracy, and completeness of the information submitted. [9 VAC 5-20-230]

Issues: The primary advantages and disadvantages of implementation and compliance with the regulation by the public and the department are discussed below.

1. **Public:** The focus of the regulation is changed from that of a technology based BACT determination for each emissions unit at a stationary source to that of overall air quality impacts of the modification or minor new source. This shift will bring the minor new source review (MNSR) regulation into line with the proposed federal and Virginia major new source review regulations. In these programs overall air quality impacts of the new or modified source, rather than changes to individual emissions units within the source, determine the permitting requirements.

The advantages to the affected entities will vary widely according to source size and type and the particular options chosen by each source in order to comply with the regulation. The regulation allows an owner to submit a permit application for a modification to a stationary source which combines requirements for multiple emissions units into one permit and voluntarily establish a PAL. It provides a means to make control measures federally and state enforceable without federal review through the use of MNSR permits. It will facilitate emissions trading requirements and will allow an owner of a stationary source or emissions unit to obtain a general permit which establishes source-specific requirements without the need for burdensome case-by-case EPA review. The regulation also allows concurrent construction.

A PAL is a new concept that is included in this regulation. PAL permitting represents an approach for vastly simplifying Virginia's MNSR program. A PAL permit would contain one or more emission caps for

some or all of the pollutants emitted by the source. As long as the source's emissions remain below the emissions caps, the owner can make any changes at the source without having to obtain a MNSR permit. However, the source remains obligated to meet any applicable new source performance standards (NSPS), national emission standards for hazardous air pollutants (NESHAPS), or maximum available control technology (MACT) requirements. This approach significantly reduces permitting burdens on sources and on the DEQ while ensuring that source changes that increase emissions trigger a permit review.

Any application requesting a PAL is subject to specific criteria to meet public participation requirements. The increased flexibility that comes with a PAL will result in quicker and more cost-effective reductions than would be achieved under the old "command and control" method of environmental compliance.

General permits are technology based permits that establish, for a particular source category, BACT limits. By issuing a general BACT determination for a specific category of sources through the general permitting process, the permitting process is simplified at the regional level and consistency is ensured from one region of the state to another. Much of the time delays in back and forth negotiations between DEQ and the source will be eliminated. If BACT for a particular source category changes, then the limits for the general permit will change as well.

Sources will have more flexibility to achieve compliance, however, to accommodate the increase in flexibility the regulation has become more complex. This complexity, at first, may be problematic for some sources.

2. **Department:** The primary benefits as a result of the changes to this regulation are: fewer permits and faster compliance with air quality requirements due to the increased flexibility in the regulation and compliance options available to the sources. Permit writers will only be issuing permits when a change or modification results in an impact to air quality, not necessarily every time a new piece of equipment is installed or changed. If a source elects the PAL option, a source can undergo several changes and not require a permit change.

One drawback, as a result of the increased complexity of the regulation, is the potential for an increase in workload of the field inspectors who make compliance determinations.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types

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of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. This proposed regulation establishes applicability and standards for Minor New Source Review (MNSR); that is, the review of new and modified sources of certain air emissions from sources that do not qualify for review under Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR). This proposal makes a number of significant changes in the way minor new and modified sources are regulated.

- The proposal implements plantwide applicability limits (PAL). A PAL allows a firm significant operational flexibility in return for accepting a plantwide cap on the total amount of annual emissions.
- General permits will be available for some, mostly smaller sources.
- Concurrent construction will be allowed during the permitting process for modifications to existing sources. Previously, no construction could begin until after the permitting process was completed.
- Procedures are established for modifying permits.
- The standards for determining best available control technology (BACT) are being changed to allow consideration of additional factors including cost effectiveness.

Estimated economic impact.

1. General Permits. The regulations establish a system of **general permits**. DEQ describes these permits as parallel with those of the Title V program specified in 9 VAC 5-80-1030. The idea behind this proposal is that, if a set of sources is sufficiently similar, then they would all end up with similar requirements even after extensive individual permit review. In that case, you could just as well permit the class of sources and save all of the resources spent on the extensive and expensive review required for individual permits.

DEQ would issue the general permit under § 9-6.14:4.1 of the Administrative Process Act, which provides for public notice and an opportunity for public comment. Applications of the general permit to individual sources will not require any public notice or opportunity for public comment.

According to DEQ, the general permits are most likely to be used for smaller sources, since these sources have more standardized production technology than larger facilities. Thus, the emissions performance and technology standards will be the same for the class of sources. A key consideration is that the result would be the same under individual and general permits.

A number of economic considerations arise in assessing the impact of general permits. These permits clearly save considerable amounts of money for both DEQ and for the sources covered by the permits. The costs of obtaining a permit under MNSR vary widely across firms and are not known with any accuracy. However, at a minimum, they fairly may be presumed to be in the thousands of dollars for each source undergoing MNSR. Even if we had a fairly good estimate of per source savings, the aggregate amount of expected savings would be highly speculative because DEQ does not know, at this point, how many general permits will be issued and, hence, how many sources might be eligible for coverage under general permits. The qualitative conclusion remains: for those sources covered, general permits will significantly lower the costs of compliance with the MNSR rules.

These benefits do not come without the possibility of some economic cost. One potential problem with general permits is that several small additions to emissions can easily add up to the same increment to emissions that would occur due to a major modification. Especially in areas with rapid economic development, new minor source emissions under a general permit could have a significant impact on local air quality. This points to the need to review the additive impact of plants covered by the general permit. There must be sufficient modeling and monitoring of emissions to ensure that no air quality standards will be violated by additions to emissions covered under the general permit. Otherwise, the increased costs due to emissions could outweigh the savings in compliance costs. It is beyond the scope of this analysis to determine whether DEQ's inventory and modeling program are sufficient to avoid incremental threats to air quality in areas with rapid economic growth.

There is another, more subtle, issue to consider with respect to general permits. Under the standard permits, sources that come on line are subjected to review to ensure that the source is implementing the best available control technology (BACT). Because air pollution regulations, as they are currently structured, do not place any cap on the total mass of emissions in an airshed, economic growth in an area would imply increased emissions and a gradual decline in air quality unless all sources are reducing their emissions enough, on average, to reduce emissions even as economic activity increases. Air quality regulations, as currently structured, rely on BACT analysis of new and modified sources to reduce the rate of emissions growth in areas meeting air quality standards. While BACT analysis at the new source level is probably not a very efficient method for protecting air quality, it is the method used in the current regulatory environment.

In areas where air quality is well above the standards, increased emissions will have a relatively small marginal impact. However, in areas where air quality is near the standards, increased emissions may impose a significant cost. Some of these costs would be attributable to increased health impacts. Other costs would be due to the increased compliance costs firms face when an area fails to meet air quality standards.

The issue here is whether the general permit procedure will reduce the extent to which sources licensed under the general permits will employ the same technology under the general permit as they would under a source-specific permit. DEQ has pointed out that general permits will only be appropriate for sources that use substantially similar technology. The application of BACT analysis to these facilities would result in all sources using the same technology that would be required if the source underwent individual review. However, over time, the BACT for the class of sources covered by the general permit will change as emissions control technology improves. It must be asked whether the move to general permits will change the rate at which new technologies are applied to sources granted coverage under those permits. The answer will depend on how often DEQ revises the BACT standard that is applied under each general permit.

A reduction in the rate of change in the technology implied by BACT analysis for general permits has costs and benefits. It reduces compliance costs by reducing the rate at which firms must apply newer, more expensive emissions control technology. However, a reduction in the rate of application of new technologies to eligible sources will also tend to increase the rate of emissions. The economic impact of this change depends critically on where the sources are locating. For areas with average air quality (that is, not pristine but not close to the air quality standards) the marginal cost of a slowdown in BACT analysis is not great. For the other classes of areas, the costs are higher.

On the assumption that most of the sources covered under the general permits will be in areas not in any immediate danger of exceeding air quality standards, then it is possible that a modest slowdown in the rate of change in the definition of the BACT for a group of sources would have a positive net economic impact. The compliance cost savings could well outweigh the value of the slight reduction in air quality implied by the change. So long as the rate of change in technology standards does not fall very much, any possible negative impact of this change would not, by itself, outweigh the cost savings generated by a system of general permits. That said, it is not possible to draw firm conclusions about the net economic impact of the general permit program without additional analysis.

The preceding discussion of the impact of BACT analysis under general permits is premised on the assumption that, in the presence of economic growth, air quality will be protected through the gradual imposition of increasingly stringent technology standards on new and modified sources. It has long been argued that this is a very inefficient method of controlling air quality. Technology standards tend to produce high compliance costs. Also, the imposition of tougher standards on newer facilities tends to slow the rate of retirement of older facilities. However, with few exceptions, the option of substituting a more efficient regulatory mechanism for BACT analysis is not legally available to DEQ.

One other issue with respect to general permits is the loss of the opportunity for public comment on the licensing of the

new or modified source. The opportunity for public comment has three dimensions of public value: (i) the value that members of the public may place on the opportunity to comment, (ii) the prospect that members of the public may reveal information unknown to DEQ, and (iii) the possibility that the siting of the facility may be easier if provisions are made for notice and comment.

The opportunity for public comment is clearly valuable to some members of the public and to officials in local communities. Given that this is true, there is some loss of economic value by discontinuing the opportunity. The magnitude of this loss would appropriately be measured in terms of willingness to pay for the opportunity to have comment. Unfortunately, the data on the value of the opportunity for comment is not available. Whatever its magnitude, this loss must be counted against the reduction in compliance costs due to eliminating the public comment opportunity.

Another justification for public notice and comment is that it affords members of the public an opportunity to provide DEQ with information that it may not otherwise have been able to obtain. It is not the opportunity for attending a public hearing that is of significance here. Anyone who could present information at a hearing could do so by telephone, letter or a visit to DEQ. However, the notice that there is a source requesting license to locate in an area could induce members of the public to provide DEQ with whatever useful and relevant information they have. The value, then, is in the notice, not the opportunity for a public hearing. DEQ or potential sources could provide notice at very low cost without incurring the costs associated with public hearings.

There is a growing body of evidence that, for potentially noxious facilities, an aggressive campaign of public involvement can improve siting prospects. However, this argument cannot justify the imposition of a comment period by a government agency. Both the costs and the benefits of the campaign would accrue to the firm attempting to site a source. If a firm believes that public involvement in the siting process will be helpful, then it may provide opportunities at its discretion. Choosing not to do so is a business decision. The conclusion here is that, while there may be other justifications for a period of public notice and comment, avoiding opposition to a facility is not a proper rationale for government involvement in the planning process.

In summary, general permits provide an opportunity for significant savings in compliance costs. These savings are offset to some unknown extent by the factors discussed. Some of the adverse consequences associated with the proposed limits on public comment could be reduced by a notice requirement for sources seeking coverage.

2. Plantwide Applicability Limits (PALs). The proposal on PALs mirrors innovations EPA has made in its NSR regulations. A PAL is an agreement between DEQ and a firm operating a cluster of sources where the firm agrees to limit emissions from the cluster of sources to a certain tonnage per year in return for greatly increased flexibility to move

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emissions between sources without undergoing MNSR. If the firm leaves the PAL agreement, then the physical modifications made to sources under the PAL become subject to MNSR.

PALs are modeled on EPA's bubble approach to regulating emissions. This approach has been used for nearly two decades. It is a performance standard rather than a technology standard. As such, it offers the prospect of significant savings in compliance costs. The loss of operational flexibility is one of the major costs firms face in managing sources of air emissions. The permitting of multiple sources at a facility can be a logistical nightmare. While the data is not available to give an estimate of the cost savings to be expected from PALs, it is potentially large. In addition, since firms enter PALs voluntarily, we may assume that a firm agreeing to be covered by a PAL views the change as in its own best interests and thus represents an expected gain to the firm.

One significant advantage of PALs is that they place a mass cap on the emissions from a collection of sources. This cap has the potential to reduce the growth of emissions over time if firms perceive a cost to leaving a PAL to obtain an increase in allowable emissions. Because a PAL is expected to have significant value for a number of firms due to the greatly increased operational flexibility, a firm expecting only moderate growth in emissions in the future may be willing to forego those increased emissions in return for lower compliance costs. This type of tradeoff already occurs in the air program when firms accept voluntary limitations on emissions in order to qualify as synthetic minors. Once a firm accepts a PAL for a facility, the longer it remains in the PAL the more costly it will become to leave, since any intervening modifications would be subject to standard MNSR BACT analysis.

Unfortunately, the mass cap on emissions will also limit the number of sources that choose to use PALs. Any firm expecting significant increases in emissions from a cluster of sources would probably choose not to agree to a PAL and would thereby give up the savings in operational flexibility available to firms with slower growing emissions. In addition, the high cost of leaving a PAL, may actually discourage some firms from entering in the first place.

The potential for slower emissions growth from a PAL in the medium term must be balanced against the possibility of an initial increase in the level of allowable emissions from the facility. On entering a PAL, a facility's emission limit will be set on the basis of historical emissions. For sources with high past emissions, the cap may be higher than current emissions. This provision will be of greatest value to firms with cyclical production patterns. The result is that the emissions caps in PALs may not be as binding as they would otherwise appear, since they may be set on fairly high benchmarks relative to current emissions. DEQ has argued that, for the most part, firms would have the ability to increase emissions to the level allowed in PALs without the PAL. The importance of the prospect that PALs may be set higher than current emissions is not well understood at this time. It

introduces a substantial uncertainty as to the magnitude of any net benefits from PALs.

Having firms operate under PALs serves another useful function. If a firm has chosen to operate under a cap on the annual mass of emissions, then it is not a large jump to allowing firms to trade emissions between PALs in cases where the emissions may be considered to be well mixed. The requirement that there be assurances that emissions are well-mixed avoids potential problems with locally elevated concentrations due to trading. The opportunity for trading emissions among PALs could greatly enhance their economic value, assuming that the trading does not result in lower local air quality.

The increased flexibility offered to firms by PALs does appear to increase the importance and the difficulty of monitoring and enforcement. For a cluster of sources not covered by a PAL, DEQ would enforce any permit restrictions one source at a time, independent of what was occurring at the other sources. Under a PAL, emissions are controlled at the aggregate level. Thus, it requires tracking the output of all sources. For end-of-year accounting purposes, this is not a problem; one only needs to add emissions from all of the facilities. However, this hides the rather complicated process by which emissions are actually measured.

Emissions may be subject to continuous emissions monitoring (CEM). In that case, tracking the emissions and enforcing the PAL is a straightforward matter. However, it is very unlikely that many sources in PALs will be subject to CEM. Instead, sources will be subject to sampling, and emissions will be inferred from a modeled relationship between emissions and production inputs or outputs. As a firm adjusts production under its PAL, the relationship between the various sources under the PAL may change, making the original model less applicable than before.

None of this is intended to argue that the flexibility offered to firms by PALs is not advantageous for them, only that, as is often the case, increased flexibility generally carries with it some cost in terms of increased monitoring and enforcement costs. It is not clear what resources might be available to DEQ should this increased monitoring and enforcement become necessary. At the current level of effort, site visits by DEQ inspectors are relatively infrequent. As a result, sources under a PAL could undergo substantial modification between visits.

It is not clear from the wording of the regulation, what the penalties are, if any, for exceeding the limit specified in the PAL. Given this uncertainty, and the questions on monitoring and enforcement already discussed, it is not possible to determine what economic impact should be expected from violations, detected and undetected, of PAL limits.

While PALs offer the prospect of a substantial economic benefit, this prospect is conditioned on the assumption that monitoring and enforcement efforts match the requirements of the somewhat more complicated regime.

3. Concurrent construction. Minor new source review is a costly process for the owners of the source. One of the key costs associated with review is the delay in the date that the source can become operational. Under current rules, the owner of an existing source may not proceed with modifications until after the NSR process is complete. Due to the length of time that it takes to perform a review, firms routinely incur significant costs of delay in bringing modified sources on line.¹ It follows that reducing the delay in bringing modified sources on line could reduce compliance costs substantially.

One way to accomplish this reduction is to allow firms to undertake modifications while the NSR is taking place. The proposed regulation would permit "concurrent construction" if: (i) the firm has submitted an application for a permit and (ii) the owner agrees to accept all financial risk for any changes that might be required pursuant to NSR. The board has 60 days after receipt of the permit application to halt construction based on concerns about air quality impacts or about whether the modifications meet the BACT standard. Notwithstanding the passage of this 60-day window, the board can deny the permit or request that changes be made to the plant even if it is completed.

The obvious advantage of the new language is that a firm could shave months off of the time it takes to get a modified source on line. The magnitude of the potential savings would be very difficult to measure with any accuracy. However, it is obvious that, even for a single firm, the savings in interest expenses and the increased flexibility to respond to changing market conditions could be worth many thousands, even millions of dollars.

Allowing firms to modify sources concurrent with permit evaluation may be difficult to implement effectively. The least expensive time to make modifications to a production process is at the design stage. Once the chosen design is constructed, modifications needed to implement changes in emission profiles may be so costly that much of the value of the investment in design and construction could be lost. In considering whether an improvement in the emissions profile is worthwhile, one needs to take into account the cost of making that change. The answer may be very different depending on whether an improvement would be made before or after design and construction.

The proposed language clearly states that firms must accept the financial risk associated with concurrent construction. However, that does not alter the fact that once construction is complete and the cost incurred, it may no longer be economically sensible to impose an improvement in the emissions profile on the firm. The net economic benefit of the improvement changes during design and construction. Thus, even if, in advance of the construction, we would choose to have the changes made, after the construction takes place, the decision could be different.

¹ Under provisions of the Clean Air Act, new sources are not permitted to begin construction until a permit is issued. This is not true of modified sources.

This means that, at the time a decision is made, the high cost of applying the standards relative to the expected environmental benefits may put DEQ and the board under considerable pressure to approve modifications that might not have been approved had the decision been made before construction began.

Most firms will prefer to avoid the risk of having their capital investments rendered useless by doing careful modeling and BACT analysis before beginning construction. This will minimize their likelihood of loss and will minimize the likelihood that the board will face the prospect of forcing expensive modifications of finished facilities. In all probability, there will be cases where, in spite of the firm's best efforts, expensive mistakes will be made. Forcing the firm to make expenditures that seem, at the time, exorbitant relative to the gains in air quality, especially when the firm was acting in good faith, will be very difficult for the agency and the board. Moreover, should exceptions to the assumption of risk be made, then honest mistakes could be expected to occur more frequently thereafter, as firms realize that the cost of a mistake will not be as great as the regulations indicate.

It is not possible to draw any firm conclusions about the net benefits of the concurrent construction rule. The outcome depends entirely on whether any cases arise where a reluctance to cause the waste of a substantial capital investment causes DEQ and the board to exercise relaxed scrutiny. If this does not happen, or does not happen often, then there will be a definite gain to Virginia of allowing concurrent construction. If it does happen, then the benefits of the rule will be less certain. Unfortunately, it will not be easy to determine whether standards of review are being relaxed in such cases.

One possible intermediate solution would be to give DEQ and the board some short period between the time the application is received and the time construction begins to allow a preliminary examination of the application. The preliminary evaluation period would be shorter than that required for full permit review. This would allow time for any reasonably obvious problems to be corrected before any substantial fixed capital was put in place. Adding such a short evaluation period might avoid some of the difficulties described without adding significantly to the costs of source modification.

4. Change in BACT analysis. The proposed regulation changes the language of 9 VAC 5-50-250 C. This subsection defines BACT. The change adds the language:

In determining best available control technology for stationary sources subject to Article 6 (9 VAC 5-80-1100 et seq.) of Part II of 9 VAC 5 Chapter 80, consideration shall be given to the nature and amount of the new emissions, emission control efficiencies achieved in the industry for the source type, and the cost effectiveness of the incremental emission reduction achieved.

The impact of this language on the meaning of BACT in practice is unknown. Much of what is said here would appear to be included in earlier language in the paragraph. In any

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event, the language does not set any kind of standard but merely specifies things that must be considered. Since different boards could presumably implement the language in different ways, it is not possible to determine the economic implications of this change in advance.

Businesses and entities affected. This regulation will affect all current and prospective holders of stationary source permits. Even those not currently covered by the rules may choose to modify their sources in a way that is subject to MNSR. Estimating a dollar value of the changes is not feasible at this time since there are so many uncertainties about how the rules will be used, what resources DEQ will be able to commit to enforcement and monitoring, and what sources will opt for what programs. The PAL program has the potential for reducing compliance costs. Risks to the environment can be kept to a minimum if DEQ brings the appropriate resources to bear in monitoring and enforcement. General permits could reduce compliance costs as long as local air quality impacts are controlled; public notice of applications for coverage under general permits could help ensure that general permits produce a net economic gain. Concurrent construction is somewhat more problematic to evaluate. There is a potential for savings, but there is also a potential that DEQ and the board may face undue pressure to approve completed projects. Some small changes in the design of the concurrent construction proposal could avoid some of these problems without giving up too large a share of the potential savings.

Localities particularly affected. No localities are likely to experience a disproportionate share of the gains or losses resulting from this proposed change.

Projected impact on employment. The impact on employment of increases in compliance costs is difficult to estimate. If the regulation reduces costs below those of other, nearby states, then we could expect some gain in employment due to these regulations. However, the reduction in compliance costs does not, by itself infer an increase in employment, since it is not known how the released funds will be used.

Effects on the use and value of private property. Any reduced compliance costs to sources of air emissions can be expected to increase profits to the firms owning the sources. The increase in profits will not, in general, be as large as the reduction in the firm's compliance costs. In competitive industries, much of the reduced costs will show up as reduced consumer prices. Insofar as profits increase, the value of the firms owning the sources will also increase. If the changes lead to increased air emissions, then properties close to those increased emissions may suffer a loss in market value. It has been empirically demonstrated that land and housing values respond to air quality.

Summary of analysis. The three significant innovations in this proposal are PALs, general permits and concurrent construction. Each of these has the potential to reduce the cost of complying with new source review rules. For PALs and general permits, reductions in compliance costs could be

offset to a greater or lesser extent by increases in air emissions. DEQ's commitment to monitoring and enforcement could determine the extent to which these changes produce benefits for the Commonwealth. The concurrent construction proposal may give rise to some difficulties of implementation due to the timing of decisions about whether the modification satisfies the permit requirements. There may be relatively small modifications to this proposal that would reduce the potential for problems.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Environmental Quality takes no issue with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The proposed regulation applies to the construction or reconstruction of new stationary sources or expansions (modifications) to existing ones. Exemptions are provided. With some exceptions, the owner must obtain a permit from the agency prior to the construction or modification of the source. The owner of the proposed new or modified source must provide information as may be needed to enable the agency to conduct a preconstruction review in order to determine compliance with applicable control technology and other standards and to assess the impact of the emissions from the facility on air quality. The regulation also provides the basis for the agency's final action (approval or disapproval) on the permit depending upon the results of the preconstruction review. The regulation provides a sourcewide perspective to determine applicability based solely upon the emissions changes directly resultant from the physical or operational change. The regulation provides for the use of a plantwide applicability limit (PAL). Under this concept, a source owner could make physical or operational changes to emissions units covered by the PAL without being subject to certain provisions of the permit program as long as the overall emissions did not exceed the PAL. Concurrent construction, i.e., construction while waiting for the permit to be issued, is allowed. Under this arrangement the source owner would assume full liability should the permit not be issued. Provisions covering general permits are included. Procedures for making changes to permits are included. The regulation also allows consideration of additional factors for making best available control technology (BACT) determinations. In addition, 9 VAC 5-80-10 (Permits - new and modified stationary sources) and 9 VAC 5-80-11 (Stationary source permit exemption levels) are being repealed.

CHAPTER 20.

GENERAL PROVISIONS.

9 VAC 5-20-220. Shutdown of a stationary source.

A. Upon a final decision by the board that a stationary source or emissions unit is shut down permanently, the board shall revoke any permits by written notification to the owner

and remove the stationary source or emissions unit from the emission inventory or consider its emissions to be zero in any air quality analysis conducted; and the stationary source or emissions unit shall not commence operation without a permit being issued under the applicable provisions of 9 VAC 5 Chapter 80 (9 VAC 5-80-10 et seq.).

B. The final decision shall be rendered as follows:

1. Upon a determination that the stationary source or emissions unit has not operated for a year or more, the board shall provide written notification to the owner (i) of its proposed decision that the stationary source or emissions unit is considered to be shut down permanently and (ii) that if the owner fails to provide within three months of the notice written response to the board that the shutdown is not to be considered permanent, the decision shall become final within six months of the notice. The response from the owner shall include the basis for the assertion that the shutdown is not to be considered permanent and a projected date for restart-up of the stationary source or emissions unit.

2. If the board should find that the basis for the assertion is not sound or the projected restart-up date allows for an unreasonably long period of inoperation, the decision to consider the shutdown permanent shall become final one year after the date of the notice of the proposed decision.

C. Nothing in any regulation of the board shall be construed to prevent the board and the owner from making a mutual determination that a stationary source or emissions unit is shut down permanently prior to any final decision rendered under subsection B of this section.

9 VAC 5-20-230. Certification of documents.

A. The following documents submitted to the board shall be signed by a responsible official: (i) any emission statement, application, form, report, or compliance certification; (ii) any document required to be so signed by any provision of the regulations of the board; or (iii) any other document containing emissions data or compliance information the owner wishes the board to consider in the administration of its air quality programs. A responsible official is defined as follows:

1. For a business entity, such as a corporation, association or cooperative, a responsible official is either:

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

b. A duly authorized representative of such business entity if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either (i) the facilities employ more than 250

persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars) or (ii) the authority to sign documents has been assigned or delegated to such representative in accordance with procedures of the business entity.

2. For a partnership or sole proprietorship, a responsible official is a general partner or the proprietor, respectively.

3. For a municipality, state, federal, or other public agency, a responsible official is either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

B. Any person signing a document under subsection A 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 and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

C. Subsection B of this section shall be interpreted to mean that the signer must have some form of direction or supervision over the persons gathering the data and preparing the document (the preparers), although the signer need not personally nor directly supervise these activities. The signer need not be in the same line of authority as the preparers, nor do the persons gathering the data and preparing the form need to be employees (e.g., outside contractors can be used). It is sufficient that the signer has authority to ensure that the necessary actions are taken to prepare a complete and accurate document.

D. Any person who fails to submit any relevant facts or who has submitted incorrect information in a document shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information.

CHAPTER 50.

NEW AND MODIFIED STATIONARY SOURCES.

9 VAC 5-50-250. Definitions.

A. For the purpose of these regulations and subsequent amendments or any orders issued by the board, the words or terms shall have the meaning given them in subsection C of this section.

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B. As used in this ~~rule~~ *article*, all terms not defined here shall have the meaning given them in 9 VAC 5 Chapter 10 (9 VAC 5-10-10 et seq.), unless otherwise required by context.

C. Terms defined.

"Best available control technology" means a standard of performance (including a visible emission standard) based on the maximum degree of emission reduction for any pollutant which would be emitted from any proposed stationary source which the board, on a case-by-case basis, taking into account energy, environmental and economic impacts and other costs, determines is achievable for such source through the application of production processes or available methods, systems and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard in Article 5 (9 VAC 5-50-400 et seq.) of this part or Article 1 (9 VAC 5-60-60 et seq.) of Part II of 9 VAC 5 Chapter 60. If the board determines that technological or economic limitations on the application of measurement methodology to particular emissions unit would make the imposition of an emission standard infeasible, a design, equipment, work practice, operational standard, or combination of them, may be prescribed instead of requiring the application of best available control technology. Such standard shall, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results. *In determining best available control technology for stationary sources subject to Article 6 (9 VAC 5-80-1100 et seq.) of Part II of 9 VAC 5 Chapter 80, consideration shall be given to the nature and amount of the new emissions, emission control efficiencies achieved in the industry for the source type, and the cost-effectiveness of the incremental emission reduction achieved.*

"Lowest achievable emission rate" means for any source, the more stringent rate of emissions based on the following:

1. The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner of the proposed stationary source demonstrates that such limitations are not achievable; or
2. The most stringent emissions limitation which is achieved in practice by such class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

9 VAC 5-50-260. Standard for stationary sources.

A. No owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any emissions in excess of that resultant from using best available control technology, as reflected in any condition that may be placed upon the permit approval for the facility.

B. A stationary source shall apply best available control technology for each regulated pollutant that it would have the potential to emit in amounts equal to or greater than the levels in 9 VAC 5-80-1320 C.

C. A modification shall apply best available control technology for each regulated pollutant for which it would result in a net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur in amounts equal to or greater than the levels in 9 VAC 5-80-1320 D as a result of physical change or change in the method of operation in the unit.

D. For phased construction projects, the determination of best available control technology shall be reviewed, and modified as appropriate, at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

9 VAC 5-50-395. Review and evaluation of regulation.

A. Prior to (three years after effective date of regulation), the department shall perform an analysis on this article and provide the board with a report on the results. The analysis shall include (i) the purpose and need for the article, (ii) alternatives which would achieve the stated purpose of this article in a less burdensome and less intrusive manner, (iii) an assessment of the effectiveness of this article, (iv) the results of a review of current state and federal statutory and regulatory requirements, including identification and justification of requirements of this article which are more stringent than federal requirements, and (v) the results of a review as to whether this article is clearly written and easily understandable by affected entities.

B. Upon review of the department's analysis, the board shall confirm the need to (i) continue this article without amendment, (ii) repeal this article or (iii) amend this article. If the board's decision is to repeal or amend this article, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.

CHAPTER 80.
PERMITS FOR STATIONARY SOURCES.

PART I.

PERMITS FOR NEW AND MODIFIED MAJOR SOURCES IN
NONATTAINMENT AREAS.

9 VAC 5-80-10. ~~Permits new and modified stationary
sources. (Repealed.)~~

~~A. Applicability.~~

~~1. Except as provided in subsection A 3 of this section, the provisions of this section apply to the construction, reconstruction, relocation or modification of any stationary source.~~

~~2. The provisions of this section apply throughout the Commonwealth of Virginia.~~

~~3. The provisions of this section do not apply to any facility exempted by 9 VAC 5-10-20, Appendix R. Exemption from the requirement to obtain a permit under this section shall not relieve any owner of the responsibility to comply with any other applicable provisions of these regulations or any other applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction. Any facility which is exempt from the provisions of this section based on the criteria in 9 VAC 5-10-20, Appendix R but which exceeds the applicability thresholds for any emission standard in 9 VAC 5-40-10 et seq. if it were an existing source or any standard of performance in 9 VAC 5-50-10 et seq. shall be subject to the more restrictive of the provisions of either the emission standard in 9 VAC 5-40-10 et seq. or the standard of performance in 9 VAC 5-50-10 et seq.~~

~~4. Where a source is constructed or modified in contemporaneous increments which individually are not subject to approval under this section and which are not part of a program of construction or modification in planned incremental phases approved by the board, all such increments shall be added together for determining the applicability of this section. An incremental change is contemporaneous with the particular change only if it occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.~~

~~5. Unless specified otherwise, the provisions of this section are applicable to various sources as follows:~~

~~a. Provisions referring to "sources," "new or modified sources, or both" or "stationary sources" are applicable to the construction, reconstruction or modification of all stationary sources (including major stationary sources and major modifications) and the emissions from them to the extent that such sources and their emissions are not subject to the provisions of 9 VAC 5-80-20 or 9 VAC 5-80-30.~~

~~b. Provisions referring to "major stationary sources" are applicable to the construction, reconstruction or modification of all major stationary sources.~~

~~c. In cases where the provisions of 9 VAC 5-80-20 or 9 VAC 5-80-30 conflict with those of this section, the provisions of 9 VAC 5-80-20 or 9 VAC 5-80-30 shall prevail.~~

~~B. Definitions.~~

~~1. For the purpose of these regulations and subsequent amendments or any orders issued by the board, the words or terms shall have the meaning given them in subsection B 3 of this section.~~

~~2. As used in this section, all terms not defined here shall have the meaning given them in 9 VAC 5-10-10 et seq., unless otherwise required by context.~~

~~3. Terms defined.~~

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

~~(1) Applicable emission standards;~~

~~(2) The emission limitation specified as a state and federally enforceable permit condition, including those with a future compliance date; and~~

~~(3) Any other applicable emission limitation, including those with a future compliance date.~~

~~"Begin actual construction" means initiation of permanent physical on site construction of an emissions unit. This includes, but is not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on site activities other than preparatory activities which mark the initiation of the change. With respect to the initial location of a portable facility, this term refers to the delivery of any portion of the portable facility to the site.~~

~~"Commence," as applied to the construction, reconstruction or modification of an emissions unit, means that the owner has all necessary preconstruction approvals or permits and has either:~~

~~(1) Begun, or caused to begin, a continuous program of actual on site construction, reconstruction or modification of the unit, to be completed within a reasonable time; or~~

~~(2) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual construction, reconstruction or~~

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modification of the unit, to be completed within a reasonable time.

~~"Construction" means fabrication, erection or installation of an emissions unit.~~

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

~~"Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR 60 and 61, requirements within the State Implementation Plan, and any permit requirements established pursuant to 40 CFR 52.21 or 9 VAC 5-80-10 et seq., including operating permits issued under an EPA approved program that is incorporated into the State Implementation Plan and expressly requires adherence to any permit issued under such program.~~

~~"Fixed capital cost" means the capital needed to provide all the depreciable components.~~

~~"Major modification" means any modification defined as such in 9 VAC 5-80-20 or 9 VAC 5-80-30, as may apply.~~

~~"Major stationary source" means any stationary source which emits, or has the potential to emit, 100 tons or more per year of any air pollutant.~~

~~"Modification" means any physical change in, change in the method of operation of, or addition to, an emissions unit which increases the uncontrolled emission rate of any air pollutant emitted into the atmosphere by the unit or which results in the emission of any air pollutant into the atmosphere not previously emitted, except that the following shall not, by themselves (unless previously limited by permit conditions), be considered modifications under this definition:~~

~~(1) Maintenance, repair and replacement which the board determines to be routine for a source type and which does not fall within the definition of reconstruction;~~

~~(2) An increase in the production rate of a unit, if that increase does not exceed the operating design capacity of that unit;~~

~~(3) An increase in the hours of operation;~~

~~(4) Use of an alternative fuel or raw material if, prior to the date any provision of these regulations becomes applicable to the source type, the emissions unit was designed to accommodate that alternative use. A unit shall be considered to be designed to accommodate an alternative fuel or raw material if provisions for that use were included in the final construction specifications; or~~

~~(5) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the board considers to be less efficient.~~

~~"Modified source" means any stationary source (or portion of it), the modification of which commenced on or after March 17, 1972.~~

~~"Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations, and those air quality control laws and regulations which are part of the State Implementation Plan.~~

~~"New source" means any stationary source (or portion of it), the construction or relocation of which commenced on or after March 17, 1972; and any stationary source (or portion of it), the reconstruction of which commenced on or after December 10, 1976.~~

~~"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or its effect on emissions is state and federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.~~

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

~~"Reactivation" means beginning operation of an emissions unit that has been shut down.~~

~~"Reconstruction"~~

~~(1) Means the replacement of an emissions unit or its components to such an extent that:~~

~~(a) The fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable entirely new unit, and~~

~~(b) It is technologically and economically feasible to meet the applicable emission standards prescribed under these regulations.~~

~~(2) Any determination by the board as to whether a proposed replacement constitutes reconstruction shall be based on:~~

(a) ~~The fixed capital cost of the replacements in comparison to the fixed capital cost of the construction of a comparable entirely new unit;~~

(b) ~~The estimated life of the unit after the replacements compared to the life of a comparable entirely new unit;~~

(c) ~~The extent to which the components being replaced cause or contribute to the emissions from the unit; and~~

(d) ~~Any economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.~~

~~"Secondary emissions" means emissions which occur or would occur as a result of the construction, reconstruction, modification or operation of a stationary source, but do not come from the stationary source itself. For the purpose of this section, secondary emissions must be specific, well defined, and quantifiable, and must impact upon the same general areas as the stationary source which causes the secondary emissions. Secondary emissions include emissions from any off site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the stationary source. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.~~

~~"State enforceable" means all limitations and conditions which are enforceable by the board, including those requirements developed pursuant to 9 VAC 5-20-110, requirements within any applicable order or variance, and any permit requirements established pursuant to 9 VAC 5-80-10 et seq.~~

~~"Stationary source" means any building, structure, facility or installation which emits or may emit any air pollutant. A stationary source shall include all of the pollutant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same two digit code) as described in the "Standard Industrial Classification Manual," as amended by the supplement (see 9 VAC 5-10-20, Appendix M).~~

~~"Uncontrolled emission rate" means the emission rate from a source when operating at maximum capacity without air pollution control equipment. Air pollutant control equipment includes control equipment which is not vital to its operation, except that its use enables~~

~~the source to conform to applicable air pollution control laws and regulations. Annual uncontrolled emissions shall be based on the maximum annual rated capacity (based on 8760 hours of operation per year) of the source, unless the source is subject to state and federally enforceable permit conditions which limit the annual hours of operation. Enforceable permit conditions on the type or amount of material combusted or processed may be used in determining the uncontrolled emission rate of a source. Secondary emissions do not count in determining the uncontrolled emission rate of a stationary source.~~

~~C. General.~~

~~1. No owner or other person shall begin actual construction, reconstruction or modification of any of the following types of sources without first obtaining from the board a permit to construct and operate or to modify and operate such source:~~

~~a. Any stationary source; or~~

~~b. Any stationary source of hazardous air pollutants to which an emission standard prescribed under 9 VAC 5-60-10 et seq. became applicable prior to the beginning of construction, reconstruction or modification. In the event that a new emission standard prescribed under 9 VAC 5-60-10 et seq. becomes applicable after a permit is issued but prior to initial startup, a new permit must be obtained by the owner.~~

~~2. No owner or other person shall relocate any emissions unit subject to the provisions of 9 VAC 5-20-160 without first obtaining from the board a permit to relocate the unit.~~

~~3. No owner or other person shall reduce the outlet elevation of any stack or chimney which discharges any pollutant from an affected facility subject to the provisions of 9 VAC 5-20-160 without first obtaining a permit from the board.~~

~~4. The board may combine the requirements of and the permits for emissions units within a stationary source subject to 9 VAC 5-80-10, 9 VAC 5-80-20, and 9 VAC 5-80-30 into one permit. Likewise the board may require that applications for permits for emissions units within a stationary source required by 9 VAC 5-80-10, 9 VAC 5-80-20, and 9 VAC 5-80-30 be combined into one application.~~

~~D. Applications.~~

~~1. A single application is required identifying at a minimum each emissions point within the emissions unit subject to this section. The application shall be submitted according to procedures approved by the board. However, where several emissions units are included in one project, a single application covering all units in the project may be submitted. A separate application is required for each location.~~

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2. For projects with phased development, a single application should be submitted covering the entire project.

3. Any application form, report, or compliance certification submitted to the board shall be signed by a responsible official. A responsible official is defined as follows:

a. For a business entity, such as a corporation, association or cooperative, a responsible official is either:

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

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

b. For a partnership or sole proprietorship, a responsible official is a general partner or the proprietor, respectively.

c. For a municipality, state, federal, or other public agency, a responsible official is either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

4. Any person signing a document under subsection D-3 above shall make the following certification:

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

5. As required under § 10.1-1321.1 of the Virginia Air Pollution Control Law, applications shall not be deemed complete unless the applicant has provided a notice from

the locality in which the source is located or is to be located that the site and operation of the source are consistent with all local ordinances adopted pursuant to Chapter 11 (§ 15.1-427 et seq.) of Title 15.1 of the Code of Virginia.

E. Information required:

1. Each application for a permit shall include such information as may be required by the board to determine the effect of the proposed source on the ambient air quality and to determine compliance with the emission standards which are applicable. The information required shall include, but is not limited to, the following:

a. That specified on applicable permit forms furnished by the board. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations. Completion of these forms serves as initial registration of new and modified sources; and

b. Any additional information or documentation that the board deems necessary to review and analyze the air pollution aspects of the source, including the submission of measured air quality data at the proposed site prior to construction, reconstruction or modification. Such measurements shall be accomplished using procedures acceptable to the board.

2. The above information and analysis shall be determined and presented according to procedures and using methods acceptable to the board.

F. Action on permit application:

1. Within 30 days after receipt of an application, the board shall notify the applicant of the status of the application. The notification of the initial determination with regard to the status of the application shall be provided by the board in writing and shall include (i) a determination as to which provisions of 9 VAC 5-80-10 et seq. are applicable, (ii) the identification of any deficiencies, and (iii) a determination as to whether the application contains sufficient information to begin application review. The determination that the application has sufficient information to begin review is not necessarily a determination that it is complete. Within 30 days after receipt of any additional information, the board shall notify the applicant of any deficiencies in such information. The date of receipt of a complete application for processing under subsection F-2 of this section shall be the date on which the board received all required information.

2. Processing time for a permit is normally 90 days following receipt of a complete application. Processing steps normally are as follows:

a. Completion of the preliminary review and analysis in accordance with subsection 1 of this section and the preliminary decision of the board. This step may

~~constitute the final step if the provisions of subsection G of this section concerning public participation are not applicable;~~

~~b. When required, completion of the public participation requirements in subsection G of this section; and~~

~~e. Completion of the final review and analysis and the final decision of the board.~~

~~3. The board normally will take action on all applications after completion of the review and analysis, or expiration of the public comment period (and consideration of comments from that) when required, unless more information is needed. The board shall notify the applicant in writing of its decision on the application, including its reasons, and shall also specify the applicable emission limitations. These emission limitations are applicable during any emission testing conducted in accordance with subsection J of this section.~~

~~4. The applicant may appeal the decision pursuant to 9 VAC 5-20-90.~~

~~5. Within 5 days after notification to the applicant pursuant to subsection F 3 of this section, the notification and any comments received pursuant to the public comment period and public hearing shall be made available for public inspection at the same location as was the information in subsection G 5 a of this section.~~

G. Public participation.

~~1. No later than 15 days after receiving the initial determination notification required under subsection F 1 of this section, the applicant for a permit for a major stationary source or a major modification with a net emissions increase of 100 tons per year of any single pollutant shall notify the public of the proposed source as required in subsection G 2 of this section.~~

~~2. The public notice required under this subsection shall be placed by the applicant in at least one newspaper of general circulation in the affected air quality control region. The notice shall be approved by the board and shall include, but not be limited to, the following:~~

- ~~a. The source name, location, and type;~~
- ~~b. The pollutants and the total quantity of each which the applicant estimates will be emitted, and a brief statement of the air quality impact of such pollutants;~~
- ~~c. The control technology proposed to be used at the time of the publication of the notice; and~~
- ~~d. The name and telephone number of a contact person, employed by the applicant, who can answer questions about the proposed source.~~

~~3. Upon a determination by the board that it will achieve the desired results in an equally effective manner, an applicant for a permit may implement an alternative plan~~

~~for notifying the public as required in subsection G 2 of this section.~~

~~4. Prior to the decision of the board, permit applications as specified below shall be subject to a public comment period of at least 30 days. At the end of the public comment period, a public hearing shall be held in accordance with subsection G 5 of this section.~~

~~a. Applications for stationary sources of hazardous air pollutants as specified in subsection C 1 b of this section.~~

~~b. Applications for major stationary sources and major modifications with a net emissions increase of 100 tons per year of any single pollutant.~~

~~c. Applications for stationary sources which have the potential for public interest concerning air quality issues, as determined by the board. The identification of such sources shall be made using the following criteria:~~

- ~~(1) Whether the project is opposed by any person;~~
- ~~(2) Whether the project has resulted in adverse media;~~
- ~~(3) Whether the project has generated adverse comment through any public participation or governmental review process initiated by any other governmental agency; and~~
- ~~(4) Whether the project has generated adverse comment by a local official, governing body or advisory board.~~

~~d. Applications for stationary sources for which any provision of the permit is to be based upon a good engineering practice (GEP) stack height that exceeds the height allowed by paragraphs 1 and 2 of the GEP definition. The demonstration specified in paragraph 3 of the GEP definition must be available during the public comment period.~~

~~5. When a public comment period and public hearing are required, the board shall notify the public, by advertisement in at least one newspaper of general circulation in the affected air quality control region, of the opportunity for the public comment and the public hearing on the information available for public inspection under the provisions of subsection G 5 a of this section. The notification shall be published at least 30 days prior to the day of the public hearing.~~

~~a. Information on the permit application (exclusive of confidential information under 9 VAC 5-20-150), as well as the preliminary review and analysis and preliminary decision of the board, shall be available for public inspection during the entire public comment period in at least one location in the affected air quality control region.~~

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~~b. A copy of the notice shall be sent to all local air pollution control agencies having State Implementation Plan responsibilities in the affected air quality control region, all states sharing the affected air quality control region, and to the regional administrator, U.S. Environmental Protection Agency.~~

~~H. Standards for granting permits. No permit will be granted pursuant to this section unless it is shown to the satisfaction of the board that the source will be designed, built and equipped to operate without causing a violation of the applicable provisions of these regulations and that the following standards have been met:~~

~~1. The source shall be designed, built and equipped to comply with standards of performance prescribed under 9 VAC 5-50-10 et seq. and with emission standards prescribed under 9 VAC 5-60-10 et seq.;~~

~~2. The source shall be designed, built and equipped to operate without preventing or interfering with the attainment or maintenance of any applicable ambient air quality standard and without causing or exacerbating a violation of any applicable ambient air quality standard; and~~

~~3. Stack elevation reductions under 9 VAC 5-80-10 C 3. The source shall be designed, built and equipped to operate without preventing or interfering with the attainment or maintenance of any applicable ambient air quality standard and without causing or exacerbating a violation of any applicable ambient air quality standard.~~

~~I. Application review and analysis. No permit shall be granted pursuant to this section unless compliance with the standards in subsection H of this section is demonstrated to the satisfaction of the board by a review and analysis of the application performed on a source-by-source basis as specified below:~~

~~1. Stationary sources.~~

~~a. Applications for stationary sources shall be subject to a control technology review to determine if such source will be designed, built and equipped to comply with all applicable standards of performance prescribed under 9 VAC 5-50-10 et seq.~~

~~b. Applications shall be subject to an air quality analysis to determine the impact of pollutant emissions as may be deemed appropriate by the board.~~

~~2. Stationary sources of hazardous air pollutants. Applications for stationary sources of hazardous air pollutants shall be subject to a control technology review to determine if such source will be designed, built and equipped to comply with all applicable emission standards prescribed under 9 VAC 5-60-10 et seq.~~

~~3. Stack elevation reductions under 9 VAC 5-80-10 C 3. Applications under 9 VAC 5-80-10 C 3 shall be subject to an air quality analysis to determine the impact of applicable criteria pollutant emissions.~~

~~J. Compliance determination and verification by performance testing.~~

~~1. For stationary sources other than those specified in subdivision 2 of this subsection, compliance with standards of performance shall be determined in accordance with the provisions of 9 VAC 5-60-20 and shall be verified by performance tests in accordance with the provisions of 9 VAC 5-60-30.~~

~~2. For stationary sources of hazardous air pollutants, compliance with emission standards shall be determined in accordance with the provisions of 9 VAC 5-60-20 and shall be verified by emission tests in accordance with the provisions of 9 VAC 5-60-30.~~

~~3. Testing required by subsections J 1 and 2 of this section shall be conducted by the owner within 60 days after achieving the maximum production rate at which the new or modified source will be operated, but not later than 180 days after initial startup of the source, and 60 days thereafter the board shall be provided by the owner with two or, upon request, more copies of a written report of the results of the tests.~~

~~4. For sources subject to the provisions of Rule 5-5 or 6-1, the requirements of subsections J 1 through 3 of this section shall be met in all cases.~~

~~5. For sources other than those specified in subsection J 4 of this section, the requirements of subsection J 1 through 3 of this section shall be met unless the board:~~

~~a. Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;~~

~~b. Approves the use of an equivalent method;~~

~~c. Approves the use of an alternative method, the results of which the board has determined to be adequate for indicating whether a specific source is in compliance;~~

~~d. Waives the requirement for testing because, based upon a technical evaluation of the past performance of similar source types, using similar control methods, the board reasonably expects the new or modified source to perform in compliance with applicable standards; or~~

~~e. Waives the requirement for testing because the owner of the source has demonstrated by other means to the board's satisfaction that the source is in compliance with the applicable standard.~~

~~6. The provisions for the granting of waivers under subsection J 5 of this section are intended for use in determining the initial compliance status of a source, and the granting of a waiver does not obligate the board to do so for determining compliance once the source has been in operation for more than one year beyond the initial startup date.~~

K. Permit invalidation, revocation and enforcement:

1. A permit granted pursuant to this section shall become invalid if a program of continuous construction, reconstruction or modification is not commenced within the latest of the following time frames:

a. Eighteen months from the date the permit is granted;

b. Nine months from the date of the issuance of the last permit or other authorization (other than permits granted pursuant to this section) from any governmental entity; or

c. Nine months from the date of the last resolution of any litigation concerning any such permits or authorizations (including permits granted pursuant to this section).

2. A permit granted pursuant to this section shall become invalid if a program of construction, reconstruction or modification is discontinued for a period of 18 months or more, or if a program of construction, reconstruction or modification is not completed within a reasonable time. This provision does not apply to the period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

3. The board may extend the periods prescribed in subsections K 1 and 2 of this section upon a satisfactory demonstration that an extension is justified. Provided there is no substantive change to the application information, the review and analysis, and the decision of the board, such extensions may be granted without being subject to the requirements of subsection G of this section.

4. Any owner who constructs or operates a new or modified source not in accordance (i) with the application submitted pursuant to this section or (ii) with the terms and conditions of any permit to construct or operate, or any owner of a new or modified source subject to this section who commences construction or operation without applying for and receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this subsection.

5. Permits issued under this section shall be subject to such terms and conditions set forth in the permit as the board may deem necessary to ensure compliance with all applicable requirements of the regulations.

6. The board may revoke any permit if the permittee:

a. Knowingly makes material misstatements in the permit application or any amendments to it;

b. Fails to comply with the terms or conditions of the permit;

c. Fails to comply with any emission standards applicable to an emissions unit included in the permit;

d. Causes emissions from the stationary source which result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standard; or fails to operate in conformance with any applicable control strategy, including any emission standards or emission limitations, in the State Implementation Plan in effect at the time that an application is submitted; or

e. Fails to comply with the applicable provisions of this section.

7. The board may suspend, under such conditions and for such period of time as the board may prescribe, any permit for any of the grounds for revocation contained in subsection K 6 of this section or for any other violations of these regulations.

8. Violation of these regulations shall be grounds for revocation of permits issued under this section and are subject to the civil charges, penalties and all other relief contained in Part II of these regulations and the Virginia Air Pollution Control Law.

9. The board shall notify the applicant in writing of its decision, with its reasons, to change, suspend or revoke a permit, or to render a permit invalid.

L. Existence of permit no defense. The existence of a permit under this section shall not constitute defense to a violation of the Virginia Air Pollution Control Law or these regulations and shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction.

M. Compliance with local zoning requirements. The owner shall comply in all respects with any existing zoning ordinances and regulations in the locality in which the source is located or proposes to be located; provided, however, that such compliance does not relieve the board of its duty under 9 VAC 5-20-140 of these Regulations and § 10.1-1307 E of the Virginia Air Pollution Control Law to independently consider relevant facts and circumstances.

N. Reactivation and permanent shutdown:

1. The reactivation of a stationary source is not subject to provisions of this section unless a decision concerning shutdown has been made pursuant to the provisions of subdivisions N 2 through N 4 of this section or 9 VAC 5-80-40 P 5.

2. Upon a final decision by the board that a stationary source is shut down permanently, the board shall revoke the permit by written notification to the owner and remove the source from the emission inventory or consider its emissions to be zero in any air quality analysis conducted; and the source shall not commence operation without a permit being issued under the applicable provisions of 9 VAC 5-80-10 et seq.

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~~3. The final decision shall be rendered as follows:~~

~~a. Upon a determination that the source has not operated for a year or more, the board shall provide written notification to the owner (i) of its tentative decision that the source is considered to be shut down permanently; (ii) that the decision shall become final if the owner fails to provide, within three months of the notice, written response to the board that the shutdown is not to be considered permanent; and (iii) that the owner has a right to a formal hearing on this issue before the board makes a final decision. The response from the owner shall include the basis for the assertion that the shutdown is not to be considered permanent and a projected date for restart up of the source and shall include a request for a formal hearing if the owner wishes to exercise that right.~~

~~b. If the board should find that the basis for the assertion is not sound or the projected restart up date allows for an unreasonably long period of inoperation, the board shall hold a formal hearing on the issue if one is requested or, if no hearing is requested, the decision to consider the shutdown permanent shall become final.~~

~~4. Nothing in these regulations shall be construed to prevent the board and the owner from making a mutual determination that a source is shutdown permanently prior to any final decision rendered under subdivision N 3 of this section.~~

~~O. Transfer of permits.~~

~~1. No persons shall transfer a permit from one location to another, or from one piece of equipment to another.~~

~~2. In the case of a transfer of ownership of a stationary source, the new owner shall abide by any current permit issued to the previous owner. The new owner shall notify the board of the change in ownership within 30 days of the transfer.~~

~~3. In the case of a name change of a stationary source, the owner shall abide by any current permit issued under the previous source name. The owner shall notify the board of the change in source name within 30 days of the name change.~~

~~4. The provisions of this subsection concerning the transfer of a permit from one location to another shall not apply to the relocation of portable facilities that are exempt from the provisions of this section by Section VII of 9 VAC 5-10-20, Appendix R.~~

~~P. Circumvention. Regardless of the exemptions provided in this section, no owner or other person shall circumvent the requirements of this section by causing or allowing a pattern of ownership or development over a geographic area of a source which, except for the pattern of ownership or development, would otherwise require a permit.~~

~~9 VAC 5-80-11. Stationary source permit exemption levels. (Repealed.)~~

~~A. General.~~

~~1. In determining whether a facility is exempt from the requirements of 9 VAC 5-80-10, the provisions of subsections B through H of this section are independent from the provisions of subsection I of this section. A facility must be determined to be exempt both under the provisions of subsections B through H taken as a group and under the provisions of subsection I to be exempt from 9 VAC 5-80-10.~~

~~2. In determining whether a facility is exempt from the requirements of 9 VAC 5-80-10 under the provisions of subsections B and C of this section, the definitions in the rule in 9 VAC 5-Chapter 40 (9 VAC 5-40-10 et seq.) that would cover the facility if it were an existing source shall be used unless deemed inappropriate by the board.~~

~~B. New source exemption levels by size. Facilities as specified below shall be exempt from the requirements of 9 VAC 5-80-10 as they pertain to construction, reconstruction or relocation.~~

~~1. Fuel burning equipment.~~

~~a. Any unit using solid fuel with a maximum heat input of less than 1,000,000 Btu per hour.~~

~~b. Any unit using liquid fuel with a maximum heat input of less than 10,000,000 Btu per hour.~~

~~c. Any unit using liquid and gaseous fuel with a maximum heat input of less than 10,000,000 Btu per hour.~~

~~d. Any unit using gaseous fuel with a maximum heat input of less than 50,000,000 Btu per hour, unless subject to a new source performance standard in Article 5 (9 VAC 5-50-400 et seq.) of 9 VAC 5-Chapter 50.~~

~~e. Any unit that powers a mobile source but is removed for maintenance or repair and testing.~~

~~2. Solvent metal cleaning operations. Any solvent metal cleaning operation with an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.~~

~~3. Volatile organic compound storage and transfer operations. Any storage or transfer operation involving petroleum liquids and other volatile organic compounds with a vapor pressure less than 1.5 pounds per square inch absolute under actual storage conditions or, in the case of loading or processing, under actual loading or processing conditions; and any operation specified below:~~

~~a. Volatile organic compound transfer operations.~~

~~(1) Any tank of 2,000 gallons or less storage capacity.~~

- ~~(2) Any operation outside the volatile organic compound emissions control areas designated in 9 VAC 5-20-206.~~
- ~~b. Volatile organic compound storage operations. Any tank of 40,000 gallons or less storage capacity.~~
- ~~4. Large appliance coating application systems. Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.~~
- ~~5. Magnet wire coating application systems. Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.~~
- ~~6. Automobile and light duty truck coating application systems.~~
- ~~a. Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.~~
- ~~b. Any vehicle refinishing operation.~~
- ~~7. Can coating application systems. Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.~~
- ~~8. Metal coil coating application systems. Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.~~
- ~~9. Paper and fabric coating application system. Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.~~
- ~~10. Vinyl coating application systems. Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.~~
- ~~11. Metal furniture coating application systems. Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.~~
- ~~12. Miscellaneous metal parts and products coating application systems.~~
- ~~a. Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.~~
- ~~b. Any vehicle customizing coating operation, if production is less than 20 vehicles per day.~~
- ~~c. Any vehicle refinishing operation.~~
- ~~d. Any fully assembled aircraft or marine vessel exterior coating operation.~~
- ~~13. Flatwood paneling coating application systems. Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.~~
- ~~14. Graphic arts (printing processes). Any printing process if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.~~
- ~~15. Petroleum liquid storage and transfer operations. Any storage or transfer operation involving petroleum liquids with a vapor pressure less than 1.5 pounds per square inch absolute under actual storage conditions or, in the case of loading or processing, under actual loading or processing conditions (kerosene and fuel oil used for household heating have vapor pressures of less than 1.5 pounds per square inch absolute under actual storage conditions; therefore, kerosene and fuel oil are not subject to the provisions of 9 VAC 5-80-10 when used or stored at ambient temperatures); and any operation specified below:~~
- ~~a. Bulk terminals gasoline bulk loading operations. Any operation outside volatile organic compound emissions control areas designated in 9 VAC 5-20-206.~~
- ~~b. Gasoline dispensing facilities. Any gasoline dispensing facility.~~
- ~~c. Bulk plants gasoline bulk loading operations.~~
- ~~(1) Any facility with an expected daily throughput of less than 4,000 gallons.~~
- ~~(2) Any operation outside volatile organic compound emissions control areas designated in 9 VAC 5-20-206.~~
- ~~d. Account/tank trucks. No permit is required for account/tank trucks, but permits issued for gasoline storage/transfer facilities should include a provision that all associated account/tank trucks meet the same requirements as those trucks serving existing facilities.~~
- ~~e. Petroleum liquid storage operations.~~
- ~~(1) Any tank of 40,000 gallons or less storage capacity.~~
- ~~(2) Any tank of less than 420,000 gallons storage capacity for crude oil or condensate stored, processed or treated at a drilling and production facility prior to custody transfer.~~
- ~~(3) Any tank storing waxy, heavy pour crude oil.~~
- ~~16. Dry cleaning plants. Any petroleum dry cleaning plant with a total manufacturers' rated solvent dryer capacity~~

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~~less than 84 pounds as determined by the applicable new source performance standard in 9 VAC 5-50-410.~~

~~17. Wood product manufacturing plants. Any addition of, relocation of or change to a woodworking machine within a plant provided the system air movement capacity, expressed as the cubic feet per minute of air, and maximum control efficiency of the control system are not decreased.~~

~~18. Wood sawmills. Any wood sawmill.~~

~~C. New sources with no exemptions. Facilities as specified below shall not be exempt, regardless of size or emission rate, from the requirements of 9 VAC 5-80-10 as they pertain to construction, reconstruction or relocation.~~

- ~~1. Petroleum refineries.~~
- ~~2. Asphalt plants.~~
- ~~3. Chemical fertilizer manufacturing plants.~~
- ~~4. Kraft pulp mills.~~
- ~~5. Sand and gravel processing facilities.~~
- ~~6. Coal preparation plants.~~
- ~~7. Stone quarrying and processing facilities.~~
- ~~8. Portland cement plants.~~
- ~~9. Wood product manufacturing plants.~~
- ~~10. Secondary metal operations.~~
- ~~11. Lightweight aggregate process operations.~~
- ~~12. Feed manufacturing plants.~~
- ~~13. Incinerators.~~
- ~~14. Coke ovens.~~
- ~~15. Sulfuric acid production units.~~
- ~~16. Sulfur recovery operations.~~
- ~~17. Primary metal operations.~~
- ~~18. Nitric acid production units.~~
- ~~19. Concrete batching plants.~~
- ~~20. Pharmaceutical products manufacturing plants.~~
- ~~21. Rubber tire manufacturing plants.~~

~~D. New source exemption levels by emission rate. Facilities not covered by subsection B or C of this section with uncontrolled emission rates less than all of the significant emission rates specified below shall be exempt from the requirements of 9 VAC 5-80-10 pertaining to construction, reconstruction or relocation.~~

~~EMISSION RATES.~~

~~Carbon monoxide—100 tons per year.
Nitrogen dioxide—40 tons per year.
Sulfur dioxide—40 tons per year.~~

~~Particulate matter (PM₁₀)—15 tons per year.
Volatile organic compounds—25 tons per year.
Lead—0.6 ton per year.~~

~~E. Modified source exemption levels by emission rate. Facilities with increases in uncontrolled emission rates less than all of the emission rates specified below shall be exempt from the requirements of 9 VAC 5-80-10 pertaining to modification.~~

~~EMISSION RATES.~~

~~Carbon monoxide—100 tons per year.
Nitrogen dioxide—40 tons per year.
Sulfur dioxide—40 tons per year.
Particulate matter (PM₁₀)—40 tons per year.
Volatile organic compounds—40 tons per year.
Lead—0.6 ton per year.~~

~~F. New source performance standards and national emission standards for hazardous air pollutants. Regardless of the provisions of subsections B, D and E of this section, affected facilities subject to Article 5 (9 VAC 5-50-400 et seq.) of 9 VAC 5 Chapter 50 or subject to Article 1 (9 VAC 5-60-60 et seq.) of 9 VAC 5 Chapter 60 shall not be exempt from the provisions of 9 VAC 5-80-10, with the exception of those facilities which would be subject only to recordkeeping or reporting requirements or both under Article 5 (9 VAC 5-50-400 et seq.) of 9 VAC 5 Chapter 50 or Article 1 (9 VAC 5-60-60 et seq.) of 9 VAC 5 Chapter 60.~~

~~G. Relocation of portable facilities. Regardless of the provisions of subsections B, C, D, E and F of this section, a permit will not be required for the relocation of a portable emissions unit for which a permit has been previously granted under 9 VAC 5 Chapter 80 (9 VAC 5-80-10 et seq.) provided that:~~

- ~~1. The emissions of the unit at the new location would be temporary;~~
- ~~2. The emissions from the unit would not exceed its allowable emissions;~~
- ~~3. The unit would not undergo modification or reconstruction;~~
- ~~4. The unit is suitable to the area in which it is to be located; and~~
- ~~5. Reasonable notice is given to the board prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the board not less than 15 days in advance of the proposed relocation unless a different time duration is previously approved by the board.~~

~~H. Requirements for exempted facilities. Any facility exempted from the provisions of 9 VAC 5-80-10 by subsection B of this section shall be subject to the provisions of any rule which would apply to the facility if it were an existing source unless specifically exempted by that rule.~~

~~I. Exemption levels for toxic pollutants.~~

1. Facilities with an increase in the uncontrolled emission rate of a toxic pollutant equal to or less than the exempt emission rate calculated using the exemption formulas for the applicable TLV[®] in subdivision 1.4 of this section shall be exempt from the requirements of 9 VAC 5-80-10 pertaining to modification, provided the increase in the uncontrolled emission rate of the pollutant does not exceed 22.8 pounds per hour or 100 tons per year.

2. Facilities with an uncontrolled emission rate of a toxic pollutant equal to or less than the exempt emission rate calculated using the exemption formulas for the applicable TLV[®] in subdivision 1.4 of this section shall be exempt from the requirements of 9 VAC 5-80-10 pertaining to construction, reconstruction or relocation, provided the uncontrolled emission rate of the pollutant does not exceed 22.8 pounds per hour or 100 tons per year.

3. If more than one exemption formula applies to a toxic pollutant emitted by a facility, the uncontrolled emission rate of that pollutant shall be equal to or less than both applicable exemption formulas in order for the source to be exempt for that pollutant. The exemption formulas apply on an individual basis to each toxic pollutant for which a TLV[®] has been established.

4. Exemption formulas:

a. For toxic pollutants with a TLV-C[®], the following exemption formula applies:

$$\text{Exempt Emission Rate (pounds per hour)} = \text{TLV-C (mg/m}^3\text{)} \times 0.033$$

b. For toxic pollutants with both a TLV-STEL[®] and a TLV-TWA[®], the following exemption formulas apply:

$$\begin{aligned} \text{Exempt Emission Rate (pounds per hour)} &= \text{TLV-STEL}^{\circledast} \text{ (mg/m}^3\text{)} \times 0.033 \\ \text{Exempt Emission Rate (tons per year)} &= \text{TLV-TWA}^{\circledast} \text{ (mg/m}^3\text{)} \times 0.145 \end{aligned}$$

c. For toxic pollutants with only a TLV-TWA[®], the following exemption formulas apply:

$$\begin{aligned} \text{Exempt Emission Rate (pounds per hour)} &= \text{TLV-TWA}^{\circledast} \text{ (mg/m}^3\text{)} \times 0.066 \\ \text{Exempt Emission Rate (tons per year)} &= \text{TLV-TWA}^{\circledast} \text{ (mg/m}^3\text{)} \times 0.145 \end{aligned}$$

5. Exemption from the requirements of 9 VAC 5-80-10 for any facility which has an uncontrolled emission rate of any toxic pollutant without a TLV[®] shall be determined by the board using available health effects information.

6. The exemption determination shall be made by the board using information submitted by the owner at the request of the board as set out in 9 VAC 5-50-200.

7. Facilities as specified below shall not be exempt, regardless of size or emission rate, from the requirements of 9 VAC 5-80-10 as they pertain to modification, construction, reconstruction or relocation.

a. Incinerators, unless the incinerator is used exclusively as air pollution control equipment.

b. Ethylene oxide sterilizers.

c. Boilers or industrial furnaces burning hazardous waste fuel for energy recovery or destruction, or processing for materials recovery or as an ingredient. For the purposes of this subsection, hazardous waste fuel means (i) hazardous waste that is burned for energy recovery or (ii) fuel produced from hazardous waste by processing, blending or other treatment (see Hazardous Waste Management Regulations, 9 VAC 20-60-10 et seq.). Hazardous waste means a solid waste or combination of solid waste which, because of its quantity, concentration or physical, chemical or infectious characteristics, may (i) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating illness, or (ii) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed (§ 10.1-1400 of the Virginia Waste Management Act). This subdivision shall not apply to boilers or industrial furnaces burning used oil, which is defined as any oil that has been refined from crude oil, used, and as a result of such use, is contaminated by physical or chemical impurities (Hazardous Waste Management Regulations, 9 VAC 20-60-10 et seq.).

Article 6.

Permits for New and Modified Stationary Sources.

9 VAC 5-80-1100. Applicability.

A. Except as provided in subsection C of this section, the provisions of this article apply to the construction, reconstruction, relocation or modification of any stationary source.

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

C. The provisions of this article do not apply to any stationary source or emissions unit that is exempt under the provisions of 9 VAC 5-80-1320. Exemption from the requirement to obtain a permit under this article shall not relieve any owner of the responsibility to comply with any other applicable provisions of regulations of the board or any other applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction. Any stationary source or emissions unit which is exempt from the provisions of this article based on the criteria in 9 VAC 5-80-1320 but which exceeds the applicability thresholds for any applicable emission standard in 9 VAC 5 Chapter 40 (9 VAC 5-40-10 et seq.) if it were an existing source or any applicable standard of performance in 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.) shall be subject to the more restrictive of the provisions

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of either the emission standard in 9 VAC 5 Chapter 40 (9 VAC 5-40-10 et seq.) or the standard of performance in 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.).

D. The fugitive emissions of a stationary source shall not be included in determining whether it is subject to this article. The provisions of this article do not apply to a stationary source or modification that would be subject to this article only if fugitive emissions, to the extent quantifiable, are considered in calculating the actual emissions of the source or net emissions increase.

E. An affected facility subject to Article 5 (9 VAC 5-50-400 et seq.) of Part I of 9 VAC 5 Chapter 50 or Article 1 (9 VAC 5-60-60 et seq.) of Part II of 9 VAC 5 Chapter 60 or a boiler, incinerator or industrial furnace as defined in 9 VAC 20-60-10 and subject to 9 VAC 20 Chapter 60 (9 VAC 20-60-10 et seq.) shall not be exempt from the provisions of this article, except where the affected facility is exempt under subsection C of this section and:

1. The affected facility would be subject only to recordkeeping or reporting requirements or both under Article 5 (9 VAC 5-50-400 et seq.) of Part I of 9 VAC 5 Chapter 50 or Article 1 (9 VAC 5-60-60 et seq.) of Part II of 9 VAC 5 Chapter 60; or
2. The affected facility is constructed, reconstructed or modified at an existing stationary source which has a current permit for similar affected facilities subject to the provisions of Article 5 (9 VAC 5-50-400 et seq.) of Part I of 9 VAC 5 Chapter 50 or Article 1 (9 VAC 5-60-60 et seq.) of Part II of 9 VAC 5 Chapter 60.

F. Regardless of the exemptions provided in this article, no owner or other person shall circumvent the requirements of this article by causing or allowing a pattern of ownership or development over a geographic area of a source which, except for the pattern of ownership or development, would otherwise require a permit.

G. No provision of this article shall be construed as exempting any stationary source or emissions unit from the provisions of 9 VAC 5-80-30 or Article 8 (9 VAC 5-80-1700 et seq.) of this part.

H. Unless specified otherwise, the provisions of this article are applicable to various sources as follows:

1. Provisions referring to "sources," "new or modified sources, or both" or "stationary sources" are applicable to the construction, reconstruction or modification of all stationary sources (including major stationary sources and major modifications) and the emissions from them to the extent that such sources and their emissions are not subject to the provisions of 9 VAC 5-80-30 or Article 8 (9 VAC 5-80-1700 et seq.) of this part.
2. Provisions referring to "major stationary sources" are applicable to the construction, reconstruction or modification of all major stationary sources.

3. In cases where the provisions of 9 VAC 5-80-30 or Article 8 (9 VAC 5-80-1700 et seq.) of this part conflict with those of this article, the provisions of 9 VAC 5-80-30 or Article 8 (9 VAC 5-80-1700 et seq.) of this part shall prevail.

9 VAC 5-80-1110. Definitions.

A. For the purpose of this article and subsequent amendments or any orders issued by the board, the words or terms shall have the meanings given them in subsection C of this section.

B. As used in this section, all terms not defined here shall have the meanings given them in 9 VAC 5 Chapter 10 (9 VAC 5-10-10 et seq.), unless otherwise required by context.

C. Terms defined.

"Actual emissions" means the actual rate of emissions (expressed in tons per year) of a pollutant from a stationary source or portion thereof, as determined in accordance with the provisions of this definition.

1. Actual emissions shall be calculated using the stationary source's actual operating hours, production rates, and types of materials processed, stored, or combusted for any 12 consecutive months during the 120 consecutive months that precede the commencement of construction of a proposed physical or operational change at the source; and any current federally or state enforceable limitations on emissions. In cases where no current federally or state enforceable limitations on emissions exist, emission factors based on the uncontrolled emission rate or otherwise acceptable to the board shall be used.
2. The board may presume that source-specific allowable emissions for the stationary source are equivalent to the actual emissions of the unit.
3. For any stationary source which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the source on that date.

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

1. Applicable emission standards;
2. The emission limitation specified as a state or federally enforceable permit condition, including those with a future compliance date; or
3. Any other applicable emission limitation, including those with a future compliance date.

"Begin actual construction" means initiation of permanent physical on-site construction of an emissions unit. This includes, but is not limited to, installation of building supports and foundations, laying of underground pipework, and

construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change. With respect to the initial location of a portable emissions unit, this term refers to the delivery of any portion of the portable emissions unit to the site.

"Commence," as applied to the construction, reconstruction or modification of a stationary source, means that the owner has all necessary preconstruction approvals or permits and has either:

1. Begun, or caused to begin, a continuous program of actual on-site construction, reconstruction or modification of the source, to be completed within a reasonable time; or
2. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual construction, reconstruction or modification of the source, to be completed within a reasonable time.

"Complete application" means that the application contains all the information necessary for processing the application and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met. Designating an application complete for purposes of permit processing does not preclude the board from requesting or accepting additional information.

"Construction" means fabrication, erection or installation of an emissions unit.

"Emergency" means, in the context of 9 VAC 5-80-1320 B 2, a situation where immediate action on the part of a source is needed and where the timing of the action makes it impractical to meet the requirements of this article, such as sudden loss of power, fires, earthquakes, floods or similar occurrences.

"Emissions cap" means any limitation on the rate of emissions of any regulated air pollutant from one or more emissions units established and identified as an emissions cap in any permit issued pursuant to the new source review program or operating permit program.

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

"Enforceable as a practical matter" means that the permit contains emission limitations that are enforceable by the board or the department and meet the following criteria:

1. Are permanent;
2. Contain a legal obligation for the owner to adhere to the terms and conditions;
3. Do not allow a relaxation of a requirement of the state implementation plan;
4. Are technically accurate and quantifiable;

5. Include averaging times or other provisions that allow at least monthly (or a shorter period if necessary to be consistent with the state implementation plan) checks on compliance. This may include, but not be limited to, the following: compliance with annual limits in a rolling basis, monthly or shorter limits, and other provisions consistent with 9 VAC 5-80-1180 and other regulations of the board; and

6. Require a level of recordkeeping, reporting and monitoring sufficient to demonstrate compliance.

"Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60, 61 and 63, requirements within the State Implementation Plan, and any permit requirements established pursuant to a new source review program or operating permits issued under an EPA-approved program that is incorporated into the State Implementation Plan and expressly requires adherence to any permit issued under such program.

"Fixed capital cost" means the capital needed to provide all the depreciable components.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"General permit" means a permit issued under this article that meets the requirements of 9 VAC 5-80-1250.

"Hazardous air pollutant" means any pollutant listed pursuant to § 112(b)(1) of the federal Clean Air Act.

"Major modification" means any modification that would result in a net emissions increase of 100 tons per year of any regulated air pollutant emitted into the atmosphere by the source or which results in the emission of any regulated air pollutant into the atmosphere not previously emitted.

"Major stationary source" means any stationary source which emits, or has the potential to emit, 100 tons or more per year of any regulated air pollutant.

"Modification" means any physical change in, change in the method of operation of, or addition to, a stationary source that would result in a net emissions increase of any regulated air pollutant emitted into the atmosphere by the source or which results in the emission of any regulated air pollutant into the atmosphere not previously emitted, except that the following shall not, by themselves (unless previously limited by permit conditions), be considered modifications under this definition:

1. Maintenance, repair and replacement which the board determines to be routine for a source type and which does not fall within the definition of reconstruction;
2. An increase in the production rate of a unit, if that increase does not exceed the operating design capacity of that unit;

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3. An increase in the hours of operation;

4. Use of an alternative fuel or raw material if, prior to the date any provision of the regulations of the board becomes applicable to the source type, the source was designed to accommodate that alternative use. A source shall be considered to be designed to accommodate an alternative fuel or raw material if provisions for that use were included in the final construction specifications;

5. Use of an alternative fuel or raw material if, prior to the date any provision of the regulations of the board becomes applicable to the source type, the source was not designed to accommodate that alternative use and the owner demonstrates to the board that as a result of trial burns at the source or other sources or of other sufficient data that the emissions resulting from the use of the alternative fuel or raw material supply are decreased;

6. The addition, replacement or use of any system or device whose primary function is the reduction of air pollutants, except when a system or device that is necessary to comply with applicable air pollution control laws and regulations is replaced by a system or device which the board considers to be less efficient in the control of air pollution emissions; or

7. The removal of any system or device whose primary function is the reduction of air pollutants if the system or device is not necessary for the source to comply with any applicable air pollution control laws or regulations.

"Modified source" means any stationary source (or portion of it), the modification of which commenced on or after March 17, 1972.

"Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations, and those air quality control laws and regulations which are part of the State Implementation Plan.

"Net emissions increase" means the amount by which the sum of the following exceeds zero: (i) any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source and (ii) any other increases and decreases in actual emissions at the source that are concurrent with the particular change and are otherwise creditable. An increase or decrease in actual emissions is concurrent with the increase from the particular change only if it is directly resultant from the particular change. An increase or decrease in actual emissions is not creditable if the board has relied on it in issuing a permit for the source under the new source review program and that permit is in effect when the increase in actual emissions from the particular change occurs. Creditable increases and decreases shall be federally or state enforceable.

"New source" means any stationary source (or portion of it), the construction or relocation of which commenced on or after March 17, 1972; and any stationary source (or portion of

it), the reconstruction of which commenced on or after December 10, 1976.

"New source review program" means a program for the preconstruction review and permitting of new stationary sources or expansions to existing ones in accordance with regulations promulgated to implement the requirements of §§ 110 (a)(2)(C), 165 (relating to permits in prevention of significant deterioration areas) and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act.

"Plantwide applicability limit" means a federally or state enforceable plantwide emission limitation established for a stationary source or portion thereof such that any subsequent physical or operational changes resulting in emissions that remain less than the limit, are excluded from the provisions of this article.

"Plantwide applicability limit modification" means, notwithstanding the definition of modification, any increase in the actual emissions rate (in tons per year) over the plantwide applicability limit. Any emissions increase of volatile organic compounds shall be considered an increase for ozone.

"Portable," in reference to emissions units, means an emissions unit that is designed to have the capability of being moved from one location to another for the purpose of operating at multiple locations and storage when idle.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or its effect on emissions is state or federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

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

"Reactivation" means beginning operation of an emissions unit that has been shut down under the provisions of 9 VAC 5-20-220.

"Reconstruction" means the replacement of an emissions unit or its components to such an extent that:

1. The fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable entirely new unit;
2. The replacement significantly extends the life of the emissions unit; and

3. It is technologically and economically feasible to meet the applicable emission standards prescribed under regulations of the board.

Any determination by the board as to whether a proposed replacement constitutes reconstruction shall be based on:

1. The fixed capital cost of the replacements in comparison to the fixed capital cost of the construction of a comparable entirely new unit;
2. The estimated life of the unit after the replacements compared to the life of a comparable entirely new unit;
3. The extent to which the components being replaced cause or contribute to the emissions from the unit; and
4. Any economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

"Regulated air pollutant" means any of the following:

1. Nitrogen oxides or any volatile organic compound;
2. Any pollutant for which an ambient air quality standard has been promulgated;
3. Any pollutant subject to any standard promulgated under § 111 of the federal Clean Air Act;
4. Any pollutant subject to a standard promulgated under or other requirements established under § 112 of the federal Clean Air Act concerning hazardous air pollutants and any pollutant regulated under 40 CFR Part 63; or
5. Any pollutant subject to a regulation adopted by the board.

"Relocation" means a change in physical location of a stationary source or an emissions unit from one stationary source to another stationary source.

"Secondary emissions" means emissions which occur or would occur as a result of the construction, reconstruction, modification or operation of a stationary source, but do not come from the stationary source itself. For the purpose of this article, secondary emissions must be specific, well-defined, and quantifiable; and must impact upon the same general areas as the stationary source which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the stationary source. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Significant" means:

1. In reference to a plantwide applicability limit or net emissions increase for any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emissions Rate
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter	25 tpy
PM ₁₀	15 tpy
Ozone	40 tpy of volatile organic compounds
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H ₂ S)	10 tpy
Total reduced sulfur (including H ₂ S)	10 tpy
Reduced sulfur compounds (including H ₂ S)	10 tpy
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5 x 10 ⁶ tpy
Municipal waste combustor metals (measured as particulate matter)	15 tpy
Municipal waste combustor acid gases (measured as the sum of SO ₂ and Hcl)	40 tpy
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	50 tpy

2. In reference to a plantwide applicability limit for any regulated air pollutant that subdivision 1 of this definition does not list, any emissions rate

"State enforceable" means all limitations and conditions which are enforceable as a practical matter, including those requirements developed pursuant to 9 VAC 5-20-110, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

"Stationary source" means any building, structure, facility or installation which emits or may emit any regulated air pollutant. A stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same two-digit code) as described in the "Standard Industrial Classification Manual," as amended by the supplement (see 9 VAC 5-20-21).

"Uncontrolled emission rate" means the emission rate from a source when operating at maximum capacity without air

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pollution control equipment. Air pollution control equipment is equipment that enables the source to conform to applicable air pollution control laws and regulations and that is not vital to its operation.

9 VAC 5-80-1120. General.

A. Except as provided in 9 VAC 5-80-1130, no owner or other person shall begin actual construction, reconstruction or modification of any of the following types of sources without first obtaining from the board a permit to construct and operate or to modify and operate such source:

1. Any stationary source; or

2. Any stationary source of hazardous air pollutants to which an emission standard prescribed under Article 1 (9 VAC 5-60-60 et seq.) of Part II of 9 VAC 5 Chapter 60 became applicable prior to the beginning of construction, reconstruction or modification.

B. No owner or other person shall relocate any emissions unit subject to the provisions of 9 VAC 5-20-160 from one stationary source to another without first obtaining from the board a permit to relocate the unit.

C. No owner or other person shall reduce the outlet elevation of any stack or chimney which discharges any pollutant from an affected facility without first obtaining a permit from the board.

D. The board may combine the requirements of and the permits for emissions units within a stationary source subject to the new source review program into one permit. Likewise the board may require that applications for permits for emissions units within a stationary source required by any provision of the new source review program be combined into one application.

E. The board in evaluating permit applications and issuing permits shall not consider any consequences to the applicant of beginning actual construction or modification prior to receiving a permit whether or not it is done under the provisions of 9 VAC 5-80-1130.

F. No emission cap or similar provisions contained in any permit issued by the board shall be construed to be a plantwide applicability limit unless the permit is issued following the requirements of this article in effect after (insert effective date), including specifically 9 VAC 5-80-1170 E and 9 VAC 5-80-1310.

G. Nothing in the regulations of the board shall be construed to prevent the board from granting permits for programs of construction or modification in planned incremental phases. In such cases, all net emissions increases from all emissions units covered by the program shall be added together for determining the applicability of this article.

9 VAC 5-80-1130. Concurrent construction.

A. An owner may begin and complete actual construction of a modification to an existing stationary source prior to

receiving a permit required by this article if each of the following conditions is met:

1. The owner has submitted an application for a permit for the modification with a notice of intent to begin actual construction of the modification;

2. The owner has submitted a certification that he (i) freely assumes all financial and other risks associated with beginning actual construction of the modification prior to receiving a permit and (ii) acknowledges that the board in evaluating permit applications may not consider any consequences to the applicant of beginning actual construction prior to receiving a permit;

3. The board has not, within 60 days of receipt of the permit application, issued a written notice to the owner, based on concerns about air quality impacts or emissions control technology, requiring the termination of construction as soon as practicable but no later than five business days after receipt of the notice;

4. The owner constructs the modification as described in the permit application; and

5. The owner does not commence operation of the modification until the permit has been issued.

B. An owner may begin actual construction or reconstruction of a new stationary source prior to receiving a permit required by this article in accordance with the following procedures:

1. If the requirement for a permit prior to construction will create an undue hardship to the applicant, the applicant may, prior to submitting a permit application, request a waiver to proceed with construction from the board.

2. The request for a waiver shall be in writing, shall explain the circumstances that will cause the undue hardship, and shall be signed by a responsible official. The request shall contain:

a. A certification that the owner (i) freely assumes all financial and other risks associated with beginning actual construction prior to receiving a permit and (ii) acknowledges that the board in evaluating permit applications may not consider any consequences to the applicant of beginning actual construction prior to receiving a permit.

b. Sufficient information for the board to make a determination as to whether the permit application is subject to 9 VAC 5-80-30 or Article 8 (9 VAC 5-80-1700 et seq.) of this part.

3. If the request contains the information specified in subdivision 2 of this subsection and is complete within the context of § 10.1-1321.1 of the Virginia Air Pollution Control Law, the request for a waiver shall be acted upon by the board within 30 days.

4. Upon granting the waiver, the board shall determine what construction activities constitute the beginning of

actual construction on that source, and what portions of the source the owner may construct prior to issuance of a permit. In doing so, the board shall consider (i) the extent to which such portions of the source may irrevocably determine the emissions of the completed source and (ii) the undue hardship upon the owner of delaying construction until the permit has been issued.

5. If a waiver is granted, the applicant shall submit the permit application for action by the board as soon as is reasonably practical but no later than 30 days after the waiver is granted. The applicant, after a waiver is granted, shall proceed at his own risk with construction of portions of the source allowed by the terms of the waiver; however, no operation of the source shall commence until a permit has been issued by the board authorizing the operation.

C. After construction, modification, or reconstruction has begun or been completed, if the plans, specifications, and completed installations do not meet applicable regulatory requirements, the application for a permit shall be denied, unless the alterations required to effect approval are made within a reasonable time as specified by the board.

D. No provision of this section shall be construed as applying to any stationary source or emissions unit subject to the provisions of 9 VAC 5-80-30 or Article 8 (9 VAC 5-80-1700 et seq.) of this part.

9 VAC 5-80-1140. Applications.

A. A single application is required identifying at a minimum each emissions unit subject to the provisions of this article. The application shall be submitted according to procedures approved by the board. However, where several emissions units are included in one project, a single application covering all units in the project may be submitted.

B. A separate application is required for each stationary source.

C. For projects with phased development, a single application should be submitted covering the entire project.

D. Any application form, report, or compliance certification submitted to the board shall comply with the provisions of 9 VAC 5-20-230.

9 VAC 5-80-1150. Application information required.

A. The board shall furnish application forms to applicants. Completion of these forms serves as initial registration of new and modified sources.

B. Each application for a permit shall include such information as may be required by the board to determine the effect of the proposed source on the ambient air quality and to determine compliance with the emission standards which are applicable. The information required shall include, but is not limited to, the following:

1. Company name and address (or plant name and address if different from the company name), owner's

name and agent, and telephone number and names of plant site manager or contact or both.

2. A description of the source's processes and products (by Standard Industrial Classification Code).

3. All emissions of regulated air pollutants.

a. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit to be covered by the permit.

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

c. Fugitive emissions shall be included in the permit application to the extent quantifiable.

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

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

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

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

8. Calculations on which the information in subdivisions 3 through 7 of this subsection is based. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations.

9. Any additional information or documentation that the board deems necessary to review and analyze the air pollution aspects of the stationary source or emissions unit, including the submission of measured air quality data at the proposed site prior to construction, reconstruction or modification. Such measurements shall be accomplished using procedures acceptable to the board.

C. The above information and analysis shall be determined and presented according to procedures and using methods acceptable to the board.

9 VAC 5-80-1160. Action on permit application.

A. Within 30 days after receipt of an application, the board shall notify the applicant of the status of the application. The notification of the initial determination with regard to the status of the application shall be provided by the board in writing and shall include (i) a determination as to which provisions of the new source review program are applicable, (ii) the identification of any deficiencies, and (iii) a determination as to whether the application contains sufficient information to begin application review. The determination that the application has sufficient information to begin review is not necessarily a determination that it is

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complete. Within 30 days after receipt of any additional information, the board shall notify the applicant of any deficiencies in such information. The date of receipt of a complete application for processing under subsection B of this section shall be the date on which the board received all required information and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met.

B. If no public comment period is required, processing time for a permit is normally 90 days following receipt of a complete application. If a public comment period is required, processing time for a permit is normally 180 days following receipt of a complete application. The board may extend this time period if additional information is required. Processing steps may include, but not be limited to:

1. Completion of the preliminary review and analysis in accordance with 9 VAC 5-80-1190 and the preliminary decision of the board. This step may constitute the final step if the provisions of 9 VAC 5-80-1170 concerning public participation are not applicable;
2. When required, completion of the public participation requirements in 9 VAC 5-80-1170; and
3. Completion of the final review and analysis and the final decision of the board.

C. The board will normally take action on all applications after completion of the review and analysis, or expiration of the public comment period (and consideration of comments from that) when required, unless more information is needed. The board shall notify the applicant in writing of its decision on the application, including its reasons, and shall also specify the applicable emission limitations. These emission limitations are applicable during any emission testing conducted in accordance with 9 VAC 5-80-1200.

D. The applicant may appeal the decision pursuant to 9 VAC 5-20-90.

E. Within five days after notification to the applicant pursuant to subsection C of this section, the notification and any comments received pursuant to the public comment period and public hearing shall be made available for public inspection at the same location as was the information in 9 VAC 5-80-1170 F 1.

9 VAC 5-80-1170. Public participation.

A. No later than 15 days after receiving the initial determination notification required under 9 VAC 5-80-1160 A, the applicant for a permit for a major stationary source or a major modification shall notify the public of the proposed source or modification as required in subsection B of this section.

B. The public notice required under this section shall be placed by the applicant in at least one newspaper of general circulation in the affected air quality control region. The notice shall be approved by the board and shall include, but not be limited to, the following:

1. The source name, location, and type;

2. The pollutants and the total quantity of each which the applicant estimates will be emitted, and a brief statement of the air quality impact of such pollutants;

3. The control technology proposed to be used at the time of the publication of the notice; and

4. The name and telephone number of a contact person, employed by the applicant, who can answer questions about the proposed source.

C. Upon a determination by the board that it will achieve the desired results in an equally effective manner, an applicant for a permit may implement an alternative plan for notifying the public as required in subsection B of this section.

D. Prior to the decision of the board, permit applications as specified below shall be subject to a public comment period of at least 30 days:

1. Applications for stationary sources of hazardous air pollutants as specified in 9 VAC 5-80-1120 A 2;

2. Applications for major stationary sources and modifications to major stationary sources that result in a significant net emissions increase of any single pollutant;

3. Applications for major modifications; and

4. Applications for stationary sources for which any provision of the permit is to be based upon a good engineering practice (GEP) stack height that exceeds the height allowed by paragraphs 1 and 2 of the GEP definition. The demonstration specified in paragraph 3 of the GEP definition must be available during the public comment period.

E. Prior to the decision of the board, permit applications as specified below shall be subject to a public comment period of at least 30 days. At the end of the public comment period, a public hearing shall be held in accordance with subsection F of this section.

1. Applications to establish a plantwide applicability limit.

2. Applications for stationary sources which have the potential for public interest concerning air quality issues, as determined by the board. The identification of such sources shall be made using the following criteria:

- a. Whether the project is opposed by any person;

- b. Whether the project has resulted in adverse media;

- c. Whether the project has generated adverse comment through any public participation or governmental review process initiated by any other governmental agency; and

- d. Whether the project has generated adverse comment by a local official, governing body or advisory board.

F. When a public comment period and public hearing are required, the board shall notify the public, by advertisement in

at least one newspaper of general circulation in the affected air quality control region, of the opportunity for the public comment and the public hearing on the information available for public inspection under the provisions of subdivision F 1 of this section. The notification shall be published at least 30 days prior to the day of the public hearing.

1. Information on the permit application (exclusive of confidential information under 9 VAC 5-20-150), as well as the preliminary review and analysis and preliminary decision of the board, shall be available for public inspection during the entire public comment period in at least one location in the affected air quality control region.

2. A copy of the notice shall be sent to all local air pollution control agencies having jurisdiction in the affected air quality control region, all states sharing the affected air quality control region, and to the regional administrator, U.S. Environmental Protection Agency.

3. Notices of public hearings published under this section shall meet the requirements of § 10.1-1307.01 of the Air Pollution Control Law of Virginia.

G. In order to facilitate the efficient issuance of permits under Articles 1 (9 VAC 5-80-50 et seq.) and 3 (9 VAC 5-80-360 et seq.) of Part II of this chapter, upon request of the applicant the board shall process the permit application under this article using public participation procedures meeting the requirements of this section and 9 VAC 5-80-270 or 9 VAC 5-80-670, as applicable.

9 VAC 5-80-1180. Standards and conditions for granting permits.

A. No permit shall be granted pursuant to this article unless it is shown to the satisfaction of the board that the source will be designed, built and equipped to operate without causing a violation of the applicable provisions of the regulations of the board and that the following standards have been met:

1. The source shall be designed, built and equipped to comply with standards of performance prescribed under 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.) and with emission standards prescribed under 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.);

2. The source shall be designed, built and equipped to operate without preventing or interfering with the attainment or maintenance of any applicable ambient air quality standard and without causing or exacerbating a violation of any applicable ambient air quality standard; and

3. The source shall be designed, built and equipped to operate without causing a violation of the applicable provisions of regulations of the board.

B. Permits may be granted to stationary sources or emissions units that contain plantwide applicability limits and emission caps provided the limits or caps are made

enforceable as a practical matter using the elements set forth in subsection D of this section.

C. Permits granted pursuant to this article may contain emissions standards as necessary to implement the provisions of this article and 9 VAC 5-50-260. The following criteria shall be met in establishing emission standards to the extent necessary to ensure that emissions levels are enforceable as a practical matter:

1. Standards may include the level, quantity, rate, or concentration or any combination of them for each affected pollutant.

2. In no case shall a standard result in emissions which would exceed the emissions rate based on the potential to emit of the emissions unit.

3. Standards shall only include limitations that are determined by the board to be achievable through application of production processes or available methods, systems, and techniques, including, but not limited to, any of the following: emissions control equipment, fuel cleaning or treatment, fuel combustion techniques, or substitution of less toxic or nontoxic materials.

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

D. Permits issued under this article shall contain, but not be limited to, any of the following elements as necessary to ensure that the permits are enforceable as a practical matter:

1. Emission standards.

2. Conditions necessary to enforce emission standards. Conditions may include, but not be limited to, any of the following:

a. Limit on fuel sulfur content.

b. Limit on production rates with time frames as appropriate to support the emission standards.

c. Limit on raw material usage rate.

d. Limits on the minimum required capture, removal and overall control efficiency for any air pollution control equipment.

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

4. Specifications for air pollution control equipment installed or to be installed and the circumstances under which such equipment shall be operated.

5. Specifications for air pollution control equipment operating parameters, where necessary to ensure that the required overall control efficiency is achieved. The

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operating parameters may include, but not be limited to, any of the following:

- a. Pressure indicators and required pressure drop.
- b. Temperature indicators and required temperature.
- c. pH indicators and required pH.
- d. Flow indicators and required flow.

6. Requirements for proper operation and maintenance of any pollution control equipment and appropriate spare parts inventory.

7. Stack test requirements.

8. Reporting or recordkeeping requirements, or both.

9. Continuous emission or air quality monitoring requirements, or both.

10. Other requirements as may be necessary to ensure compliance with the applicable regulations.

9 VAC 5-80-1190. Application review and analysis.

No permit shall be granted pursuant to this article unless compliance with the standards in 9 VAC 5-80-1180 is demonstrated to the satisfaction of the board by a review and analysis of the application performed on a source-by-source basis as specified below:

A. Applications for stationary sources shall be subject to the following review and analysis:

1. A control technology review to determine if such source will be designed, built and equipped to comply with all applicable standards of performance prescribed under 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.).

2. An air quality analysis to determine the impact of pollutant emissions as may be deemed appropriate by the board.

B. Applications for stationary sources of hazardous air pollutants shall be subject to a control technology review to determine if such source will be designed, built and equipped to comply with all applicable emission standards prescribed under 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.).

C. Applications under 9 VAC 5-80-1120 C shall be subject to an air quality analysis to determine the impact of applicable criteria pollutant emissions.

9 VAC 5-80-1200. Compliance determination and verification by performance testing.

A. For stationary sources other than those specified in subsection B of this section, compliance with standards of performance shall be determined in accordance with the provisions of 9 VAC 5-50-20 and shall be verified by performance tests in accordance with the provisions of 9 VAC 5-50-30.

B. For stationary sources of hazardous air pollutants, compliance with emission standards shall be determined in

accordance with the provisions of 9 VAC 5-60-20 and shall be verified by emission tests in accordance with the provisions of 9 VAC 5-60-30.

C. Testing required by subsections A and B of this section shall be conducted by the owner within 60 days after achieving the maximum production rate at which the new or modified source will be operated, but not later than 180 days after initial startup of the source; and 60 days thereafter the board shall be provided by the owner with two or, upon request, more copies of a written report of the results of the tests.

D. For sources subject to the provisions of Article 5 (9 VAC 5-50-400 et seq.) of Part I of 9 VAC 5 Chapter 50 or Article 1 (9 VAC 5-60-60 et seq.) of Part II of 9 VAC 5 Chapter 60, the requirements of subsections A through C of this section shall be met in all cases.

E. For sources other than those specified in subsection D of this section, the requirements of subsections A through C of this section shall be met unless the board:

1. Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;
2. Approves the use of an equivalent method;
3. Approves the use of an alternative method, the results of which the board has determined to be adequate for indicating whether a specific source is in compliance;
4. Waives the requirement for testing because, based upon a technical evaluation of the past performance of similar source types, using similar control methods, the board reasonably expects the new or modified source to perform in compliance with applicable standards; or
5. Waives the requirement for testing because the owner of the source has demonstrated by other means to the board's satisfaction that the source is in compliance with the applicable standard.

F. The provisions for the granting of waivers under subsection E of this section are intended for use in determining the initial compliance status of a source, and the granting of a waiver does not obligate the board to do so for determining compliance once the source has been in operation for more than one year beyond the initial startup date.

9 VAC 5-80-1210. Permit invalidation, rescission, revocation and enforcement.

A. A permit granted pursuant to this article shall become invalid if a program of continuous construction, reconstruction or modification is not commenced within the latest of the following time frames:

1. Eighteen months from the date the permit is granted;
2. Nine months from the date of the issuance of the last permit or other authorization (other than permits granted pursuant to this article) from any governmental entity; or

3. Nine months from the date of the last resolution of any litigation concerning any such permits or authorizations (including permits granted pursuant to this article).

B. A permit granted pursuant to this article shall become invalid if a program of construction, reconstruction or modification is discontinued for a period of 18 months or more, or if a program of construction, reconstruction or modification is not completed within a reasonable time. This provision does not apply to the period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

C. The board may extend the periods prescribed in subsections A and B of this section upon a satisfactory demonstration that an extension is justified. Provided there is no substantive change to the application information, the review and analysis, and the decision of the board, such extensions may be granted without being subject to the requirements of 9 VAC 5-80-1170.

D. Any owner who constructs or operates a new or modified source not in accordance with the terms and conditions of any permit to construct or operate, or, except as provided in 9 VAC 5-80-1130, any owner of a new or modified source subject to this article who commences construction or operation without receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this section.

E. Permits issued under this article shall be subject to such terms and conditions set forth in the permit as the board may deem necessary to ensure compliance with all applicable requirements of the regulations.

F. The board may revoke any permit if the permittee:

1. Knowingly makes material misstatements in the permit application or any amendments to it;
2. Fails to comply with the terms or conditions of the permit;
3. Fails to comply with any emission standards applicable to an emissions unit included in the permit;
4. Causes emissions from the stationary source which result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standard; or fails to operate in conformance with any applicable control strategy, including any emission standards or emission limitations, in the State Implementation Plan in effect at the time that an application is submitted; or
5. Fails to comply with the applicable provisions of this article.

G. The board may suspend, under such conditions and for such period of time as the board may prescribe, any permit for any of the grounds for revocation contained in subsection F of this section or for any other violations of the regulations of the board.

H. The permittee shall comply with all terms and conditions of the permit. A permit noncompliance constitutes a violation of the Virginia Air Pollution Control Law and may be grounds for (i) enforcement action or (ii) termination or revocation.

I. Violation of the regulations of the board shall be grounds for revocation of permits issued under this article and are subject to the civil charges, penalties and all other relief contained in Part I (9 VAC 5-20-10 et seq.) of 9 VAC 5 Chapter 20 and the Virginia Air Pollution Control Law.

J. The board shall notify the applicant in writing of its decision, with its reasons, to change, suspend or revoke a permit, or to render a permit invalid.

K. Nothing in the regulations of the board shall be construed to prevent the board and the owner from making a mutual determination that a permit is invalid or revoked prior to any final decision rendered under subsection J of this section.

L. Nothing in the regulations of the board shall be construed to prevent the board and the owner from making a mutual determination that a permit is rescinded because all of the statutory or regulatory requirements (i) upon which the permit is based or (ii) that necessitated issuance of the permit are no longer applicable.

9 VAC 5-80-1220. Existence of permit no defense.

The existence of a permit under this article shall not constitute defense to a violation of the Virginia Air Pollution Control Law or the regulations of the board and shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction.

9 VAC 5-80-1230. Compliance with local zoning requirements.

No provision of this part or any permit issued thereunder shall relieve any owner from the responsibility to comply in all respects with any existing zoning ordinances and regulations in the locality in which the source is located or proposes to be located; provided, however, that such compliance does not relieve the board of its duty under 9 VAC 5-20-140 and § 10.1-1307 E of the Virginia Air Pollution Control Law to independently consider relevant facts and circumstances.

9 VAC 5-80-1240. Transfer of permits.

A. No persons shall transfer a permit from one location to another, or from one piece of equipment to another.

B. In the case of a transfer of ownership of a stationary source, the new owner shall abide by any current permit issued to the previous owner. The new owner shall notify the board of the change in ownership within 30 days of the transfer.

C. In the case of a name change of a stationary source, the owner shall abide by any current permit issued under the previous source name. The owner shall notify the board of

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the change in source name within 30 days of the name change.

D. The provisions of this section concerning the transfer of a permit from one location to another shall not apply to the relocation of portable emissions units that are exempt from the provisions of this article by subdivision A 1 c of 9 VAC 5-80-1320.

9 VAC 5-80-1250. General permits.

A. The requirements for issuance of a general permit are as follows:

1. The board may issue a general permit covering a stationary source or emissions unit category containing numerous similar stationary sources or emissions units that meet the following criteria:

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

b. Stationary sources or emissions units shall not be subject to case-by-case standards or requirements.

c. Stationary sources or emissions units shall be subject to the same or substantially similar requirements governing operation, emissions, monitoring, reporting, or recordkeeping.

2. Stationary sources or emissions units subject to a general permit shall comply with all requirements applicable to other permits issued under this article.

3. General permits shall (i) identify the criteria by which stationary sources or emissions units may qualify for the general permit and (ii) describe the process for stationary sources or emissions units to use in applying for the general permit.

4. General permits shall be issued in accordance with § 9-6.14:4.1 C 11 of the Administrative Process Act.

5. In addition to fulfilling the requirements specified by law, the notice of public comment shall include, but not be limited to, the following:

a. The name, address and telephone number of a department contact from whom interested persons may obtain additional information including copies of the draft general permit;

b. The criteria to be used in determining which stationary sources or emissions units qualify for the general permit;

c. A brief description of the stationary source or emissions unit category that the department believes qualifies for the general permit including, but not limited to, an estimate of the number of individual stationary sources or emissions units in the category;

d. A narrative statement of the estimated air quality impact contributed by the stationary source or

emissions unit category covered by the general permit including information regarding specific pollutants and the total quantity of each emitted pollutant and the type and quantity of fuels used, if applicable;

e. A brief description of the application process to be used by stationary sources or emissions units to request coverage under the general permit; and

f. A brief description of the public comment procedures.

B. The requirements for application for a general permit are as follows:

1. Stationary sources or emissions units which qualify for a general permit may apply to the board for coverage under the terms of the general permit. Stationary sources or emissions units that do not qualify for a general permit shall apply for coverage under a permit issued under the other provisions of this article.

2. The application shall meet the requirements of this article and include all information necessary to determine qualification for and to assure compliance with the general permit.

3. Stationary sources or emissions units that become subject to the general permit after it is issued to other stationary sources or emissions units in the category addressed by the general permit shall file an application with the board using the application process described in the general permit. The board shall issue the general permit to the stationary source or emissions unit if it determines that the stationary source or emissions unit meets the criteria set out in the general permit.

C. The requirements for issuance of a general permit are as follows:

1. The board shall grant the conditions and terms of the general permit to stationary sources or emissions units that meet the criteria set out in the general permit covering the specific stationary source or emissions unit category.

2. The issuance of a permit to a stationary source or emissions unit covered by a general permit shall not require compliance with the public participation procedures under 9 VAC 5-80-1170.

3. A response to each general permit application may not be provided. The general permit may specify a reasonable time period after which a stationary source or emissions unit that has submitted an application shall be deemed to be authorized to operate under the general permit.

4. Stationary sources or emissions units covered under a general permit may be issued a letter, a certificate, or a summary of the general permit provisions, limits, and requirements, or any other document which would attest that the stationary source or emissions unit is covered by the general permit.

5. The general permit shall specify where the general permit and the letter, certificate, summary or other document shall be maintained by the source.

D. The requirements pertaining to enforcement of a general permit are as follows:

1. The stationary source or emissions unit shall be subject to enforcement action under 9 VAC 5-80-1210 for operation without a permit issued under this article if the stationary source or emissions unit is later determined by the board not to qualify for the conditions and terms of the general permit.

2. The act of granting or denying a request for authorization to operate under a general permit shall not be subject to judicial review.

9 VAC 5-80-1260. Changes to permits.

A. The general requirements for making changes to permits are as follows:

1. Changes to a permit issued under this article shall be made as specified under subsections B and C of this section and 9 VAC 5-80-1270 through 9 VAC 5-80-1300.

2. Changes to a permit issued under this article may be initiated by the permittee as specified in subsection B of this section or by the board as specified in subsection C of this section.

3. Changes to a permit issued under this article and incorporated into a permit issued under Article 1 (9 VAC 5-80-50 et seq.) of Part II of this chapter shall be made as specified in Article 1 (9 VAC 5-80-50 et seq.) of Part II of this chapter.

4. This section shall not be applicable to general permits.

B. The requirements for changes initiated by the permittee are as follows:

1. The permittee may initiate a change to a permit by submitting a written request to the board for an administrative permit amendment, a minor permit amendment or a significant permit amendment. The requirements for these permit revisions can be found in 9 VAC 5-80-1270 through 9 VAC 5-80-1290.

2. A request for a change by a permittee shall include a statement of the reason for the proposed change.

C. The board may initiate a change to a permit through the use of permit reopenings as specified in 9 VAC 5-80-1300.

9 VAC 5-80-1270. Administrative permit amendments.

A. Administrative permit amendments shall be required for and limited to the following:

1. Correction of typographical or any other error, defect or irregularity which does not substantially affect the permit.

2. Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source.

3. Change in ownership or operational control of a source where the board determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the board and the requirements of 9 VAC 5-80-1240 have been fulfilled.

4. The combining of permits under the new source review program as provided in 9 VAC 5-80-1120 D.

B. The administrative permit amendment procedures are as follows:

1. The board will normally take final action on a request for an administrative permit amendment no more than 60 days from receipt of the request.

2. The board shall incorporate the changes without providing notice to the public under 9 VAC 5-80-1170. However, any such permit revisions shall be designated in the permit amendment as having been made pursuant to this section.

3. The owner may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

9 VAC 5-80-1280. Minor permit amendments.

A. Minor permit amendment procedures shall be used only for those permit amendments that:

1. Do not violate any applicable requirement;

2. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements;

3. Do not require or change a case-by-case determination of an emission limitation or other standard;

4. Do not seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include:

a. An emissions cap assumed to avoid classification as a modification under the new source review program or § 112 of the federal Clean Air Act; and

b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act;

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5. Are not modifications under the new source review program or under § 112 of the federal Clean Air Act; and

6. Are not required to be processed as a significant amendment under 9 VAC 5-80-1290; or as an administrative permit amendment under 9 VAC 5-80-1270.

B. Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments involving the use of economic incentives, emissions trading, and other similar approaches, to the extent that such minor permit amendment procedures are explicitly provided for in a regulation of the board or a federally-approved program. Minor permit amendment procedures may also be used to require more frequent monitoring or reporting by the permittee or to reduce the level of an emissions cap.

C. Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments involving the rescission of a provision of a permit if the board and the owner make a mutual determination that the provision is rescinded because all of the statutory or regulatory requirements (i) upon which the provision is based or (ii) that necessitated inclusion of the provision are no longer applicable.

D. A request for the use of minor permit amendment procedures shall include all of the following:

1. A description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs.

2. A request that such procedures be used.

E. The public participation requirements of 9 VAC 5-80-1170 shall not extend to minor permit amendments.

F. Normally within 90 days of receipt by the board of a complete request under minor permit amendment procedures, the board will do one of the following:

1. Issue the permit amendment as proposed.

2. Deny the permit amendment request.

3. Determine that the requested amendment does not meet the minor permit amendment criteria and should be reviewed under the significant amendment procedures.

G. The requirements for making changes are as follow:

1. The owner may make the change proposed in the minor permit amendment request immediately after the request is filed.

2. After the change under subdivision 1 of this subsection is made, and until the board takes any of the actions specified in subsection F of this section, the source shall comply with both the applicable regulatory requirements governing the change and the proposed permit terms and conditions.

3. During the time period specified in subdivision 2 of this subsection, the owner need not comply with the existing permit terms and conditions he seeks to modify. However, if the owner fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions he seeks to modify may be enforced against him.

9 VAC 5-80-1290. Significant amendment procedures.

A. The criteria for use of significant amendment procedures are as follows:

1. Significant amendment procedures shall be used for requesting permit amendments that do not qualify as minor permit amendments under 9 VAC 5-80-1280 or as administrative amendments under 9 VAC 5-80-1270.

2. Significant amendment procedures shall be used for those permit amendments that:

a. Involve significant changes to existing monitoring, reporting, or recordkeeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.

b. Require or change a case-by-case determination of an emission limitation or other standard.

c. Seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include:

(1) An emissions cap assumed to avoid classification as a modification under the new source review program or § 112 of the federal Clean Air Act.

(2) An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act.

B. A request for a significant permit amendment shall include a description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs. The applicant may, at his discretion, include a suggested draft permit amendment.

C. The provisions of 9 VAC 5-80-1170 shall apply to requests made under this section.

D. The board will normally take final action on significant permit amendments within 90 days after receipt of a complete request.

E. The owner shall not make the change applied for in the significant amendment request until the amendment is approved by the board under subsection D of this section.

9 VAC 5-80-1300. Reopening for cause.

A. A permit may be reopened and amended under any of the following situations:

1. Additional regulatory requirements become applicable to the emissions units covered by the permit after a permit is issued but prior to commencement of construction.
2. The board determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.
3. The board determines that the permit must be amended to assure compliance with the applicable regulatory requirements or that the conditions of the permit are not sufficient to meet all of the standards and requirements contained in this article.
4. A new emission standard prescribed under Article 1 (9 VAC 5-60-60 et seq.) of Part II of 9 VAC 5 Chapter 60 becomes applicable after a permit is issued but prior to initial startup.

B. Proceedings to reopen and reissue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

C. Reopenings shall not be initiated before a notice of such intent is provided to the source by the board at least 30 days in advance of the date that the permit is to be reopened, except that the board may provide a shorter time period in the case of an emergency.

9 VAC 5-80-1310. Plantwide applicability limit.

A. The owner of a stationary source may request the board to approve a plantwide applicability limit for any one or more pollutants, and the board may approve a plantwide applicability limit for a stationary source or portion thereof, in accordance with subsections B through E of this section.

B. A plantwide applicability limit for a stationary source may be established only after opportunity for public comment in accordance with subsection G of this section.

C. A plantwide applicability limit may not be established for hazardous air pollutants.

D. A plantwide applicability limit shall only be valid for the specific portion of the stationary source identified in the permit as being subject to the plantwide applicability limit.

E. The emissions limitations and conditions for a plantwide applicability limit shall be as follows:

1. A plantwide applicability limit shall be established based on either:

a. Plantwide actual emissions (not to exceed current allowable emissions), including a reasonable operating margin, less than the applicable significant emissions rate; or

b. Sourcewide limits on annual emissions established in a permit issued within the immediately preceding five years pursuant to 9 VAC 5-80-30, where the sourcewide emissions limits were completely offset and relied upon in an attainment demonstration plan or maintenance plan approved by the Commonwealth.

2. Any plantwide applicability limit emissions limitations shall be achievable through application of production processes or available methods, systems, and techniques including, but not limited to, emissions control equipment, fuel cleaning or treatment, fuel combustion techniques, substitution of less polluting materials, or limits on production that represent normal source operations.

3. Specific terms and conditions that ensure that plantwide applicability limit emissions limitations are enforceable as a practical matter shall be contained in a federally or state enforceable permit applicable to the source.

4. The emissions limitations and conditions established for a plantwide applicability limit shall not relieve any owner of the responsibility to comply fully with any applicable control technology requirements.

F. The requirements for plantwide applicability limit modifications shall be as follows:

1. Notwithstanding the definitions for modification and net emissions increase, any physical or operational change consistent with plantwide applicability limit terms and conditions of a permit issued under this section shall not constitute a modification for the pollutants covered by the plantwide applicability limits. All decreases in emissions shall have approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change;

2. Requirements equivalent to those contained in 9 VAC 5-80-1140 through 9 VAC 5-80-1200 shall apply to any plantwide applicability limit modification as if it were a modification, except that in lieu of 9 VAC 5-50-260, a plantwide applicability limit modification shall apply best available control technology for each regulated air pollutant if an emissions increase above the plantwide applicability limit would occur; and

3. The best available control technology requirement applies to each emissions unit that undergoes a physical or operational change and contributes to the emissions increase above the plantwide applicability limit.

G. The requirements for plantwide applicability limit reevaluations shall be as follows:

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1. The board shall reevaluate the plantwide applicability limit emissions limitations pursuant to:

a. Permit renewal and public notification procedures under Articles 1 (9 VAC 5-80-50 et seq.) and 3 (9 VAC 5-80-360 et seq.) of Part II of this chapter; or

b. Any other proceeding with public notice and opportunity for public comment equivalent to that in 9 VAC 5-80-1170 E.

2. The board shall evaluate and may adjust the source's plantwide applicability limit emissions limitations to reflect new applicable requirements as they become effective.

H. The requirements for termination of plantwide applicability limits shall be as follows:

1. Nothing in the regulations of the board shall be construed to prevent the board and the owner from making a mutual determination that a plantwide applicability limit is rescinded.

2. In cases where a plantwide applicability limit is rescinded under the provisions of subdivision 1 of this subsection or 9 VAC 5-80-1210, the affected emissions units shall be subject to the requirements of this article as though the plantwide applicability limit had never been in effect.

9 VAC 5-80-1320. Permit exemption levels.

A. The general requirements for permit exemption levels are as follows:

1. The provisions of this article do not apply to the following stationary sources or emissions units:

a. The construction, reconstruction, relocation or modification of any stationary source or emissions unit that is exempt under the provisions of subsections B through E of this section.

b. The reconstruction of any stationary source or emissions unit if the emissions resulting from the reconstruction will not increase.

c. The relocation of a portable emissions unit provided that:

(1) The emissions from the portable emissions unit are secondary emissions;

(2) The portable emissions unit has previously been permitted or is subject to a general permit;

(3) The unit would not undergo modification or reconstruction;

(4) The unit is suitable to the area in which it is to be located; and

(5) Reasonable notice is given to the board prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the board not

less than 15 days in advance of the proposed relocation unless a different time duration is previously approved by the board.

d. The reactivation of a stationary source unless a determination concerning shutdown has been made pursuant to the provisions of 9 VAC 5-20-220.

e. The use by any source of an alternative fuel or raw material, if the owner demonstrates to the board that as a result of trial burns at their facility or other facilities or other sufficient data that the emissions resulting from the use of the alternative fuel or raw material supply are decreased.

2. In determining whether a source is exempt from the provisions of this article, the provisions of subsections B through D of this section are independent from the provisions of subsection E of this section. A source must be determined to be exempt both under the provisions of subsections B through D taken as a group and under the provisions of subsection E to be exempt from this article.

3. In determining whether a source is exempt from the provisions of this article under the provisions of subsection B of this section, the definitions in 9 VAC 5 Chapter 40 (9 VAC 5-40-10 et seq.) that would cover the source if it were an existing source shall be used unless deemed inappropriate by the board.

B. New emissions units as specified below shall be exempt from the provisions of this article as they pertain to construction or relocation.

1. Fuel burning equipment units (external combustion units, not engines and turbines):

a. Using solid fuel with a maximum heat input of less than 1,000,000 Btu per hour;

b. Using liquid fuel with a maximum heat input of less than 10,000,000 Btu per hour;

c. Using liquid and gaseous fuel with a maximum heat input of less than 10,000,000 Btu per hour;

d. Using gaseous fuel with a maximum heat input of less than 50,000,000 Btu per hour; or

2. Engines and turbines used for emergency purposes only and which do not exceed 500 hours of operation per year at a single stationary source as follows:

a. Gasoline engines with an aggregate rated brake (output) horsepower of less than 910 hp and diesel engines powering electrical generators having an aggregate rated electrical power output of less than 611 kilowatts.

b. Diesel engines with an aggregate rated brake (output) horsepower of less than 1,675 hp and diesel engines powering electrical generators having an aggregate rated electrical power output of less than 1125 kilowatts.

- c. Combustion gas turbines with an aggregate of less than 10,000,000 Btu per hour heat input (low heating value).
3. Engines that power mobile sources during periods of maintenance, repair or testing.
4. Solvent metal cleaning operations with a potential to emit of not more than seven tons per year, 40 pounds per day and eight pounds per hour.
5. Volatile organic compound storage and transfer operations involving petroleum liquids and other volatile organic compounds with a vapor pressure less than 1.5 pounds per square inch absolute under actual storage conditions or, in the case of loading or processing, under actual loading or processing conditions; and operations specified below:
- a. Volatile organic compound transfer operations:
- (1) Involving a tank of 2,000 gallons or less storage capacity; or
- (2) Outside the volatile organic compound emissions control areas designated in 9 VAC 5-20-206.
- b. Volatile organic compound storage operations involving a tank of 40,000 gallons or less storage capacity.
6. Large appliance coating application systems within a stationary source if the potential to emit of the source is not more than seven tons per year, 40 pounds per day and eight pounds per hour.
7. Magnet wire coating application systems within a stationary source if the potential to emit of the source is not more than seven tons per year, 40 pounds per day and eight pounds per hour.
8. Automobile and light duty truck coating application systems within a stationary source if the potential to emit of the source is not more than seven tons per year, 40 pounds per day and eight pounds per hour.
9. Can coating application systems within a stationary source if the potential to emit of the source is not more than seven tons per year, 40 pounds per day and eight pounds per hour.
10. Metal coil coating application systems within a stationary source if the potential to emit of the source is not more than seven tons per year, 40 pounds per day and eight pounds per hour.
11. Paper and fabric coating application systems within a stationary source if the potential to emit of the source is not more than seven tons per year, 40 pounds per day and eight pounds per hour.
12. Vinyl coating application systems within a stationary source if the potential to emit of the source is not more than seven tons per year, 40 pounds per day and eight pounds per hour.
13. Metal furniture coating application systems within a stationary source if the potential to emit of the source is not more than seven tons per year, 40 pounds per day and eight pounds per hour.
14. Miscellaneous metal parts and products coating application systems within a stationary source if the potential to emit of the source is not more than seven tons per year, 40 pounds per day and eight pounds per hour.
15. Vehicle customizing coating operations, if production is less than 20 vehicles per day.
16. Vehicle refinishing operations.
17. Coating operations for the exterior of fully assembled aircraft or marine vessels.
18. Flatwood paneling coating application systems within in a stationary source if the potential to emit of the source is not more than seven tons per year, 40 pounds per day and eight pounds per hour.
19. Graphic arts printing processes within a stationary source if the potential to emit of the source is not more than seven tons per year, 40 pounds per day and eight pounds per hour.
20. Petroleum liquid storage and transfer operations involving petroleum liquids with a vapor pressure less than 1.5 pounds per square inch absolute under actual storage conditions or, in the case of loading or processing, under actual loading or processing conditions (kerosene and fuel oil used for household heating have vapor pressures of less than 1.5 pounds per square inch absolute under actual storage conditions; therefore, kerosene and fuel oil are not subject to the provisions of this article when used or stored at ambient temperatures); and operations specified below:
- a. Gasoline bulk loading operations at bulk terminals located outside volatile organic compound emissions control areas designated in 9 VAC 5-20-206.
- b. Gasoline dispensing facilities.
- c. Gasoline bulk loading operations at bulk plants:
- (1) With an expected daily throughput of less than 4,000 gallons; or
- (2) Located outside volatile organic compound emissions control areas designated in 9 VAC 5-20-206.
- d. Account/tank trucks; however, permits issued for gasoline storage/transfer facilities should include a provision that all associated account/tank trucks meet the same requirements as those trucks serving existing facilities.
- e. Petroleum liquid storage operations involving:
- (1) A tank of 40,000 gallons or less storage capacity;

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(2) A tank of less than 420,000 gallons storage capacity for crude oil or condensate stored, processed or treated at a drilling and production facility prior to custody transfer; or

(3) A tank storing waxy, heavy pour crude oil.

21. Dry cleaning plants with a total manufacturers' rated solvent dryer capacity less than 84 pounds as determined by the applicable new source performance standard in 9 VAC 5-50-410.

22. Any addition of, relocation of or change to a woodworking machine within a wood product manufacturing plant provided the system air movement capacity, expressed as the cubic feet per minute of air, and maximum control efficiency of the control system are not decreased.

23. Wood sawmills.

24. Exhaust flares at natural gas and coalbed methane extraction wells.

C. New sources not exempted by subsection B of this section with a potential to emit at rates less than all of the emission rates specified below shall be exempt from the provisions of this article pertaining to construction or relocation.

Pollutant	Emissions Rate
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter	25 tpy
PM ₁₀	15 tpy
Ozone	25 tpy of volatile organic compounds
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H ₂ S)	10 tpy
Total reduced sulfur (including H ₂ S)	10 tpy
Reduced sulfur compounds (including H ₂ S)	10 tpy
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5 x 10 ⁻⁶ tpy
Municipal waste combustor metals (measured as particulate matter)	15 tpy
Municipal waste combustor acid gases (measured as the sum of SO ₂ and HCl)	40 tpy
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	50 tpy

D. Stationary sources with net emissions increases less than all of the emission rates specified below shall be exempt from the provisions of this article pertaining to modification or reconstruction.

Pollutant	Emissions Rate
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	10 tpy
Sulfur dioxide	10 tpy
Particulate matter	15 tpy
PM ₁₀	10 tpy
Ozone	10 tpy of volatile organic compounds
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H ₂ S)	10 tpy
Total reduced sulfur (including H ₂ S)	10 tpy
Reduced sulfur compounds (including H ₂ S)	10 tpy
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5 x 10 ⁻⁶ tpy
Municipal waste combustor metals (measured as particulate matter)	15 tpy
Municipal waste combustor acid gases (measured as the sum of SO ₂ and HCl)	40 tpy
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	50 tpy

E. Exemption levels for toxic pollutants shall be as follows:

1. Stationary sources with a net emissions increase of a toxic pollutant equal to or less than the exempt emission rate calculated using the exemption formulas for the applicable TLV® in subdivision 4 of this subsection shall be exempt from the provisions of this article pertaining to modification, provided the net emissions increase of the pollutant does not exceed 22.8 pounds per hour or 100 tons per year.

2. Stationary sources with a potential to emit of a toxic pollutant equal to or less than the exempt emission rate calculated using the exemption formulas for the applicable TLV® in subdivision 4 of this subsection shall be exempt from the provisions of this article pertaining to construction, reconstruction or relocation, provided the potential to emit of the pollutant does not exceed 22.8 pounds per hour or 100 tons per year.

3. If more than one exemption formula applies to a toxic pollutant emitted by a stationary source, the emission rate of that pollutant shall be equal to or less than both

applicable exemption formulas in order for the source to be exempt for that pollutant. The exemption formulas apply on an individual basis to each toxic pollutant for which a TLV® has been established.

4. The formulas for making toxic pollutant exemption determinations shall be as follows:

a. For toxic pollutants with a TLV-C®, the following exemption formula applies:

$$\text{Exempt emission rate (pounds per hour)} = \text{TLV-C (mg/m}^3\text{)} \times 0.033$$

b. For toxic pollutants with both a TLV-STEL® and a TLV-TWA®, the following exemption formulas apply:

$$\text{Exempt emission rate (pounds per hour)} = \text{TLV-STEL}^{\circledR} \text{ (mg/m}^3\text{)} \times 0.033$$

$$\text{Exempt emission rate (tons per year)} = \text{TLV-TWA}^{\circledR} \text{ (mg/m}^3\text{)} \times 0.145$$

c. For toxic pollutants with only a TLV-TWA®, the following exemption formulas apply:

$$\text{Exempt emission rate (pounds per hour)} = \text{TLV-TWA}^{\circledR} \text{ (mg/m}^3\text{)} \times 0.066$$

$$\text{Exempt emission rate (tons per year)} = \text{TLV-TWA}^{\circledR} \text{ (mg/m}^3\text{)} \times 0.145$$

5. Exemption from the provisions of this article for any stationary source of any toxic pollutant without a TLV® shall be determined by the board using available health effects information.

6. The exemption determination shall be made by the board using information submitted by the owner at the request of the board as set out in 9 VAC 5-50-200.

9 VAC 5-80-1330. Review and evaluation of article.

A. Prior to (three years after effective date of regulation), the department shall perform an analysis on this article and provide the board with a report on the results. The analysis shall include (i) the purpose and need for the article, (ii) alternatives which would achieve the stated purpose of this article in a less burdensome and less intrusive manner, (iii) an assessment of the effectiveness of this article, (iv) the results of a review of current state and federal statutory and regulatory requirements, including identification and justification of requirements of this article which are more stringent than federal requirements, and (v) the results of a review as to whether this article is clearly written and easily understandable by affected entities.

B. Upon review of the department's analysis, the board shall confirm the need to (i) continue this article without amendment, (ii) repeal this article or (iii) amend this article. If the board's decision is to repeal or amend this article, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.

VA.R. Doc. No. R96-151; Filed November 17, 1997, 3:37 p.m.

FINAL REGULATIONS

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 regulation.

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Title of Regulation: 9 VAC 20-70-10 et seq. Financial Assurance Regulations for Solid Waste Facilities (amending 9 VAC 20-70-10, 9 VAC 20-70-30, 9 VAC 20-70-50, 9 VAC 20-70-60, 9 VAC 20-70-70, 9 VAC 20-70-90; adding 9 VAC 20-70-41, 9 VAC 20-70-75, 9 VAC 20-70-81, 9 VAC 20-70-111, 9 VAC 20-70-112, 9 VAC 20-70-113, 9 VAC 20-70-140, 9 VAC 20-70-150, 9 VAC 20-70-160, 9 VAC 20-70-170, 9 VAC 20-70-180, 9 VAC 20-70-190, 9 VAC 20-70-200, 9 VAC 20-70-210, 9 VAC 20-70-220, 9 VAC 20-70-230, 9 VAC 20-70-240, 9 VAC 20-70-250, 9 VAC 20-70-260, 9 VAC 20-70-270 and 9 VAC 20-70-280; repealing 9 VAC 20-70-20, 9 VAC 20-70-40, 9 VAC 20-70-80, 9 VAC 20-70-100, 9 VAC 20-70-110, 9 VAC 20-70-120, 9 VAC 20-70-130).

Statutory Authority: §§ 10.1-1402 and 10.1-1410 of the Code of Virginia.

Effective Date: January 7, 1998.

Summary:

An owner or operator of a solid waste, regulated medical waste or vegetative waste management and yard waste composting treatment and disposal facility is required to obtain one, or a combination, of the financial responsibility mechanisms described in Part III of these regulations in order to assure that the costs associated with protecting the public health and safety from the consequences of an abandonment or a failure to properly execute closure, post-closure care or corrective action are recovered.

The amendments to these regulations incorporate all the requirements of the federal Solid Waste Disposal Facility Criteria (40 CFR Part 258) promulgated on October 9, 1991. Accordingly, it contains several major changes and numerous editorial changes designed to remove definitional inconsistencies with other regulations governing the management of solid wastes. The amendments also update the wording of the financial responsibility documents. The major changes are shown below.

Based on the 1993 amendment to the Virginia Waste Management Act, the regulatory amendments remove the exemption from the financial assurance regulations for facilities owned and operated by the local governing bodies and regional authorities. The amendments also establish a local government financial test and guarantee that would lessen the impact of statutorily required

assurance. As a result of comments received during the public participation period, the proposed regulations have been changed so that the facilities owned and operated by local governments that have closed prior to the effective date of the federal requirements would be exempt from the requirements of these regulations.

The amendments state explicitly that costs associated with corrective action for releases are to be included in the financial responsibility documents at the time when such costs become known. It also states explicitly that storage facilities are not required to obtain financial assurance.

The amendments remove the requirements to obtain and maintain third-party liability insurance currently required of all facilities and streamlines the financial test for privately owned and operated facilities.

Summary of Public Comments and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from Wladimir Gulevich, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4218.

CHAPTER 70. FINANCIAL ASSURANCE REGULATIONS FOR SOLID WASTE FACILITIES.

PART I. DEFINITIONS.

9 VAC 20-70-10. Definitions.

The following words and terms [] when used in this chapter [] shall have the following meaning, unless the content clearly indicates otherwise:

"Abandoned facility" means any inactive solid waste management facility ~~which no longer receives solid waste on a regular basis and which that~~ has not been properly closed in accordance with plans approved by the department met closure and post-closure care requirements.

"Ash" means waste material produced from an incineration process or any combustion. ~~Ash types include fly ash, bottom ash, and incinerator residue.~~

"Bottom ash" means ~~ash or slag remaining in the combustion unit after combustion.~~

"Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

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"Authority" means an authority created under the provisions of [~~§ 15.1-4241 of~~] the Virginia Water and [Sewer Waste] Authorities Act [, Chapter 51 (§ 15.2-5100 et seq.) of Title 15.2 of the Code of Virginia,] or, if any such authority shall be abolished, the board, body, or commission succeeding to the principal functions thereof or to whom the powers given by the Virginia Water and [Sewer Waste] Authorities Act to such authority shall be given by law.

"Board" means the Virginia Waste Management Board.

"Cash plus marketable securities" means all the cash plus marketable securities held on the last day of a fiscal year, excluding cash and marketable securities designed to satisfy past obligations such as pensions.

"Closed facility" means a solid waste management facility which that has been properly terminated secured in accord accordance with an approved the facility closure plan on file with the Department of Waste Management and complying with all applicable regulations and requirements concerning its stabilization. A closed facility may be undergoing post-closure care.

"Closure" means the act of securing and stabilizing a solid waste management facility pursuant to the requirements of this chapter and any other applicable solid waste management standards.

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

"Construction/demolition/debris landfill" means a solid waste disposal area used for the controlled disposal of construction wastes, demolition wastes, debris wastes, or nondecomposable inert solids which are insoluble in water.

"Construction waste" means the waste building material refuse and other largely inert solid waste resulting from construction, remodeling, and repair operations on houses, commercial buildings, pavements, and other structures. Construction waste includes lumber, wire, sheetrock, broken brick, shingles, glass, pipes, asphalt, concrete and other nonhazardous, nonsoluble unwanted or unused construction material. Paints, coatings, asbestos and any liquid, compressed gases, or semi liquids are not construction wastes. A mixture of construction waste with any amount of other type of solid waste will cause it to be classified as other than construction waste.

"Corrective action" means all actions necessary to mitigate the public health or environmental threat from a release to the environment of pollutants solid waste or constituents of solid waste from an operating, abandoned, or closed solid waste disposal management facility and to restore the environmental conditions as required.

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

~~"Debris waste" means inert solid wastes such as brick or block, wood chips, tree stumps, or brush.~~

~~"Demolition waste" means solid waste which is largely inert, resulting from the demolition or razing of buildings, roads, and other man-made structures. Asbestos waste is not demolition waste.~~

"Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during normal operating cycle of the business.

"Current closure cost estimate" means the most recent of the estimates prepared in accordance with the requirements of 9 VAC 20-70-111.

"Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

"Current post-closure cost estimate" means the most recent of the estimates prepared in accordance with the requirements of 9 VAC 20-70-112.

"Debt service" means the amount of principal and interest due on a loan in a given time period, typically the current year.

"Deficit" means total annual revenues less total annual expenditures.

"Department" means the Virginia Department of Environmental Quality.

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

"Disposal" means the intentional discharge, deposition deposit, injection, dumping, spilling, leaking or placement placing of any solid waste into or on any land or water so that such solid waste or any constituent thereof may enter the environment (i.e., air, soil, surface water or groundwater) or to otherwise discard or be emitted into the air or discharged into any waters.

"Facility" means a solid waste management processing or disposal site, or resource recovery site, including any and all contiguous land structures and other appurtenances and improvements thereon used for solid waste disposal and associated activities. Facility types include sanitary landfills, construction/demolition/debris landfills, industrial waste landfills, resource recovery systems, transfer stations, incinerators and composting operations. A facility may consist of more than one operational unit any waste management facility unless the context clearly indicates otherwise.

~~"Fly ash" means ash particulate collected from air pollution attenuation devices on combustion units, such as those that burn fossil fuels or incinerate solid waste.~~

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~~"Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency, or establishment of the federal government including any government corporation and the Government Printing Office.~~

~~"Garbage and refuse collection and disposal system" means a system, plant or facility designed to collect, manage, dispose of, or recover and use energy from solid waste and the land, structures, vehicles and equipment for use in connection therewith.~~

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

~~"Groundwater" means any water, except capillary moisture or unsaturated zone 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 within the boundaries of this state Commonwealth, whatever may be the subsurface geologic structure in which such water stands, flows, percolates or otherwise occurs.~~

~~"Hazardous waste" means a "hazardous waste" as defined by the Virginia Hazardous Waste Management Regulations (9 VAC 20-60-10 et seq.).~~

~~"Incineration" means the controlled combustion of solid waste in an enclosed device.~~

~~"Incinerator" means a commercial furnace or other combustion unit which is an enclosed device using controlled flame combustion for solid waste with a rated capacity for greater than 20 tons of solid waste per day and is not classified as a boiler or industrial furnace for other than solid waste.~~

~~"Incinerator residue" means the resulting ash product from the incineration of solid waste.~~

~~"Industrial solid waste" means all solid waste resulting from a manufacturing and industrial process which is not suitable for discharge to a sanitary sewer or treatment in a publicly owned sewage treatment plant. Industrial solid wastes may include: mining wastes from the extraction, beneficiation and processing of ores and minerals unless those materials are returned to the mine site; fly ash; bottom ash; slag; fire gas emission control wastes generated primarily from the combustion of coal or other fossil fuels; cement kiln dust; and asbestos.~~

~~"Industrial waste landfill" means a sanitary landfill facility for the disposal of a specific industrial waste or a waste which is a by product of a production process.~~

~~"Infectious waste" means solid wastes which are generated by health care facilities, laboratories, and research facilities and are contaminated with pathogenic organisms and may cause infectious disease in exposed persons.~~

~~"Institutional waste" means all solid waste emanating from institutions such as, but not limited to, hospitals, nursing~~

~~homes, orphanages, and either public or private schools. It can include infectious waste from health care facilities and research facilities that has not been classified as a hazardous waste by the Virginia Hazardous Waste Management Regulations (9 VAC 20-60-10 et seq.).~~

~~"Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill, or an impoundment closed in situ as an industrial waste landfill. See Solid Waste Management Regulations (9 VAC 20-80-10 et seq.) for further detail.~~

~~"Leachate" means water or other a liquid that has percolated passed through or originated in emerged from solid waste and contained, dissolved, that contains soluble, suspended, or miscible contaminants extracted from the solid materials from such waste. Leachate and any material with which it is mixed is solid waste; except that leachate that is pumped from a collection containment facility tank for transportation to for disposal in an off-site facility is regulated as septage, and leachate discharged into a wastewater collection system is regulated as industrial wastewater.~~

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

~~"Monitoring wells" means a well point below the uppermost or regional groundwater table for the purpose of obtaining periodic water samples for qualitative analysis.~~

~~"Nonhazardous solid waste" means solid waste that is not classified as hazardous waste by the Virginia Hazardous Waste Management Regulations (9 VAC 20-60-10 et seq.).~~

~~"Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.~~

~~"Local government" means a county, city or town or any authority, commission, or district created by one or more counties, cities or towns.~~

~~"Net working capital" means current assets minus current liabilities.~~

~~"Net worth" means total assets minus total liabilities and is equivalent to owner's equity.~~

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

~~"Owner" means the person, corporation or other legal entity which legally possesses the land on which a solid waste management facility is located for the purposes of this chapter, all individuals, incorporated companies, copartnerships, societies or associations, and any federal agency or governmental unit of the Commonwealth having any title or interest in any garbage and refuse collection and disposal system, or the services or facilities to be rendered thereby.~~

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"Parent corporation" means a corporation that directly owns at least 50% of the voting stock of the corporation that is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

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

"Person" means an individual, trust, firm, joint stock company, corporation, partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body, or federal government agency a governmental body, a municipal corporation or any other legal entity.

"Post-closure care" means the requirements placed upon an owner or operator of a solid waste disposal facility after closure to ensure environmental and public health safety for a specified number of years after closure.

"Regulated medical waste" means solid waste defined to be regulated medical waste in Part III of the Regulated Medical Waste Management Regulations (9 VAC 20-120-10 et seq.)

"Sanitary landfill" means a land disposal site employing an engineered, constructed and controlled burial method of disposal of solid waste to minimize environmental and health nuisances and hazards. The methods include spreading the solid waste in thin layers, compacting the solid waste to the smallest practical volume, confining the solid waste to the smallest practical area, and applying suitable cover material at the end of each operating day or at such more frequent intervals as may be necessary an engineered land burial facility for the disposal of solid waste which is so located, designed, constructed and operated to contain and isolate the solid waste so that it does not pose a substantial present or potential hazard to human health or the environment.

"Secure access control" means the use of fences with locking gates, entry control, operational inspection of incoming solid waste and positive limitations on unauthorized disposal. Natural barriers which prevent unauthorized access may be considered as a replacement for fence sections.

"Shadow bond rating" means bond rating as determined by Moody's or Standard and Poor's after analysis of the debt capacity of a local government with no outstanding general obligation bonds.

"Signature" means the name of a person written with his own hand.

"Site" means the all land area upon which a facility or activity is physically located or conducted and structures, other appurtenances, and improvements thereon used for treating, storing, and disposing of solid waste. This term includes adjacent land used for utility systems such as repair, storage, shipping or processing areas, or other areas incident to the management of solid waste.

"Solid waste" means any discarded material, garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including but not limited to solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigating return flow or industrial discharges which are point sources subject to permits under § 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear or by product material as defined by The Atomic Energy Act of 1954, as amended (68 Stat. 923). Solid waste can include construction waste, commercial waste, debris waste, industrial waste, infectious waste, and institutional waste except where excluded as a hazardous waste of those materials defined as "solid waste" in the Virginia Waste Management Act and the Virginia Solid Waste Management Regulations (9 VAC 20-80-10 et seq.).

"Solid waste disposal facility" means any sanitary landfill facility, construction/demolition/debris landfill facility, industrial waste landfill, resource recovery facility, incinerator and composting facility. A wastewater treatment plant is not a solid waste facility a solid waste management facility at which solid waste will remain after closure.

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

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

"Substantial business relationship" means the extent of a business relationship necessary under applicable Virginia law to make a guarantee contract incident to that relationship valid and enforceable. A "substantial business relationship" shall arise from a pattern of recent and on-going business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the director.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

"Total expenditures" means all expenditures excluding capital outlays and debt repayment.

"Total revenue" means revenue from all taxes and fees but does not include the proceeds from borrowing or asset sales, excluding revenue from funds managed on behalf of a specific third party.

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

["Unit" means a discrete area of land used for the management of solid waste.]

PART II.

GENERAL INFORMATION AND LEGISLATIVE AUTHORITY.

9 VAC 20-70-20. Authority for regulations. (Repealed.)

~~Section 10.1-1410 of the Code of Virginia authorizes the Virginia Waste Management Board to exercise general supervision and control over solid waste management activities in this Commonwealth and promulgate regulations for financial responsibility by privately owned solid waste disposal facilities in the event of abandonment. Authority to adopt regulations is established under the Administrative Process Act (§ 9-6-14:4.1.(C)(5)) of the Code of Virginia.~~

9 VAC 20-70-30. Purpose of chapter.

A. The purpose of this chapter is to assure that owners and operators of ~~nonhazardous solid permitted or unpermitted waste disposal management facilities identified in 9 VAC 20-70-50~~ A are financially responsible for the closure and, post-closure of care and corrective action at their facilities and can provide financial assurance for liability which may result from any sudden or nonsudden accidental occurrences, as applicable.

B. This chapter establishes standards and procedures for financial assurance to be used in the issuance and continuation of permits to construct or, operate ~~solid waste management facilities, modify, close, or provide post-closure care and to be used in the performance of corrective actions or in formulation of enforcement documents issued by the department.~~

9 VAC 20-70-40. Petition for revisions. (Repealed.)

~~The Virginia Waste Management Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision of this chapter.~~

9 VAC 20-70-41. Analysis of this chapter.

A. Within three years after [~~the effective date of this amended chapter January 7, 1998~~], the department shall perform an analysis on this chapter and provide the board with a report on the results. The analysis shall include:

1. The purpose and need for the chapter;
2. Alternatives which would achieve the stated purpose of this chapter in a less burdensome and less intrusive manner;
3. An assessment of the effectiveness of this chapter;
4. The results of a review of current state and federal statutory and regulatory requirements, including identification and justification of requirements of this chapter which are more stringent than federal requirements; and

5. The results of a review as to whether this chapter is clearly written and easily understandable by affected entities.

B. Upon review of the department's analysis, the board shall confirm the need to:

1. Continue this chapter without amendment;
2. Repeal this chapter; or
3. Amend this chapter.

C. If the board's decision is to repeal or amend this chapter, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.

9 VAC 20-70-50. Applicability of chapter.

A. This chapter applies to all persons who own, operate, or allow ~~solid~~ the following permitted or unpermitted waste disposal management facilities to be operated on their property in the Commonwealth except counties, cities, and towns or federal and state agencies:

1. Solid waste treatment and disposal facilities regulated under the Virginia Solid Waste Management Regulations (9 VAC 20-80-10 et seq.);
2. [Composting] Facilities regulated under [Vegetative Waste Management and] Yard Waste Composting [Facilities] Regulations ([~~9 VAC 20-100-10~~ 9 VAC 20-101-10] et seq.); or
3. Medical waste treatment or disposal facilities regulated under Regulated Medical Waste Management Regulations (9 VAC 20-120-10 et seq.).

B. Exemptions to this chapter include:

1. ~~Composting of sewage sludge at the sewage treatment plant of generation and not involving other solid wastes.~~
 2. ~~Land application of wastes regulated under Virginia Sewerage Regulations or the State Water Control Board as a part of the National Pollution Discharge Elimination System (NPDES).~~
 3. ~~Solid waste generated in the normal operation of a farm and related to the production of crops, to the extent those solid wastes are managed on the site of their generation.~~
 4. ~~Management of hazardous waste as defined and controlled by the Commonwealth of Virginia, Virginia Waste Management Board, Hazardous Waste Management Regulations (9 VAC 20-60-10 et seq.).~~
1. Owners or operators of facilities who are federal or state government entities whose debts and liabilities are the debts or liabilities of the United States or the Commonwealth, are exempt from this chapter;

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2. Owners and operators of facilities conditionally exempt under 9 VAC 20-80-60 D of the Virginia Solid Waste Management Regulations are exempt from this chapter so long as they meet the conditions of the exemption;

3. Owners and operators of facilities that manage solely wastes excluded under 9 VAC 20-80-150 or conditionally exempt under 9 VAC 20-80-160 of the Virginia Solid Waste Management Regulations are exempt from this chapter;

4. Owners or operators of regulated medical waste management facilities exempt or excluded under Article 2, Part III, of the Virginia Regulated Medical Waste Management Regulations (9 VAC 20-120-10 et seq.) are exempt from this chapter; and

5. Owners and operators of yard waste composting facilities exempt under [~~9 VAC 20-100-60~~ 9 VAC 20-101-60 and 9 VAC 20-101-70] of the Vegetative Waste Management and] Yard Waste Composting Facility Regulations are exempt from this chapter; and

6. Owners and operators of hazardous waste management units regulated under the Virginia Hazardous Waste Management Regulations (9 VAC 20-60-10 et seq.) are exempt from this chapter as far as such units are concerned.

C. Management of solid Owners and operators of facilities or units that treat or dispose of wastes which are exempted from the Virginia Hazardous Waste Management Regulations (9 VAC 20-60-10 et seq.) are subject to these regulations unless also exempted herein.

D. Facilities with separate ownership and operation. If separate, nonexempt persons own and operate a waste management facility subject to this chapter, the owner and operator shall be jointly and severally responsible for meeting the requirements of this chapter. If either the owner or operator is exempt, as provided in 9 VAC 20-70-50 B, then the other person shall be responsible for meeting the requirements of this chapter. If both the owner and the operator are exempt, as provided in 9 VAC 20-70-50 B, then the requirements of this chapter are not applicable to that waste management facility.

E. [Exemptions for facilities owned and operated by local governments.

1. Closed facilities.] Owners and operators of facilities who are local governmental entities or regional authorities [that have completed the closure by October 9, 1994,] are exempt from [all] the requirements of this chapter [until April 9, 1997,] provided they:

a. Have (i) disposed of less than 100 tons per day of solid waste during a representative period prior to October 9, 1993; (ii) disposed of less than 100 tons per day of solid waste each month between October 9, 1993, and April 9, 1994; (iii) ceased to accept solid waste prior to April 9, 1994; and (iv) whose units are

not on the National Priority List as found in Appendix B to 40 CFR Part 300; or

b. Have (i) disposed of more than 100 tons per day of solid waste prior to October 9, 1993, and (ii) ceased to accept solid waste prior to that date.

2. All other facilities. Owners and operators of facilities who are local governmental entities or regional authorities that are not exempt under subdivision 1 of this subsection are subject to the requirements of this chapter on January 7, 1998.] The director may delay on a case-by-case basis the effective date for such entities until April 9, 1998, provided that the owner/operator demonstrates to the director's satisfaction that [~~the April 9, 1997,~~ an earlier] deadline does not provide sufficient time to comply with these requirements and that such a waiver will not adversely affect human health and the environment.

9 VAC 20-70-60. Enforcement and appeal procedures; offenses and penalties.

A. An enforcement action commences with a notice from the department or its representative that there is information indicating that a named party (i) is or may be in violation of a law or regulation; or (ii) is not or may not be in compliance with any existing requirement for obtaining or retaining a permit or other benefit or right. The commencement of an enforcement action is not a case decision. An enforcement action ends when a case decision becomes final, either administratively or on court review.

A. B. All administrative enforcement actions and appeals taken from actions of the director relative to the provisions of § 10.1-1457 of the Virginia Waste Management Act and this chapter shall be governed by the Administrative Process Act, Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.

B. C. Orders. The executive director is authorized to issue orders to require any person to comply with this chapter as stated or to require such steps he deems necessary to bring about compliance. Orders will be issued in written form through certified mail and will be issued in accord with provisions of the Virginia Administrative Process Act.

9 VAC 20-70-70. Suspensions and revocations.

~~A. If the executive director believes that the public health or the environment is or may be threatened by a solid waste management facility and that the threat poses a substantial present or potential hazard to human health or environment, he may suspend all or part of the operation of the facility for such time as he shall prescribe. The suspension shall be made by written notice to the operator. Such a suspension shall constitute an order. An administrative hearing on the suspension will be held at the request of the owner/operator.~~

B. The executive director may revoke, suspend, or amend any permit for cause as set in § 10.1-1409 of the Code of Virginia and as provided for in 9 VAC 20-80-600 and 9 VAC 20-80-620 of Virginia Solid Waste Management Regulations.

Failure to provide or maintain adequate financial assurance in accordance with these regulations shall be a basis for revocation of such facility ~~solid waste permit and site closure~~. Failure to provide or maintain adequate financial assurance in accordance with this chapter, taken with other relevant facts and circumstances, may be a basis for summary suspension of such facility permit pending a hearing to amend or revoke the permit, or to issue any other appropriate order.

9 VAC 20-70-75. Forfeitures.

Forfeiture of any financial obligation imposed pursuant to this chapter shall not relieve any holder of a permit issued pursuant to the provisions of Part VII of the Solid Waste Management Regulations (9 VAC 20-80-10 et seq.) or Parts IV and X of the Regulated Medical Waste Regulations (9 VAC 20-120-10 et seq.), or any other legal obligations for the consequences of abandonment of any facility.

PART III.
CLOSURE AND POST CLOSURE FINANCIAL
RESPONSIBILITY AND LIABILITY COVERAGE.
FINANCIAL ASSURANCE CRITERIA.

Article 1.
General Provisions.

9 VAC 20-70-80. General purpose and scope. (Repealed.)

~~A. Permits for nonhazardous solid waste disposal facilities shall require closure, and post closure financial assurance and liability insurance plans as prescribed in this part for the purpose of assuring that owners and operators of these facilities are financially responsible for protection of public health and the environment.~~

~~B. This part contains general provisions governing closure and post closure care for solid waste disposal facilities. These provisions may be supplemented by more specific closure and post closure care requirements. Together with the cost estimate provisions, these provisions form the basis of the financial assurance requirements and liability insurance limits included in this part.~~

9 VAC 20-70-81. General purpose and scope.

In order to assure that the costs associated with protecting the public health and safety from the consequences of an abandonment or a failure to properly execute closure, post-closure care or corrective action at a waste management facility are to be recovered from the owner or operator, the owner or operator of such facility shall obtain one, or a combination of the financial responsibility mechanisms described in this part. Financial responsibility mechanisms shall be in amount calculated as the cost estimate using the procedures set forth in [9 VAC 20-70-110 Article 3 (9 VAC 20-70-111 et seq.) of this part].

A. In the case of new facilities, the selected financial responsibility mechanism or mechanisms shall be filed with the Department of Environmental Quality as part of the permit

application procedures and prior to the issuance of an operating permit.

B. In the case of existing facilities that become regulated as the result of a regulatory amendment, the selected financial responsibility mechanism shall be filed with the Department of Environmental Quality within 180 days of the effective date of the amendment.

C. The director may reject the proposed evidence of financial responsibility if the mechanism or mechanisms submitted do not adequately assure that funds will be available for closure, post-closure care, or corrective action. The owner or operator shall be notified in writing within 45 days of receipt of the financial assurance mechanism of the tentative decision to accept or reject the proposed evidence.

Article 2.

Closure, Post-Closure Care and Corrective Action
Requirements.

9 VAC 20-70-90. Closure and, post-closure care and corrective action requirements.

~~A. Notification.~~

~~1. An owner or operator intending to close a solid waste disposal facility shall notify the department of the intention to do so at least 180 days prior to the anticipated date for initiating closure. Simultaneous notice shall be made to the governing body of each host locality and adjacent property owners.~~

~~2. The owner or operator shall post one sign notifying all persons of the closing and prohibition against further receipt of waste materials. Further, suitable barriers shall be installed at former accesses to prevent new waste from being deposited.~~

~~B. Closure and post closure standards.~~

~~1. Closure and post closure care shall occur in accord with approved plans. A closure plan and a post closure plan shall be submitted with the permit application. The holder of the permit shall submit a proposed modified closure plan or post closure plan to the department for review and approval as such modifications become necessary during the life of the facility.~~

2. A. The owner or operator shall close his facility in a manner that minimizes the need for further maintenance; and controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, the post-closure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the groundwater, surface water, or to the atmosphere. The post-closure period shall continue for 40 years after the date of completing closure of the solid waste disposal facility or as the department decides is sufficient to protect human health and the environment.

The closure standards applicable to the solid waste management facilities are described in 9 VAC 20-80-200 D, 9 VAC 20-80-210 A 7, 9 VAC 20-80-250 E, 9 VAC 20-80-260 E, 9 VAC 20-80-270 E, 9 VAC 20-80-330 E, 9 VAC 20-80-

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340 E, 9 VAC 20-80-350 E, 9 VAC 20-80-380 B, and 9 VAC 20-80-470 E of the Solid Waste Management Regulations. The closure requirements applicable to the regulated medical waste facilities are specified in 9 VAC 20-120-290 of the Regulated Medical Waste Management Regulations. The closure requirements for [vegetative waste management and] yard waste composting facilities are specified in [9 VAC 20-100-140 9 VAC 20-101-150] of the [Vegetative Waste Management and] Yard Waste Composting Facilities [Regulations].

C. Inspection.

1. ~~The department shall inspect all solid waste management facilities that have been closed to determine if the closing is complete and adequate in accordance with the approved plan not more than 30 days after being notified by the owner or operator that closure has been completed. The department shall notify the owner of a closed facility in writing not more than 30 days after the inspection of its findings.~~

a. ~~If the closure is not satisfactory, it shall order necessary construction or such other steps as may be appropriate to bring unsatisfactory sites into compliance with the closure requirements.~~

b. ~~If the closure is satisfactory, the owner shall be advised in writing.~~

2. ~~Notification by the department that the closure is satisfactory does not relieve the operator of responsibility for corrective action in accordance with regulations of the department to prevent or abate problems caused by the facility.~~

B. *Following closure of each solid waste disposal unit, the owner or operator shall conduct post-closure care in accordance with the requirements of 9 VAC 20-80-250 F, 9 VAC 20-80-260 F, or 9 VAC 20-80-270 F of the Solid Waste Management Regulations, as applicable.*

C. *The owner or operator shall institute a corrective action program when required to do so by 9 VAC 20-80-190, 9 VAC 20-80-210 A 7, or 9 VAC 20-80-310 of the Solid Waste Management Regulations, as applicable.*

9 VAC 20-70-100. Financial responsibility. (Repealed.)

A. General.

1. ~~In order to assure that the costs associated with protecting the public health and safety from the consequences of an abandonment or a failure to properly execute closure or post-closure care of a nonhazardous solid waste disposal facility are to be recovered from the owner or operator, the owner or operator of such a facility shall obtain one, or a combination of the financial responsibility instruments described in this section. Evidence of financial responsibility shall be in one or a combination of the following forms: a surety bond; a trust fund maintained for the benefit of the Department of Waste Management;~~

~~a letter of credit; a deposit of acceptable collateral with the executive director; with the financial test and corporate guarantee or such other mechanisms as the board may deem appropriate. Financial responsibility instruments for site closure shall be in the amount calculated as the cost estimate for facility closure using the procedures set forth in 9 VAC 20-70-110 and 9 VAC 20-70-120. The selected financial responsibility instrument or instruments shall be filed with the Department of Waste Management as part of the permit application procedures and prior to the issuance of an operating permit. The director may reject the proposed evidence of financial responsibility if the mechanisms submitted do not adequately assure that funds will be available for closure and post-closure care. The owner shall be notified in writing within 45 days of receipt of the financial assurance mechanisms of the decision to accept or reject the proposed evidence.~~

2. ~~To further protect the public health and safety, owners or operators of nonhazardous solid waste disposal facilities shall obtain liability coverage for sudden and nonsudden accidental occurrences using the procedures set forth in 9 VAC 20-70-130.~~

B. Applicability.

1. ~~The requirements for appropriate financial responsibility for solid nonhazardous waste disposal facilities as contained in this chapter shall apply to all private owners or operators of such existing and future facilities throughout the Commonwealth of Virginia; no state, local or other governmental agency is required to comply with these provisions on financial responsibility.~~

2. ~~Any funds forfeited to the state pursuant to a financial responsibility plan required by this chapter shall be paid over to the county, city, or town in which the abandoned facility is located to be expended by the county, city, or town only as necessary to restore and maintain such facility in a safe condition.~~

Article 3.

Cost Estimates.

9 VAC 20-70-110. Cost estimates. (Repealed.)

A. Cost estimate for facility closure.

1. ~~In submitting a closure plan as required by this chapter, the owner or operator of a solid nonhazardous waste disposal facility shall include therein a written estimate of the cost of closing the facility. The estimated closing cost shall be jointly agreed upon by the Department of Environmental Quality and the owner or operator filing the permit application but in no case shall the estimated closing cost be less than:~~

a. ~~One thousand dollars for each acre of a landfill ultimately to be utilized at the site for actual waste disposal purposes.~~

~~b. Five thousand dollars for each acre used for composting of solid waste and for on-site storage.~~

~~c. Ten thousand dollars for each acre or fraction thereof used at an incinerator for the collection and storage of solid waste and for incinerator residue.~~

~~2. If no mutually agreed estimate is arrived at, the estimate will be determined by the department.~~

~~3. The estimated closing cost shall be based on the work required for a third party contractor to effect proper closure at the most expensive point in the life of the facility. Those factors to be considered in estimating the closing cost shall include:~~

~~a. The size and topography of the site.~~

~~b. The daily and weekly tonnage of waste to be received at the site.~~

~~c. Availability of cover and fill material needed for site grading.~~

~~d. The type of waste to be received at the site.~~

~~e. Landfill method and sequential landfill plan.~~

~~f. The location of the site and the character of the surrounding area.~~

~~g. Requirements for surface drainage.~~

~~h. Leachate collection and treatment system.~~

~~i. Environmental quality monitoring systems.~~

~~j. Structures and other improvements to be dismantled and removed.~~

~~k. Site storage capacity for solid waste, incinerator residue, and compost material.~~

~~l. Off site disposal requirements.~~

~~m. An appropriate forecasted average rate of inflation over the period of the life of the site.~~

~~n. Vector control requirements.~~

~~4. If the executive director has reason to believe that a previously submitted closure cost estimate is no longer adequate, he may require that the operator submit a revised estimate. The operator shall submit the revised estimate within 90 days following the receipt of a notice of the requirement by the executive director. When the revised estimates are approved, the owner/operator shall submit revised financial assurance for the revised closure costs.~~

~~B. Cost estimate for facility post-closure.~~

~~1. In submitting a closure plan as required by this chapter, the owner or operator of a nonhazardous solid waste disposal facility shall include therein a written estimate of the cost of post-closure care, monitoring, maintenance, and corrective action for a privately owned or operated facility located in the Commonwealth of~~

~~Virginia. Unless on-site disposal is planned or required, an incinerator, resource recovery facility, and compost facility will not be required to include a post-closure cost estimate in its closure plan. The estimated post-closure cost shall be jointly agreed upon by the Department of Environmental Quality and the owner or operator filing the permit application. If no mutually agreed estimate is arrived at, the estimate will be determined by the department. Such costs shall be based on the work required for a third party contractor.~~

~~2. Those factors to be considered in estimating post-closure care costs shall include:~~

~~a. The size and topography of the site.~~

~~b. The type and quantity of waste received.~~

~~c. Landfill method and sequential landfill plan.~~

~~d. The potential for significant leachate production and the possibility of contaminating water supplies.~~

~~e. Environmental quality monitoring systems.~~

~~f. Soil conditions.~~

~~g. An appropriate forecasted average rate of inflation over the period of the life of the site.~~

~~h. The location of the site and the character of the surrounding area.~~

~~3. Estimated costs of post-closure activities shall be determined on a case-by-case basis. If during a disposal site's active waste collection life a substantial change occurs in the operations of the facility or in the nature and development of the surrounding area, the executive director may order the filing of a revised estimate of post-closure costs by the owner or operator, which shall be submitted within 90 days following the receipt of notice of the requirement by the executive director. When the revised estimates are approved, the owner/operator shall submit revised financial assurance for the revised post-closure costs.~~

9 VAC 20-70-111. Cost estimate for facility closure.

A. The owner or operator shall have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements of 9 VAC 20-70-90 A.

1. The estimate shall equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan.

2. The closure cost estimate shall be based on the costs to the owner or operator of hiring a third party to close the facility. A third party may not be either a parent or a subsidiary of the owner or operator.

3. The closure cost estimate may not incorporate any salvage value that may be realized by the sale of

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wastes, facility structures or equipment, land or other facility assets at the time of partial or final closures.

[~~4. The owner or operator may not incorporate a zero cost for waste that might have economic value.]~~

B. During the active life of the facility, the owner or operator shall adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial mechanisms used to comply with this part. For owners and operators using the financial test or guarantee, the closure cost estimate shall be updated for inflation within 30 days after the close of the owner's or operator's fiscal year. The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business, as specified below. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year.

1. The first adjustment is made by multiplying the closure cost estimate by the latest inflation factor. The result is the adjusted closure cost estimate.

2. Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

C. During the active life of the facility, the owner or operator shall revise the closure cost estimate no later than 30 days after a revision has been made to the closure plan which increases the cost of closure. If the owner or operator has an approved closure plan, the closure cost estimate shall be revised no later than 30 days after the closure plan has been modified, if the change in the closure plan increases the cost of closure. The revised closure cost estimate shall be adjusted for inflation as specified in subdivisions B 1 and B 2 of this section.

D. The owner or operator shall keep at the facility the latest closure cost estimate prepared in accordance with subsections A through C of this section during the operating life of the facility.

E. The owner or operator of each waste management unit shall establish financial assurance for closure of the unit in compliance with 9 VAC 20-70-140. The owner or operator shall provide continuous coverage for closure until released from financial assurance requirements by the director.

F. The owner or operator may reduce the closure cost estimate and the amount of financial assurance provided under subsection E of this section, if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the unit. The owner or operator shall notify the director that the justification for the reduction of the closure cost estimate and the amount of financial assurance has been placed in the operating record.

9 VAC 20-70-112. Cost estimate for facility post-closure.

A. The owner or operator shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the solid waste disposal unit in compliance with the post-closure plan required by 9 VAC 20-70-90 B. The post-closure cost estimate used to demonstrate financial assurance shall account for the total costs of conducting post-closure care, including annual and periodic costs as described in the post-closure plan over the entire post-closure care period. The owner or operator shall notify the director that the estimate has been placed in the operating record.

1. The cost estimate for post-closure care shall be based on the most expensive costs of post-closure care during the post-closure care period.

2. During the active life of the solid waste disposal unit and during the post-closure care period, the owner or operator shall annually adjust the post-closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial mechanism used to comply with this part. For owners or operators using the financial test or guarantee, the post-closure care cost estimate shall be updated for inflation within 30 days after the close of the owner's or operator's fiscal year. The adjustment process to be used is described in 9 VAC 20-70-111 B.

3. The owner or operator shall increase the post-closure care cost estimate and the amount of financial assurance provided under subsection B of this section if changes in the post-closure plan or solid waste disposal unit conditions increase the maximum costs of post-closure care.

4. The owner or operator may reduce the post-closure cost estimate and the amount of financial assurance provided under subsection B of this section if the cost estimate exceeds the maximum costs of post-closure care remaining over the post-closure care period. The owner or operator shall notify the director that the justification for the reduction of the post-closure cost estimate and the amount of financial assurance has been placed in the operating record.

B. The owner or operator of each solid waste disposal unit shall establish, in a manner under 9 VAC 20-70-140, financial assurance for the costs of post-closure care as required under 9 VAC 20-70-90 B. The owner or operator shall provide continuous coverage for post-closure care until released from financial assurance requirements for post-closure care by the director.

C. The owner or operator shall keep the latest post-closure cost estimate prepared in accordance with subsection B of this section during the operating life of the facility and during the entire post-closure care period at a place specified in the post-closure plan.

9 VAC 20-70-113. ~~Financial assurance for corrective action.~~

~~A. An owner or operator of a solid waste management unit required to undertake a corrective action program under 9 VAC 20-70-90 C shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action. The corrective action cost estimate shall account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The owner or operator shall notify the director that the estimate has been placed in the operating record unless corrective action is proceeding under Part IV of the Solid Waste Management Regulations (9 VAC 20-80-10 et seq.). In the latter case, the new corrective action cost estimate shall be submitted to the director within 30 days of its preparation.~~

~~1. The owner or operator shall annually adjust the estimate for inflation until the corrective action program is completed within 60 days prior to the anniversary date of the establishment of the financial mechanism used to comply with this part. For owners or operators using the financial test or guarantee, the corrective action cost estimate shall be updated for inflation within 30 days after the close of owner's or operator's fiscal year. The adjustment process to be used is described in 9 VAC 20-70-111 B.~~

~~2. The owner or operator shall increase the corrective action cost estimate and the amount of financial assurance provided under subsection B of this section if changes in the corrective action program or solid waste management unit conditions increase the maximum costs of corrective action.~~

~~3. The owner or operator may reduce the amount of the corrective action cost estimate and the amount of financial assurance provided under subsection B of this section if the cost estimate exceeds the maximum remaining costs of corrective action. The owner or operator shall notify the director that the justification for the reduction of the corrective action cost estimate and the amount of financial assurance has been placed in the operating record.~~

~~B. The owner or operator of each solid waste management unit required to undertake a corrective action program under 9 VAC 20-70-90 C shall establish financial assurance for the most recent corrective action program. The owner or operator shall provide continuous coverage for corrective action until released from financial assurance requirements for corrective action by the director.~~

**Article 4.
Allowable Financial Mechanisms.**

9 VAC 20-70-120. Financial assurance for facility closure and post-closure. (Repealed.)

~~A. General. For each nonhazardous solid waste facility for which a permit is applied, a separate financial assurance~~

~~mechanism shall be provided for closure and post-closure activities. Determination of the financial responsibility requirements for post-closure care shall be made by the department when the complete closure plan, closure financial responsibility mechanisms, and the permit application are evaluated.~~

~~B. Financial mechanisms. Financial responsibility may be demonstrated by one or a combination of the following financial instruments executed in the amount calculated as the estimated closing cost in accordance with 9 VAC 20-70-110. Financial instruments shall substantially comply with the language shown in the cited appendices.~~

~~1. A closure trust fund maintained by the owner or operator of a disposal site for the benefit of the Department of Environmental Quality (see Appendices 3.1 and 3.2).~~

~~2. A surety bond guaranteeing performance of closure, with the disposal site owner or operator as the principal and the Commonwealth of Virginia as the obligee, issued for the life of the disposal site or until closure is completed, written with a penal sum equal to the estimated closure cost amount (see Appendices 3.3 and 3.4).~~

~~3. A letter of credit from a bank or other financial institution regulated by an agency of the Commonwealth of Virginia written in the amount of the estimated closure cost (see Appendices 3.5 and 3.6).~~

~~4. A deposit of acceptable collateral, as determined by the executive director, with the Commonwealth of Virginia with market value at least equal to the amount of the estimated closure cost (see Appendix 3.7).~~

~~5. A financial test and corporate guarantee as determined appropriate by the executive director in accordance with Appendices 3.8, 3.9, and 3.10.~~

~~6. Other individual or group mechanisms that the department may deem appropriate.~~

~~C. Multiple financial mechanisms.~~

~~1. An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism. These mechanisms are limited to trust funds, performance bonds, letters of credit, and deposits of acceptable collateral. The mechanisms must be as specified in Appendices 3.1 through 3.7 except that it is the combination of mechanisms rather than each single mechanism, which must provide financial assurance for an amount at least equal to the closure cost estimate.~~

~~2. The executive director may elect to use any or all of the mechanisms, in accordance with the requirements of Appendices 3.1 through 3.7.~~

~~D. Release of the owner or operator from the requirements of this section. Within 60 days after receiving certification from the owner or operator that closure has been accomplished in accordance with the closure plan and the~~

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provisions of this chapter, the executive director shall verify that proper closure has occurred. Unless the executive director has reason to believe that closure has not been in accordance with the closure plan, he shall notify the owner or operator in writing that he is no longer required to maintain financial assurance for closure of the particular facility. Such notice shall release the owner or operator only from the requirements for financial assurance for closure of the facility; it does not release him from legal responsibility for meeting the closure or post closure standards or from liability for any sudden or nonsudden accidents occurring either before, during, or after closure of the site. If no written notice of termination of financial assurance requirements or failure to properly perform closure is received by the owner or operator within 60 days after certifying proper closure, the owner or operator may petition the executive director for an immediate decision, in which case the executive director shall respond within 10 days after receipt of such petition.

E. Incapacity of institution issuing financial responsibility instruments. An owner or operator who fulfills the requirements of this section by obtaining a letter of credit, a surety bond, or by depositing negotiable collateral will be deemed to be without the required financial assurance in the event of bankruptcy, insolvency, or a suspension or revocation of the license or charter of the issuing institution. The owner or operator shall establish other financial assurance within 60 days of such event.

9 VAC 20-70-130. Liability insurance requirements. (Repealed.)

A. Each owner and operator of a solid waste disposal facility shall secure and maintain liability coverage for claims arising from injuries to other parties, including bodily injury or damage to property of others. This coverage shall be in the form of a financial test for liability coverage (see Appendix 3.8) an insurance policy, or other financial instruments as authorized in 9 VAC 20-70-130 G. These forms of coverage shall be of the types and in not less than the amounts listed in subsections D, E and F below. Each person securing a permit shall file evidence of satisfactory liability coverage when the department issues the permit and before any site development work begins.

B. The liability insurance shall be issued by an insurance company authorized to do business in the Commonwealth of Virginia. The liability insurance shall be subject to the insurer's policy provisions filed with and approved by the executive director.

C. A certificate or memorandum of insurance shall be furnished to the department for its approval showing specifically the coverage and limits, together with the name of the insurance company and the insurance agent. If any of the coverages set forth on these certificates or memoranda of insurance are reduced, cancelled, terminated, or nonrenewed, the permittee or insurance company shall, not less than 30 days before the effective date of the action, furnish the department with appropriate notices of that action. Timely proof of periodic renewal shall be furnished to the

department by submittal of a certificate or memorandum of insurance before the expiration date of the policy.

D. Each owner or operator of a solid waste disposal facility shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility. The minimum liability limits for sudden accidental occurrences shall be for the annual aggregate of \$100,000 for all landfills, incinerators, resource recovery facilities and compost facilities.

E. If the executive director determines at any time that an owner's or operator's required liability limits are not consistent with the degree and duration of present or potential risks associated with the disposal facility, the executive director may increase the operator's limit as may be necessary to protect human health and the environment. An insurance policy shall have not more than a \$5,000 deductible for each occurrence. The executive director may authorize an increase in the deductible based on the owner/operator's financial ability to pay a higher deductible. The minimum coverage shall include the following expenses:

1. Coverage of premises and operations, including operations of independent contractors; and
2. Coverage for contamination or pollution.

F. An owner or operator of a solid waste disposal facility shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the disposal facility. The owner or operator shall have and maintain minimum liability coverage for nonsudden accidental occurrences for an annual aggregate sum exclusive of legal defense cost as follows:

1. Five hundred thousand dollars for sanitary landfills and industrial landfills without a liner and leachate collection system;
2. Two hundred fifty thousand dollars for sanitary and industrial landfills with a liner and leachate collection system; and
3. One hundred thousand dollars for construction/demolition/debris landfills.

G. Any applicant, after conducting a site risk assessment, may request that the department evaluate the hazards involved in an accidental occurrence and may request a variance from the specific insurance coverage amounts prescribed under this chapter or requirements for liability insurance where the applicant is able to demonstrate other financial responsibility satisfactory to the executive director.

1. Solid waste disposal facilities accepting construction/demolition/debris waste shall not be required to obtain liability insurance if the applicant can demonstrate that:

- ~~a. No wastes other than construction, demolition or debris wastes have been or will be accepted into the site;~~
- ~~b. Reasonably secure access control, either natural or man-made, eliminate the risk that unauthorized wastes will enter the site; and~~
- ~~c. The location and design of the site is sufficient to prevent adverse effects associated with the disposal of construction/demolition/debris wastes.~~
- ~~2. Any applicant may request a waiver of the requirement for liability insurance. In evaluating the request for a waiver, the director shall consider:~~
 - ~~a. The nature of the wastes accepted in the site.~~
 - ~~b. The security of access control.~~
 - ~~c. The ownership of the land on which the disposal is occurring.~~
 - ~~d. The existence of a groundwater monitoring program.~~
 - ~~e. The compliance record of the applicant.~~
- ~~3. If the director finds that commercial insurance cannot be obtained in the voluntary market due to circumstances beyond the control of the permit holder or applicant or such insurance is not economically feasible to obtain, the director may allow the use of personal bonds or other mechanisms in lieu of commercial insurance.~~

9 VAC 20-70-140. Allowable financial mechanisms.

The mechanisms used to demonstrate financial assurance shall ensure that the funds necessary to meet the costs of closure, post-closure care, and corrective action for known releases will be available whenever they are needed. Owners and operators shall choose from the options specified in this article.

9 VAC 20-70-150. Trust fund.

A. The owner or operator of a waste management facility may satisfy the requirements of this article by establishing a trust fund that conforms to the requirements of this section and by submitting an originally signed duplicate of the trust agreement to the director. The trustee for the trust fund shall be a bank or financial institution that has the authority to act as a trustee and whose trust operations are regulated and examined by the Commonwealth of Virginia.

B. Payments into the trust fund shall be made annually by the owner or operator over the useful or the remaining life of the waste management facility unit, whichever is shorter, in the case of a trust fund for closure or post-closure care, or over one-half of the estimated length of the corrective action program in the case of corrective action for known releases. This period is hereafter referred to as the "pay-in period."

C. If a trust fund is used to demonstrate financial assurance for closure and post-closure care:

1. For a new facility, the first payment shall be made at least 60 days before the initial receipt of waste for treatment or disposal. A receipt from the trustee for this payment shall be submitted by the owner or operator to the director before this initial receipt of [~~solid or regulated medical~~] waste. [For an existing facility, permitted or unpermitted, the first payment is due on the effective date of the trust agreement.

2.] The first payment shall be at least equal to the current closure cost and, if applicable, post-closure care estimate divided by the number of years in the pay-in period. Subsequent payments shall be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment shall be determined by this formula:

$$\text{Next payment} = \frac{CE - CV}{Y}$$

where CE is the current closure and post-closure care cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

[~~2. For an existing facility, permitted or unpermitted, if an owner or operator establishes a trust fund as specified in this section, the first payment shall not be less than the closure and, if applicable, post-closure care cost of that portion of the facility that has not been closed in accordance with an approved plan. This payment is due on the effective date of the trust agreement. If the value of the trust fund is less than the current closure cost for the entire facility and, if applicable, post-closure care estimate, the amount of the current closure cost or post-closure care estimate still to be paid into the trust fund shall be paid in over the pay-in period. Payments shall continue to be made no later than 30 days after each anniversary date of the first payment made pursuant to this regulation. The amount of each payment shall be determined by this formula:~~

$$\text{Next payment} = \frac{CE - CV}{Y}$$

where CE is the current closure and post-closure care cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

~~3. At no time during the life of the facility or the term of the permit shall the trust fund have a value less than the cost of closure of that portion of the facility that has not been closed in accordance with an approved closure plan at the time of the annual payment.]~~

D. For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund shall be at least equal to one-half of the current

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cost estimate for corrective action divided by the number of years in the corrective action pay-in period as defined in subsection B of this section. The amount of subsequent payments shall be determined by the following formula:

$$\text{Next payment} = \frac{RB - CV}{Y}$$

where RB is the most recent estimate of the required trust fund balance for corrective action (i.e., the total costs that will be incurred during the second half of the corrective action period), CV is the current value of the trust fund, and Y is the number of years remaining on the pay-in period. The initial payment into the trust fund shall be made no later than 120 days after the corrective action remedy has been selected.

E. If the owner or operator establishes a trust fund after having used one or more alternate mechanisms specified in this section, the initial payment into the trust fund shall be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of this section, as applicable.

F. The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the cost estimate at the time the fund is established. However, the value of the fund shall be maintained at no less than the value would have been if annual payments were made as specified in subsections B through E of this section, as applicable.

G. Whenever the cost estimate changes after the pay-in period is completed, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new cost estimate, the owner or operator shall, within 60 days of the change in the cost estimate, deposit a sufficient amount into the fund so that its value after payment at least equals the amount of the new estimate, or obtain other financial assurance as specified in this article to cover the difference. If the value of the trust fund is greater than the total amount of the cost estimate, the owner or operator may submit a written request to the director for release of the amount that is in excess of the cost estimate.

H. If the owner or operator substitutes other financial assurance as specified in this article for all or part of the trust fund, he may submit a written request to the director for release of the amount in excess of the current cost estimate covered by the trust fund.

I. Within 60 days after receiving a request from the owner or operator for release of funds specified in subsections G through H of this section, the director will instruct the trustee to release to the owner or operator such funds as the director deems appropriate, if any, in writing.

J. After beginning closure or during the period of post-closure care, an owner or operator or any other person authorized to conduct closure or post-closure care, may request reimbursement for closure or post-closure expenditures by submitting itemized bills to the director.

Within 60 days after receiving bills for closure or post-closure care activities, the director shall instruct the trustee to make reimbursements in those amounts as the director determines are in accordance with the closure or post-closure plan or are otherwise justified.

K. The director shall agree to terminate the trust when:

1. The owner or operator substitutes alternate financial assurance as specified in this article; or
2. The director notifies the owner or operator that he is no longer required by this article to maintain financial assurance for the closure, post-closure care or corrective action.

L. The wording of the trust agreement shall be identical to the wording specified in Appendix I and the trust agreement shall be accompanied by a formal certification of acknowledgment. Schedule A of the trust agreement, as described in Appendix I, shall be updated within 60 days after a change in the amount of the current cost estimate covered by the agreement.

9 VAC 20-70-160. Surety bond guaranteeing payment or performance.

A. An owner or operator may demonstrate financial assurance for closure or post-closure care by obtaining a payment or performance surety bond that satisfies the requirements of this section. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this section.

1. An owner or operator of a new facility shall submit the bond to the director at least 60 days before the date on which waste is first received for treatment or disposal. In case of existing facilities, the owner or operator who substitutes a surety bond for another financial assurance mechanism already in place shall submit the bond to the director at least 30 days before the expiration date of the previous mechanism.
2. The bond shall be effective before the initial receipt of waste, [~~effective date of this amendment~~ January 7, 1998], or the expiration date of the previous assurance mechanism, whichever is later, or no later than 120 days after the corrective action remedy has been selected.
3. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of Treasury.

B. The surety bond shall name the facility operator or owner as the principal and name the Commonwealth of Virginia as the obligee.

C. The penal sum of the bond shall be in an amount at least equal to the current closure, post-closure care or corrective action cost estimate, whichever is applicable.

D. The term of the bond shall be for the active life of the waste management facility for which a permit is applied by the owner or operator through the closure period. A bond used for post-closure care assurance shall extend through the post-closure period. A bond used for corrective action shall extend through the corrective action period.

E. The bond shall guarantee that the owner or operator will:

1. Perform final closure, post-closure care, or corrective action in accordance with the closure or post-closure plan and other requirements in any permit for the facility;
2. Perform final closure, post-closure care, or corrective action following an order to begin closure, post-closure, or corrective action issued by the director or by a court, or following issuance of a notice of termination of the permit; or
3. Provide alternate financial assurance as specified in this article within 60 days after receipt by the director of a notice of cancellation of the bond from the surety.

F. The surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

G. The owner or operator shall establish a standby trust fund. The standby trust fund shall meet the requirements of 9 VAC 20-70-150 except the requirements for initial payment and subsequent annual payments.

H. Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund shall be approved by the trustee.

I. If upon amendment of the permit, the cost estimate increases to an amount greater than the amount of the penal sum of the bond, the owner or operator shall, within 60 days after the increase, cause the penal sum of the bond to be increased to an amount at least equal to the new estimate or obtain other financial assurance, as specified in this article to cover the increase. Whenever the cost estimate decreases, the penal sum may be reduced to the amount of the cost estimate following written approval by the director. Notice of an increase or decrease in the penal sum shall be sent to the director by certified mail within 60 days after the change.

J. The bond shall remain in force for its term unless the surety sends written notice of cancellation by certified mail to the owner or operator and to the director. Cancellation cannot occur, however:

1. During the 120 days beginning on the date of receipt of the notice of cancellation by the director as shown on the signed return receipt; or
2. While an enforcement procedure is pending.

K. Following a determination that the owner or operator has failed to perform closure or post-closure in accordance with the approved plan and any other permit or order

requirements when required to do so, the surety shall perform, or cause to have performed, closure, post-closure care or corrective action in accordance with the terms of the bond, approved plan and any other permit requirement or enforcement order. As an alternative to performing final closure or post-closure, the surety may forfeit the full amount of the penal sum to the Commonwealth.

L. The owner or operator may cancel the bond if the director has given prior written consent based on receipt of evidence of alternative financial assurance as specified in this article or if the owner or operator is no longer required to demonstrate financial responsibility.

M. The director will notify the surety if the owner or operator provides alternate financial assurance as specified in this article.

N. The surety will not be liable for deficiencies in the performance of closure by the owner or operator after the owner or operator has been notified by the director that the owner or operator is no longer required by this article to maintain financial assurance for closure or post-closure care of the facility.

O. In regard to closure or post-closure performed either by the owner or operator or by the surety, proper final closure of a waste management facility shall be deemed to have occurred when the director determines that final closure or post-closure has been completed. Such final closure shall be deemed to have been completed when the provisions of the site's approved plan have been executed and the provisions of any other permit requirements or enforcement orders relative to closure or post-closure care have been complied with.

P. The wording of the surety bond shall be identical to the wording specified in Appendix II.

9 VAC 20-70-170. Letter of credit.

A. An owner or operator of a waste management facility may satisfy the requirements of this article by obtaining an irrevocable standby letter of credit that satisfies the requirements of this section and by submitting the letter of credit to the director. The letter of credit shall be effective before the initial receipt of waste or before [~~the effective date of this amendment~~ January 7, 1998], whichever is later, in case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected. The issuing institution shall be a bank or other financial institution that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by the Commonwealth of Virginia, by a federal agency, or by an agency of another state.

B. The letter of credit shall be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for closure, post-closure care, or corrective action, whichever applicable. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year. If the issuing

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institution decides not to extend the letter of credit beyond the current expiration date it shall, at least 120 days before the date, notify both the owner or operator and the director by certified mail of that decision. The 120-day period will begin on the date of receipt by the director as shown on the signed return receipt. Expiration cannot occur, however, while an enforcement procedure is pending. If the letter of credit is canceled by the issuing institution, the owner or operator shall obtain alternate financial assurance.

C. Whenever the cost estimate increases to an amount greater than the amount of credit, the owner or operator shall, within 60 days of the increase, cause the amount of credit to be increased to an amount at least equal to the new estimate or obtain other financial assurance as specified in this article to cover the increase. Whenever the cost estimate decreases, the letter of credit may be reduced to the amount of the new estimate following written approval by the director. The issuing institution shall send the notice of an increase or decrease in the amount of the credit to the director by certified mail within 60 days of the change.

D. Following a determination that the owner or operator has failed to perform closure, post-closure or corrective action in accordance with the approved plan or other permit or order requirements, the director will draw on the letter of credit.

E. The owner or operator may cancel the letter of credit only if alternate financial assurance acceptable to the director is substituted as specified in this article or if the owner or operator is released by the director from the requirements of this chapter.

F. The director shall return the original letter of credit to the issuing institution for termination when:

1. The owner or operator substitutes acceptable alternate financial assurance for closure, post-closure care, or corrective action as specified in this article; or
2. The director notifies the owner or operator that he is no longer required by this article to maintain financial assurance for closure or post-closure of the facility.

G. The wording of the letter of credit shall be identical to the wording specified in the Appendix III.

9 VAC 20-70-180. Deposit of acceptable collateral.

A. An owner or operator of a waste management facility (with the exception of sanitary landfills) may satisfy the requirements of this article, wholly or in part, by filing with the director a collateral bond payable to the Commonwealth of Virginia, conditioned so that the owner or operator shall comply with the closure, post-closure care or corrective action plan filed for the site. The amount of the bond shall be at least equal to the estimated closure, post-closure care or corrective action cost for the site for which the permit application has been filed or any part thereof not covered by other financial responsibility mechanisms. Liability of such bond shall be for the term of the permit or until proper final closure, post-closure care or corrective action is completed,

whichever comes last. Such bond shall be executed by the owner or operator after depositing with the director acceptable collateral, the market value of which shall be at least equal to the total estimated closure, post-closure care, or corrective action cost or any part thereof not covered by other financial responsibility mechanisms.

B. Acceptable collateral may include certificates of deposit, negotiable bonds of the United States Government, the Commonwealth of Virginia or any of its agencies, any government authority within the Commonwealth of Virginia, or any county, municipality or other local bond issuing authority within the Commonwealth of Virginia approved as acceptable for financial responsibility purposes by the director.

C. The director shall, upon receipt of any such collateral, place the mechanisms with the state treasurer to be held in the name of the Commonwealth of Virginia, in trust, for the purposes for which such deposit is made.

D. The owner or operator shall be entitled to demand, receive and recover the interest and income from said mechanisms as it becomes due and payable as long as the market value of the mechanisms plus any other mechanisms used continue to at least equal the amount of the estimated closure, post-closure care, or corrective action cost.

E. The owner or operator shall also be permitted to replace the collateral mechanisms with other like mechanisms of at least equal market value upon proper notification to the director and the state treasurer.

F. In the event of failure of the owner or operator to comply with the final closure, post-closure care or corrective action requirements, the director shall declare said collateral forfeited and shall request the state treasurer to convert said collateral into cash and transfer such funds to the director to be used for closure, post-closure care or corrective action purposes.

9 VAC 20-70-190. Insurance.

A. An owner or operator may demonstrate financial assurance for closure, post-closure care or corrective action by obtaining insurance which conforms to the requirements of this section. The insurance shall be effective before the initial receipt of waste or before [~~the effective date of this amendment~~ January 7, 1998], whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected. At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states. The owner or operator shall notify the director that a copy of the insurance policy has been placed in the operating record.

B. The insurance policy shall guarantee that funds will be available to close the waste management unit whenever final closure occurs, or to provide post-closure care for the solid waste disposal unit whenever the post-closure care period begins, whichever is applicable. The policy shall also guarantee that once closure or post-closure care begins, the

insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or post-closure care, up to an amount equal to the face amount of the policy.

C. The insurance policy shall be issued for a face amount at least equal to the current cost estimate for closure or post-closure care, whichever is applicable. The term face amount means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount although the insurer's future liability will be lowered by the amount of the payments.

D. An owner or operator, or any other person authorized to conduct closure or post-closure care, may receive reimbursements for closure or post-closure expenditures, whichever is applicable. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or post-closure care, and if justification and documentation of the cost is placed in the operating record. The owner or operator shall notify the director that the documentation of the justification for reimbursement has been placed in the operating record and that reimbursement has been received.

E. Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

F. The insurance policy shall provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner and operator and to the director 120 days in advance of cancellation. If the insurer cancels the policy, the owner or operator shall obtain alternate financial assurance as specified in this section.

G. For insurance policies providing coverage for post-closure care, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase shall be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85% of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week Treasury securities.

H. The owner or operator may cancel the insurance policy only if alternate financial assurance is substituted as specified in this article, or if the owner or operator, is no longer required to demonstrate financial responsibility.

I. The wording of the insurance certificate shall be identical to the wording specified in Appendix IV.

9 VAC 20-70-200. Corporate financial test.

An owner or operator may satisfy the requirements for financial assurance by demonstrating that he passes a financial test as specified in this section. To pass this test the owner or operator shall meet the following criteria:

1. Financial component.

a. The owner or operator shall satisfy one of the following three conditions:

(1) A current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's;

(2) A ratio of less than 1.5 comparing total liabilities to net worth; or

(3) A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities.

b. The tangible net worth of the owner or operator shall be greater than the sum of the current closure, post-closure care, corrective action cost estimates and any other environmental obligations covered by a financial test plus \$10 million.

c. The owner or operator shall have assets located in the United States amounting to at least the sum of current closure, post-closure care, corrective action cost estimates and any other environmental obligations covered by a financial test as described in subdivision 3 of this section.

2. Reporting requirements.

a. To demonstrate that he meets the financial component, the owner or operator shall submit the following items to the director:

(1) A letter signed by the owner's or operator's chief financial officer and worded as specified in Appendix V.

(2) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year except as provided in subdivision 2 a (2) (a) of this section:

(a) To be eligible to use the financial test, the owner's or operator's financial statements referenced in subdivision 2 of this section shall receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance. The director may evaluate qualified opinions on a case by case basis and allow use of the financial test in cases where the director deems that the matters which form the basis for the qualification are insufficient to warrant disallowance of the test.

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If the director does not allow use of the test, the owner or operator shall provide alternate financial assurance as specified in this article.

(b) (Reserved.)

(3) If the chief financial officer's letter providing evidence of financial assurance includes financial data that are different from data in the audited financial statements referred to in subdivision 2 a (2) of this section or any other audited financial statement or data filed with the Securities Exchange Commission (SEC), a special report from the owner's or operator's independent certified public accountant to the owner or operator is required stating that:

(a) He has compared the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(b) In connection with that examination, no matters came to his attention which caused him to believe that the data in the chief financial officer's letter should be adjusted.

b. An owner or operator shall submit the items specified in subdivision 2 of this section before the initial receipt of waste or before [~~the effective date of this amendment~~ January 7, 1998], whichever is later in the case of closure, post-closure care, or no later than 120 days after the corrective action remedy has been selected. If the owner or operator changes the financial assurance mechanism to corporate financial test from any other mechanism, the owner or operator shall submit the items specified in subdivision 2 of this section at least 60 days before the date that the former assurance expires.

c. After the initial submission of items specified in subdivision 2 of this section, the owner or operator shall update the information and submit updated information to the director within 90 days following the close of the owner or operator's fiscal year. This information must consist of all three items specified in subdivision 2 of this section.

d. The owner or operator is no longer required to submit the items specified in subdivision 2 of this section when:

(1) He substitutes alternate financial assurance as specified in this article; or

(2) He is released from the requirements of this article by the director.

e. If the owner or operator no longer meets the requirements of subdivision 1 of this section, the owner or operator shall, within 120 days following the close of the owner or operator's fiscal year, obtain

alternative financial assurance that meets the requirements of this article, notify the director that the owner or operator no longer meets the criteria of the financial test and submit the alternate assurance documentation.

f. The director may, based on a reasonable belief that the owner or operator may no longer meet the requirement of this article, require reports of financial condition at any time from the owner or operator in addition to those specified in subdivision 2 of this section. If the director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subdivision 1 of this section, the owner or operator shall provide alternate financial assurance as specified in this article within 30 days after notification of such a finding.

g. The director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see subdivision 2 a (2) of this section). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The director will evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in this article within 30 days after notification of the disallowance.

3. Calculation of costs to be assured. When calculating the current cost, estimates for closure, post-closure care, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test referred to in subdivision 1 of this section, the owner or operator must include cost estimates required for municipal solid waste management facilities under this part, as well as cost estimates required for the following environmental obligations, if it assures them through a financial test obligations associated with underground injection control (UIC) facilities under 40 CFR 144.62, petroleum underground storage tank facilities under 40 CFR Part 280, polychlorinated biphenyls (PCB) storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265.

4. During the period of post-closure care, the director may approve a decrease in the current post-closure cost estimate for which this test demonstrates financial assurance if the owner or operator demonstrates to the director that the amount of the cost estimate exceeds the remaining cost of the post-closure care.

9 VAC 20-70-210. Local government financial test.

An owner or operator that satisfies the requirements of subdivisions 1 through 3 of this section may demonstrate financial assurance up to the amount specified in subdivision 4 of this section.

1. Financial component.

a. The owner or operator shall satisfy [the provisions of] subdivision 1 a [~~(1) or subdivision 1 a (2)~~] of this section, as applicable:

(1) If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, he shall have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's on all such general obligation bonds; [~~or~~]

(2) If the owner or operator [has the legal authority to issue general obligation bonds but] does not have [any such bonds] outstanding [~~rated, general obligation bonds; (a)~~] he shall have a current [general obligation] shadow bond rating of Aaa, Aa, A, or Baa as issued by Moody's, or AAA, AA, A, or BBB as issued by Standard and Poor's; or

~~(b)~~ (3) If the owner or operator does not have outstanding, rated general obligation bonds,] he shall satisfy each of the following financial ratios based on the owner's or operator's most recent audited annual financial statement:

[~~#~~ (a)] A ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and

[~~#~~ (b)] A ratio of annual debt service to total expenditures less than or equal to 0.20.

b. The owner or operator shall prepare his financial statements in conformity with Generally Accepted Accounting Principles for governments and have its financial statements audited by an independent certified public accountant or by the Auditor of Public Accounts.

c. An owner or operator is not eligible to assure its obligations under this section if [~~#~~ he]:

(1) Is currently in default on any outstanding general obligation bonds,

(2) Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's,

(3) Operated at a deficit equal to 5.0% or more of total annual revenue in each of the past two fiscal years, or

(4) Receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant or Auditor of Public Accounts auditing its financial statement as required under subdivision 1 b of this section. However, the director may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the director deems the qualification insufficient to warrant disallowance of the test.

2. Public notice component. The local government owner or operator shall place a reference to the closure, post-closure care, or corrective action costs assured through the financial test into next comprehensive annual financial report (CAFR) after [~~the effective date of this section~~ January 7, 1998,] or prior to the initial receipt of waste at the facility, whichever is later. Disclosure shall include the nature and source of closure and post-closure requirements, the reported liability at the balance sheet date, the estimated total closure and post-closure care cost remaining to be recognized, the percentage of landfill capacity used to date, and the estimated landfill life in years. A reference to corrective action cost shall be placed in CAFR no later than 120 days after the corrective action remedy has been selected in accordance with 9 VAC 20-80-310. For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the operating record until issuance of the next available CAFR if timing does not permit the reference to be incorporated into the most recently issued CAFR or budget. For closure and post-closure care costs, conformance with Government Accounting Standards Board Statement 18 assures compliance with this public notice component.

3. Recordkeeping and reporting requirements.

a. The local government owner or operator must place the following items in the facility's operating record:

(1) A letter signed by the local government's chief financial officer that:

(a) Lists all the current cost estimates covered by a financial test, as described in subdivision 4 of this section;

(b) Provides evidence and certifies that the local government meets the conditions of subdivisions 1 a, 1 b, and 1 c of this section; and

(c) Certifies that the local government meets the conditions of subdivisions 2 and 4 of this section.

(2) The local government's independently audited year-end financial statements for the latest fiscal year, including the unqualified opinion of the auditor who must be an independent, certified public accountant or an appropriate state agency that conducts equivalent comprehensive audits;

(3) A report to the local government from the local government's independent certified public accountant (CPA) or the Auditor of Public Accounts based on performing an agreed upon procedures engagement relative to the financial ratios required by subdivision 1 a [~~(2)~~ (3)] of this section, if applicable, and the requirements of subdivisions 1 b, 1 c (3) and 1 c (4) of this section. The CPA or state agency's report should state the procedures

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performed and the CPA or state agency's findings; and

(4) A copy of the comprehensive annual financial report (CAFR) used to comply with subdivision 2 of this section or certification that the requirements of General Accounting Standards Board Statement 18 have been met.

b. The items required in subdivision 3 a of this section shall be placed in the facility operating record as follows:

(1) In the case of closure and post-closure care, either before [~~the effective date of this section~~ January 7, 1998], or prior to the initial receipt of waste at the facility, whichever is later, or

(2) In the case of corrective action, not later than 120 days after the corrective action remedy is selected in accordance with the requirements of 9 VAC 20-80-310.

c. After the initial placement of the items in the facility's operating record, the local government owner or operator must update the information and place the updated information in the operating record within 180 days following the close of the owner or operator's fiscal year.

d. The local government owner or operator is no longer required to meet the requirements of subdivision 3 of this section when:

(1) The owner or operator substitutes alternate financial assurance as specified in this section; or

(2) The owner or operator is released from the requirements of this section in accordance with 9 VAC 20-70-111 E, 9 VAC 20-70-112 B, or 9 VAC 20-70-113 B.

e. A local government shall satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test it must, within 210 days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this section, place the required submissions for that assurance in the operating record, and notify the state director that the owner or operator no longer meets the criteria of the financial test and that alternate assurance has been obtained.

f. The director, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government

financial test, the local government shall provide alternate financial assurance in accordance with this article.

4. Calculation of costs to be assured. The portion of the closure, post-closure, and corrective action costs for which an owner or operator can assure under subdivision 1 of this section is determined as follows:

a. If the local government owner or operator does not assure other environmental obligations through a financial test, it may assure closure, post-closure, and corrective action costs that equal up to 43% of the local government's total annual revenue or the sum of total revenues of constituent governments in the case of regional authorities.

b. If the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR 144.62, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under Part IX or X of the Virginia Hazardous Waste Management Regulations (9 VAC 20-60-10 et seq.), it shall add those costs to the closure, post-closure, and corrective action costs it seeks to assure under subdivision 1 of this section. The total shall not exceed 43% of the local government's total annual revenue.

c. The owner or operator shall obtain an alternate financial assurance mechanism for those costs that exceed the limits set in subdivisions 4 a and 4 b of this section.

9 VAC 20-70-220. Corporate guarantee.

A. An owner or operator may meet the requirements of this article by obtaining a written guarantee, hereafter referred to as "corporate guarantee." The guarantor shall be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator.

B. Financial component. The guarantor shall meet the requirements for owners or operators in 9 VAC 20-70-200 and shall comply with the terms of the corporate guarantee.

C. Reporting requirements.

1. The wording of the corporate guarantee shall be identical to the wording specified in Appendix VI. The corporate guarantee shall accompany the items sent to the director as specified in subdivision 2 of 9 VAC 20-70-200.

2. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this

letter shall describe this "substantial business relationship" and the value received in consideration of the guarantee.

3. The guarantee shall be effective and the guarantor shall submit the items specified in subdivision 2 of 9 VAC 20-70-200 before the initial receipt of the waste or before [the effective date of this amendment], whichever is later in the case of closure or post-closure care, or no later than 120 days after the corrective action remedy has been selected. If the owner or operator changes the financial assurance mechanism to corporate guarantee from any other mechanism, the guarantor shall submit the required items 60 days before the former mechanism expires.

D. The terms of the corporate guarantee shall provide that:

1. If the owner or operator fails to perform final closure or post-closure care, or corrective action of a facility covered by the corporate guarantee in accordance with the closure, post-closure care or corrective action plan and other permit or order requirements whenever required to do so, the guarantor will:

a. Perform, or pay a third party to perform, closure, post-closure care, and/or corrective action as required (performance guarantee); or

b. Establish a fully funded trust fund as specified in 9 VAC 20-70-150 in the name of the owner or operator (payment guarantee).

2. The corporate guarantee will remain in force unless the guarantor sends a prior notice of cancellation by certified mail to the owner or operator and to the director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the director, as evidenced by the return receipts.

3. If a guarantee is canceled, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator, obtain alternate financial assurance, and submit the required documentation to the director.

4. If the owner or operator fails to provide alternate financial assurance as specified in this article and to obtain the written approval of such alternate assurance from the director within 90 days after the receipt by both the owner or operator and the director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial assurance in the name of the owner or operator.

E. If a corporate guarantor no longer meets the requirements of subdivision 1 of 9 VAC 20-70-200, the owner or operator must, within 90 days following the close of the guarantor's fiscal year, obtain alternative assurance and submit the required documentation to the director. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must

provide that alternate assurance within 120 days following the close of the guarantor's fiscal year, obtain alternative assurance, and submit the necessary documentation to the director.

F. The owner or operator is no longer required to submit the items specified in this section when:

1. The owner or operator substitutes alternate financial assurance, or

2. The owner or operator is released from the requirements by the director.

9 VAC 20-70-230. Local government guarantee.

A. An owner or operator may demonstrate financial assurance for closure, post-closure, and corrective action, as required by this article, by obtaining a written guarantee provided by a local government. The guarantor shall meet the requirements of the local government financial test in 9 VAC 20-70-210 and shall comply with the terms of a written guarantee.

B. Terms of the written guarantee. The guarantee shall be effective before the initial receipt of waste or before [~~the effective date of this amendment~~ January 7, 1998], whichever is later, in the case of closure, post-closure care, or no later than 120 days after the corrective action remedy has been selected. The guarantee shall provide that:

1. If the owner or operator fails to perform closure, post-closure care, and/or corrective action of a facility covered by the guarantee, the guarantor will:

a. Perform, or pay a third party to perform, closure, post-closure care, and/or corrective action as required; or

b. Establish a fully funded trust fund as specified in 9 VAC 20-70-150 in the name of the owner or operator.

2. The guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the director, as evidenced by the return receipts.

3. If a guarantee is canceled, the owner or operator shall, within 90 days following receipt of the cancellation notice by the owner or operator and the director, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the director. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor shall provide that alternate assurance within 120 days following the close of the guarantor's fiscal year, obtain alternative assurance, place evidence of the alternate assurance in the facility operating record, and notify the director.

C. Recordkeeping and reporting.

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1. The owner or operator shall place a certified copy of the guarantee along with items required under subdivision 3 of 9 VAC 20-70-210 into the facility's operating record before the initial receipt of waste or before [~~the effective date of this amendment~~ January 7, 1998], whichever is later in the case of closure, post-closure care, or no later than 120 days after the corrective action remedy has been selected.

2. The owner or operator is no longer required to maintain the items specified in 9 VAC 20-170-190 when:

- a. The owner or operator substitutes alternate financial assurance as specified in this section; or
- b. The owner or operator is released from the requirements of this chapter.

3. If a local government guarantor no longer meets the requirements of 9 VAC 20-70-210, the owner or operator shall, within 90 days following the close of the guarantor's fiscal year, obtain alternative assurance, place evidence of the alternate assurance in the facility operating record, and notify the director. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor shall provide that alternate assurance within 120 days.

9 VAC 20-70-240. Other mechanisms.

A. An owner or operator may satisfy the requirements of this article by obtaining any other mechanism that is approved by the director. In order to receive such approval, the owner or operator shall submit documentation that:

1. The financial assurance mechanisms shall ensure that the amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action for known releases when needed;
2. The financial assurance mechanisms shall ensure that funds will be available in a timely fashion when needed; and
3. The financial assurance mechanisms shall be obtained by the owner or operator by [~~the effective date of this amendment~~ January 7, 1998,] or prior to the initial receipt of solid waste, whichever is later, in the case of closure and post-closure care, and no later than 120 days after the corrective action remedy has been selected, until the owner or operator is released from the financial assurance requirements.

B. The financial assurance mechanisms shall be legally valid, binding, and enforceable under [the federal and] Virginia [law laws].

9 VAC 20-70-250. Multiple financial mechanisms.

An owner or operator may satisfy the requirements of this article by establishing more than one financial mechanism per facility, except that mechanisms guaranteeing performance, rather than payment, may not be combined with other mechanisms. The mechanisms shall be specified in 9

VAC 20-70-150 through 9 VAC 20-70-240, except that financial assurance for the amount at least equal to the current cost estimate for closure, post-closure care, or corrective action may be provided by a combination of mechanisms, rather than a single mechanism.

Article 5.

Release from Financial Assurance Requirements.

9 VAC 20-70-260. Release of the owner or operator from the financial assurance requirements.

Within 60 days after receiving certification from the owner or operator that closure, post-closure care or corrective action has been accomplished in accordance with the requirements of the permit or the order, the director shall verify whether proper closure, post-closure care, or corrective action has occurred. Unless the director has reason to believe that closure, post-closure care or corrective action has not been in accordance with the appropriate plan or other requirements, he shall notify the owner or operator in writing that he is no longer required to maintain financial assurance for the particular unit or facility. Such notice shall release the owner or operator only from the requirements for financial assurance for the unit or facility; it does not release him from legal responsibility for meeting the closure, post-closure care or corrective action standards. If no written notice of termination of financial assurance requirements or failure to properly perform closure, post-closure care or corrective action is received by the owner or operator within 60 days after certifying proper closure, post-closure care or corrective action, the owner or operator may request the director for an immediate decision in which case the director shall respond within 10 days after receipt of such request.

Article 6.

Incapacity of Owners, Operators or Financial Institution.

9 VAC 20-70-270. Incapacity of owners, operators or financial institution.

A. An owner or operator shall notify the director by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in 9 VAC 20-70-220 shall make such a notification if he is named as debtor, as required under the terms of the corporate guarantee.

B. An owner or operator who fulfills the requirements of Article 4 (9 VAC 20-70-140 et seq.) of this part by obtaining a trust fund, a letter of credit, a surety bond, or an insurance policy, will be deemed to be without the required financial assurance in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing a surety bond, letter of credit, or insurance policy to issue such mechanisms. The owner or operator shall establish other financial assurance within 60 days of such event.

Article 7. Discounting.

9 VAC 20-70-280. Discounting.

The director may allow discounting of closure cost estimates, post-closure care cost estimates, and/or corrective action costs up to the rate of return for essentially risk free investments, net of inflation, under the following conditions:

1. The director determines that cost estimates are complete and accurate and the owner or operator has submitted a statement from a registered professional engineer so stating;
2. The director finds the facility in compliance with applicable and appropriate permit conditions;
3. The director determines that the closure date is certain and the owner or operator certifies that there are no foreseeable factors that will change the estimate of site life; and
4. Discounted cost estimates must be adjusted annually to reflect inflation and years of remaining life.

APPENDIX 3-1. GUIDELINES FOR TRUST FUND.

A. The owner or operator of a nonhazardous solid waste disposal facility may satisfy the requirements of this section by establishing a closure trust fund which satisfies the requirements of this appendix and by attaching an originally signed duplicate of the trust agreement to the facility closure or post-closure plan submitted with the permit application. The trustee for the trust fund must be a bank or financial institution which has the authority to act as a trustee and whose trust operations are regulated and examined by the Commonwealth of Virginia.

B. The trust agreement shall be executed in the form provided for such purposes by the executive director. The trust agreement must contain a formal certification of the acknowledgement as indicated in Appendix 3-2.

C. Payments to the trust fund must be made annually by the owner or operator over the term of the state permit issued for such facility or over the disposal life of the facility if such facility life is shorter than the term of the state permit. Payments must be made as follows:

1. The first payment shall be made when the trust is established and shall be at least equal to the cost estimate (as determined under 9 VAC 20-70-110), divided by the number of years in the term of the permit or life of the facility, whichever is the shorter.
2. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment shall be the cost estimate minus the current value of the trust fund, divided by the number of years remaining in the term of the permit, or the remaining number of years in the life of the site, whichever is the shorter.

D. The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the cost estimate at the time the fund is established. However, the value of the fund must be maintained at no less than the value would have been if annual payments were made as specified in paragraphs A and C of this Appendix.

E. If the owner or operator establishes a trust fund after having initially used one or more alternative mechanisms specified in this section, his first payment must be at least the amount that the fund would have contained if the trust fund were established and annual payments were made as specified in paragraphs A and C of this Appendix.

F. Whenever the cost estimate changes after the pay in period is completed, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new cost estimate, the owner or operator must, within 60 days of the change in the cost estimate, deposit a sufficient amount into the fund so that its value after payment at least equals the amount of the new estimate, or obtain other financial assurance as specified in this section to cover the difference. If the value of the trust fund is greater than the total amount of the cost estimate, the owner or operator may submit a written request to the executive director for release of the amount which is in excess of the closure cost estimate.

G. If the owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, he may submit a written request to the executive director for release of the amount which is greater than the amount required as a result of the substitution.

H. Within 60 days after receiving a request from the owner or operator for release of funds specified in paragraphs F and G of this Appendix, the executive director will instruct the trustee to release to the owner or operator such funds as the executive director specifies in writing.

I. After beginning final closure or during the period of post-closure care, an owner or operator or any other person authorized to conduct closure, may request reimbursement for closure or post-closure expenditures respectively by submitting itemized bills to the executive director. Within 60 days after receiving bills for closure activities, the executive director shall instruct the trustee to make reimbursements in those amounts as the executive director determines that the expenditures are in accordance with the closure or post-closure plan or are otherwise justified.

J. The executive director shall agree to terminate the trust when:

1. The owner or operator substitutes alternate financial assurance as specified in this section; or
2. The executive director notifies the owner or operator that he is no longer required by this section to maintain financial assurance for the closure or post-closure of the facility.

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APPENDIX 3-2.1.

WORDING OF TRUST AGREEMENT FOR A TRUST FUND AGREEMENTS.

A trust agreement for a trust fund as specified in 9 VAC 20-70-120, must be worded as follows, except that (NOTE: Instructions in [brackets parentheses] are to be replaced with the relevant information and the [brackets parentheses] deleted.)

TRUST AGREEMENT

Trust agreement, the "Agreement," entered into as of (date) by and between (name of the owner or operator), a (State) (corporation, partnership, association, proprietorship), the "Grantor," and (name of corporate trustee), a (State corporation) (national bank), the "Trustee."

Whereas, the ~~Virginia~~ Waste Management Board, ~~Commonwealth of Virginia~~, has established certain regulations applicable to the Grantor, requiring that the owner or operator of a [~~nonhazardous~~] (solid) (regulated medical) (yard) waste (disposal) (management) facility must provide assurance that funds will be available when needed for (closure ~~or~~, post-closure care, or corrective action) of the facility,

Whereas, the Grantor has elected to establish a trust to provide (all or part of) such financial assurance for the facility identified herein,

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 "fiduciary" means any person who exercises any power of control, management, or disposition or renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of this trust fund, or has any authority or responsibility to do so, or who has any authority or responsibility in the administration of this trust fund.

B. The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

C. The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facility and Cost Estimates. This Agreement pertains to (~~insert the facility number, if any, name, address, and the closure cost estimate, or portion thereof, for which financial assurance is demonstrated by this Agreement~~) facility(ies) and cost estimates identified on attached Schedule A.

(NOTE: On Schedule A, for each facility list, as applicable, the permit number, name, address, and the current closure

and/or post-closure cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement.)

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Department of Environmental Quality, 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 [~~property~~] consisting of [~~the property cash or securities~~], which [~~is~~ are] acceptable to the Trustee, described in Schedule A B attached hereto. Such property and any other property subsequently transferred to the Trustee is 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 will be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee undertakes no responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments to discharge any liabilities of the Grantor established by the Commonwealth of Virginia's Department of Environmental Quality.

Section 4. Payment for (Closure, Post-Closure Care, or Corrective Action). The Trustee will make such payments from the Fund as the Department of Environmental Quality, Commonwealth of Virginia will direct, in writing, to provide for the payment of the costs of (closure ~~or~~, post-closure care, corrective action) of the facility covered by this Agreement. The Trustee will reimburse the Grantor or other persons as specified by the Department of Environmental Quality, Commonwealth of Virginia, from the Fund for (closure ~~or~~, post-closure care, corrective action) expenditures in such amounts as the Department of Environmental Quality will direct, in writing. In addition, the Trustee will refund to the Grantor such amounts as the Department of Environmental Quality specifies in writing. Upon refund, such funds will no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the fund will consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee will 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 investment guidelines and objectives communicated in writing to the Trustee from time to time by the Grantor, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee or any other fiduciary will discharge his duties with respect to the trust fund solely in the interest of the ~~participants and beneficiaries~~ beneficiary 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 any enterprise of a like character and with like aims; except that:

A. Securities or other obligations of the Grantor, or any other owner or operator of the facility, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 USC § 80a-2(a), will not be acquired or held, unless they are securities or other obligations of the federal or a state government;

B. The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

C. The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 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~~ *participating* herein. To the extent of the equitable share of the Fund in any such commingled trust, such commingled trust will be part of the Fund; *and*

B. To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 USC § 80a-1 et seq., of 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 Trustees 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 private contract or at public auction. No person dealing with the Trustee will 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 dispositions;

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 State government, or any agency or instrumentality thereof with a

Federal Reserve Bank, but the books and records of the Trustee will 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 will be paid from the Fund. All other expenses incurred by the Trustee in connection with the ~~administration~~ *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 will be paid from the Fund.

Section 10. Annual Valuation. The Trustee will annually, at the end of the month coincident with or preceding the anniversary date of establishment of the Fund, furnish the Grantor and to the ~~executive~~ director of the Department of Environmental Quality, Commonwealth of Virginia, a statement confirming the value of the Trust. Any securities in the Fund will be valued at market value as of no more than 30 days prior to the date of the statement. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the ~~executive~~ director of the Department of Environmental Quality, Commonwealth of Virginia will constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee will be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee will be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. ~~Upon the written agreement of Grantor, the Trustee, and the executive director of the Department of Environmental Quality, Commonwealth of Virginia, the Trustee may resign or the Grantor may replace the Trustee. In either event, the Grantor will appoint a successor Trustee who will~~ *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*

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hereunder. Upon acceptance of the appointment by the successor trustee, the Trustee will 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 and the date on which he assumes administration of the trust will be specified in writing and sent to the Grantor, the ~~executive~~ director of the Department of Environmental Quality, Commonwealth of Virginia, and the present ~~and successor~~ trustees 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 will be paid as provided in Part IX.

Section 14. Instructions to the Trustee. All orders, requests and instructions by the Grantor to the Trustee will be in writing, signed by ~~the grantor, trustee, a Notary Public and any person the Grantor may designate such persons as are designated in the attached Exhibit A or such other designees as the grantor may designate by amendment to Exhibit A.~~ The Trustee will be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests, and instructions by the ~~Executive~~ Director of the Department of Environmental Quality, Commonwealth of Virginia, to the Trustee will be in writing, signed by the ~~Executive~~ Director and the Trustee will act and will be fully protected in acting in accordance with such orders, requests and instructions. The Trustee will 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 Commonwealth of Virginia's Department of Environmental Quality hereunder has occurred. The Trustee will have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or the Commonwealth of Virginia's Department of Environmental Quality, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee will notify the Grantor and the ~~Executive~~ Director of the Department of Environmental Quality, Commonwealth of Virginia, by certified mail within 10 days following the expiration of the 30 day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee is not required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the ~~Executive~~ Director of the Department of Environmental Quality, Commonwealth of Virginia, or by the Trustee and the ~~Executive~~ Director of the Department of Environmental Quality, Commonwealth of Virginia, if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in

Section 16, this Trust will be irrevocable and will continue until terminated at the written agreement of the Grantor, the Trustee, and the ~~Executive~~ Director of the Department of Environmental Quality, Commonwealth of Virginia, or by the Trustee and the ~~Executive~~ Director if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, will be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee will 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 ~~Executive~~ Director of the Department of Environmental Quality, Commonwealth of Virginia, issued in accordance with this Agreement. The Trustee will be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, 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 19. Choice of Law. This Agreement will be administered, construed and enforced according to the laws of the Commonwealth of Virginia.

Section 20. Interpretation. As used in the 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 will not affect the interpretation of 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 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 the relevant regulations of the Department of Environmental Quality, Commonwealth of Virginia.

(Signature of Grantor)

By: (Title) (Date)

Attest:

(Title) (Date)

(Seal)

(Signature of Trustee)

By

Attest:

(Title)

(Seal)

(Date)

Certification of Acknowledgement:

COMMONWEALTH OF VIRGINIA

STATE OF

CITY/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)

[{Expiration Date}]

APPENDIX 3.3.

GUIDELINES FOR SURETY BOND GUARANTEEING PERFORMANCE OF CLOSURE OR POST CLOSURE.

~~A. An owner or operator may satisfy the requirements of this section by obtaining a surety bond which satisfies the requirements of this appendix and by submitting the original copy of the bond with the facility closure plan along with the permit application. Only bonds issued by surety companies licensed to operate as sureties in the Commonwealth of Virginia and approved by the executive director will satisfy the requirements of this section.~~

~~B. The surety bond form supplied by the executive director shall be used by the owner or operator and the surety.~~

~~C. The surety bond must name the disposal site operator or owner as the principal and name the Commonwealth of Virginia as the obligee.~~

~~D. The term of the bond shall be for the life of the disposal facility for which a permit is applied by the owner or operator through the closure period. A bond used for post closure assurance shall extend through the post closure period.~~

~~E. The bond must guarantee that the owner or operator will:~~

- ~~1. Perform final closure or post closure in accordance with the closure or post closure plan and other requirements in the permit for the facility; or~~
- ~~2. Perform final closure or post closure following an order to begin closure or post closure issued by the executive director or by a court, or following issuance of a notice of termination of the permit.~~

~~F. Provide alternate financial assurance as specified in this section within 60 days after receipt by the executive director of a notice of cancellation of the bond from the surety.~~

~~G. The surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.~~

~~H. The penal sum of the body must be in an amount at least equal to the amount of the closure or post closure cost estimate. (See 9 VAC 20-70-110.)~~

~~I. If upon renewal of the permit, the cost estimate increases to an amount greater than the amount of the penal sum of the bond, the owner or operator shall, within 60 days after the increase, cause the penal sum of the bond to be increased to an amount at least equal to the new estimate or obtain other financial assurance, as specified in this section, to cover the increase. Whenever the cost estimate decreases, the penal sum may be reduced to the amount of the cost estimate following written approval by the executive director. Notice of an increase or decrease in the penal sum must be sent to the executive director by certified mail within 60 days after the change.~~

~~J. The bond shall remain in force for its term unless the surety sends written notice of cancellation by certified mail to the owner or operator and to the executive director. Cancellation cannot occur, however:~~

- ~~1. During the 120 days beginning on the date of receipt of the notice of cancellation by the executive director as shown on the signed return receipt; or~~
- ~~2. While a compliance procedure is pending.~~

~~K. Following a determination that the owner or operator has failed to perform final closure or post closure in accordance with the approved plan and other permit requirements when required to do so, the surety shall perform final closure in accordance with the terms of the bond, approved plan and other permit requirements or closure order. As an alternative to performing final closure or post closure, the surety may forfeit the full amount of the penal sum to the Commonwealth.~~

~~L. The owner or operator may cancel the bond if the executive director has given prior written consent based on receipt of evidence of alternative financial assurance as specified in this section.~~

~~M. The executive director will notify the surety if the owner or operator provides alternate financial assurance as specified in this section.~~

~~N. The surety will not be liable for deficiencies in the performance of closure by the owner or operator after the owner or operator has been notified by the executive director that the owner or operator is no longer required by this section to maintain financial assurance for closure of the facility.~~

~~O. In regard to closure or post closure performed either by the owner or operator or the surety, proper final closure of a nonhazardous solid waste disposal site shall be deemed to have occurred when the executive director determines that final closure or post closure has been completed. Such final closure shall be deemed to have been completed when the provisions of the site's approved plan have been executed and at the minimum, an acceptable final cover has been applied to all excavated trenches, pits, basins, and wastes; backfills have been returned to reasonably acceptable grades for the areas; leachate and erosion potential has been eliminated or minimized; and adequate revegetation of~~

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~~excavated and disturbed grounds and areas has been completed.~~

APPENDIX 3.4. II.

WORDING OF SURETY BOND GUARANTEEING PERFORMANCE OF CLOSURE OR POST-CLOSURE.

~~A surety bond guaranteeing performance of closure, as specified in 9 VAC 20-70-120 B-2, must be worded as follows, except that the (NOTE: instructions in [brackets parentheses] are to be replaced with the relevant information and the [brackets parentheses] deleted.)~~

PERFORMANCE BOND FOR CLOSURE

Date bond executed:

Effective date:

Principal: (legal name and business address)

Type of organization: (insert "individual," "joint venture," "partnership," or "corporation")

State of incorporation:

Surety: (name and business address)

Name, address, ~~identification~~ permit number, if any, and (closure, post-closure care, or corrective action) cost estimate for the facility:

Penal sum of bond: \$.....

Surety's bond number:

Know all men by these present, That we, the Principal and Surety hereto are firmly bound to the Department of Environmental Quality, Commonwealth of Virginia, (hereinafter called the Department) in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally; *provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "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 each sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.*

Whereas, said Principal is required to have a permit from the Department of Environmental Quality, Commonwealth of Virginia, in order to own or operate the ~~nonhazardous~~ (solid, regulated medical, yard) waste ~~disposal~~ management facility identified above, and

Whereas, said Principal is required to provide financial assurance for (closure, post-closure care, corrective action) of the facility as a condition of the permit,

Now, therefore the conditions of this obligation are such that if the Principal shall faithfully perform (closure or, post-closure care, corrective action), whenever required to do so, of the facility identified above in accordance with the (closure

or, post-closure care, corrective action) plan submitted to receive said permit and other requirements of said permit as such plan and permit may be amended or renewed pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall faithfully perform (closure or, post-closure care, corrective action) following an order to begin (closure or, post-closure care, corrective action) issued by the Commonwealth of Virginia's Department of Environmental Quality or by a court, or following a notice of termination of the permit,

Or, if the Principal shall provide alternate financial assurance as specified in the Department's regulations and obtain the director's written approval of such assurance, within 90 days of the date notice of cancellation is received by the ~~executive~~ Director of the Department of Environmental Quality from the Surety, then this obligation will be null and void, otherwise it is to remain in full force and effect for the life of the ~~disposal~~ management facility identified above.

The Surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the ~~executive~~ Director of the Department of Environmental Quality, Commonwealth of Virginia, that the Principal has been found in violation of the requirements of the Department's regulations, the Surety must either perform (closure or, post-closure care, corrective action) in accordance with the approved plan and other permit requirements or forfeit the (closure, post-closure care, corrective action) amount of the ~~cost estimate~~ guaranteed for the facility to the Commonwealth of Virginia.

Upon notification by the ~~executive~~ Director of the Department of Environmental Quality, Commonwealth of Virginia, that the Principal has been found in violation of an order to begin (closure or, post-closure care, corrective action), the Surety must either perform (closure or, post-closure care, corrective action) in accordance with the ~~closure~~ order or forfeit the amount of the (closure ~~cost estimate~~, post-closure care, corrective action) guaranteed for the facility to the Commonwealth of Virginia.

The Surety hereby waives notification of amendments to the (closure, post-closure care, corrective action) plans, orders, permit, applicable laws, statutes, rules, and regulations and agrees that such amendments to the ~~closure or post-closure plan, permit, applicable laws, statutes, rules and regulations~~ shall in no way alleviate its obligation on this bond.

For purposes of this bond, ~~final~~ (closure or, post-closure care, corrective action) shall be deemed to have been completed when the ~~executive~~ Director of the Department of Environmental Quality, Commonwealth of Virginia, determines that the conditions of the approved plan have been met and, at the minimum, an acceptable final cover has been applied to all excavated trenches, pits, basins, and exposed wastes; backfills have been returned to reasonable grades for the area; leachate and erosion potential has been

~~eliminated or minimized; and adequate revegetation of excavated and disturbed grounds and areas has been completed.~~

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

The Surety may cancel the bond by sending written notice of cancellation to the owner or operator and to the executive Director of the Department of Environmental Quality, Commonwealth of Virginia, provided, however, that cancellation cannot occur (1) during the 120 days beginning on the date of receipt of the notice of cancellation by the executive director as shown on the signed return receipt; or (2) while a compliance procedure is pending.

The Principal may terminate this bond by sending written notice to the Surety, provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond by the executive Director of the Department of Environmental Quality, Commonwealth of Virginia.

In witness whereof, the Principal and Surety have executed this Performance 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 and that the wording of this surety bond is identical to the wording specified in the relevant regulations of the Commonwealth of Virginia, Department of Environmental Quality.

Principal

Signature(s):

Name(s) and Title(s) (typed)

Corporate Surety

Name and Address:

State of Incorporation:

Liability Limit: \$.....

Signature(s):

Name(s) and Title(s) (typed)

Corporate Seal:

**APPENDIX 3.5.
GUIDELINES FOR LETTER OF CREDIT.**

~~A. An owner or operator of a nonhazardous solid waste disposal facility may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which satisfies the requirements of this appendix and by submitting the original copy of the letter of credit attached to the facility~~

~~closure or post closure plan along with the permit application. The letter of credit must be effective before the initial receipt of waste at the facility for which it is issued. The issuing institution must be a bank or other financial institution which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by the Commonwealth of Virginia.~~

~~B. The wording of the letter of credit must be identical to the wording specified in the Appendix 3.6.~~

~~C. The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year. If the issuing institution decides not to extend the letter of credit beyond the current expiration date it must, at least 120 days before the date, notify both the owner or operator and the executive director by certified mail of that decision. The 120 day period will begin on the date of receipt by the executive director as shown on the signed return receipt. Expiration cannot occur, however, while a compliance procedure is pending.~~

~~D. The letter of credit must be issued for at least the amount of the cost estimate (see 9 VAC 20-70-110), except as provided in 9 VAC 20-70-120.~~

~~E. Whenever the cost estimate increases to an amount greater than the amount of credit, the owner or operator shall, within 60 days of the increase, cause the amount of credit to be increased to an amount at least equal to the new estimate or obtain other financial assurance as specified in this section to cover the increase. Whenever the cost estimate decreases, the letter of credit may be reduced to the amount of the new estimate following written approval by the executive director. Notice of an increase or decrease in the amount of the credit shall be sent to the executive director by certified mail within 60 days of the change.~~

~~F. Following a determination that the owner or operator has failed to perform closure or post-closure in accordance with the approved plan or other permit requirements, the executive director will draw on the letter of credit.~~

~~G. The letter of credit no longer satisfies the requirements of this paragraph subsequent to the receipt by the executive director of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the then current expiration date. Upon receipt of such notice, the executive director shall issue an order of noncompliance with these regulations, unless the owner or operator of the site has demonstrated alternate financial assurance as specified in this appendix. Should the owner or operator not correct the violation by demonstrating such alternate financial assurance within 30 days of issuance of the compliance order, the executive director will draw on the letter of credit.~~

~~H. The executive director shall return the original letter of credit to the issuing institution for termination when:~~

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~~1. The owner or operator substitutes alternate financial assurance for closure or post closure as specified in this section; or~~

~~2. The executive director notifies the owner or operator, in accordance with 9 VAC 20-70-120 D that he is no longer required by this section to maintain financial assurance for closure or post closure of the facility.~~

APPENDIX 3-6. III.

WORDING OF IRREVOCABLE STANDBY LETTER OF CREDIT.

~~A letter of credit as specified in 9 VAC 20-70-120 B 3 must be worded as follows, except that (NOTE: Instructions in [brackets parentheses] are to be replaced with the relevant information and the [brackets parentheses] deleted.)~~

IRREVOCABLE STANDBY LETTER OF CREDIT

Executive Director
Department of Environmental Quality
P.O. Box 10009
Richmond, Virginia 23240-0009

Dear (Sir or Madam):

We hereby establish our Irrevocable Letter of Credit No. in your favor of the Executive Director, Department of Environmental Quality, Commonwealth of Virginia, at the request and for the account of (owner's or operator's name and address) up to the aggregate amount of (in words) U.S. dollars \$....., available upon presentation of

1. your sight draft, bearing reference to this letter of credit No. together with
2. your signed statement declaring that the amount of the draft is payable pursuant to regulations issued under the authority of the Department of Environmental Quality, Commonwealth of Virginia.

The following amounts are included in the amount of this letter of credit: (Insert the facility identification permit number, if any, name and address, and the closure, post-closure care, corrective action cost estimate, or portions thereof, for which financial assurance is demonstrated by this letter of credit.)

This letter of credit is effective as of (date) and will expire on (date at least one year later), but such expiration date will be automatically extended for a period of (at least one year) on (date) and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you and (owner or operator's name) by certified mail that we decide not to extend the Letter of Credit beyond the current expiration date. In the event you are so notified, unused portion of the credit will be available upon presentation of your sight draft for 120 days after the date of receipt by you as shown on the signed return receipt or while a compliance procedure is pending, whichever is later.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we will duly honor such draft upon presentation to us, and we will pay to you the amount of the draft promptly and directly.

I hereby certify that I am authorized to execute this letter of credit on behalf of (issuing institution) and that the wording of this letter of credit is identical to the wording specified in the relevant regulations of the Department of Environmental Quality, Commonwealth of Virginia.

Attest:

(Signature and title of official 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," of "the Uniform Commercial Code.")

APPENDIX 3-7.

GUIDELINES FOR DEPOSIT OF ACCEPTABLE COLLATERAL.

~~A. An owner or operator of a nonhazardous solid waste disposal facility may satisfy the requirements of this section, wholly or in part, by filing with the executive director a collateral bond payable to the Commonwealth of Virginia, conditioned so that the owner or operator shall comply with the closure or post closure plan filed for the site. The amount of the bond shall be at least equal to the estimated closure or post closure cost of the site for which the permit application has been filed or any part thereof not covered by other financial responsibility instruments. Liability of such bond shall be for the term of the permit or until proper final closure or post closure of the site is completed, whichever comes first. Such bond shall be executed by the owner or operator after depositing with the executive director acceptable collateral, the market value of which shall be at least equal to the total estimated closure or post closure cost or any part thereof not covered by other financial responsibility instruments.~~

~~B. Acceptable collateral may include certificates of deposit, negotiable bonds of the United States Government, the Commonwealth of Virginia or any of its agencies, any government authority within the Commonwealth of Virginia, or any county, municipality or other local bond issuing authority within the Commonwealth of Virginia approved as acceptable for financial responsibility purposes by the executive director.~~

~~C. The executive director shall, upon receipt of any such collateral, place the instruments with the State Treasurer to be held in the name of the Commonwealth of Virginia, in trust, for the purposes for which such deposit is made.~~

~~D. The owner or operator shall be entitled to demand, receive and recover the interest and income from said instruments as it becomes due and payable as long as the market value of the instruments plus any other mechanisms used continue to at least equal the amount of the estimated closing cost.~~

~~E. The owner or operator shall also be permitted to replace the collateral instruments with other like instruments of at least equal market value upon proper notification to the executive director and the State Treasurer.~~

~~F. In the event of failure of the owner or operator to comply with the final closure or post closure plan, the executive director shall declare said collateral forfeited and shall request the State Treasurer to convert said collateral into cash and transfer such funds to the executive director to be used for final closure purposes.~~

~~APPENDIX 3.8.
GUIDELINES FOR FINANCIAL TEST AND CORPORATE
GUARANTEE FOR FINANCIAL ASSURANCE AND
LIABILITY COVERAGE.~~

~~A. An owner or operator may satisfy the requirements for financial assurance by demonstrating that he passes a financial test as specified in this appendix. To pass this test the owner or operator shall meet the criteria in either 1 or 2 below:~~

~~1. The owner or operator shall have:~~

- ~~a. Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and~~
- ~~b. Net working capital and tangible net worth each at least six times the sum of the current closure and post closure cost estimates; and~~
- ~~c. Tangible net worth of at least \$10 million; and~~
- ~~d. Assets in the United States amounting to at least 90% of his total assets or at least six times the sum of the current closure and post closure cost estimates.~~

~~2. The owner or operator shall have:~~

- ~~a. A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and~~
- ~~b. Tangible net worth at least six times the sum of the current closure and post closure cost estimates or a Bond rating of AA for Standard and Poor's or Aa for Moody's and a tangible net worth of two times the sum of the current closure and post closure cost estimates; and~~
- ~~c. Tangible net worth of at least \$10 million; and~~
- ~~d. Assets located in the United States amounting to at least 90% of his total assets or at least six times the sum of the current closure and post closure cost estimates.~~

~~B. To demonstrate that he meets this test, the owner or operator shall submit the following items to the executive director;~~

~~1. A letter signed by the owner's or operator's chief financial officer and worded as specified in Appendix 3.9 for closure and post closure financial assurance or Appendix 3.11 for liability coverage. A separate letter is required for closure and post closure and for assuring liability coverage.~~

~~2. A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statement for the latest completed fiscal year; and~~

~~3. A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:~~

- ~~a. He has compared the data which the letter from the chief financial officer specifies as having been derived from an independently audited, year end financial statement for the latest fiscal year with the amounts in such financial statements; and~~
- ~~b. In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.~~

~~C. An owner or operator of a new facility shall submit the items specified to the executive director at least 60 days before the date on which solid waste is first received for treatment, storage, or disposal.~~

~~D. After the initial submission of items specified in B, the owner or operator shall send updated information to the executive director within 90 days after the close of each succeeding fiscal year. This information shall consist of all three items specified in B.~~

~~E. If the owner or operator no longer meets the requirements of A, he shall send notice to the executive director of intent to establish alternate financial assurance as specified in this part. The notice shall be sent by certified mail within 90 days after the end of the fiscal year for which the year end financial data show that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternate financial assurance within 120 days after the end of such fiscal year.~~

~~F. The executive director may, based on a reasonable belief that the owner or operator may no longer meet the requirement of A, require reports of financial condition at any time from the owner or operator in addition to those specified in B. If the executive director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of A, the owner or operator shall provide alternate financial assurance as specified in this part within 30 days after notification of such a finding.~~

~~G. The executive director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see B 2 of this appendix). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The~~

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~~executive director will evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in this part within 30 days after notification of the disallowance.~~

~~H. During the period of post closure care, the executive director may approve a decrease in the current post closure cost estimate for which this test demonstrates financial assurance if the owner or operator demonstrates to the executive director that the amount of the cost estimate exceeds the remaining cost of the post closure care.~~

~~I. The owner or operator is no longer required to submit the items specified in B when:~~

- ~~1. An owner or operator substitutes alternate financial assurance as specified in this part; or~~
- ~~2. The executive director releases the owner or operator from the requirements of this part.~~

~~J. Release of the owner or operator from the requirements of this appendix within 60 days after receiving certification from the owner or operator and an independent registered professional engineer that closure has been accomplished in accordance with the closure plan. The executive director will notify the owner or operator in writing that he is no longer required by this appendix to maintain financial assurance for closure of the particular facility, unless the Executive Director has reason to believe that closure has not been in accordance with the closure plan.~~

~~K. An owner or operator may meet the requirements of this appendix by obtaining a written guarantee, hereafter referred to as "corporate guarantee". The guarantor shall be the parent corporation of the owner or operator. The guarantor shall meet the requirements for owners or operators in A through G and shall comply with the terms of the corporate guarantee. The wording of the corporate guarantee shall be identical to the wording specified in Appendix 3.10. The corporate guarantee shall accompany the items sent to the executive director as specified in B. The terms of the corporate guarantee shall provide that:~~

- ~~1. If the owner or operator fails to perform final closure or post closure of a facility covered by the corporate guarantee in accordance with the closure plan or post closure plan and other interim status requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in Appendices 3.1 and 3.2 in the name of the owner and operator.~~
- ~~2. The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the executive director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the executive director, as evidenced by the return receipts.~~
- ~~3. If the owner or operator fails to provide alternate financial assurance as specified in this part and obtain~~

~~the written approval of such alternate assurance from the executive director within 90 days after the receipt by both the owner or operator and the executive director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial assurance in the name of the owner or operator.~~

APPENDIX IV.

WORDING OF CERTIFICATE OF INSURANCE.

(NOTE: Instructions in [brackets parentheses] are to be replaced with the relevant information and the [brackets parentheses] deleted.)

CERTIFICATE OF INSURANCE

Name and Address of Insurer (herein called the "Insurer"):

Name and Address of Insured (herein called the "Insured"):

Facilities Covered: *(List for each facility: Permit number (if applicable), name, address and the amount of insurance for closure, post-closure care or corrective action. (These amounts for all facilities covered shall total the face amount shown below.))*

Face Amount: \$.....

Policy Number:

Effective Date:

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for (insert "closure," "post-closure care," "corrective action") for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of 9 VAC 20-70-190 of the Financial Assurance Regulations for Solid Waste Facilities ("Regulations") (9 VAC 20-70-10 et seq.), as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the Director, the Insurer agrees to furnish to the Director a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in APPENDIX IV of the Regulations as such regulations were constituted on the date shown immediately below.

(Authorized signature for Insurer)

(Name of person signing)

(Title of person signing)

Signature of witness or notary:

(Date)

APPENDIX 3.9. V.

WORDING OF LETTER FROM CHIEF FINANCIAL OFFICER FOR CLOSURE AND POST CLOSURE FINANCIAL ASSURANCE.

(NOTE: Instructions in [brackets parentheses] are to be replaced with the relevant information and the [brackets parentheses] removed.)

Executive Director
 Department of Environmental Quality
 P.O. Box 10009
 Richmond, Virginia 23240-0009

Dear {Sir, Madam}:

I am the chief financial officer of (name and address of firm). This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in 9 VAC 20-70-120 of the ~~Solid Waste~~ Financial Assurance Regulations for Solid Waste Facilities (9 VAC 20-70-10 et seq.) ("Regulations").

(Fill out the following four paragraphs regarding *solid waste, regulated medical waste, yard waste composting, hazardous waste, underground injection (regulated under the federal program in 40 CFR Part 144, or its equivalent in other states), petroleum underground storage, and PCB storage (regulated under 40 CFR Part 761)* facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its name, address, *permit number, if any*, and current closure ~~and/or~~ post-closure care, *corrective action or any other environmental obligation* cost estimates. Identify each cost estimate as to whether it is for closure ~~or~~ post-closure care, *corrective action or other environmental obligation*.)

1. This firm is the owner or operator of the following facilities for which financial assurance ~~for closure or post closure care~~ is demonstrated through the financial corporate test specified in ~~Appendix 3.8 of the~~ 9 VAC 20-70-200 or its equivalent in other applicable regulations. The current ~~closure and/or post closure~~ cost estimates covered by the test are shown for each facility:
2. This firm guarantees, through the corporate guarantee specified in ~~Appendix 3.8 of the regulations~~ 9 VAC 20-70-220, the ~~closure or post closure care of financial assurance~~ for the following facilities owned or operated by subsidiaries of this firm. The current cost estimates ~~for the closure or post closure care~~ so guaranteed are shown for each facility:
3. This firm, as owner or operator or guarantor, is demonstrating financial assurance for ~~the closure or post closure care of~~ the following facilities through the use of a financial test. The current ~~closure and/or post closure~~ cost estimates covered by such a test are shown for each facility:

4. This firm is the owner or operator of the following ~~solid waste management facilities~~ for which financial assurance ~~for closure and post closure care~~ is not demonstrated through the financial test or any other financial assurance mechanism. The current ~~closure and/or post closure~~ cost estimates for the facilities which are not covered by such financial assurance are shown for each facility:

This firm (insert "is required" or "is not required") to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on (month, day). The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended (date).

- | | | |
|---|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| 1 | Sum of current closure, post-closure care, corrective action or other environmental obligations cost estimates (total of all cost estimates shown in the four paragraphs above.) | \$ _____ |
| 2 | Tangible net worth* | \$ _____ |
| 3 | Total assets located in the United States* | \$ _____ |
| | | Yes No |

Line 2 exceeds line 1 by at least \$10 million?

Line 3 exceeds line 1 by at least \$10 million?

(Fill in Alternative I if the criteria of ~~Appendix 3.8 A-1~~ 9 VAC 20-70-200 1 a (1) are used. Fill in Alternative II if the criteria of ~~Appendix 3.8 A-2~~ 9 VAC 20-70-200 1 a (2) are used. Fill in Alternative III if the criteria of 9 VAC 20-70-200 1 a (3) are used.)

ALTERNATIVE I.

~~(1) Sum of current closure and post closure cost estimates (total of all cost estimates shown in the four paragraphs above.) \$....~~

Current bond rating of most recent issuance of this firm and name of rating service

Date of issuance of bond

Date of maturity of bond

ALTERNATIVE II

~~(2) 4 Total liabilities (if any portion of the closure or, post-closure care, corrective action or other environmental obligations cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4 line 5.)~~ \$....

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(~~3~~) Tangible net worth \$.....
 (~~4~~) New 5 Net worth \$.....
 (~~5~~) Current assets \$.....
 (~~6~~) Current liabilities \$.....
 (~~7~~) New working capital (line 5 minus line 6). \$.....
 (~~8~~) The sum of net income plus depreciation, depletion, and amortization. \$.....
 (~~9~~) Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) \$.....

YES NO

(10) Is line 3 at least \$10 million?
 (11) Is line 3 at least 6 times line 1?
 (12) Is line 7 at least 6 times line 1?
 (~~13~~) Are at least 90% of firm's assets located in the U.S.? If not, complete line 14.
 (14) Is line 9 at least 6 times line 1?

YES NO

(15) Is line 2 4 divided by line 4 5 less than 2.0?

ALTERNATIVE [# III]

6 Total liabilities \$.....
 7 The sum of net income plus depreciation, depletion, and amortization minus \$10 million* \$.....

YES NO

(16) Is line 8 7 divided by line 2 6 greater than 0.1?
 (17) Is line 5 divided by line 6 greater than 1.5?

ALTERNATIVE II.

(1) Sum of current closure and post closure cost estimates (total of all cost estimates shown in the four paragraphs above). \$.....
 (2) Current bond rating of most recent issuance of this firm and name of rating service \$.....
 (3) Date of issuance of bond. \$.....
 (4) Date of maturity of bond. \$.....
 (~~5~~) Tangible net worth (If any portion of the closure and post closure cost estimates if included in "Total Liabilities" on your firm's financial statements, you may add the amount of that portion to this line.) \$.....
 (~~6~~) Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) \$.....

YES NO

(~~7~~) Is line 5 at least \$10 million?
 (8) Is line 5 at least 6 times line 1?

(~~9~~) Are at least 90% of firm's assets located in the U.S.? If not, complete line 10.

(10) Is line 6 at least 6 times line 1?

I hereby certify that the wording of this letter is identical to the wording specified in ~~Appendix 3.8 of the Article 4 (9 VAC 20-70-140 et seq.) of Part III of the Financial Assurance Regulations~~ as such regulations were constituted on the date shown immediately below.

(Signature)
 (Name)
 (Title)
 (Date)

. APPENDIX 3.10. VI.

WORDING OF CORPORATE GUARANTEE FOR CLOSURE OR POST-CLOSURE CARE.

(NOTE: Instructions in [brackets parentheses] are to be replaced with the relevant information and the [brackets parentheses] removed.)

CORPORATE GUARANTEE FOR CLOSURE OR POST-CLOSURE CARE.

Guarantee made this (date) by (name of guaranteeing entity), a business corporation organized under the laws of the state of (insert name of state), herein referred to as guarantor. This guarantee is made on behalf of the (owner or operator) of (business address), which is (one of the following: "our subsidiary"; "a subsidiary of (name and address of common parent corporation) of which guarantor is a subsidiary"; or "an entity with which the guarantor has a substantial business relationship, as defined in Part I of the Virginia Financial Assurance Regulations for Solid Waste Management Facilities (9 VAC 20-70-10 et seq.)") to the Virginia Department of Environmental Quality ("Department"), obligee, on behalf of our subsidiary (owner or operator) of (business address).

Recitals

1. Guarantor meets or exceeds the financial test criteria in 9 VAC 20-70-200 and agrees to comply with the reporting requirements for guarantors as specified in ~~Appendix 3.8 9 VAC 20-70-220 of the Financial Assurance Regulations for Solid Waste Facilities ("Regulations")~~.
2. (Owner or operator) owns or operates the following (solid, regulated medical, yard) waste management facility(ies) covered by this guarantee: (List for each facility: name, and address, and permit number, if any. Indicate for each whether guarantee is for closure, post-closure care, or both corrective action or other environmental obligations.)
3. "Closure plans" and "post-closure care plans" as used below refer to the plans maintained as required by ~~9 VAC 20-70-120 the (Solid Waste Management~~

Regulations (9 VAC 20-80-10 et seq.), Regulated Medical Waste Management Regulations (9 VAC 20-120-10 et seq.) or [Vegetative Waste Management and] Yard Waste Composting Regulation ([~~9 VAC 20-100-10~~ 9 VAC 20-101-10] et seq.).

4. For value received from (owner or operator), guarantor guarantees to the Department that in the event that (owner or operator) fails to perform (insert "closure", "post-closure care", or "closure and post-closure care corrective action") of the above facility(ies) in accordance with the closure or post-closure care plans and other (requirements of the) permit or (interim status requirements the order) whenever required to do so, the guarantor shall do so or establish a trust fund as specified in ~~9 VAC 20-70-120~~ 9 VAC 20-70-140 in the name of (owner or operator) in the amount of the current closure or post-closure cost estimates as specified in ~~9 VAC 20-70-110~~.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the executive director and to (owner or operator) that he intends to provide alternate financial assurance as specified in ~~9 VAC 20-70-120~~ Article 4 of Part III of the Regulations, in the name of (owner or operator). Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless (owner or operator) has done so.

6. The guarantor agrees to notify the Executive director 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.

7. Guarantor agrees that within 30 days after being notified by the Executive director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure or, post-closure care, or corrective action, he shall establish alternate financial assurance as specified in ~~9 VAC 20-70-120~~ Article 4 of Part III of the Regulations, in the name of (owner or operator) unless (owner or operator) has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or post-closure plan, amendment or modification of the closure or post-closure plan, amendment or modification of the permit, amendment or modification of the order, the extension or reduction of the time of performance of closure or post-closure, or any other modification or alteration of an obligation of the owner or operator pursuant to the Virginia [(Solid or Regulated Medical Waste Management or Vegetative Waste Management and Yard Waste Composting Facility)] Regulations.

9. Guarantor agrees to remain bound under this guarantee for so long as (owner or operator) shall comply with the applicable financial assurance requirements of ~~9 VAC 20-70-120~~ Article 4 of Part III of the Regulations for the above-listed facilities, except that guarantor may cancel this guarantee by sending notice by certified mail to the executive director and to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by both the Department and [owner or operator], as evidenced by the return receipts as provided in paragraph 10 of this agreement.

10. (Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator:) Guarantor may terminate this guarantee by sending notice by certified mail to the Director of the Department of Environmental Quality and to the (owner or operator), provided that this guarantee may not be terminated unless and until (the owner or operator) obtains and the director approves, alternate (closure, post-closure, corrective action) coverage complying with the requirements of 9 VAC 20-70-10 et seq. (Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator:) Guarantor may terminate this guarantee 120 days following the receipt of notification, through certified mail, by the director and by (the owner or operator).

~~10-11.~~ 11. Guarantor agrees that if (owner or operator) fails to provide alternate financial assurance as specified in ~~9 VAC 20-70-120~~ Article 4 of Part III of the Regulations, and obtain written approval of such assurance from the executive director within 90 days after a notice of cancellation by the guarantor is received by the executive director from guarantor, guarantor shall provide such alternate financial assurance in the name of (owner or operator).

11-12. Guarantor expressly waives notice of acceptance of this guarantee by the Department or by (owner or operator). Guarantor also expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in Appendix ~~3-40~~ VI of the Regulations as such regulations were constituted on the date first above written.

(Name of guarantor) Effective date:

(Authorized signatur(for guarantor)

(Name of person signing)

(Title of person signing)

Signature of witness or notary:

Final Regulations

APPENDIX 3.11. WORDING OF THE LETTER FROM CHIEF FINANCIAL OFFICER FOR LIABILITY COVERAGE.

Executive Director
Department of Environmental Quality
P.O. Box 10000
Richmond, VA 23240

Dear [Sir, Madam]:

I am the chief financial officer of [owner's or operator's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage [insert "and closure and/or post closure care" if applicable] as specified in 9 VAC 20-70-130 of the Virginia Solid Waste Financial Assurance Regulations.

[Fill out the following paragraph regarding facilities and liability coverage. For each facility, include its name and address.]

The owner or operator identified above is the owner or operator of the following facilities for which liability coverage is being demonstrated through the financial test specified in 9 VAC 20-70-130.

[If you are using the financial test to demonstrate coverage of both liability and closure and post closure care, fill in the following four paragraphs regarding facilities and associated closure and post closure cost estimates. If there are not facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its name, address, and current closure and/or post closure care.]

1. The owner or operator identified above owns or operates the following facilities for which financial assurance for closure or post closure care is demonstrated through the financial test specified in 9 VAC 20-70-120 of the Virginia Solid Waste Financial Assurance Regulations. The current closure and/or post closure cost estimates covered by the test are shown for each facility:

2. The owner or operator identified above guarantees, through the corporate guarantee specified in 9 VAC 20-70-120 of the Virginia Solid Waste Financial Assurance Regulations, the closure and post closure care of the following facilities owned or operated by its subsidiaries. The current cost estimates for the closure and post closure care so guaranteed are shown for each facility:

3. This owner or operator is demonstrating financial assurance for the closure or post closure care of the following facilities through the use of financial test. The current closure and/or post closure cost estimates covered by such a test are shown for each facility:

4. The owner or operator identified above owns or operates the following hazardous waste management facilities. The current closure and/or post closure cost estimates not covered by such financial assurance are shown for each facility:

This owner or operator [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this owner or operator ends on [month, day]. The figures for the following items marked with the asterisk are derived from this owner's or operator's independently audited, year end financial statements for the latest completed fiscal year ended [date].

[Fill in part A if you are using the financial test to demonstrate coverage only for the liability requirements.]

Part A.

Liability Coverage for Accidental Occurrences.

[Fill in Alternative I if the criteria of Appendix 3.8.A.1 are used. Fill in Alternative II if the criteria of Appendix 3.8.A.2 are used.]

ALTERNATIVE I.

- (1) Amount of annual aggregate liability coverage to be demonstrated. \$.....
- (*2) Current Assets. \$.....
- (*3) Current Liabilities. \$.....
- (4) Net working capital (line 2 minus line 3). \$.....
- (*5) Tangible net worth. \$.....
- (*6) If less than 90% of assets are located in the U.S., give total U.S. assets. \$.....

YES NO

- (7) Is line 5 at least \$10 million?
- (8) Is line 4 at least 6 times line 1?
- (9) Is line 5 at least 6 times line 1?
- (*10) Are at least 90% of assets located in the U.S.? If not, complete 11.

- (11) Is line 6 at least 6 times line 1?

ALTERNATIVE II.

- (1) Amount of annual aggregate liability coverage to be demonstrated. \$.....
- (2) Current bond rating of most recent issuance and name of rating service. \$.....
- (3) Date of issuance of bond. \$.....
- (4) Date of maturity of bond. \$.....
- (*5) Tangible net worth. \$.....
- (*6) Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) \$.....

YES NO

- (7) Is line 5 at least \$10 million?
- (8) Is line 5 at least 6 times line 1?

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(*9) Are at least 90% of assets located in the U.S.? If not, complete line 10.

(10) Is line 6 at least 6 times line 1?

{Fill in part B if you are using the financial test to demonstrate assurance of both liability coverage and closure or post closure care.}

Part B.

Closure or Post-Closure Care and Liability Coverage.

{Fill in Alternative I if the criteria of Appendix 3.8.A.1 are used. Fill in Alternative II if the criteria of Appendix 3.8.A.2 are used.

ALTERNATIVE I.

(1) Sum of current and post closure cost estimates (total of all cost estimates listed above). \$.....

(2) Amount of annual aggregate liability coverage to be demonstrated. \$.....

(3) Sum of lines 1 and 2. \$.....

(*4) Total liabilities (if any portion of your closure or post closure cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6). \$.....

(*5) Tangible net worth. \$.....

(*6) Net worth. \$.....

(*7) Current Assets. \$.....

(*8) Current Liabilities. \$.....

(9) Net working capital (line 7 minus line 8). \$.....

(*10) The sum of net income plus depreciation, depletion, and amortization. \$.....

(*11) Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) \$.....

YES NO

(12) Is line 5 at least \$10 million?

(13) Is line 5 at least 6 times line 3?

(14) Is line 9 at least 6 times line 3?

(*15) Are at least 90% of assets located in the U.S.? If not, complete line 16.

(16) Is line 11 at least 6 times line 3?

(17) Is line 4 divided by line 6 less than 2.0?

(18) Is line 10 divided by line 4 greater than 0.1?

(19) Is line 7 divided by line 8 greater than 1.5?

ALTERNATIVE II.

(1) Sum of current and post closure cost estimates (total of all cost estimates listed above). \$.....

(2) Amount of annual aggregate liability coverage to be demonstrated. \$.....

(3) Sum of lines 1 and 2. \$.....

(4) Current bond rating of most recent issuance and name of rating service. \$.....

(5) Date of issuance of bond. \$.....

(6) Date of maturity of bond. \$.....

(*7) Tangible net worth (if any portion of the closure or post closure cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line). \$.....

(*8) Total assets in the U.S. (required only if less than 90% of assets are located in the U.S.) \$.....

YES NO

(9) Is line 7 at least \$10 million?

(10) Is line 7 at least 6 times line 3?

(*11) Are at least 90% of assets located in the U.S.? If not, complete line 12.

(12) Is line 8 at least 6 times line 3?

I hereby certify that the wording of this letter is identical to the wording specified in Appendix 3.11 of the Virginia Solid Waste Financial Assurance Regulations as such regulations were constituted on the date shown immediately below.

{Signature}

{Name}

{Title}

{Date}

VA.R. Doc. No. R97-664; Filed November 17, 1997, 3:41 p.m.

Title of Regulation: 9 VAC 20-100-10 et seq. Yard Waste Composting Facility Regulations (REPEALED).

VA.R. Doc. No. R96-403; Filed November 17, 1997, 3:40 p.m.

Title of Regulation: 9 VAC 20-101-10 et seq. Vegetative Waste Management and Yard Waste Composting Regulations.

Statutory Authority: §§ 10.1-1402 and 10.1-1408.1 of the Code of Virginia.

Effective Date: January 7, 1998.

Summary:

Part I contains definitions. Part II states the basis of authority for the regulations and their relationship to other regulations.

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The regulations supersede the board's Yard Waste Composting Facility Regulations, 9 VAC 20-100-10 et seq. The Virginia Solid Waste Management Act and other regulations of the board contain exemptions for certain vegetative waste management or yard waste composting facilities from the general requirements for solid waste management facilities. These exemptions are restated in Part III. Some facilities are exempt from all regulatory control and others are limited to relief from the requirement for the operator to have a permit from the director of the department. Conditions are specified under which the exemptions apply, and some conditions require a report be submitted to the department. Forms for those reports are included in Part III. An exemption applying to owners of real property who use small waste disposal units to bury vegetative (primarily tree stumps and root mat) on-site contains 16 qualifying criteria and allows the use of qualifying units without a permit.

Part IV prescribes the technical and other standards for vegetative waste management and yard waste composting facilities. The standards address siting, design and construction, operation, and closure. Part V sets out the procedures for obtaining a permit by rule, which constitutes the reduced requirements for permitting called for in the Solid Waste Management Act. The permit by rule procedure minimizes the documentation submitted by the facility operator in order to obtain the permit and the time required to obtain the permit. The penalties for violation of the regulations are listed in Part VI.

Several changes were made in the proposed regulations. The changes made include the following:

1. Several definitions were amended, deleted or added.
2. A section was added to explain the department's intent to monitor the effectiveness and need for the regulations on a regular basis.
3. Burial of waste in "structural roadway prisms" was prohibited in response to the recommendation of the Virginia Department of Transportation.
4. To improve the public record of the site, a requirement was added for recording small waste disposal units in the real property deed book, including a legal plat and description.
5. To provide for better surveillance of the units, a new requirement was made that the director, local government and adjacent property owner be notified of the proposed small waste disposal unit six weeks before it is opened; notice is to include a legal plat and description of the property.
6. The date of opening of the small waste disposal unit was established as the initiation date for monitoring and reporting; report copies are to be sent to the director and local government.

Summary of Public Comments and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from Robert Wickline, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4212.

CHAPTER 101. VEGETATIVE WASTE MANAGEMENT AND YARD WASTE COMPOSTING REGULATIONS.

PART I. DEFINITIONS.

9 VAC 20-101-10. Definitions.

The following words and terms [7] when used in this chapter [7] shall have the following meanings unless the context clearly indicates otherwise. Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia defines words and terms that supplement those in this chapter. The Virginia Solid Waste Management Regulations, 9 VAC 20-80-10 et seq., define additional words and terms that supplement those in the statute and this chapter. When the statute, as cited, and the solid waste management regulations, as cited, define a word or term differently, the definition of the statute is controlling.

"Agricultural operation" means any operation devoted to the bona fide production of crops, animals, or fowl, including but not limited to the production of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery and floral products; and the production and harvest of products from silviculture activity.

"Board" means the Virginia Waste Management Board.

"Building" means an enclosed structure which has no open side.

"Clean wood" means uncontaminated natural or untreated wood. Clean wood includes but is not limited to byproducts of harvesting activities conducted for forest management or commercial logging, or mill residues consisting of bark, chips, edgings, sawdust, shavings or slabs. It does not include wood that has been treated, adulterated, or chemically changed in some way; treated with glues, binders, or resins; or painted, stained or coated.

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

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

"Decomposed vegetative waste" means a stabilized organic product produced from vegetative waste by a

controlled natural decay process in such a manner that the product can be handled, stored, or applied to the land without adversely affecting public health or the environment.

"Decomposition of vegetative waste" means a controlled natural process, active or passive, which results in the decay and chemical breakdown of vegetative waste.

"Department" means the Department of Environmental Quality.

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

"Disclosure statement" means a sworn statement or affirmation, in such form as may be required by the director, which includes:

1. The full name, business address, and social security number of all key personnel;
2. The full name and business address of any entity, other than a natural person, that collects, transports, treats, stores, or disposes of solid waste or hazardous waste in which any key personnel holds an equity interest of 5.0% or more;
3. A description of the business experience of all key personnel listed in the disclosure statement;
4. A listing of all permits or licenses required for the collection, transportation, treatment, storage, or disposal of solid waste or hazardous waste issued to or held by any key personnel within the past 10 years;
5. A listing and explanation of any notices of violation, prosecutions, administrative orders (whether by consent or otherwise), license or permit suspensions or revocations or enforcement actions of any sort by any state, federal or local authority, within the past 10 years, which are pending or have concluded with a finding of violation or entry of a consent agreement, regarding an allegation of civil or criminal violation of any law, regulation or requirement relating to the collection, transportation, treatment, storage, or disposal of solid waste or hazardous waste by any key personnel, and an itemized list of all convictions within 10 years of key personnel of any of the following crimes punishable as felonies under the laws of the Commonwealth or the equivalent thereof under the laws of any other jurisdiction: murder; kidnapping; gambling; robbery; bribery; extortion; criminal usury; arson; burglary; theft and related crimes; forgery and fraudulent practices; fraud in the offering, sale, or purchase of securities; alteration of motor vehicle identification numbers; unlawful manufacture, purchase, use or transfer of firearms; unlawful possession or use of destructive devices or explosives; violation of the Drug Control Act, Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia; racketeering; or violation of antitrust laws;

6. A listing of all agencies outside the Commonwealth which have regulatory responsibility over the applicant or have issued any environmental permit or license to the applicant within the past 10 years in connection with the applicant's collection, transportation, treatment, storage or disposal of solid waste or hazardous waste;

7. Any other information about the applicant and the key personnel that the director may require that reasonably relates to the qualifications and ability of the key personnel or the applicant to lawfully and competently operate a solid waste management facility in Virginia; and

8. The full name and business address of any member of the local governing body or planning commission in which the solid waste management facility is located or proposed to be located, who holds an equity interest in the facility.

"Equity" means both legal and equitable interests.

"Key personnel" means the applicant itself and any person employed by the applicant in a managerial capacity, or empowered to make discretionary decisions, with respect to the solid waste or hazardous waste operations of the applicant in Virginia, but shall not include employees exclusively engaged in the physical or mechanical collection, transportation, treatment, storage, or disposal of solid or hazardous waste and such other employees as the director may designate by regulation. If the applicant has not previously conducted solid waste or hazardous waste operations in Virginia, the term also includes any officer, director, partner of the applicant, or any holder of 5.0% or more of the equity or debt of the applicant. If any holder of 5.0% or more of the equity or debt of the applicant or of any key personnel is not a natural person, the term includes all key personnel of that entity, provided that where such entity is a chartered lending institution or a reporting company under the Securities Exchange Act of 1934 (15 USC § 78a et seq.), the term does not include key personnel of such entity. Provided further that the term means the chief executive officer of any agency of the United States or of any agency or political subdivision of the Commonwealth, and all key personnel of any person, other than a natural person, that operates a landfill or other facility for the disposal, treatment, or storage of nonhazardous solid waste under contract with or for one of those governmental entities.

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

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

"Landscape maintenance" means the care of lawns, shrubbery, and vines, and includes the pruning of trees.

"Leachate" means a liquid that has passed through or emerged from solid waste and contains soluble, suspended or miscible materials from such waste. Leachate and any material with which it is mixed is solid waste; except that

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leachate that is pumped from a collection tank for transportation to disposal in an off-site facility is regulated as septage, and leachate discharged into a wastewater collection system is regulated as industrial waste water.

"Mulch" means woody waste consisting of stumps, trees, limbs, branches, bark, leaves and other clean wood waste which has undergone size reduction by grinding, shredding, or chipping, and is distributed to the general public for landscaping purposes or other horticultural uses except composting as defined and regulated under [~~these regulations~~ this chapter] or the Solid Waste Management Regulations, 9 VAC 20-80-10 et seq.

"Off-site" means any site that does not meet the definition of on-site as defined in this part.

"On-site" means the same or geographically contiguous property, which may be divided by public or private right-of-way, provided the entrance and exit [~~between the properties is at a cross roads intersection, and access is by crossing as opposed to going along, the right of way to the facility are controlled by the owner or the operator of the facility~~]. Noncontiguous properties owned by the same person but connected by a right-of-way [~~that which~~] he controls and to which the public does not have access [~~;~~] is also considered on-site property.

"Open dump" means a site on which any solid waste is placed, discharged, deposited, injected, dumped, or spilled so as to create a nuisance or present a threat of a release of harmful substances into the environment or present a hazard to human health.

"Owner of real property" means a person, persons or legal entity who holds title to a parcel of real property, and, for the purpose of [~~these regulations~~ this chapter], any person, persons or legal entity who holds more than 5.0% of the stock or substance of a company or corporation that holds title to a parcel of real property.

"Permit by rule" means provisions of the regulations stating that a facility or activity is deemed to have a permit if it meets the requirements of the provision.

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

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

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

"Solid waste management facility" means a site used for planned treating, long term storage, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal units. For the purposes of this chapter only, "long term storage" shall be deemed to occur if during any period

of 30 consecutive calendar days the site was not free of solid waste.

["Structural roadway prism" means the line of repose from the shoulder break to the shoulder break of the roadway, usually a 1:1 slope.]

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

["~~Vegetative waste decomposition~~" means a controlled natural process, active or passive, which results in the decay and chemical breakdown of vegetative waste.

~~"Vegetative waste decomposition facility" means an engineered facility for the decomposition of vegetative waste which is so located, designed, constructed, and operated as to isolate, process, and manage the vegetative waste and decomposed vegetative waste so that it represents no nuisance or potential hazard to human health or the environment.]~~

"Vegetative waste management facility" means a solid waste management facility that manages vegetative waste.

"Yard waste" means decomposable waste materials generated by yard and lawn care and includes leaves, grass trimmings, brush, wood chips, and shrub and tree trimmings. Yard waste shall not include roots or stumps that exceed six inches in diameter. (Note: Yard wastes are also vegetative waste; however, the terms are not interchangeable because vegetative wastes may include wastes that are not yard wastes.)

"Yard waste compost" means a stabilized organic product produced from yard waste by a controlled aerobic decomposition process in such a manner that the product can be handled, stored, and/or applied to the land so that it does not pose a present or potential hazard to human health or the environment.

"Yard waste composting" means the controlled aerobic yard waste decomposition process by which yard waste compost is produced.

"Yard waste composting facility" means an engineered facility for composting of yard waste which is so located, designed, constructed, and operated to isolate, process, and manage the yard waste and yard waste compost so that it does not pose a present or potential hazard to human health or the environment.

PART II. PURPOSE AND APPLICABILITY.

9 VAC 20-101-20. Purpose.

The purpose of these regulations is to establish appropriate standards for siting, design, construction, operation and closure, and expedited permitting procedures pertaining to certain vegetative waste management facilities,

including those for yard waste composting. Further, these regulations provide reasonable exemptions from the permitting requirements contained in the Virginia Solid Waste Management Regulations (9 VAC 20-80-10 et seq.), both procedural and substantive, in order to encourage the development of vegetative waste management and yard waste composting facilities as required by subsections I, K, and L of § 10.1-1408.1 of the Code of Virginia.

9 VAC 20-101-30. Applicability.

A. The Virginia Waste Management Act (Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia) prohibits any person from operating a facility for the treatment, storage, or disposal of nonhazardous solid waste without a permit from the director. Except as provided in Part III (9 VAC 20-101-60 et seq.), vegetative waste is nonhazardous solid waste, and facilities that treat, store or dispose of vegetative waste shall not be operated by any person who does not hold a permit for its operation from the director. All vegetative waste management facilities may be permitted as solid waste management facilities under the Solid Waste Management Regulations, 9 VAC 20-80-10 et seq. The regulations herein provide alternate, abbreviated requirements for obtaining a permit from the director, and they apply to vegetative waste management facilities provided:

1. Except as provided in Part IV (9 VAC 20-101-110 et seq.), the vegetative wastes are not combined with other refuse, sludges, animal manures, or other solid wastes controlled by the Solid Waste Management Regulations (9 VAC 20-80-10 et seq.), and
2. Except as provided in Part IV, the vegetative waste is not managed atop a partially or fully closed solid waste disposal unit at a solid waste disposal facility.

B. Persons who do not meet the conditions of subsection A of this section and are not otherwise exempted under Part III (9 VAC 20-101-60 et seq.) shall manage their waste in accordance with all provisions of the Virginia Solid Waste Management Regulations, 9 VAC 20-80-10 et seq.

9 VAC 20-101-40. Consequence of failure to comply with provisions.

In the event that an owner or operator of an agricultural operation or vegetative waste management facility operating under these exemptions violates any provisions of that exemption, the owner or operator shall lose that exemption and become subject to all the requirements of this chapter and applicable requirements of the Virginia Solid Waste Management Regulations, 9 VAC 20-80-10 et seq.

9 VAC 20-101-50. Relationship to other regulations.

A. This chapter supersedes, replaces and repeals all existing previous regulations of the board adopted as the Yard Waste Composting Facility Regulations (9 VAC 20-100-10 et seq.).

B. This chapter does not affect the Virginia Solid Waste Management Regulations (9 VAC 20-80-10 et seq.), except that persons subject to and in compliance with this chapter are exempt from the Solid Waste Management Regulations only for those activities covered by this chapter.

C. Persons subject to this chapter are subject to applicable provisions of the Financial Assurance Regulations of Solid Waste Facilities (9 VAC 20-70-10 et seq.).

D. All vegetative waste management facilities that exist on [~~the effective date of these regulations~~ January 7, 1998,] and are operated under a permit by rule under the provisions of the Yard Waste Composting Facility Regulations (9 VAC 20-100-10 et seq.) may continue to operate under the terms of that permit by rule until its closure plan is amended, terminated, or the owner or operator otherwise loses permit by rule status.

E. Section 10.1-1408.2 of the Code of Virginia requires certain employees of solid waste management facilities be certified by the Board [~~of~~ for] Waste Management Facility Operators and that certain facilities be under the direct supervision of an operator certified by the Board [~~of~~ for] Waste Management Facility Operators. Nothing in this chapter shall be interpreted so as to conflict with the statute. The [~~Board of Virginia~~] Waste Management [Board] interprets the statute to apply only to permitted facilities.

[F. Within three years after January 7, 1998, the department shall perform analysis on this chapter and provide the Virginia Waste Management Board with a report on the results. The analysis shall include:

1. The purpose and need for the chapter;
2. Alternatives which would achieve the stated purpose of this chapter in a less burdensome and intrusive manner;
3. An assessment of the effectiveness of this chapter;
4. The results of a regulatory review of current state and federal statutory and regulatory requirements, including identification and justification of this chapter's requirements which exceed federal requirements; and
5. The results of a review as to whether this chapter is clearly written and easily understandable by affected parties.

Upon review of the department's analysis, the Virginia Waste Management Board shall confirm the need to:

1. Continue this chapter without amendment;
2. Repeal this chapter; or
3. Amend this chapter.

The Virginia Waste Management Board will authorize the department to initiate the applicable regulatory process and to carry out the decision of the Virginia Waste Management Board if amendment or repeal of this chapter is warranted.]

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PART III.

EXEMPTIONS FOR SPECIAL VEGETATIVE WASTE MANAGEMENT FACILITIES TO THESE REGULATIONS OR TO THE REQUIREMENT TO HAVE A PERMIT.

9 VAC 20-101-60. General exemptions.

The Code of Virginia and previous regulations adopted by the board included exemptions from some requirements of the board regarding specified activities involving vegetative waste. Nothing contained in these Vegetative Waste Management and Yard Waste Composting Regulations shall be construed to interfere with those exemptions or add requirements or conditions to those existing exemptions. These exemptions include:

1. Solid waste management practices that involve only the placing of stumps and other land clearing debris from agricultural or forestal activities at the site of the clearing that do not receive waste from off-site and that do not create an open dump, hazard or public nuisance are exempt from all requirements of this chapter and of the Solid Waste Management Regulations (9 VAC 20-80-10 et seq.).
2. Solid waste management practices that involve only the on-site placing of solid waste from mineral mining activities at the site of those activities and in compliance with a permit issued by the Department of Mines, Minerals and Energy, that do not include any municipal solid waste, are accomplished in an environmentally sound manner, and that do not create an open dump, hazard or public nuisance are exempt from all requirements of this chapter and of the Solid Waste Management Regulations (9 VAC 20-80-10 et seq.).
3. Owners or operators of agricultural operations or owners of the real property or those authorized by owners of the real property who compost only the vegetative wastes and yard waste generated on said property shall be exempt from all other provisions of this chapter and from all requirements of the Solid Waste Management Regulations (9 VAC 20-80-10 et seq.) as applied to the composting activity providing that:
 - a. All decomposed vegetative waste and compost produced is utilized on said property;
 - b. No vegetative waste or other waste material generated from sources other than said property is received;
 - c. All applicable standards of local ordinances that govern or concern vegetative waste handling, composting, storage or disposal are satisfied; and
 - d. They pose no nuisance or present or potential threat to human health or the environment.
4. Owners or operators of agricultural operational activities which accept yard wastes generated off-site shall be exempt from all other provisions of this chapter and from all requirements of the Solid Waste

Management Regulations (9 VAC 20-80-10 et seq.) as applied to the composting activities providing that:

- a. ~~[All decomposed vegetative waste and compost produced is utilized on said property within 18 months of receipt;]~~ The total time for the composting process and storage of material that is being composted or has been composted shall not exceed 18 months prior to its field application or sale as a horticultural or agricultural product.]
 - b. No waste material other than yard waste ~~[and solid waste under 9 VAC 20-80-150 F of the Solid Waste Management Regulations is received;]~~ is received ;
 - c. The total amount of yard waste received from off-site never exceeds 6,000 cubic yards in any 12-month period;
 - d. All applicable standards of local ordinances that govern or concern ~~[vegetative- yard]~~ waste handling, composting, storage or disposal are satisfied;
 - e. They pose no nuisance or present or potential threat to human health or the environment; and
 - f. The owner submits a complete certification letter in accordance with 9 VAC 20-101-90 A before receiving any waste at the site.
5. Owners or other persons authorized by the owner of real property who receive only ~~[vegetative yard]~~ waste generated off-site for the purpose of producing compost on said property shall be exempt from all other provisions of this chapter and from all requirements of the Solid Waste Management Regulations (9 VAC 20-80-10 et seq.) as applied to the composting activity provided that:
- a. Not more than 500 cubic yards of yard waste generated off-site is received at the owner's said property in any consecutive 12-month period;
 - b. No compensation will be received, either directly or indirectly, by the owner or other persons authorized by the owner of said property from parties providing ~~[vegetative yard]~~ waste generated off said property;
 - c. All applicable standards of local ordinances that govern or concern ~~[vegetative yard]~~ waste handling, composting, storage or disposal are satisfied; and
 - d. They pose no nuisance or present or potential threat to human health or the environment.
6. Mulch shall be exempt from all other provisions of this chapter and from all requirements of the Solid Waste Management Regulations (9 VAC 20-80-10 et seq.) provided it is reclaimed or temporarily stored incidental to reclamation and is not accumulated speculatively and is managed without creating an open dump, hazard or a public nuisance.

9 VAC 20-101-70. Exemption of small waste disposal units for vegetative wastes from land clearing.

A. Owners of real property who operate small waste disposal units that qualify under all the conditions of this section shall be exempt from other provisions of this chapter as applied to those units. They shall likewise be exempt from the requirements of the Solid Waste Management Regulations (9 VAC 20-80-10 et seq.) except for those sections cited below. No person other than the owner of the real property shall be exempt under this section. All owners of the real property who hold title to property at the time the disposal unit is initially opened or during the time the unit remains open (limited to two calendar years below) shall, in the exercise of this exemption, accept responsibility for maintaining compliance of the unit with all requirements of this chapter as set out in this exemption. The owner agrees that he shall not sell, give or otherwise transfer the responsibility for the unit's compliance to any other party throughout its active life, the post-closure care period, and the corrective action period, and that he shall remain the principal party responsible for the compliance of the unit with this chapter.

Only units that are in compliance with all requirements of this section shall qualify, and waste disposal units that are not in compliance with all requirements of this section shall not qualify or shall cease to qualify. Units that qualify for this exemption shall comply with the following requirements:

1. No waste that is not a vegetative waste or yard waste as defined in 9 VAC 20-101-10 shall be placed in the disposal unit. Grass trimmings and bulk leaves shall not be placed in the disposal unit.
2. The waste disposal unit shall not be larger than 0.50 acres in size.
3. The waste disposal unit shall not be located within 1,000 feet of any other waste disposal unit of any type, including other disposal units exempted by ~~[these regulations]~~ this chapter.
4. The waste disposal unit shall not be located within 150 feet of any existing building or planned building. The waste disposal unit shall not be located within 50 feet of any existing or planned subdivision lot that may be used for the erection of a building.
5. The waste disposal unit shall not be located within 100 feet of a flowing stream; body of water; any well, spring, sinkhole, or unstable geologic feature. Also, it shall not be located within 200 feet of any groundwater source of drinking water.
6. The waste disposal unit shall be constructed to separate all waste by at least two feet vertically from the seasonal high water table.
7. The waste disposal unit ~~[shall]~~ should not obstruct the scenic view from any public road and ~~[shall]~~ should be graded to present a good appearance.

8. Mounding of the waste disposal unit shall not reach an elevation more than ~~[40]~~ 20 feet above the original elevation of the terrain before the disposal began. (Note: the elevation of the original terrain should be based on the general area and not the bottom of ravines and small depressions in the disposal area.)

9. The waste received by the waste disposal unit shall be limited to the following:

- a. Waste generated on-site;
- b. Waste generated by clearing the path of a roadway or appurtenances to the roadway when buried within the right-of-way of the roadway [(waste shall not be buried in the structural roadway prism)] or adjacent land under a permanent easement and the terms of the easement incorporate the construction of the disposal unit; and
- c. Waste from property that is owned by the owner of the disposal unit, within the same construction project, and generated not more than two miles from the unit.

10. The waste disposal unit shall be closed two calendar years from the date it first receives waste. The closure shall include cover with two feet of compacted soil, grading for good appearance with slopes that prevent erosion, and seeding or revegetation. During the life of the unit, sufficient earth should be applied periodically to prevent excessive subsidence of the waste disposal unit when closed. Sides of the finished unit shall be sloped to prevent erosion, and slopes shall not be steeper than one vertical foot to ~~[two]~~ three horizontal feet.

11. The location ~~[plat and legal description, as set out in subdivision 16 of this subsection,]~~ of all units that are not located wholly within the bed or right-of-way of a public road shall be recorded ~~[in the deed book for the property in the court of record]~~ prior to the first receipt of waste ~~[in the deed book for the property in the court of record]~~. ~~[Waste disposal shall not be allowed within the structural roadway prism.]~~

12. The owner shall maintain continuous control of access to all disposal units from the time they are opened until they are closed in accordance with this chapter. The owner shall prevent fires and provide standby equipment and supplies sufficient to easily suppress a fire. Brush and small limbs that might provide tinder for a fire shall be covered at the end of the work day with one foot of soil.

13. The owner shall not be exempt from the groundwater monitoring and corrective action requirements of the Solid Waste Management Regulations (9 VAC 20-80-10 et seq.) to include required monitoring during the post-closure period. The owner of a small waste disposal unit shall comply in all respects with the groundwater monitoring and corrective action requirements contained in 9 VAC 20-80-260 B 11, C 12, C 13, D and 9 VAC 20-80-310.

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14. The owner shall not be exempt from the decomposition gas monitoring and venting requirements of the Solid Waste Management Regulations (9 VAC 20-80-10 et seq.). The owner of a small waste disposal unit shall comply in all respects with the decomposition gas monitoring and venting requirements as established in 9 VAC 20-80-260 B 9 and 9 VAC 20-80-280.

15. The owner shall not be exempt from any requirement of the Financial Assurance Regulations For Solid Waste Disposal Facilities, 9 VAC 20-70-10 et seq., and shall comply with all financial assurance requirements.

[16. At least six weeks before beginning construction of a waste disposal unit, the owner of the real property shall notify in writing the director, the governing board of the city, county or town wherein the property lies, and all property owners whose parcel will abut the area of the proposed disposal unit. The notice shall give the names and legal addresses of the owners, the type of unit to be developed, and the projected date of initial construction of the unit. The owner shall include a plat and legal description of the disposal unit's metes and bounds prepared and stamped by a Virginia licensed land surveyor. The plat and description shall follow all standard practice such as inclusion of the nearest existing intersection of state roads and existing fixed survey markers in the vicinity.

Note: Unless otherwise designated, all monitoring and reporting requirements shall begin at the initiation of the unit's operations and all reports shall be sent to the department and the chief executive of the local government.]

B. The use of small amounts of brush used on-site with filter cloth to form a barrier for erosion control shall not be considered a waste disposal unit or require a permit when the barrier is constructed in accordance with the approved erosion control plan for the site.

9 VAC 20-101-80. Exemptions to permitting requirements.

A. The Code of Virginia includes exemptions from permitting requirements of the board for specified activities involving vegetative waste. Persons entitled to these exemptions are not required to comply with the permitting requirements of Part V (9 VAC 20-101-160 et seq.) of this chapter or to have a permit under the Virginia Solid Waste Management Regulations (9 VAC 20-80-10 et seq.). Unless exempted by other provisions of this chapter or other regulations of the board, they are required to comply with facility standards contained in Part IV (9 VAC 20-101-110 et seq.) of this chapter.

B. Any person who removes trees, brush, or other vegetation from land used for agricultural or forestal purposes is exempted from the requirement to obtain a permit for that operation under this chapter or the Virginia Solid Waste Management Regulations, 9 VAC 20-80-10 et seq., provided

that such material is deposited or placed on the same or other property of the same landowner from which such materials were cleared.

C. Owners or operators of agricultural operations which include yard waste composting units are not required to receive a permit for the construction or operation of those [~~vegetative~~ yard] waste composting units under [~~these~~ regulations this chapter] or the Virginia Solid Waste Management Regulations, 9 VAC 20-80-10 et seq., provided that:

1. The composting area is located not less than 300 feet from a property boundary of a parcel owned or controlled by another person, is located not less than 1,000 feet from an occupied dwelling not located on the same property as the composting area, and is not located within an area designated as a flood plain;

2. The agricultural operation has at least one acre of ground suitable to receive yard waste for each 150 cubic yards of finished compost generated;

3. The total time for the composting process and storage of material that is being composted or has been composted shall not exceed 18 months prior to the field application or sale as a horticultural or agricultural product;

4. The owner and operator of any agricultural operation that receives in any 12-month period (consecutive) more than 6,000 cubic yards of yard waste generated from property not within the control of the owner or the operator shall submit by July 15 each year to the director an annual report in accordance with 9 VAC 20-101-100 describing the volume and types of yard waste received for composting by the operation between July 1 and June 30 of the preceding consecutive 12 months and shall certify that the yard waste composting facility complies with local ordinances; and

5. Prior to the receipt of yard waste generated off-site, the owner or operator of the agricultural operation submits to the director a certification letter in compliance with 9 VAC 20-101-90 B.

9 VAC 20-101-90. Contents of certification letter.

A. Prior to the receipt of yard waste generated off-site, the owner or operator of the agricultural operation intending to operate under the exemption contained in subdivision 4 of 9 VAC 20-101-60 shall submit to the director a certification letter which shall include all of the following:

1. The name and address of the agricultural operation owner or operator;

2. The name, physical location and mailing address of the agricultural operation;

3. The location of the yard waste [~~management-site~~ composting facility] at the address specified pursuant to subdivision 2 of this subsection and the amount of land available for receipt of yard waste;

4. A statement by the owner or operator that the owner or operator agrees to receive no solid waste other than yard waste;

5. A statement by the owner or operator that no yard waste that is received will remain on-site, in any combination of processing time and storage time, for more than 18 months.

6. A statement by the owner or operator that [7] at least [7] 1.0 [~~acres~~ acre] of suitable ground per 150 cubic yards of finished compost generated annually will be reserved at the site to receive the yard waste;

7. A statement by the owner or operator that the total amount of yard waste received from off-site generators will not exceed 6,000 cubic yards in any consecutive 12-month period;

8. A statement by the owner or operator that the yard waste [~~management site~~ composting facility] at the agricultural operation specified pursuant to subdivision 2 of this subsection is not within an area subject to base floods, is located no less than 300 feet from a property boundary, is located no less than 1,000 feet from any occupied dwelling not located on the same parcel;

9. The following statement signed by the owner or operator:

"I certify that I have personally examined and am familiar with the information submitted in this letter and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete."

B. Prior to the receipt of yard waste generated off-site, the owner or operator of the agricultural operation intending to operate under the exemption contained in 9 VAC 20-101-80 C shall submit to the director a certification letter which shall include all of the following:

1. The name and address of the agricultural operation owner or operator;

2. The name, physical location and mailing address of the agricultural operation;

3. The location of the yard waste [~~management site~~ composting facility] at the address specified pursuant to subdivision 2 of this subsection and the amount of land available for receipt of yard waste;

4. A statement by the owner or operator that the owner or operator agrees to receive no solid waste other than yard waste;

5. A statement by the owner or operator that no yard waste that is received will be remain on-site, in any combination of processing time and storage time, for more than 18 months.

6. A statement by the owner or operator that [7] at least [7] 1.0 [~~acres~~ acre] of suitable ground per 150 cubic yards of finished compost generated annually will be reserved at the site to receive the yard waste;

7. A statement by the owner or operator that the total amount of yard waste received from off-site generators will not exceed 6,000 cubic yards in any consecutive 12-month period, or a statement by the owner that he will file an annual report in accord with 9 VAC 20-101-100 each and every year of its operation and that operation under the exemption is contingent upon prompt and complete filing of the annual report;

8. A statement by the owner or operator that any yard waste management sites at the agricultural operation specified pursuant to subdivision 2 of this subsection is not within an area subject to base floods, is located no less than 300 feet from a property boundary, is located no less than 1,000 feet from any occupied dwelling not located on the same parcel;

9. The following statement signed by the owner or operator:

"I certify that I have personally examined and am familiar with the information submitted in this letter and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete."

**YARD WASTE COMPOSTING
NOTICE OF INTENT AND CERTIFICATION**

Name of the Owner or Operator:

Mailing Address:

Composting Site Address:

Telephone Number:

Telephone Number:

COMPOSTING SITE CONDITIONS

Agricultural operations receiving only yard waste for composting are exempt from permitting requirements if the following conditions are met:

The area designated for composting is located greater than 300 feet from all property boundaries;

The area designated for composting is located more than 1,000 feet from any occupied dwelling not located on the same property as the composting area;

The area designated for composting is not located within an area designated as a flood plain as defined in § 10.1-600 of the Code of Virginia;

The agricultural operation has, at least, one acre of ground suitable to receive yard waste for each 150 cubic yards of finished compost generated annually; and

The total time for the composting process and storage of the material that is being composted or has been composted shall not exceed 18 months prior to its field application or sale as a horticultural or agricultural product.

I hereby certify that the site designated for this yard waste composting operation meets each of the above requirements for an agricultural exemption from the permitting requirements.

Signature of the Owner or Operator:

Date:

In addition to the above certification, an owner or operator of any agricultural operation that receives more than 6,000 cubic yards of yard waste in any consecutive twelve months from property not within the control of the owner or operator shall complete the certification on the reverse side of this form.

FORM DEQ-YW-1 (Provided in accordance with § 10.1-1408.1 K of the Code of Virginia)

Certification required for owners or operators of agricultural operations that receive more than 6,000 cubic yards of yard waste generated annually from property not within control of owner or operator.

The undersigned certifies that the location and operation of the composting facility complies with all local ordinances.

Signature or the owner or operator:

Type or printed name:

Title:

Date:

Note: Section 10.1-1408.1 K of the Code of Virginia requires that owners or operators of composting facilities receiving more than 6,000 cubic yards of yard wastes generated from property not within control of the owner or operator submit an annual report describing the volume and types of yard waste received to operate the composting facility. Form DEQ-YW-2 shall be submitted to the director by July 15 for the preceding 12 months.

(Provided in accordance with § 10.1-1408.1 K of the Code of Virginia)

9 VAC 20-101-100. Contents of annual report.

Owners or operators of agricultural operation which include yard waste composting units who intend to operate under the exemption of 9 VAC 20-101-80 C shall submit by July 15 each year to the director an annual report on the following form describing accurately and completely the volume and types of yard waste received for composting by the operation between July 1 and June 30 of the preceding 12 months and shall certify that the yard waste composting facility continues to comply with local ordinances.

YARD WASTE COMPOSTING ANNUAL REPORT

Owners or operators of an agricultural composting operation receiving only yard waste, who are exempt from permitting requirements, and who may receive more than 6,000 cubic yards of yard waste generated from property not within control of the owner or operator in any twelve months period, shall submit to the director an annual report describing the volume and types of yard waste received for composting. Completion and filing of this form by July 15 will constitute compliance with the statutory requirement for the preceding twelve months, July 1 through June 30.

[Calendar] Year [Ending]:

Name of owner or operator:

Address:

Telephone Number:

Type of Waste	Volume (Cubic Yards)
Leaves	
Grass Trimmings	
Brush	
Wood Chips	
Shrub and Tree Trimmings	
[Roots and Stumps (Less than 6 inches in diameter)]	
Total	

Signature or the owner or operator:

Type or printed name:

Title:

Date:

Form DEQ-YW-2 (Provided in accordance with § 10.1-1408.1 K of the Code of Virginia)

PART IV.
STANDARDS FOR ALL VEGETATIVE WASTE
MANAGEMENT FACILITIES.

9 VAC 20-101-110. Compliance.

Vegetative waste management facilities, including yard waste composting facilities, shall comply with the requirements of this part unless otherwise exempted by other provisions [~~elsewhere~~] in this chapter.

9 VAC 20-101-120. Siting.

A. Yard waste composting and vegetative waste management facilities shall not be sited or constructed in areas subject to base floods. No facility shall be closer than 50 feet to any regularly flowing stream.

B. Yard waste composting and vegetative waste management facilities shall not be located in areas which are geologically unstable or where the site topography is heavily dissected.

C. Acceptable yard waste composting or vegetative waste management facility sites must have sufficient area and terrain to allow for control and proper management of runoff, and leachate.

D. The boundary of a yard waste composting or vegetative waste management facility shall not be located within 200 feet of any dwelling, a health care facility, school, or similar type of public institution. The director may reduce this set-back distance if the owner or operator successfully shows that a nuisance will not be created owing to the operation of such facility.

E. A yard waste composting or vegetative waste management facility shall not be located atop a closed waste disposal unit located on property whose deed or some other instrument which is normally examined during title searches contains a notation required under 9 VAC 20-80-250 [~~E-8, E-6;~~] or 9 VAC 20-80-270 [~~E-7~~] of the Virginia Solid Waste Management Regulations with the following exceptions:

1. For a closed unpermitted waste disposal unit at a solid waste management facility closed prior to December 1988, the following conditions shall apply:

- a. The yard waste composting or vegetative waste management facility does not pose a present or potential hazard to human health or the environment;
- b. All siting, design and construction, operating and closure standards of this part have been satisfied;
- c. The owner or operator of the yard waste composting or vegetative waste management facility successfully satisfies all provisions of Part V (9 VAC 20-101-160 et seq.).

2. For a waste disposal unit closed prior to December 1988 which is located at a solid waste management facility for which a permit has been issued and that is operating under the provisions of the Solid Waste

Management Regulations (9 VAC 20-80-10 et seq.), the following conditions shall apply:

- a. The yard waste composting or vegetative waste management facility does not pose a present or potential hazard to human health or the environment;
- b. All siting, design and construction, operating and closure standards of this part have been satisfied;
- c. The owner or operator of the yard waste composting or vegetative waste management facility successfully demonstrates to the director that all provisions of Part V (9 VAC 20-101-160 et seq.) have been satisfied.
- d. The closure plan for the solid waste management facility is amended to incorporate the operating and approved closure plans [~~of for~~] the yard waste composting or vegetative waste management facility. The owner or operator of the solid waste management facility must request the amendment to the solid waste facility closure plan in accordance with [~~9 VAC 20-80-250-E~~ 9 VAC 20-80-620] of the Solid Waste Management Regulations.

3. For waste disposal units closed after December 1988 and under the provisions of the Solid Waste Management Regulations (9 VAC 20-80-10 et seq.), the following conditions shall apply:

- a. The yard waste composting or vegetative waste management facility does not pose a present or potential hazard to human health or the environment;
- b. The existing permit issued for the solid waste management facility at which the closed waste disposal unit is located is amended to include any changes that may be required as a result of the operation of the vegetative or yard waste composting operation. The owner or operator must request the permit amendment in accordance with Part VII (9 VAC 20-80-480 et seq.) of the Solid Waste Management Regulations.

9 VAC 20-101-130. Design and construction.

A. A handling area and equipment shall be provided to segregate waste other than vegetative waste and noncompostable components in the vegetative waste and to store such components in properly constructed containers prior to their disposal at a permitted solid waste disposal facility.

B. If the yard waste composting or vegetative waste management facility is located in any area where the seasonal high water table lies within 24 inches of the ground surface, the composting and handling areas shall be hard-surfaced and diked or bermed to prevent entry of runoff or escape of runoff, leachate, and other liquids, and a sump with either a gravity discharge to atmosphere or an adequately sized pump located at the low point of the hard-surfaced area shall be provided to convey liquids to a

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waste water treatment (including but not limited to recirculation), disposal or holding facility.

C. Sound engineering controls shall be incorporated into design of yard waste composting and vegetative waste management facilities located on sites with:

1. Springs, seeps, and other groundwater intrusions;
2. Gas, water, or sewage lines under the active areas; or electrical transmission lines above or below the active areas.

D. Areas used for mixing, composting, curing, screening, and storing shall be graded to prevent runoff, collect runoff, and provided with a drainage system to route the collected runoff to a waste water storage, treatment (including but not limited to recirculation), or disposal facility.

E. A buffer zone with the minimum size of 100 feet shall be incorporated in the yard waste composting or vegetative waste management facility design between the facility boundaries and process operations.

F. Roads serving the unloading, handling, composting, and storage areas shall be usable under all weather conditions.

9 VAC 20-101-140. Operations.

A. The addition of any other solid waste including but not limited to hazardous waste, regulated medical waste, construction waste, debris, demolition waste, industrial waste, or other municipal solid waste to the vegetative waste received at the yard waste composting or vegetative waste management facility is prohibited, except that the materials which are excluded from regulation as solid waste under 9 VAC 20-80-150 F of the Solid Waste Management Regulations may be combined with yard waste for the purpose of producing compost under the provisions of Parts II (9 VAC 20-101-20 et seq.) and III (9 VAC 20-101-60 et seq.) of this chapter.

B. Solid waste other than vegetative waste shall be segregated from the vegetative waste and promptly removed from the yard waste composting or vegetative waste management facility site for proper management at a solid waste management facility permitted by the department. Segregated solid waste shall not remain at the yard waste composting or vegetative waste management facility at the end of the working day unless it is stored in containers specifically designed for storage of solid waste. Containerized putrescible waste shall not remain at the yard waste composting or vegetative waste management facility for more than seven days. Containerized nonputrescible waste shall be collected for disposal at intervals of less than 30 days.

C. Access to a yard waste composting or vegetative waste management facility that has not been closed in accordance with 9 VAC 20-101-150 shall be permitted only when an attendant is on duty.

D. Dust, odors, and vectors shall be controlled so they do not constitute nuisances or hazards.

E. The owner or operator shall prepare, implement, and enforce a safety program and a fire prevention and suppression program designed to minimize hazards.

F. Open burning shall be prohibited [~~with~~ on] the waste management facility property.

G. Fugitive dust and mud deposits on main off-site roads and access roads shall be minimized at all times to limit nuisances.

H. Leachate or other runoff from a yard waste composting or vegetative waste management facility shall not be permitted to drain or discharge directly into surface waters.

- I. Designed buffer zones shall be maintained.

9 VAC 20-101-150. Closure.

A. The owner or operator shall close his yard waste composting or vegetative waste management facility in a manner that minimizes the need for further maintenance. All waste and residues, including unfinished compost, shall be removed and disposed in a permitted solid waste management facility. Any finished compost present at the time of closure shall be removed and marketed or utilized in accordance with the operational plan for the facility, or disposed in a permitted solid waste management facility. If the owner or operator is unable or unwilling to remove all compost, the facility shall close in accordance with Part V (9 VAC 20-80-240 et seq.) of the Solid Waste Management Regulations.

B. The following items shall be considered in development of the closure plan and an amendment of plan:

1. The owner or operator of a yard waste composting or vegetative waste management facility shall have a written closure plan. This plan shall identify the steps necessary to completely close the facility at the time when its operation is most extensive. The closure plan shall include, at least a schedule for final closure including, as a minimum, the anticipated date when wastes will no longer be received, the date when completion of final closure is anticipated, and intervening milestone dates which will allow tracking of the progress of closure.

2. The closure plan shall be submitted to the department prior to the construction and operation of the yard waste composting or vegetative waste management facility, unless the owner or operator is exempt from the requirements of the Financial Assurance Regulations of Solid Waste Facilities (9 VAC 20-70-10 et seq.), in which case the closure plan shall be submitted no later than 30 days from the date the yard waste composting or vegetative waste management facility commences operation. The department shall review each closure plan no later than 90 days from receipt. If the department finds plan to be deficient, it shall cite the reasons for the

finding and state what amendments are necessary. If found to be deficient, the closure plan shall be amended by the owner or operator within 90 days of the director's finding. If the amended closure plan continues to be deficient, the department will amend the plan to meet the closure performance requirements within 90 days.

3. The owner or operator may amend his closure plan at any time during the active life of the yard waste composting or vegetative waste management facility. The owner or operator shall so amend his plan any time changes in operating plans or facility design affects the closure plan. Amended plans shall be submitted to the department within 15 days of such changes. The director may require that amended plans be modified to meet the closure requirements.

4. At any time during the operating life of the yard waste composting or vegetative waste management facility, the closure plan shall be made available to the department upon request of the director.

5. The owner or operator shall submit an updated closure plan to the director at least 180 days before the date he expects to begin final closure. The director will modify, approve, or disapprove the plan within 90 days of receipt. If the closure plan is disapproved, the owner or operator shall modify the plan to meet the closure requirements. If an owner or operator plans to begin closure within 180 days after ~~[the effective date on these regulations January 7, 1998]~~, he shall submit the necessary plans on ~~[the effective date of these regulations January 7, 1998]~~.

C. The owner or operator shall complete closure activities in accordance with the approved closure plan and within 12 months after receiving the final volume of wastes. The director may approve a longer closure period if the owner or operator can demonstrate that the required or planned closure activities will, of necessity, take longer than 12 months to complete; and that he has taken all necessary steps to eliminate any significant threat to human health and the environment from the unclosed but inactive yard waste composting or vegetative waste management facility.

D. At the beginning of the closure activities, the owner or operator shall post at least one sign notifying all persons of the closing, and providing a notice prohibiting further receipt of waste materials. Further, suitable barriers shall be installed at former accesses to prevent new waste from being deposited.

E. A yard waste composting or vegetative waste management facility shall be deemed properly closed when the above actions have been taken by the owner or operator and a representative of the department verifies same by an on-site inspection and provides a written confirmation that closure has been completed properly.

PART V. FACILITY PERMIT BY RULE.

9 VAC 20-101-160. Permit by rule provisions.

Notwithstanding any provisions of Part VII (9 VAC 20-80-480 et seq.) of the Virginia Solid Waste Management Regulations, the owner or operator of a vegetative waste management facility which accepts only vegetative wastes as defined in 9 VAC 20-101-10 shall be deemed to have a solid waste management facility permit if the owner or operator:

1. Demonstrates to the director the legal control over the site for the useful life of the vegetative waste management facility. A documentation of an option to purchase will be considered as a temporary substitute for a deed; however, the true copy of a deed shall be provided to the department before construction begins.

2. Notifies the director of his intent to operate such a facility and provides the department:

a. The certification from the governing body of the county, city, or town in which the facility is to be located that the location and operation of the facility are consistent with all applicable ordinances; and

b. A disclosure statement as defined in 9 VAC 20-101-10 as required under § 10.1-1408.1 B of the Code of Virginia.

3. Provides the director with a certification that the facility meets the siting standards of 9 VAC 20-101-120.

4. Furnishes to the director a certificate signed by a professional engineer licensed to practice by the Commonwealth that the facility has been designed and constructed in accordance with the standards of 9 VAC 20-101-130. Such certificate shall contain no qualifications or exceptions from the requirements and plans.

5. Submits to the director an operational plan describing how the standards of 9 VAC 20-101-140 will be met and the procedure for marketing or utilizing the finished compost.

6. Submits to the director a closure plan describing how the standards of 9 VAC 20-101-150 will be met.

7. Submits to the director the proof of financial responsibility if required by the Financial Assurance Regulations of Solid Waste Facilities (9 VAC 20-70-10 et seq.).

9 VAC 20-101-170. Change of ownership.

A permit by rule may not be transferred by the permittee to a new owner or operator. However, when the property transfer takes place without proper closure, the new owner or operator shall notify the department of the sale and fulfill all the requirements contained in 9 VAC 20-101-160 with the exception of subdivision 7 of 9 VAC 20-101-160 within 30 days of the date of the sale. If required by the Financial

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Assurance Regulations of Solid Waste Facilities (9 VAC 20-70-10 et seq.), financial assurance proof shall be posted by the new owner or operator within 30 days from the date of the sale; provided however, that until the actual posting of such financial assurance proof, the old owner or operator shall not be relieved of his responsibility to post financial assurance. Upon presentation of the financial assurance proof required by subdivision 7 of 9 VAC 20-101-160 by the new owner or operator, the department will release the old owner or operator from his closure and financial responsibilities under the Financial Assurance Regulations of Solid Waste Facilities (9 VAC 20-70-10 et seq.) and acknowledge existence of the new permit by rule in the name of the new owner or operator.

9 VAC 20-101-180. Facility modifications.

The owner or operator of a vegetative waste management facility may modify the design and operation of the facility by furnishing the department a new certificate required by subdivision 4 of 9 VAC 20-101-160 and a new operational plan required by subdivision 5 of 9 VAC 20-101-160. Whenever modifications in the design or operation of the facility affect the provisions of the approved closure plan, the owner or operator shall submit an amended closure plan in accordance with the requirements of 9 VAC 20-101-150. Should there be an increase in the closure costs, the owner or operator shall submit a new proof of financial responsibility as required by the Financial Assurance Regulations of Solid Waste Facilities (9 VAC 20-70-10 et seq.).

PART VI. ENFORCEMENT.

9 VAC 20-101-190. Loss of permit by rule status.

In the event that a vegetative waste management facility operating under a permit by rule violates any provisions of [~~these regulations~~ this chapter] in a substantive manner, the owner or operator of the facility will be considered to be operating an unpermitted facility as provided for in 9 VAC 20-80-80 of the Virginia Solid Waste Management Regulations and shall be required to either obtain a new permit as required by Part VII (9 VAC 20-80-480 et seq.) or close under Part V (9 VAC 20-80-240 et seq.) or VI (9 VAC 20-80-320 et seq.) of those regulations, as applicable.

9 VAC 20-101-200. Termination.

In addition to the grounds identified in § 10.1-1409 of the Code of Virginia, the director shall terminate permit by rule and shall require closure of the facility whenever he finds that:

1. As a result of changes in key personnel, the requirements necessary for a permit by rule are no longer satisfied;
2. The applicant has knowingly or willfully misrepresented or failed to disclose a material fact in his disclosure statement, or any other report or certification required under [~~these regulations~~ this chapter], or has knowingly or willfully failed to notify the director of any

material change to the information in the disclosure statement; or

3. Any key personnel have been convicted of any of the crimes listed in § 10.1-1409 of the Code of Virginia, punishable as felonies under the laws of the Commonwealth or the equivalent thereof under the laws of any other jurisdiction; or has been adjudged by an administrative agency or a court of competent jurisdiction to have violated the environmental protection laws of the United States, the Commonwealth or any other state and the director determines that such conviction or adjudication is sufficiently probative of the permittee's inability or unwillingness to operate the facility in a lawful manner.

9 VAC 20-101-210. Enforcement.

Loss or termination of a permit by rule under [~~these regulations~~ this chapter] shall not preclude additional action for remediation or enforcement, including (without limitation) the assessment of civil charges or civil penalties, as is otherwise authorized by law.

VA.R. Doc. No. R96-404; Filed November 17, 1997, 3:40 p.m.

* * * * *

REGISTRAR'S NOTICE: The following regulation filed by The Virginia Waste Management Board is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 B 4 of the Code of Virginia with exempts regulations relating to grants of state or federal funds or property.

Title of Regulation: 9 VAC 20-150-10 et seq. Waste Tire End User Reimbursement Regulation (amending 9 VAC 20-150-10, 9 VAC 20-150-120 and 9 VAC 20-150-130; repealing 9 VAC 20-150-90).

Statutory Authority: §§ 10.1-1402, 10.1-1422.3 and 10.1-1422.4 of the Code of Virginia.

Effective Date: November 18, 1997.

Summary:

This regulation provides guidelines for the partial reimbursement from the Waste Tire Trust Fund to end users of Virginia generated waste tires and promotes the use of waste tires by enhancing markets for waste tires, chips or similar materials. Enhanced markets make it easier and less expensive to direct waste tires to processing areas other than landfills.

Chapter 627 of the 1997 Acts of Assembly authorized several changes to the regulation. First, it allows the Department of Environmental Quality to direct more money into the reimbursement program (carryover of unobligated funds may now be used for reimbursements). It also allows applicants to seek reimbursements more frequently than the original

calendar quarter. These amendments implement HB 2012.

Agency Contact: Copies of the regulation may be obtained from Allan Lassiter, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4215.

9 VAC 20-150-10. Definitions.

A. The definitions set out in Part 1 of the Virginia Solid Waste Management Regulations, 9 VAC 20-80-10 et seq., are incorporated by reference.

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

"Applicant" means any person or persons seeking reimbursement under this chapter.

"Asphalt pavement containing recycled rubber" means any hot mix or spray applied binder in asphalt paving mixture that contains rubber from waste tire materials which is used for asphalt pavement base, surface course or interlayer, or other road and highway related uses.

"Authorized signature" means the signature of an individual who has authority to sign on behalf of, and bind, the applicant.

"Available funds" means for a given ~~calendar~~ *fiscal* year, a maximum of ~~75%~~ *80%* of the previous *fiscal* year's collection of the waste tire tax *plus 85% of nonobligated carryover funds at the end of the previous fiscal year.*

"Burning" means the controlled burning of waste tire materials for the purpose of energy recovery.

"Cost of use" means the equipment, leasehold improvements, buildings, land, engineering, transportation, operating, taxes, interest, and depreciation or replacement costs of using waste tire materials incurred by the end user after deducting any tipping fee received by the end user.

"Daily cover" means using waste tire material as an alternate cover placed upon exposed solid waste to control disease vectors, fires, odors, blowing litter and scavenging without presenting a threat to human health and the environment.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality or the director's designee.

"Embankment" means a raised earthen structure to carry a roadway.

"End user" means:

1. For energy recovery: the person who utilizes the heat content or other forms of energy from the burning or pyrolysis of waste tire materials;

2. For other eligible uses: the last person who uses the waste tire materials to make a product with economic value. If the waste tire materials are processed by more than one person in becoming a product, the end user is the last person to use the tire as waste tire materials. A person who produces waste tire materials and gives or sells them to another person to use is not an end user.

"Energy recovery" means utilizing the heat content or other forms of energy from the burning or pyrolysis of waste tire materials.

"Fill material for construction" means the material is used as a base or sub-base under the footprint of a structure, a paved parking lot, sidewalk, walkway or similar application.

"Generator" means any person whose act or process produces waste tires or whose act first causes a tire to become a solid waste.

"Hauler" means a person who picks up or transports waste tires for the purpose of removal to a permitted storage, processing or disposal facility.

"Partial reimbursement" means reimbursement that does not exceed the purchase price of waste tire materials or the cost of use if the waste tire materials were not purchased.

"Passenger tire equivalent" means a measure of passenger, truck tires, and oversize tires where: One passenger car tire equals 20 pounds or 1/100 ton. One truck tire 20-24 inch rim equals 100 pounds or 1/200 ton and a tire with over 24-inch rim equals 200 pounds or greater as computed by the end user.

"Processor" means a person engaged in the processing of waste tires including, but not limited to, stamping, stripping, shredding, or crumbing; that operates under a permit issued by the local, state, or federal government; or is exempt from permit requirements.

"Pyrolysis" means thermal treatment of waste tire materials to separate it into other components with economic value.

"Retreading" means processing a waste tire by attaching a new tread to make a usable tire.

"Road bed base" means the foundation of a road prepared for surfacing.

"Tipping fee" means a fee charged to a person for disposal of a waste tire.

"Tire" means a continuous solid or pneumatic rubber covering encircling the wheel of a vehicle in which a person or property is transported, or by which they may be drawn on a highway.

"Tire pile" means an accumulation of waste tire materials that violates the Virginia Solid Waste Management Regulations (9 VAC 20-80-10 et seq.).

"Waste tire" means a tire that has been discarded because it is no longer suitable for its original intended purpose because of wear, damage or defect.

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"Waste tire materials" means whole waste tires or waste tires that have been size reduced by physical or chemical process. This term includes waste tires or chips or similar materials as specified in §§ 10.1-1422.3 and 10.1-1422.4 of the Code of Virginia.

"Waste Tire Trust Fund" means the nonreverting fund set up by § 10.1-1422.3 of the Code of Virginia in which proceeds from the waste tire tax are deposited.

~~9 VAC 20-150-90. Available funds. (Repealed.)~~

~~Applicants approved for reimbursement will be reimbursed their qualifying amount until such time as available funds are exhausted for the calendar year. If available funds for a calendar year are exhausted, no further reimbursement will be made for utilization of tires in that calendar year. Applications will be considered in order of receipt.~~

9 VAC 20-150-120. Application for reimbursement.

A. A person may apply to the director for reimbursement from the Waste Tire Trust Fund on a *monthly or quarterly basis* for utilizing waste tire materials if the request for reimbursement is complete and complies with other provisions of this chapter.

B. The minimum reimbursement application amount is 5,000 passenger tire equivalents or 50 tons of waste tire materials used.

C. In order to apply for reimbursement, the utilization of the waste tire materials must occur after December 20, 1994.

D. An applicant for reimbursement must file form DEQ-EURR with the director, providing at a minimum:

1. Applicant's name and address;
2. Name and location of facility where end use occurs;
3. A description of the end use;
4. A statement of the purchase price paid for the waste tire materials or, if the waste tire materials were not purchased, the cost of use; and
5. An authorized signature.

E. Application for *quarterly* reimbursement will be accepted up to the last business day of the month following a calendar quarter. Applications received after the one-month deadline will be considered late and reimbursement will not be considered for that calendar quarter. Such a late application will be considered in the following calendar ~~quarter~~ *month with other monthly applications*.

Application for monthly reimbursement will be accepted up to the 15th calendar day of the month following a month. Applications received after the 15-day deadline will be considered late and reimbursement will not be considered for that month. Such a late application will be considered in the following month.

F. An applicant for a reimbursement for utilization of waste tire materials is subject to audit by the director. Applicants

shall allow access to all records related to waste tire management activities during normal business hours for the purpose of determining compliance with this chapter for five years from the date of reimbursement.

G. In addition to any other penalty imposed by law, any person who knowingly or intentionally provides false information to the director in applying for a reimbursement shall be ineligible to receive any reimbursement under this chapter.

9 VAC 20-150-130. Review of application.

A. The director shall review the reimbursement application form, DEQ-EURR, for completeness and eligibility within three days of receipt.

B. If an application is not complete as required in 9 VAC 20-150-120 D, the director may require the applicant to submit the missing information. The director may delay reimbursement until the information is received.

C. The director will process for payment all applications for reimbursement that are complete and in compliance with the regulations up to the amount of *available funds available, but in no case will payments exceed 75% of the previous year's tax collection as certified by the Department of Taxation.* The complete applications will be processed in the order received and until available funds are exhausted. Complete applications will be reviewed and acted on within three working days. *When available funds for a given fiscal year are exhausted, all remaining eligible applications will be held and paid first in the following fiscal year.*

~~D. The first time that applications may be submitted is after December 20, 1994. The first payment will be processed beginning in the calendar quarter following December 20, 1994. After that applications will be received and processed as specified in 9 VAC 20-150-120 E.~~

~~E. D.~~ When an applicant believes an error has been made in the review of or response to his application, he shall notify the director in writing within 30 days of receiving the director's response. The notice shall contain a copy of the application and the director's response, a brief statement describing the believed error, and copies of any documents supporting the statement.

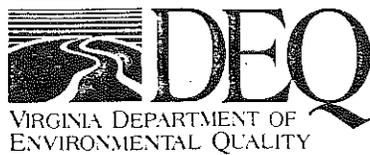
The director shall review the notice and attached documents and may further investigate the matter. The director shall advise the applicant in writing in due course of his response to the applicant's notice of error.

If the director concludes that an error has been made, he shall reinstate the application and act on it. If the available funds are exhausted, and would not have been had the director acted correctly on the application originally, the reinstated application shall be carried over to the next year and paid from available funds.

NOTICE: The forms used in administering 9 VAC 20-150-10 et seq., Waste Tire End User Reimbursement Regulation, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

Commonwealth of Virginia Waste Tire Certification, DEQ-WTC, Revised 1/96.

Waste Tire Program End User Reimbursement Application, DEQ-EURR, Revised 6/95 8/97.



VIRGINIA WASTE TIRE PROGRAM

END USER REIMBURSEMENT APPLICATION
(FORM DEQ-EURR)

COMPANY NAME _____
 ADDRESS _____
 CITY _____ STATE _____ ZIP _____
 FEDERAL ID# _____
 PHONE _____ CONTACT PERSON _____

WASTE TIRE PILES: TO QUALIFY FOR \$50 PER TON REIMBURSEMENT, STATE THE DEQ PILE # _____ AND ATTACH A COPY OF THE CERTIFICATION SIGNED BY A DEQ STAFF PERSON.

LOCATION OF END USE _____
 DESCRIPTION OF USE _____
 USE OCCURRED BETWEEN (DATES) _____ AND _____
 VIRGINIA-ORIGIN DOCUMENTED BY _____

COMPLETE THE CALCULATION FOR PURCHASE PRICE (PP) OR COST OF USE (COU).

<u>PURCHASE PRICE CALCULATION</u>	<u>COST OF USE CALCULATION</u>
TONS OF MATERIAL PURCHASED _____	COST OF USE PER TON _____
PURCHASE PRICE PER TON _____	MINUS TIPPING FEE _____
	NET COST OF USE _____
P.P./C.O.U. DOCUMENTED BY _____	TONS OF MATERIAL USED _____

CERTIFICATION: I certify that the amount of waste tire material listed above was utilized in the manner specified on this request during the period listed. I further certify that the documentation exist at the office of the company listed above that demonstrates that waste tire material was from waste tires that were Virginia generated as defined in the Waste Tire End User reimbursement Regulations (9 VAC 20-150-10 et seq). Additionally, I certify that records exist in our office, for review by DEQ, that shows the purchase price paid or cost of use and the amount of waste tire material that was used.

Signature _____ Date _____

USE	TONS	FOR DEQ USE ONLY RATE	AMOUNT OF REIMBURSEMENT DUE
_____	_____	_____	_____

APPROVED FOR PAYMENT PROCESSING _____ Date _____

Department of Environmental Quality, Waste Tire Program, 629 East Main Street, Richmond, VA 23219
 DEQ-EURR
 8/97

WE ENHANCE AND PROTECT THE ENVIRONMENT FOR THE PEOPLE OF VIRGINIA

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

REGISTRAR'S NOTICE: The amendments to the following regulation are exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation, and in accordance with § 9-6.14:4.1 C 3, which excludes regulations which consist only of changes in style or form or corrections of technical errors. The Department of Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 12 VAC 30-120-10 et seq. Waivered Services (Medallion II) (amending 12 VAC 30-120-360, 12 VAC 30-120-370 and 12 VAC 30-120-380).

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

Effective Date: January 7, 1998.

Summary:

The purpose of this action is to amend state regulations concerning HMO enrollment to make changes in the form of the regulations, to make technical clarifications, and to conform the language to federal regulations. The first several changes to 12 VAC 30-120-370 clarify terminology. The changes to 12 VAC 30-120-370 D 5 and F correct language to conform to federal regulations. The remaining change to subsection F is a clarification of time requirements. The changes also clarify the intent of 12 VAC 30-120-380 I.

Agency Contact: Copies of the regulation may be obtained from Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

12 VAC 30-120-360. Definitions.

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

~~"ABD" means aged, blind and disabled recipients as defined in 12 VAC 30-30-10.~~

~~"AFDC" means Aid to Families with Dependent Children which is a public assistance program, administered by the Department of Social Services, providing financial assistance to needy citizens.~~

~~"AFDC related" means those clients who are eligible for medical assistance under rules related to the AFDC program,~~

~~such as pregnant women and indigent children under specific ages. It shall not include foster care, subsidized adoption, or spend down medically needy clients.~~

"Appeal" means any written communication from a client or his representative which clearly expresses that he wants to present his case to a reviewing authority.

"Area of ~~record~~ residence" means the recipient's address in the Medicaid eligibility file.

"Capitation payment" means the payment issued to an HMO contractor by DMAS on behalf of a client, in return for which the HMO accepts responsibility for the services to be provided under a contract.

"Client," "clients," "recipient" or "enrollee" means an individual or individuals having current Medicaid eligibility who shall be authorized by DMAS to be a member or members of Medallion II.

"CMP" means a competitive medical plan with current Medicare contracts.

"Covered services" means Medicaid services as defined in the State Plan for Medical Assistance.

"Disenrollment" means a change in enrollment from one Medallion II HMO plan to another.

"DMAS" means the Department of Medical Assistance Services.

"Eligible person" means any person determined by DMAS as eligible to receive services and benefits under the State Plan for Medical Assistance ~~in the categories of AFDC, AFDC related, and ABD.~~

"Emergency services" means services provided in a hospital, clinic, office, or other facility that is equipped to furnish the required care, after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in:

1. Placing the client's health in serious jeopardy;
2. Serious impairment to bodily functions; or
3. Serious dysfunction of any bodily organ or part.

"Foster care" means a child who received either foster care assistance under Title IV-E of the Social Security Act or state and local foster care assistance.

"Grievance" means any request by a client to an HMO to resolve a dispute.

"Health care plan" means any arrangement in which any health maintenance organization undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services.

"HMO" means a health maintenance organization, as licensed by the State Corporation Commission's Bureau of

Insurance, which undertakes to provide or arrange for one or more health care plans.

"*Network*" means doctors, hospitals or other health care providers who participate or contract with an HMO and as a result, agree to accept a mutually-agreed upon sum or fee schedule as payment in full for covered services.

"*Nonparticipating provider*" means a facility not in the HMO's network or a provider not in the HMO's network practicing at a facility not in the HMO's network.

"*Spend-down*" means the process of reducing countable income by deducting incurred medical expenses for medically needy individuals, as determined in the State Plan for Medical Assistance.

"*Subsidized adoption*" means any child for whom an adoption assistance agreement is in effect.

12 VAC 30-120-370. Medallion II enrollees.

A. DMAS shall determine enrollment in Medallion II. Enrollment in Medallion II is not a guarantee of continuing eligibility for services and benefits under the Virginia Medical Assistance Program.

B. The following individuals shall be excluded from participating in Medallion II. Individuals not meeting the exclusion criteria must participate in the Medallion II program.

1. Individuals who are inpatients in state mental hospitals;
2. Individuals who are approved by DMAS as inpatients in long-stay hospitals, nursing facilities, or intermediate care facilities for the mentally retarded;
3. Individuals who are placed on spend-down;
4. Individuals who are participating in federal waiver programs for home-based and community-based Medicaid coverage;
5. Individuals who are participating in foster care or subsidized adoption programs;
6. Individuals who are in the third trimester of pregnancy upon initial assignment to Medallion II and who request ~~exemption~~ *exclusion*;
7. Individuals who are in their ninth month of pregnancy, when they are or will be automatically assigned or reassigned, and were not in the Medicaid HMO to which they were assigned or reassigned within the last seven months, if they are seeking care from a provider (physician or hospital or both) not affiliated with the HMO to which they were previously assigned. ~~Disenrollment~~ *Exclusion* requests may be made by the HMO, a provider, or the recipient;
8. Individuals who ~~reside~~ *live* outside their area of ~~record~~ *residence* for greater than 60 days except those individuals placed there for medically necessary services funded by the HMO;

9. Individuals who enter into a Medicaid approved hospice program in accordance with DMAS criteria;

10. Individuals with any other comprehensive group or individual health insurance coverage;

11. Individuals who have been preassigned to an HMO but have not yet been enrolled, who are inpatients in hospitals other than those listed in subdivisions 1 and 2 of this subsection, until the first day of the month following discharge;

12. Individuals who have been preassigned to an HMO but have not yet been enrolled, who are scheduled for surgery which is scheduled to be within 30 days of initial ~~preassignment~~ *enrollment* into the HMO, which requires an inpatient hospital stay, until the first day of the month following discharge; and

13. Individuals who have been preassigned to an HMO but have not yet been enrolled, who have been diagnosed with a terminal condition and who have a life expectancy of six months or less, if they request exclusion. The client's physician must certify the life expectancy.

C. Medallion II managed care plans shall be marketed to recipients, and recipients shall be enrolled in those plans, exclusively through an independent marketing broker under contract to DMAS.

D. Clients shall be enrolled as follows:

1. All eligible persons, except those meeting one of the exclusions of subsection B of this section, shall be enrolled in Medallion II.

2. Clients shall receive a Medicaid card from DMAS during the interim period, and shall be provided authorized medical care in accordance with DMAS' procedures, after eligibility has been determined to exist.

3. Once individuals are enrolled in Medicaid, they will receive a letter indicating that they may select one of the contracted HMOs. These letters shall indicate a preassigned HMO, determined as provided in subsection E of this section, in which the client will be enrolled if he does not make a selection within a period specified by DMAS of not less than 45 days.

4. The effective date of coverage in the Medallion II program for newly eligible individuals under the Virginia Medical Assistance Program (except for those specified under subdivision 6 of this subsection) and individuals who move from the area of their Medallion II HMO shall be assigned to an HMO as described in subdivision 3 of this subsection.

5. A child born to a woman enrolled with an HMO will be enrolled with the HMO from birth until the last day of the third month including the month of birth, unless otherwise specified by the Medicaid Managed Care Health Benefits Manager. For instance, a child born during the month of February will be automatically enrolled until April 30. By

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the end of that third month, the child will be disenrolled unless the Medicaid Managed Care Health Benefits Manager specifies continued enrollment. If the child remains an inpatient in a hospital at the end of that third month, the child shall automatically remain enrolled until the last day of the month of discharge, *unless this child's parent requests disenrollment.*

6. Individuals who lose then regain eligibility for Medallion II within 60 days will be reenrolled into their previous HMO without going through preassignment and selection.

E. Clients who do not select an HMO as described in subdivision D 3 of this section shall be assigned to an HMO as follows:

1. MEDALLION primary care physicians will be asked to select the HMO in which their MEDALLION clients will be enrolled.
2. Clients currently enrolled in "Options" shall be assigned to the HMO in which they participated under "Options" if that HMO contracts with DMAS for Medallion II.
3. Clients not assigned pursuant to subdivision 1, or 2, or 3 of this subsection shall be assigned to the HMO of another family member, if applicable.
4. All other clients shall be assigned to an HMO on a basis of approximately equal number by HMO in each locality.

F. HMO enrolled recipients shall be permitted to change HMOs, upon request to the Medicaid Managed Care Health Benefits Manager, ~~within 60 days of the request. The disenrollment will be effective no later than the first day of the second month following the request.~~

Clients in State Plan defined HMOs which are also CMPs or are federally qualified HMOs will be permitted to change HMOs upon request to the Medicaid Managed Care Health Benefits Manager only:

1. During DMAS-specified open enrollment periods;
2. During the first month of the six-month enrollment period;
3. If a combination of complex medical factors of the client, in the sole discretion of DMAS, would be better served under another contracted HMO; or
4. Upon determination by DMAS that good cause exists as determined under subsection H of this section.

~~Clients who are inpatients in hospitals other than those specified as exclusions in subsection A of this section, or clients who are scheduled for surgery within 30 days which requires an inpatient hospital stay, are restricted from disenrollment until the first day of the month following discharge.~~

G. DMAS will inform those HMOs which are CMPs, or are federally qualified HMOs, of open enrollment periods. Open enrollment periods will occur at a minimum of twice per calendar year and will be held no more than six months apart. CMPs and federally qualified HMOs will notify their enrolled recipients of open enrollment periods no less than 30 days before the start of each new period of enrollment and at least twice each year.

H. Disenrollment for good cause may be requested at any time. The request must be made in writing. Good cause for disenrollment shall include the following:

1. A recipient's desire to seek services from a federally qualified health center which is not under contract with the current HMO but is under contract to another HMO available to the recipient; or
2. Performance or nonperformance of service to the recipient by an HMO or one or more of its providers which is deemed by the department's external quality review organizations to be below the generally accepted community practice of health care.

DMAS shall determine whether good cause exists for disenrollment.

Good cause for disenrollment shall be deemed to exist and the disenrollment shall be granted if DMAS fails to take final action on a valid request prior to the first day of the second month after the request.

The DMAS determination concerning good cause for disenrollment may be appealed by the client in accordance with the department's client appeals process at 12 VAC 30-110-10 through 12 VAC 30-110-380.

The current HMO shall provide, within two working days of a request from DMAS, information necessary to determine good cause.

12 VAC 30-120-380. Medallion II provider responsibilities.

A. The HMO shall provide, at a minimum, all medically necessary covered services provided under the State Plan for Medical Assistance and further defined by written DMAS regulations, policies and instructions, except as otherwise modified or excluded in this part.

Nonemergency services provided by hospital emergency departments shall be covered by HMOs in accordance with rates negotiated between the HMOs and the emergency departments.

B. Services that shall be provided outside the HMO network, and reimbursed by DMAS, are school-based services and community mental health services (rehabilitative, targeted case management and waiver services). Clients may also seek emergency services and family planning services from a provider outside the HMO. The HMOs shall pay for emergency services and family planning services whether they are provided inside or outside the HMO network.

The HMOs shall pay for services furnished in:

1. Facilities or by practitioners outside the HMOs' networks if services are needed because of a medical emergency;
2. Areas outside the HMOs' service areas if medical services are needed and the recipient's health would be endangered if he were required to travel to his place of residence;
3. Another state if it is general practice for recipients in that area to receive medical services in another state; and
4. Facilities or by practitioners outside the HMOs' networks if the needed medical services or necessary supplementary resources are not available in the HMOs' networks.

C. Immunizations shall not be included in the fee that DMAS pays the HMOs. The HMO may choose to offer immunizations under the regular Medicaid immunization reimbursement methodology or may refer the patient to a local health department.

D. The HMOs shall report encounter data to DMAS under the contract requirements, which may include data reports based on the Health Plan Employer Data and Information Set (HEDIS), report cards for clients, and ad hoc quality studies performed by third parties.

E. The HMO shall maintain such records as may be required by federal and state law and regulation and by DMAS policy. The HMO shall furnish such required information to DMAS, the Attorney General of Virginia or his authorized representatives, or the State Medicaid Fraud Control Unit on request and in the form requested.

F. The HMO shall ensure that the health care provided to its clients meets all applicable federal and state mandates, community standards for quality, and standards developed pursuant to the DMAS managed care quality program.

G. Effective January 1, 1997, each HMO shall test the readability of its program information documents by use of the Flesch Readability Formula, as set forth in Rudolf Flesch, *The Art of Readable Writing* (1949, as revised 1974 1962), and no program information document shall be used unless it achieves a Flesch total readability score of 40 or better. This requirement shall not apply to language that is mandated by federal or state laws, regulations or agencies.

All program information documents within the scope of this section, and all amendments thereto, shall be filed with DMAS in advance of their use and distribution, accompanied by certificates setting forth the Flesch scores and certifying compliance with the requirements of this section. Any program information document to which this does not apply shall be accompanied by a documentation of the federal or state laws, regulation or agency mandate that authorizes the exemption. The term "program information documents" means all forms, brochures, handbooks or other

documentation (i) provided to recipients covered under Medicaid managed care programs and (ii) describing the programs' medical care coverages and the rights and responsibilities of recipients covered. The term "recipient" shall include potential recipients and recipients.

H. The HMOs shall promptly provide or arrange for the provision of all required services. Initial face-to-face medical evaluations shall be available within 48 hours for urgent care and within 15 business days for routine care. On-call clinicians shall be available 24 hours per day, seven days per week.

I. The HMOs must meet standards specified by DMAS for sufficiency of provider networks. The HMOs shall include in their network a sufficient number of ~~Part H Early Intervention program~~ providers of each type of ~~therapy~~ covered service (i.e., speech, occupational, or physical *therapy*) to ensure adequate access. *For example, HMOs must include, but are not necessarily limited to, providers specializing in early childhood, youth and geriatric services.*

J. Preauthorization and concurrent review decisions must be supervised by qualified medical professionals and completed within two business days after receipt of all necessary information.

K. When the need is identified, the HMOs shall designate a single case manager, who shall function as an exceptional needs care coordinator within the HMO, for all persons with complex health care needs.

L. The HMOs shall not charge copayments to any categorically needy enrollees.

DOCUMENT INCORPORATED BY REFERENCE

The Art of Readable Writing, Rudolf ~~Flesch~~ *Flesch*, Ph.D., 1949, revised 1974 1962, Collier Books.



COMMONWEALTH of VIRGINIA

E. M. MILLER, JR.
ACTING REGISTRAR OF REGULATIONS

JANE D. CHAFFIN
DEPUTY REGISTRAR

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3581
FAX (804) 692-0625

November 24, 1997

Mr. Joseph M. Teefey, Director
Department of Medical Assistance Services
600 East Broad Street, Suite 1300
Richmond, Virginia 23219

Dear Mr. Teefey:

This letter acknowledges receipt of the amendments to 12 VAC 30-120-10 et seq. Waivered Services (Medallion II: Definitions, Enrollees and Provider Responsibilities) submitted by the Department of Medical Assistance Services.

As required by § 9-6.14:4.1 C 4(c) of the Code of Virginia, I have determined that the amendments to 12 VAC 30-120-380 D 5 and F of these regulations are exempt from the operation of Article 2 of the Administrative Process Act since they do not differ materially from those required by federal law.

Sincerely,

A handwritten signature in cursive script that reads "E. M. Miller, Jr." followed by a small flourish.

E. M. Miller, Jr.
Acting Registrar of Regulations

VA.R. Doc. No. R98-96; Filed November 14, 1997, 11:15 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

REAL ESTATE BOARD

REGISTRAR'S NOTICE: The following regulatory action filed by the Real Estate Board is exempt from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 9 of the Code of Virginia, which excludes regulations of the regulatory boards served by the Department of Professional and Occupational Regulation pursuant to Title 54.1 which are limited to reducing fees charged to regulants and applicants.

Title of Regulation: 18 VAC 135-20-10 et seq. Virginia Real Estate Board Licensing Regulations (amending 18 VAC 135-20-80, 18 VAC 135-20-120, 18 VAC 135-20-140, and 18 VAC 135-20-370).

Statutory Authority: §§ 54.1-113, 54.1-201 and 54.1-2105 of the Code of Virginia.

Effective Date: January 8, 1998.

Summary:

The amendments reduce the amount of fees charged to applicants for licensure and certification and for renewal of licenses and certifications.

Agency Contact: Copies of the regulation may be obtained from Karen W. O'Neal, Assistant Director, Real Estate Board, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8552.

18 VAC 135-20-80. Application fees.

A. All application fees for licenses are nonrefundable and the date of receipt by the board or its agent is the date which will be used to determine whether it is on time.

B. Application fees for original licenses are as follows:

Salesperson by education and examination	\$100 \$90
Salesperson by reciprocity	\$125 \$75
Broker by education and examination	\$115 \$100
Broker by reciprocity	\$150 \$100
Broker concurrent license	\$100 \$90
Firm license	\$150 \$145
Branch office license	\$75
Transfer application	\$50 \$35
Activate application	\$50 \$35
Bad check penalty	\$25

C. Examination fees are as follows:

Registration for sales and brokers	\$68.50
Additional fee for phone or "fax" registrations	\$5.00

18 VAC 135-20-120. Fees for renewal.

All fees for renewals are nonrefundable, and the date of receipt by the board or its agent is the date which will be used to determine whether or not it is on time, and are as follows:

Salesperson	\$100 \$46
Broker	\$115 \$50
Concurrent broker	\$115 \$50
Firm	\$150 \$75
Branch office	\$75 \$45

18 VAC 135-20-140. Failure to renew; reinstatement required.

A. All applicants for reinstatement must meet all requirements set forth in 18 VAC 135-20-100 A and B of this chapter. Applicants for reinstatement of an active license must have completed the continuing education requirement in order to reinstate the license. Applicants for reinstatement of an inactive license are not required to complete the continuing education requirement for license reinstatement.

B. If the requirements for renewal of a license, including receipt of the fee by the board, are not completed by the licensee within 30 days of the expiration date noted on the license, a reinstatement fee of ~~\$250~~ \$100 is required.

C. A license may be reinstated for up to one year following the expiration date with payment of the reinstatement fee. After one year, the license may not be reinstated under any circumstances and the applicant must meet all current educational and examination requirements and apply as a new applicant.

D. Any real estate activity conducted subsequent to the expiration may constitute unlicensed activity and be subject to prosecution under Chapter 1 of Title 54.1 of the Code of Virginia.

18 VAC 135-20-370. Fees.

A. The application fee for original certificate for a proprietary school shall be ~~\$150~~ \$90.

B. The renewal fee for proprietary school certificates expiring annually on June 30 shall be ~~\$150~~ \$45.

C. The board in its discretion may deny renewal of a certificate. Upon such denial, the certificate holder may request that a hearing be held.

VA.R. Doc. No. R98-94; Filed November 13, 1997, 11:59 a.m.

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TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

Title of Regulation: 24 VAC 30-70-10 et seq. Minimum Standards of Entrances to State Highways (REPEALED).

Title of Regulation: 24 VAC 30-71-10 et seq. Minimum Standards of Entrances to State Highways.

Statutory Authority: §§ 33.1-12, 33.1-197, and 33.1-198 of the Code of Virginia.

Effective Date: January 7, 1998.

Summary:

In the interest of public safety, the Commonwealth of Virginia has required channelization at commercial properties since 1946. At that time, the Highway Commission (now the Commonwealth Transportation Board) adopted a resolution establishing certain basic minimum standards which were made a part of the department's "Road and Bridge Standards." Since adoption of those original standards, the department has incorporated them into the "Minimum Standards of Entrances to State Highways."

This publication of the "Minimum Standards of Entrances to State Highways" is the sixth edition since 1946—the last revision was made in 1989. Guidelines are set forth primarily for commercial entrances. The guidelines and illustrations are compatible with the department's "Land Development Manual" and with the Location and Design Division's "Road and Bridge Standards."

Entrance controls not only protect through traffic from indiscriminate interference, but are designed to promote safe and convenient connections to public highways for commercial establishments.

Summary of Public Comments and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from S. D. Edwards, Traffic Engineering Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-0121.

CHAPTER 71.

MINIMUM STANDARDS OF ENTRANCES TO STATE HIGHWAYS.

24 VAC 30-71-10. Definitions.

The following words and terms [] when used in this chapter [] shall have the following [meaning meanings] unless the content clearly indicates otherwise:

"Accessible route" means a continuous unobstructed stable firm and slip resistant path connecting all accessible elements of a facility (may include parking access aisles, curb ramps, crosswalks at vehicular ways, walks, ramps and lifts) that can be approached, entered and used by persons with mobility impairments. An accessible route shall, to the maximum extent feasible, coincide with the route for the general public and shall be a minimum of three feet [(0.91 meter)] wide.

"Board" means the Commonwealth Transportation Board, Commonwealth of Virginia.

"Central office" means the office in downtown Richmond that contains the administrative functions, including preconstruction activities, and executes command responsibility and control over all Virginia Department of Transportation activities.

"Clear zone" means the unobstructed, relatively flat area provided beyond the edge of the traveled way for the recovery of errant vehicles. The width of the clear zone is influenced by the type of facility, traffic volume, speed, horizontal alignment and embankment and is detailed in the department's Road Design Manual, [revised November 1994 English (revised October 1996) or metric (revised September 1996) measurement versions].

"Commercial entrance" means an entrance serving all entities other than an individual private residence. (See private entrance.)

"Commissioner" means the Commonwealth Transportation Commissioner, who is also Vice-Chairman of the Commonwealth Transportation Board.

"Commonwealth" means the Commonwealth of Virginia.

"Department" means the Virginia Department of Transportation (VDOT).

"Design speed" means the maximum safe speed that can be maintained over a specified section of highway when conditions are so favorable that the design features of the highway govern, as defined in the American Association of State Highway Transportation Officials' [1990 1994] edition of A Policy on Geometric Design of Highways and Streets.

"District office" means the office in each of the nine construction districts located throughout the state that implements the construction and maintenance operations of the Virginia Department of Transportation.

"Engineer" means the engineer representing the Virginia Department of Transportation.

"Operating speed" means the highest overall speed at which a driver can travel on a given highway under favorable weather conditions and under prevailing traffic conditions without at any time exceeding the safe speed as determined by the design speed on a section-by-section basis, as defined in the American Association of State Highway Transportation Officials' [1990 1994] edition of A Policy on Geometric Design of Highways and Streets.

"Private entrance" means an entrance serving an individual private residence and used for the exclusive benefit of the occupant.

"Private subdivision road or street" means a road or street that serves more than one individual property, is privately owned and maintained, and requires a commercial entrance permit.

"Right-of-way" means that property within the entire area of every way or place of whatever nature within the system of state highways under the ownership, control or jurisdiction of the board, which is open or which is to be open within the future for the use of the public for purposes of travel in the Commonwealth. The area set out above includes not only the traveled portion but the entire area inside and outside the traveled portion, from boundary line to boundary line, and also parking and recreation areas which are under the ownership, control or jurisdiction of the board.

"Sight distance" means, for crossovers and commercial entrances, the distance measured between the height of the driver's eye [$3\frac{1}{2}$ 3.5] feet [(1.07 meter)] and the height of a [$4\frac{1}{4}$ 4.25] - foot [(1.30 meter)] object without horizontal or vertical obstruction to the line of sight.

"System of state highways" means all highways and roads under the ownership, control, or jurisdiction of the board including, but not limited to, the primary, secondary, and interstate systems.

24 VAC 30-71-20. Procedure for obtaining permits.

All applications for permits shall be obtained from and submitted through the office of the resident engineer [~~who is authorized to issue entrance permits~~] for the county in which the work is to be performed. The applicant shall submit plans and application form for all proposed installations in sufficient time to permit the department to review them and make any necessary studies and changes. The plans shall include detailed and complete information concerning the location of the work, the type pavement, the roadway geometrics and other facts about the highway.

[The resident engineers are authorized to issue private entrance permits. District administrators or their designees are authorized to issue commercial entrance permits (except outdoor theaters), permits for individual logging roads, permits for median crossovers, and permits for private entrances.]

Any waiver of the required sight distance may only be granted by the chief engineer or the assistant commissioner for operations after a traffic engineering investigation has been conducted. However, a significant (i) increase of traffic in and out of the entrance, (ii) change in character of the traffic or peak hour volume, or (iii) operational safety problem may require upgrading or reconstruction, or both, of the entrance or closing the entrance. This language is not intended to be exclusive.

Permits cover not only the actual performance of work as approved, but also cover the subsequent maintenance,

adjustment or removal of work. All permits shall be issued to the owners of the facilities or, in cases where continuing bonds are required, permits may be issued jointly to the owner and his contractor (as agent). The central office shall maintain permanent records of all permits issued.

24 VAC 30-71-30. Appeal procedure.

Permit applications shall be processed in a timely fashion. Applicants shall be notified in writing of the action taken on applications. If the permit is granted, issuance of the permit shall satisfy that requirement. If the permit is denied, notification of denial shall be made by certified mail, return receipt requested.

[~~The district administrator, chief engineer or assistant commissioner for operations, as the case may be, is authorized to consider and render a ruling on unresolved differences of opinion between the applicant and the resident engineer concerning the interpretation and application of these requirements.~~] If the resident engineer either denies a permit sought or imposes conditions upon the issuance of a permit with which the applicant disagrees, an appeal may be made to the district administrator.

[The district administrator, chief engineer or assistant commissioner for operations, as the case may be, is authorized to consider and render a ruling on unresolved differences of opinion between the applicant and the resident engineer concerning the interpretation and application of these requirements.]

To utilize the appeal process, the applicant shall provide the district administrator with a written request for review, setting forth a brief description of the unresolved issues within 30 days of receipt of the denial. The district administrator shall advise the applicant in writing within 60 days of the receipt of the appeal of his decision.

24 VAC 30-71-40. Drive-in theaters.

Certain conditions as set forth in § 33.1-12(15) of the Code of Virginia shall first be met in order [~~be to~~] construct entrances to drive-in theaters.

24 VAC 30-71-50. Entrance design.

All entrance design and construction shall comply with the department's design and construction criteria set forth in the documents incorporated by reference in [~~24 VAC 30-71-220~~ 24 VAC 30-71-170].

In the event that plans have been adopted which shall ultimately change a highway, the permittee may be required to construct entrances which shall be compatible with the ultimate plans. The determinations to whether the entrances shall include curb and gutter shall be the responsibility of the engineer.

In counties [or cities] which have ordinances or entrance standards which equal or exceed those of the Virginia Department of Transportation, then those of the county [or city] shall apply.

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The permittee shall be required to supply sufficient information for the department to determine entrance design features to adequately serve the roadway facility as well as the proposed development. Detailed engineering plans and traffic analysis plans from a certified professional firm may be required by the department.

To ensure the maximum efficiency of all commercial entrance designs certain general requirements shall be satisfied by each permittee. Consequently, potential applicants interested in using any individual designs shown in this chapter should first familiarize themselves with the prerequisites specified in 24 VAC 30-71-60 through [24 VAC 30-71-200 24 VAC 30-71-150].

24 VAC 30-71-60. Bonds, guarantee fees and irrevocable letters of credit.

All bonds prepared on form MP-20 shall indicate what permit the bond is for and define what type of work the bond covers, listing permit number and indicating whether it is a continuing bond or a performance bond. The estimated amount of the bond shall be the amount the resident engineer anticipates it will take to complete or restore the work should the permittee fail to complete the work.

A guarantee fee is a cash amount paid by the proposed permittee in advance of permit issuance to cover the performance of work within highway right-of-way. When work covered by the permittee is completed to the satisfaction of the resident engineer, the guarantee fee is refunded in its entirety to the permittee. Should the permittee fail to complete the work to the satisfaction of the resident engineer, then all or whatever portion of the guarantee fee that is required to complete work covered by permit or restore the right-of-way to its original condition shall be retained by the department.

An irrevocable letter of credit may be used instead of a guarantee fee or performance bond. This letter of credit is furnished by a bank and is used to verify a line of credit that will be set aside to provide for coverage of work performed by the permittee or his agent in accordance with the approved permit. (For more information on permit charges, see the Land Use Permit Manual, 24 VAC 30-150-10 et seq.)

24 VAC 30-71-70. Location.

To prevent undue interference with free traffic movements, entrance locations shall be avoided within intersectional areas, traffic circles, railroad grade crossings, interchanges or similar areas of traffic congestion. It is essential that designs allow unimpeded traffic movements entering or exiting. Parking and storage spaces shall be located a reasonable distance from the entrance location to prevent interference with vehicles attempting to enter or exit the facility.

To reduce the number of points of access to state highways, joint use entrances are recommended if agreement can be reached by the owners. For a joint use entrance to be approved by the department, a copy of the

property owner's recorded agreement shall be submitted to the department.

24 VAC 30-71-80. Construction.

The type and depth of pavement shall be clearly indicated on the permit application. The pavement of entrances, turn lanes, and tapers shall be of stable material which is at least comparable to the pavement of the adjacent roadway.

On site parking shall be designed so as not to interfere with sight distance and to prevent vehicular overhang on state right-of-way. Interior curbing should be set a minimum of two feet [~~inside~~ (0.61 meter outside or beyond)] the right-of-way line and should extend the entire length of the parking area. When parking areas abut curbing sections with sidewalk, parked vehicles shall be kept a sufficient distance from the curbing by the use of parking bumpers, or other means, to prevent vehicle overhang over the sidewalk. The engineer shall determine the need for additional curbing along the right-of-way to the adjacent property line.

Mountable curb (standard CG-3 or CG-7 in the [English (revised April 1995) or metric (revised September 1997) measurement versions of the] Road and Bridge Standards, Volumes I and II) is required when constructed within the clear zone of a road posted for a speed limit greater than 40 miles per hour [(64 kilometers per hour)] in rural areas and 45 miles per hour [(72 kilometers per hour)] in urban and suburban areas. [However, mountable curb is not recommended adjacent to sidewalks.]

All curbing and entrance gutters used to construct commercial entrances shall be installed in accordance with the Virginia Department of Transportation's Road and Bridge Standards, [~~January 4, 1993~~, English (revised April 1995) or metric (revised September 1997) measurement versions,] and all material shall meet the department's certification.

The property owner or developer of commercial or industrial entrances or subdivision road entrances shall be responsible for the entire construction of the entrance in accordance with the provisions of the required permit.

24 VAC 30-71-90. Drainage.

Entrances shall be constructed so as not to impair drainage within the state's right-of-way, and so that surface water shall drain from the state roadway.

Where deemed necessary by the engineer, copies of a complete drainage layout, based on a drainage study by a qualified engineer, shall be furnished by the permittee, along with his plans. This layout shall include the ultimate development and clearly show how the permittee proposes to handle the drainage and run-off from his development.

Pipe ends shall be reviewed independently by the engineer and grading or treatment at pipe ends shall be done in such a manner as to minimize any hazard the pipe end may present to an out-of-control vehicle.

24 VAC 30-71-100. Crossovers.

Crossovers between the main through lanes shall not be permitted at entrances being constructed under provisions of a permit unless determined necessary by the department, and then only in accordance with the current policy on crossovers as outlined in this chapter and the department's Road Design Manual, [~~revised November 1994~~ English (revised October 1996) or metric (revised September 1996) measurement versions]. All crossover locations shall be approved by the district traffic engineer.

Crossovers that do not meet the standards as outlined in the department's Road Design Manual [, English (revised October 1996) or metric (revised September 1996) measurement versions], shall be reviewed by the state traffic engineer and the state location and design engineer.

If the department determines that a crossover is permissible, the permittee shall be responsible for the entire cost and construction, including turn lanes, as deemed necessary by the engineer.

24 VAC 30-71-110. Auxiliary lanes, right turn lanes and left turn lanes.

The need for auxiliary lanes, right turn lanes and left turn lanes shall be [jointly] determined by the [~~resident~~ district traffic] engineer and [~~district traffic~~ resident] engineer in accordance with the department's latest design and construction criteria included in the [English (revised October 1996) or metric (revised September 1996) measurement versions of the] Road Design Manual.

24 VAC 30-71-120. Curb ramps for persons with mobility impairments.

Ramps in curb sections to aid the physically handicapped shall be provided as required in § 15.1-381 of the Code of Virginia. A standard drawing of the curb ramp (CG-12) is

shown in the Road and Bridge Standards [~~dated January 1, 1993~~ English (revised April 1995) or metric (September 1997) measurement versions].

24 VAC 30-71-130. Sight distances.

The following shall be utilized to evaluate sight distance. Vertical sight distance shall be determined from a target mounted [~~4 1/2~~ 4.25] feet [(1.30 meters)] above the grade of the vehicle path simulating a vehicle entering or exiting the entrance. The sight distance shall be measured from an eye height of [~~3 1/2~~ 3.5] feet [(1.07 meters)] to the target. Horizontal sight distance shall be determined from [~~a~~ an eye] height of [~~3 1/2~~ 3.5] feet [(1.07 meters)] with the object being [~~4 1/2~~ 4.25] feet [(1.30 meters)]. For more information on sight distance, see the [~~1990~~ 1994] edition of A Policy on Geometric Design of Highways and Streets published by the American Association of State Highway Transportation Officials.

On a typical two lane road with a horizontal curve, numerous objects restrict sight distance. These include, but are not limited to, cut slopes, buildings, vegetation, and vehicles. Landscaping in these areas shall conform to the VDOT Environmental Division's Planting Guidelines Manual, [effective] 1990. It is possible to have sight distance in the winter and not in the spring or summer due to the growth of vegetation. These obstructions should be considered when reviewing a commercial entrance permit. A divided highway may have similar problems. It is important to obtain the desirable commercial entrance sight distance from the entrance as well as the left turn position into the entrance. Any waiver of the required sight distance may only be granted by the chief engineer or the assistant commissioner for operations after a traffic engineering investigation has been conducted.

[Table 1 shows specific information about sight distances and speeds along major roads:

Final Regulations

Table 1
Sight Distances Along Major Roads at Intersections with Minor Road and Crossovers and Commercial Entrances

Height of Eye (3.5 ft.) (1.07 m.)	Height of Object (4.25 ft.) (1.30 m.)						
Speed Limit*							
Miles per hour (mph)	25 mph	30 mph	35 mph	40 mph	45 mph	50 mph	55 mph
Kilometers per hour (kph)	40 kph	48 kph	56 kph	64 kph	72 kph	80 kph	89 kph
Two and Three Lane Road or Four Lane Divided Highways not at Crossovers	250 ft. 76 m.	300 ft. 91 m.	350 ft. 107 m.	400 ft. 122 m.	450 ft. 137 m.	500 ft. 152 m.	550 ft. 168 m.
Four Lane** Undivided and Four Lane Divided Highways at Crossovers	300 ft. 91 m.	350 ft. 107 m.	425 ft. 130 m.	475 ft. 145 m.	525 ft. 160 m.	600 ft. 183 m.	650 ft. 198 m.

* Where the operating speed on the respective segment of highway is determined to be lower than the legal speed limit, and, in the judgment of the engineers, the operating speed shall not create hazards for either a driver at a connection or on the major roadway and the legal speed limit cannot and, in all probability, shall not be obtained in the foreseeable future as a result of improvement or reconstruction, the sight distance requirements for the operating speed may then be applied. The operating speed shall be determined by a traffic engineering study at the location in question. In all cases when the operating speed is used in lieu of the speed limit, full documentation of its determination shall be attached to the permit assembly.

** For median widths greater than 60 feet (18 meters), each roadway can be considered as a separate two, three, or four lane roadway. (See the 1994 edition of A Policy on Geometric Design of Highways and Streets.)

[24 VAC 30-71-140. Responsibility for maintenance of commercial entrances.

~~Section 33.1-198 of the Code of Virginia places the responsibility on the property owner to maintain commercial entrances in a manner satisfactory to the department. However, for the safety of motorists and pedestrians and to promote effective drainage, portions of commercial entrances may be maintained by the department, as described below and depicted in Figure 1 (see 24 VAC 30-71-200).~~

1. ~~Entrances in curb and gutter sections. If the department is responsible for maintenance of adjacent sidewalks, the department shall maintain the entrance to the back edge of the sidewalk. If there is no sidewalk, or if the department is not responsible for the maintenance of the sidewalk, the department shall maintain the entrance up to a line two feet behind the gutter line.~~

~~The property owner is responsible for the satisfactory maintenance of the entrance not maintained by the department.~~

2. ~~Entrances not in curb and gutter sections. The department shall maintain that portion of the entrance between the edge of the pavement and the normal shoulder line. The property owner will be responsible for the satisfactory maintenance of the entrance not maintained by the department with the following exception. When the department constructs the separation island as part of a road project or safety improvement measure, the department is responsible for the maintenance of the island unless the right-of-way agreement designated the responsibility to the landowner.~~

~~Where commercial entrances are constructed under permit, the maintenance of the separation island is the responsibility of the property owner.~~

24 VAC 30-71-150. Drainage structures at commercial and private entrances.

The department shall maintain drainage pipe at entrances to provide proper drainage. Repair or replacement shall be handled as follows:

1. ~~Private entrances. Should the pipe or structure fail due to no fault of the department, the landowner shall furnish the necessary material for repairs and the department shall furnish the necessary labor for the work. Also, in questionable cases, right-of-way agreements should be examined for possible responsibility.~~

2. ~~Commercial entrances. The landowner is responsible for repairing or replacing drainage structures which have failed due to no fault of the department. This repair or replacement shall be covered by permit.~~

Final Regulations

~~Should the department damage or destroy the drainage structure, the department is responsible for restoring the entrance and drainage structure to as good or better condition.~~

~~24 VAC 30-71-160~~ 24 VAC 30-71-140] Tenure of commercial entrances.

A. Tenure of all commercial entrances to highways is finite and is not meant to be transferred from one owner to another. If department representatives determine that an entrance is substandard or that safety, use, or maintenance of the entrance has changed significantly enough to require corrections, then necessary changes shall be made or the entrance may be closed at the direction of the commissioner or his representative. It should also be noted that once an entrance has been constructed (regardless of date), the permittee or his successors or assignees shall be responsible for the maintenance and upkeep of the entrance as stated above.

B. Commercial entrances may require reconstruction or upgrading, or both, when department representatives determine after review that the following conditions exist:

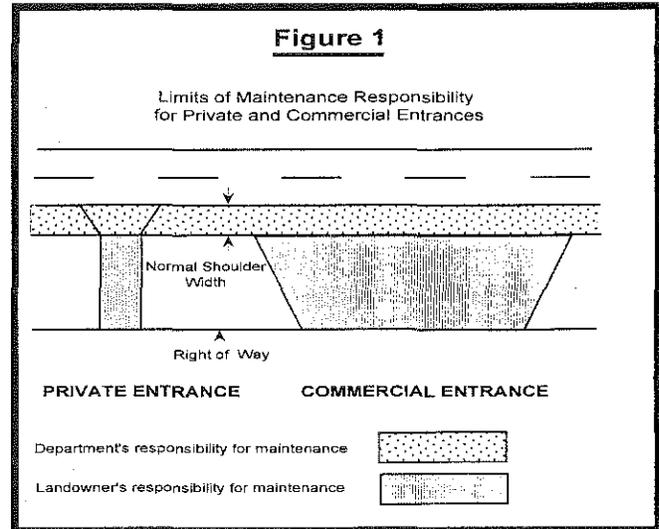
1. [Safety.] When the entrance has been determined to be unsafe in its present condition for public use because of physical erosion of the entrance, increase in motor vehicle traffic, or some other condition is found to exist.

2. [Use.] When traffic in and out of the entrance has changed significantly to require upgrading or reconstruction, or both. Such changes may include, but are not limited to changes in traffic volume, character of the traffic or peak hour traffic. This language is not intended to be exclusive.

3. [Maintenance.] When the entrance becomes unserviceable due to heavy equipment damage, reclamation by natural causes, or increased traffic volume, etc.

C. Commercial entrances shall be reviewed periodically for substandard conditions as outlined above and when the property is being considered for sale, has been rezoned, or when there is a change in commercial use either by the property owner or by a lessee. Department personnel shall work closely with the various local and county governments to protect the department's interest and the interest of the traveling public through zoning ordinances for commercial, subdivision and private entrance requirements, and to obtain their assistance in policing changes in ownership that might affect the department's requirements for the entrances. These periodic reviews are necessary to provide both patron and through-highway-traffic users a safe means of travel.

[The department is responsible for the maintenance of that portion of the entrance within the normal shoulder as shown in Figure 1.]



[~~24 VAC 30-71-170~~ 24 VAC 30-71-150] Developer participation in traffic signal cost.

The following guidelines have been developed in an effort to obtain an equitable method of determining developer responsibility for participation in funding traffic signal work necessitated by land development:

1. Where the proposed development will generate sufficient traffic to warrant signalization, the total cost for design, materials, timing plans, and installation shall be borne by the developer.

2. Where development-generated traffic and existing highway traffic must be combined to meet the requirements for either the major or minor movements for any hour or hours, the developer shall bear 50% of the total cost for design materials, timing plans, and installation.

3. Where an existing traffic signal must be modified to accommodate traffic movements to or from the development, the developer shall bear the total cost for any design, materials, timing plans, installation, and relocation required to accommodate the development traffic.

For large developments, such as regional shopping centers and corporate complexes, the department reserves the right to require that the developer design or have designed the traffic signal, including timing plans, and to install or have installed a complete working installation. Designs and installations shall be in accordance with the current departmental specifications and standards and shall be approved by the engineer.

[24 VAC 30-71-180. Authorization (private entrance).

The Commonwealth Transportation Board is authorized to control and regulate entrances to improved highways as provided in § 33.1-197 of the Code of Virginia.

24 VAC 30-71-190. Drainage (private entrance).

The property owner constructing a new private entrance shall, where required, furnish the necessary size pipe which meets the department's Road and Bridge Specifications. The department may install the pipe. No grading of the entrance shall be performed by the department.

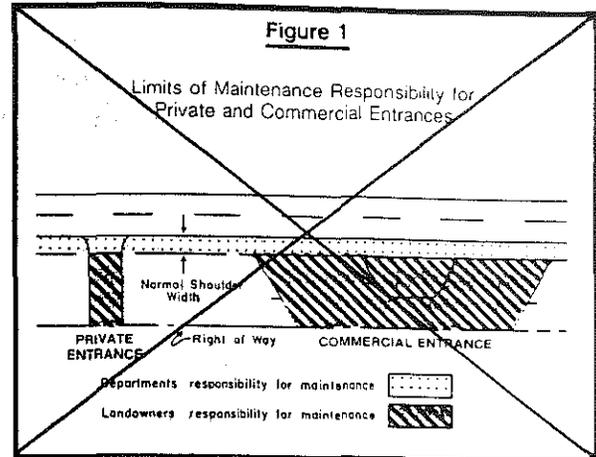
24 VAC 30-71-200. Responsibility for maintenance (private entrance).

The department is responsible for the maintenance of that portion of the entrance within the normal shoulder as shown in Figure 1. The property owner is responsible for the maintenance of the remainder of the entrance except that the resident engineer, at his discretion, may periodically add stabilization stone to that portion of the entrance on the right-of-way. The department is not responsible for any maintenance on hard surfaced entrances beyond the normal shoulder line.

For specific information concerning private entrances and public road connections, reference should be made to the department's Subdivision Street Requirements (24 VAC 30-90-10 et seq.), Policy Manual and Land Use Permit Manual (24 VAC 30-150-10 et seq.), and Road and Bridge Standards. This information is available in the residency and district offices.

In a curb and gutter section with sidewalk where the department shall be responsible for the maintenance of the sidewalk, the department is responsible for the maintenance of entrances to the back edge of the sidewalk.

In a curb and gutter section without sidewalk or where the department is not responsible for the maintenance of the sidewalk, the department shall maintain the entrance only to a line two feet behind the gutter line.



[24 VAC 30-71-210 24 VAC 30-71-160]. Commercial entrance design illustrations.

**STANDARD PRIVATE SUBDIVISION
ROAD/STREET ENTRANCE**

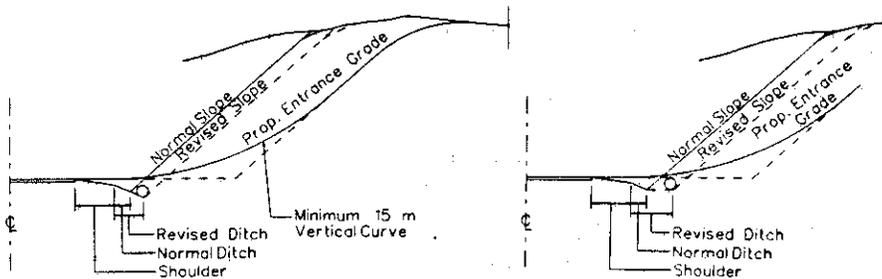
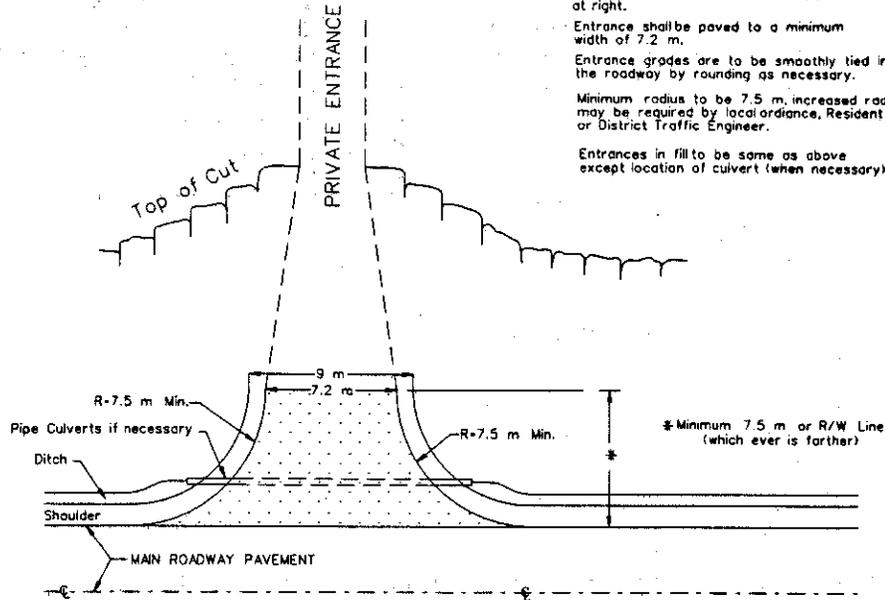
Note: All entrance grades shall start back of the shoulder line. If drainage is necessary, the ditch line may be moved back to provide at least 225 mm of cover over pipe, as shown at right.

Entrance shall be paved to a minimum width of 7.2 m.

Entrance grades are to be smoothly tied into the roadway by rounding as necessary.

Minimum radius to be 7.5 m, increased radius may be required by local ordinance, Resident or District Traffic Engineer.

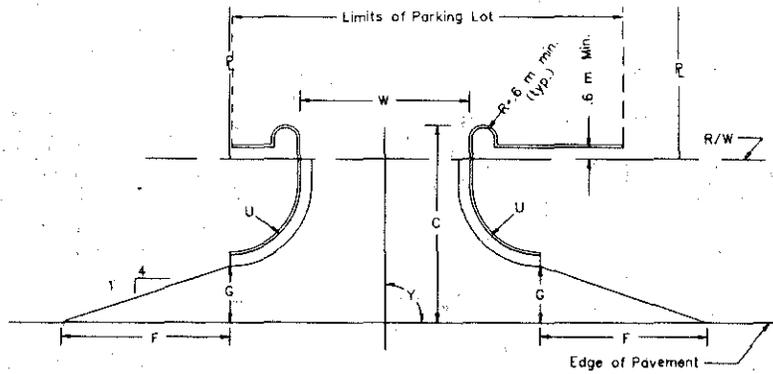
Entrances in fill to be same as above except location of culvert (when necessary).



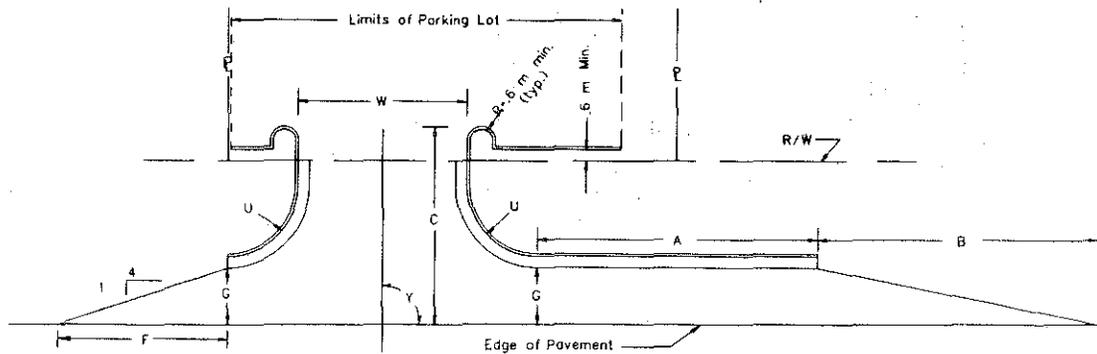
ALTERNATE METHODS FOR PLACING PIPES UNDER ENTRANCES

**COMMERCIAL ENTRANCE DESIGNS
ALONG HIGHWAYS WITH SHOULDERS**

SINGLE TWO-WAY ENTRANCE



SINGLE TWO-WAY ENTRANCE
WITH RIGHT TURN LANE AND TAPER



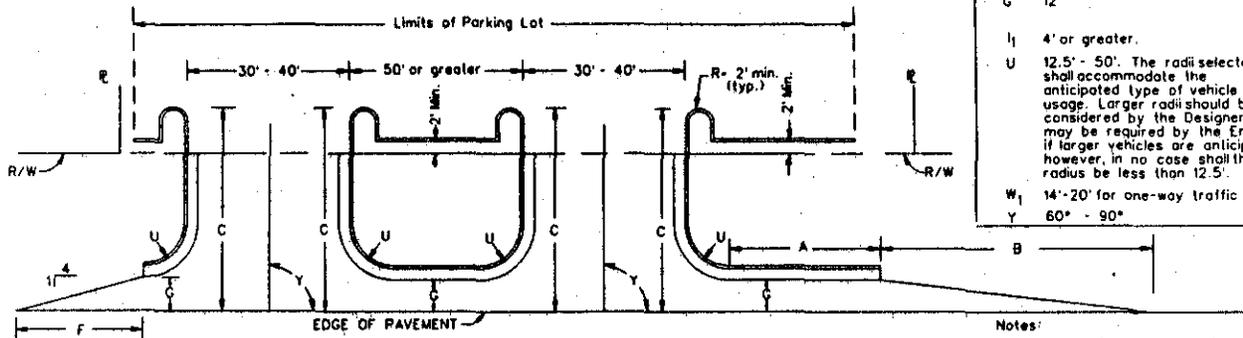
LETTER SYMBOL	DIMENSIONS
A	As determined by the Engineer
B	30 m or greater.
C	7.5 m or greater. In developing areas where it is anticipated that the right turn lane will become a continuous thru lane in the future, an additional 3.6 m is recommended.
F	14.4 m or greater.
G	3.6 m
U	3.8 m - 15 m. The radii selected shall accommodate the anticipated type of vehicle usage. Larger radii should be considered by the designer or may be required by the Engineer if larger vehicles are anticipated; however, in no case shall radius be less than 3.8 m.
W	9 m - 12 m
Y	60° - 90°

Notes:
Entrance details shown on this sheet may be modified to meet specific site requirements as directed or approved by the Engineer, when based on sound engineering principles.

If an Accessible route as defined on page _____ is present, curb ramps in accordance with S'd. CG-12 will be provided.

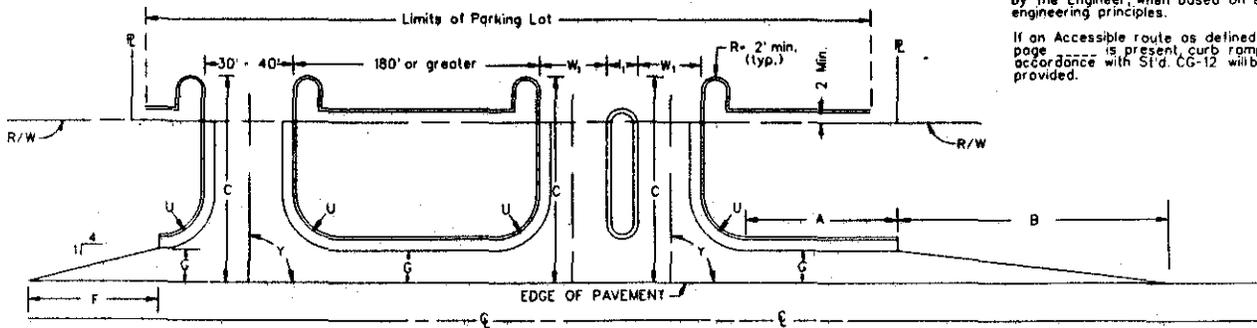
COMMERCIAL ENTRANCE DESIGNS ALONG HIGHWAYS WITH SHOULDERS

MULTIPLE ENTRANCES WITH RIGHT TURN LANE AND TAPER



LETTER SYMBOL	DIMENSIONS
A	As determined by the Engineer
B	100' or greater
C	25' or greater. In developing areas where it is anticipated that the right turn lane will become a continuous thru lane in the future, an additional 12' is recommended.
	200' or greater for entrance to a major shopping center as determined by the Engineer.
F	48' or greater.
G	12'
I ₁	4' or greater.
U	12.5' - 50'. The radii selected shall accommodate the anticipated type of vehicle usage. Larger radii should be considered by the Designer or may be required by the Engineer if larger vehicles are anticipated; however, in no case shall the radius be less than 12.5'.
W ₁	14'-20' for one-way traffic
Y	60° - 90°

SHOPPING CENTER ENTRANCES



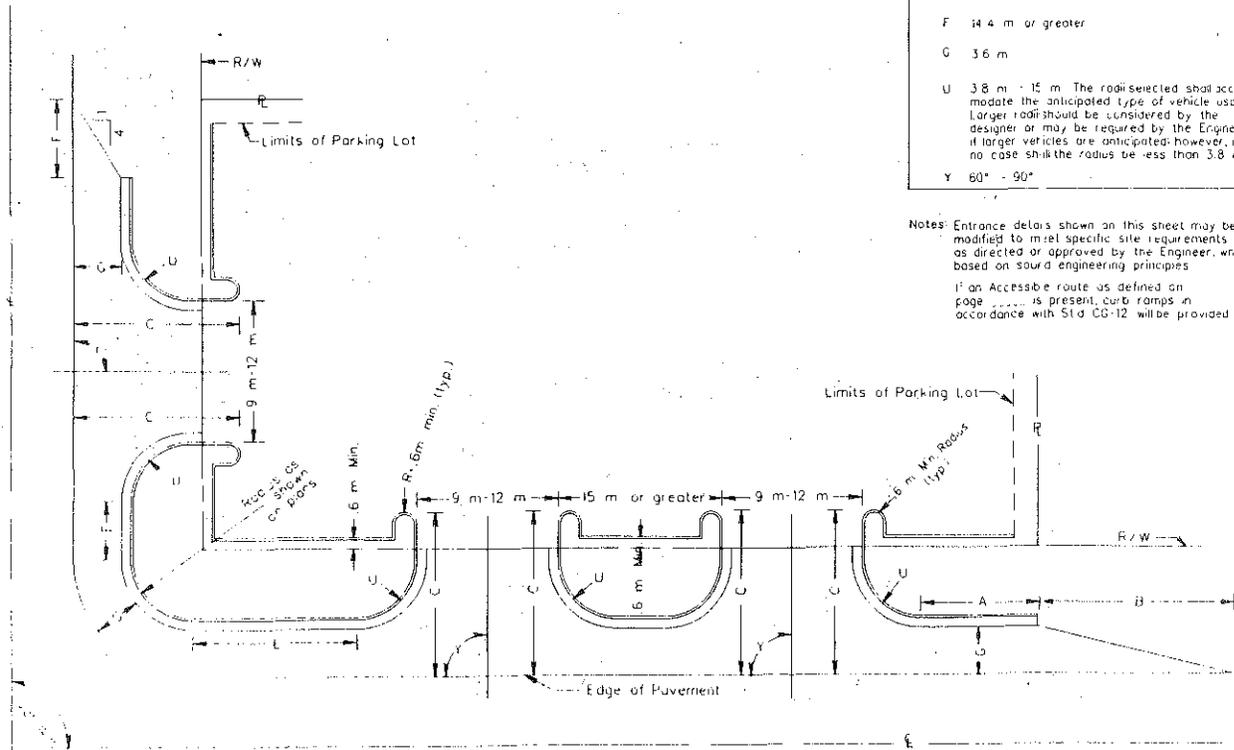
Notes:
Entrance details shown on this sheet may be modified to meet specific site requirements as directed or approved by the Engineer, when based on sound engineering principles.
If an Accessible route as defined on page ----- is present, curb ramps in accordance with S.D. CG-12 will be provided.

COMMERCIAL ENTRANCE DESIGNS ALONG HIGHWAYS WITH SHOULDERS

MULTIPLE ENTRANCES AT INTERSECTIONS

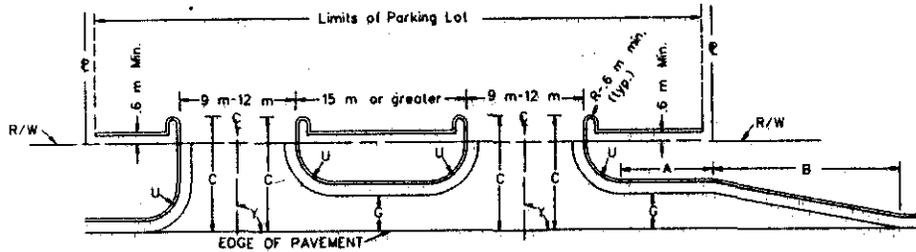
LETTER SYMBOL	DIMENSIONS
A	As determined by the Engineer
B	30 m or greater
C	7.5 m or greater. In developing areas where it is anticipated that the right turn lane will become a continuous thru lane in the future, an additional 3.6 m is recommended
	60 m or greater for entrance to a major shopping center as determined by the engineer
E	15 m or greater (additional length will be required as directed by the Engineer if intersection is signalized or future signalization is anticipated)
F	14.4 m or greater
G	3.6 m
U	3.8 m - 15 m. The radius selected shall accommodate the anticipated type of vehicle usage. Larger radii should be considered by the designer or may be required by the Engineer if larger vehicles are anticipated; however, in no case shall the radius be less than 3.8 m
Y	60° - 90°

Notes: Entrance details shown on this sheet may be modified to meet specific site requirements as directed or approved by the Engineer, when based on sound engineering principles.
If an Accessible route as defined on page _____ is present, curb ramps in accordance with S1-G-12 will be provided.

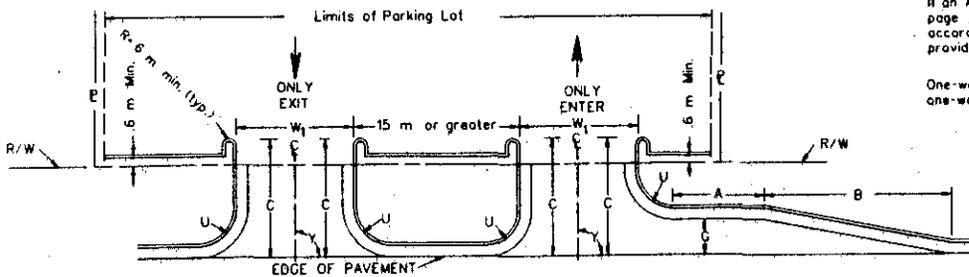


COMMERCIAL ENTRANCE DESIGNS ALONG HIGHWAYS WITH CURB AND GUTTER

MULTIPLE ENTRANCES WITH RIGHT TURN LANE AND TAPER



TWO ONE-WAY ENTRANCES WITH RIGHT TURN LANE AND TAPER



LETTER SYMBOL	DIMENSIONS
A	As determined by the Engineer.
B	30 m or greater.
C	7.5 m or greater. In developing areas where it is anticipated that the right turn lane will become a continuous thru lane in the future, an additional 3.6 m is recommended.
	60 m or greater for entrance to a major shopping center as determined by the Engineer.
G	3.6 m
U	3.8 m to 15 m. The radii selected shall accommodate the anticipated type of vehicle usage. Larger radii should be considered by the Designer or may be required by the Engineer if larger vehicles are anticipated; however, in no case shall the radius be less than 3.8 m.
W ₁	4.2 m-6.0 m for one-way traffic.
Y	60° - 90°

Notes: Entrance details shown on this sheet may be modified to meet specific site requirements as directed or approved by the Engineer, when based on sound engineering principles.

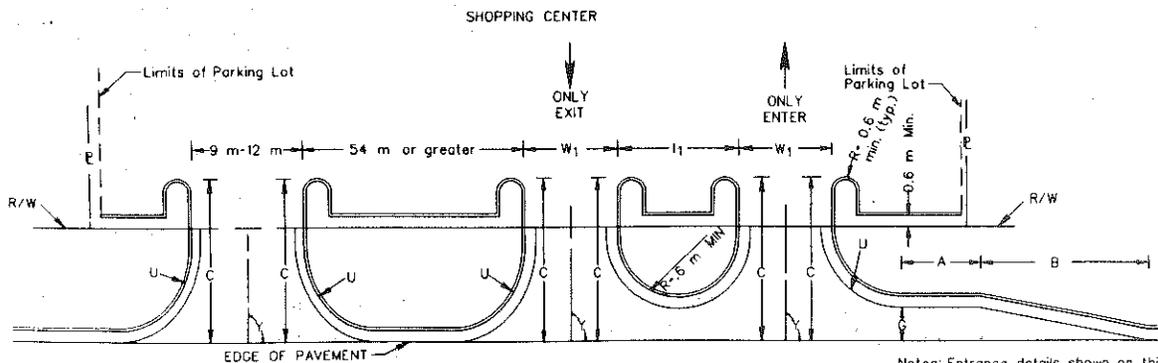
If an Accessible route as defined on page _____ is present, curb ramps in accordance with Std CG-12 will be provided.

One-way entrances must be signed one-way.

COMMERCIAL ENTRANCE DESIGNS ALONG HIGHWAYS WITH CURB AND GUTTER

MULTIPLE ENTRANCES WITH RIGHT TURN LANES
AND TAPER FOR SHOPPING CENTER ENTRANCES

LETTER SYMBOL	DIMENSIONS
A	As determined by the Engineer
B	30 m or greater
C	7.5 m or greater. In developing areas where it is anticipated that the right turn lane will become a continuous thru lane in the future, an additional 3.6 m is recommended.
	60 m or greater for entrance to a major shopping center as determined by the Engineer.
G	3.6 m
I ₁	1.2 m or greater
U	3.8 m-15 m. The radii selected shall accommodate the anticipated type of vehicle usage. Larger radii should be considered by the designer or may be required by the Engineer if larger vehicles are anticipated; however, in no case shall the radius be less than 3.8 m.
W ₁	4.2 m-6.0 m for one-way traffic
Y	60°-90°



Notes: Entrance details shown on this sheet may be modified to meet specific site requirements as directed or approved by the Engineer, when based on sound engineering principles.

If an Accessible route as defined on page _____ is present, curb ramps in accordance with Std. CG-12 will be provided.

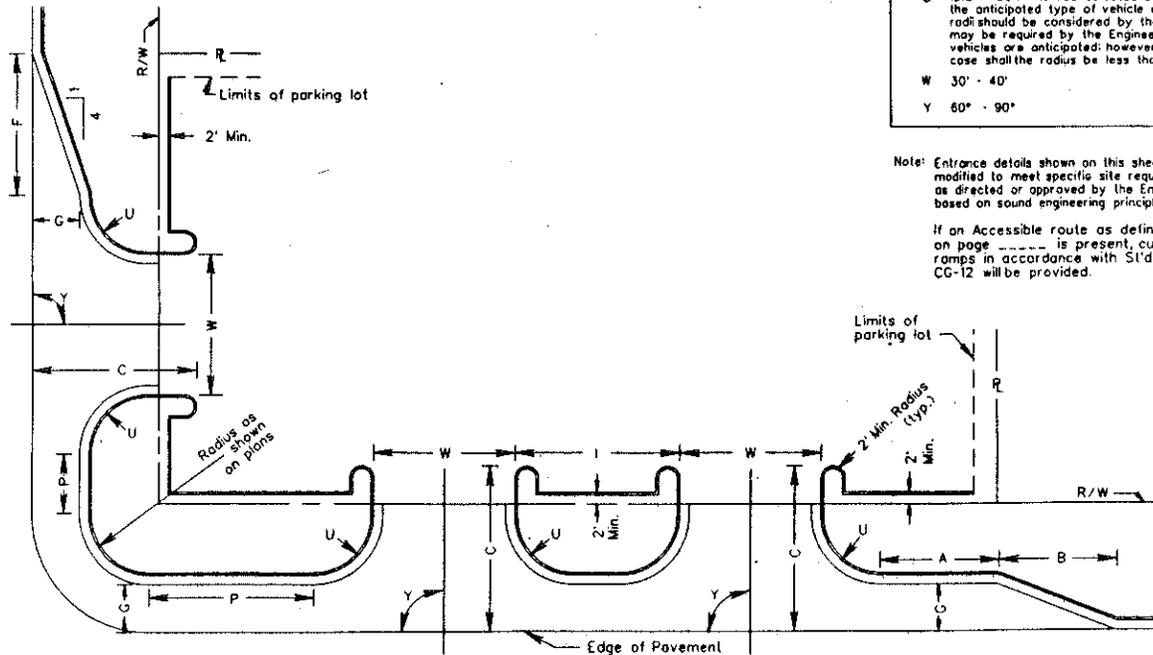
One-way entrances must be signed one-way

COMMERCIAL ENTRANCE DESIGNS ALONG HIGHWAYS WITH CURB AND GUTTER

MULTIPLE ENTRANCES AT INTERSECTION
WITH RIGHT TURN LANE AND TAPER

LETTER
SYMBOL DIMENSIONS

- A As determined by the Engineer
- B 100' or greater.
- C 25' or greater. In developing areas where it is anticipated that the right turn lane will become a continuous thru lane in the future, an additional 12' is recommended.
200' or greater for entrance to shopping center or other major traffic generator as determined by the engineer.
- F 48' or greater.
- G 12'
- I 50' or greater.
- P 50' or greater (additional length will be required as directed by the Engineer if intersection is signalized or future signalization is anticipated.)
- U 12.5' - 50'. The radii selected shall accommodate the anticipated type of vehicle usage. Larger radii should be considered by the designer or may be required by the Engineer if larger vehicles are anticipated; however, in no case shall the radius be less than 12.5'.
- W 30' - 40'
- Y 60° - 90°

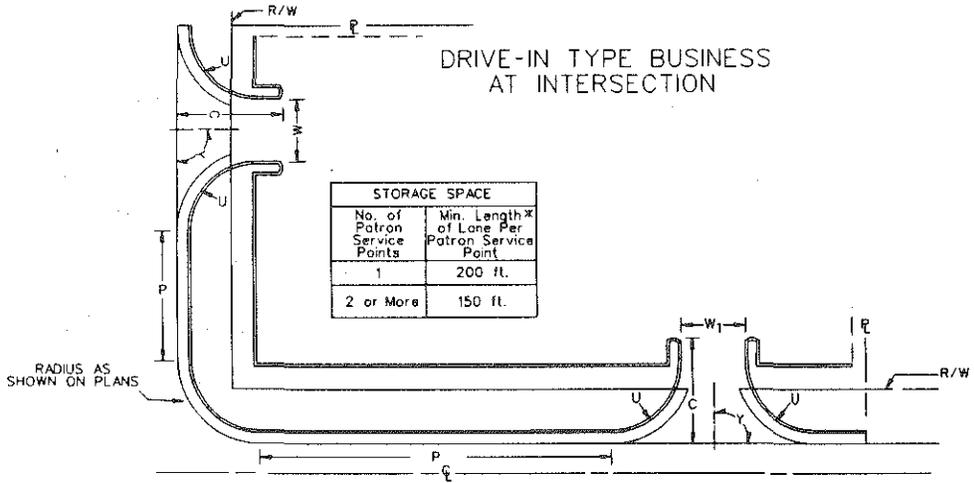


Note: Entrance details shown on this sheet may be modified to meet specific site requirements as directed or approved by the Engineer, when based on sound engineering principles.

If an Accessible route as defined on page _____ is present, curb ramps in accordance with S'd. CG-12 will be provided.

COMMERCIAL ENTRANCE DESIGNS TO SERVE DRIVE-IN TYPE BUSINESSES SUCH AS DRIVE-IN BANKS, FAST FOOD RESTAURANTS, SERVICE STATIONS, AND CAR WASHES WITH ONE WAY TRAFFIC ENTERING AND/OR EXITING HIGHWAYS

LETTER SYMBOL	DIMENSIONS
A	As determined by the Engineer
B	100' or greater
C	25' or greater. In developing areas where it is anticipated that the right turn lane will become a continuous thru lane in the future, an additional 12' is recommended.
G	12'
P	50' or greater (additional length will be required as directed by the Engineer if intersection is signalized or future signalization is anticipated.)
U	12.5' - 50'. The radii selected shall accommodate the anticipated type of vehicle usage. Larger radii should be considered by the Designer or may be required by the Engineer if larger vehicles are anticipated; however, in no case shall radius be less than 12.5'.
W	30'-40'
W ₁	14'-20' for one-way traffic
Y	60° - 90°

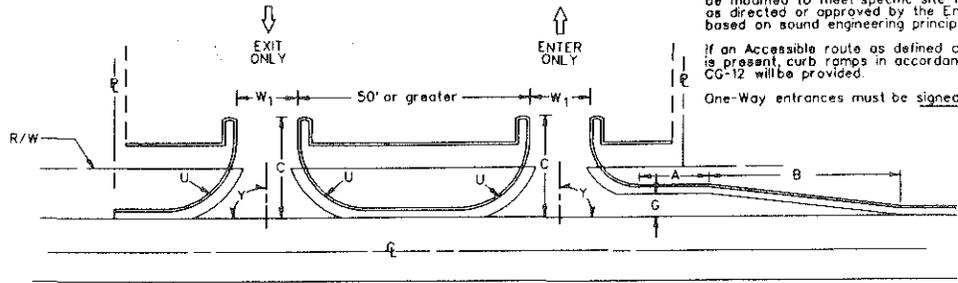


Pump Island to Pavement Edge	Distance
Parallel	12 ft.
1° to 45°	20 ft.
46° to 90°	30 ft.

DRIVE-IN TYPE BUSINESS MID BLOCK WITH RIGHT TURN LANE AND TAPER

No. of Patron Service Points	Min. Length* of Lane Per Patron Service Point
1	200 ft.
2 or More	150 ft.

* Length measured from nearest service point to highway.



NOTES: Entrance details shown on this sheet may be modified to meet specific site requirements as directed or approved by the Engineer, when based on sound engineering principles.
If an Accessible route as defined on page is present, curb ramps in accordance with Std. CG-12 will be provided.
One-Way entrances must be signed one-way.

Final Regulations

[~~24 VAC 30-71-220~~, 24 VAC 30-71-170.] Listing of documents incorporated by reference.

Information pertaining to the availability and cost of any of these publications should be directed to the department's division indicated, by writing to the Virginia Department of Transportation, 1401 East Broad Street, Richmond, Virginia 23219.

1. Guidelines for Planting along Virginia's Roadways (1990), Environmental Division (VDOT)
2. 24 VAC 30-90-10 et seq., Subdivision Street Requirements (1996), Secondary Roads Division (VDOT)
3. 24 VAC 30-150-10 et seq., Land Use Permit Manual (1983), Maintenance Division (VDOT)
4. [A] Policy on Geometric Design of Highways and Streets [~~(1990)~~ (1994)], [~~Secondary Roads Location and Design~~] Division (VDOT)
5. Road and Bridge Standards, [~~Volumes I and II (1993)~~ January 1997 (revised April 1995) (English measurements), Road and Bridge Standards, January 1997 (revised September 1997) (metric measurements) ~~Secondary Roads Location and Design~~ Division (VDOT)
6. Pavement Design Guide for Subdivision and Secondary Roads in Virginia (revised January 1996), Materials Division (VDOT)
7. Road Design Manual, [~~Volumes I and II (revised November 1994)~~, revised October 1996 (English measurements)] [Road Design Manual, revised September 1996 (metric measurements),] Location and Design Division (VDOT)
8. Road and Bridge Specifications (1994), [(English measurements) Road and Bridge Specifications (effective 1997) (metric measurements),] Construction Division (VDOT)

FORM

[Entrance Permit Application, MP-253, 1989.]

FORM MP-253

Page 1 of 5

ENTRANCE - PERMIT APPLICATION

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
Land Use Permit Section
1401 East Broad St., Richmond, VA 23219
Phone (804) 786-4271

Date:

VDOT Official Use Only:
Designate Type of Entrance Permit
Commercial
Residential/NO FEE CHARGED IF OWNER OCCUPANT
Permit No.
Permittee No.
Effective date
Expiration date
Fee- \$40 + \$5.00 per entranceway
Total Fee Due \$
Ant. of Performance \$
Authorized by
Title

APPLICANT

- 1. Name
Address
City State Zip Code
Social Security Number or Tax ID Number
2. Phone Number

LOCATION

- 3. Locate and/or provide a drawing showing the exact location of your property in relation to the highway(s) to which you are requesting entrance access.
The property fronts on Highway Route(s)
in County or Town of

- 4. Design plans are attached? Yes No (Note: Four copies of design plans must be submitted with this application.)

LAND USE

- 5. Entrance will serve a Single Family Residence
Commercial Business
Temporary Entrance to vacant land (undeveloped) no buildings
Other: Describe

- 6. Have you applied for jurisdiction zoning and Land Use approvals from the county or town where applicable? Yes No

BUSINESS INFORMATION (DO NOT COMPLETE BUSINESS SECTION IF SINGLE RESIDENCE.)

- 7. Describe the type of business operation to be engaged:

- 8. Size of land parcel being developed is acres or square feet.
9. Size of building(s) in square feet is or acres.
10. Size of parking lot is acres or square feet; number of parking spaces is
11. Number of business employees working at this facility is
12. Number of daily patrons to facility is projected to be
13. Total number of peak hour vehicles is projected to be
V.P.H./ Entrance No. 1
V.P.H./ Entrance No. 2
V.P.H./ Entrance No. 3
V.P.H./ Entrance No. 4
Total for "All"

GEOGRAPHICAL CONDITIONS AT POINT OF ENTRANCE - Number 1

- 14. The speed limit on the highway to be entered is M.P.H.
15. The "sight distances" to the left and to the right of the proposed entrance as will be observed by a seated automobile driver is as follows:
Right vision is feet.
Left vision is feet.

- 16. Can sight distances be improved? Yes No.
If "Yes", please explain methodology (ies)

- 17. The fronting highway is divided undivided.
18. If "divided", what is the location of the nearest "crossover" in each direction?

- 19. Does the fronting highway have curb and gutters? Yes No.

GEOGRAPHICAL CONDITIONS AT POINT OF ENTRANCE - Number 2

- 20. The speed limit on the highway to be entered is _____ M.P.H.
- 21. The "sight distances" to the left and to the right of the proposed entrance as will be observed by a seated automobile driver is as follows:
Right vision is _____ feet.
Left vision is _____ feet.
- 22. Can sight distances be improved? _____ Yes _____ No
If "Yes", please explain methodology (ies) _____

- 23. The fronting highway is _____ divided _____ undivided.
- 24. If "divided", what is the location of the nearest "crossover" in each direction?

- 25. Does the fronting highway have curb and gutters? _____ Yes _____ No.

GEOGRAPHICAL CONDITIONS AT POINT OF ENTRANCE - Number 3

- 26. The speed limit on the highway to be entered is _____ M.P.H.
- 27. The "sight distances" to the left and to the right of the proposed entrance as will be observed by a seated automobile driver is as follows:
Right vision is _____ feet.
Left vision is _____ feet.
- 28. Can sight distances be improved? _____ Yes _____ No
If "Yes", please explain methodology (ies) _____

- 29. The fronting highway is _____ divided _____ undivided.
- 30. If "divided", what is the location of the nearest "crossover" to each direction?

- 31. Does the fronting highway have curb and gutters? _____ Yes _____ No

GEOGRAPHICAL CONDITIONS AT POINT OF ENTRANCE - Number 4

- 32. The speed limit on the highway to be entered is _____ M.P.H.
- 33. The "sight distances" to the left and to the right of the proposed entrance as will be observed by a seated automobile driver is as follows:
Right vision is _____ feet.
Left vision is _____ feet.
- 34. Can sight distances be improved? _____ Yes _____ No
If "Yes", please explain methodology (ies) _____

- 35. The fronting highway is _____ divided _____ undivided.
- 36. If "divided", what is the location of the nearest "crossover" in each direction?

- 37. Does the fronting highway have curb and gutters? _____ Yes _____ No.

Note: If more than four entrances are to be built provide same geographical information on an attached sheet and or a traffic impact study for the project.

CONSTRUCTION

- 38. Estimated cost of entrance construction is projected to be \$ _____.
- 39. Signature of applicant or agent _____
All applicable items on this form must be completed before your request can be considered. Recheck information furnished to avoid delay.
Prepayment Required - Remittance payable to Virginia Department of Transportation
Total amount enclosed \$ _____ / _____ check / _____ cash / _____ money ord.

VDDOT OFFICIAL USE ONLY:

V.D.O.T. REVIEWER'S EVALUATION OF REQUEST

1. Permit recommended for approval? Yes / No: If "yes" specify length and diameter of pipe: / feet / inches.

If no, describe basic facts for decision

2. May be approved if design changes are made as follows:

3. If approved, the amount of Performance Bond required is \$

4. Name and title of reviewer at Residency

Date:

5. Approved / Denied by District Traffic Engineer

Date:

6. Approved / Denied by Resident Engineer

Date:

Additional Remarks:

NOTICE: A copy of this application with plans must be attached to each four part permit assembly to evidence the basis of permit evaluation.

GENERAL NOTICES/ERRATA

STATE CORPORATION COMMISSION

EDITOR'S NOTICE: The distribution lists which are referenced in the following order as Appendices A and B are not being published. However, these lists are available for public inspection at the State Corporation Commission, Document Control Center, Tyler Building, 1st Floor, 1300 East Main Street, Richmond, Virginia, from 8:15 a.m. to 5 p.m., Monday through Friday.

At Richmond, NOVEMBER 7, 1997

APPLICATION OF

COMMONWEALTH OF VIRGINIA, ex rel.,
STATE CORPORATION COMMISSION

CASE NO. PUC970166

Ex Parte, in re: Consideration of
changes in universal service support
for low-income customers as required
by federal regulations

ORDER FOR COMMENTS

The Telecommunications Act of 1996, 47 U.S.C. § 251 et seq. (the "Act"), and associated federal regulations,¹ require the Commission to take various actions with regard to the provision of universal telecommunications service.² These actions include designating telecommunications carriers eligible to receive universal service support, which the Commission has undertaken in Case No. PUC970135, and implementing discounts for telecommunications services for eligible schools and libraries throughout the Commonwealth, which was done in Case No. PUC970063.³

In this docket, the Commission will consider comments on the Virginia Universal Service Plan ("VUSP"), under which eligible lower-income Virginians may obtain reduced charges for telephone services, and will consider changes that might be necessary to conform the VUSP to federal requirements.

Currently, all incumbent local exchange carriers ("ILECs") in Virginia participate in one of the two federal Lifeline Assistance plans, as well as the federal Link-Up program. One plan provides for a qualifying subscriber's telephone bill to be reduced by \$3.50 per month. That customer's ILEC receives half of this amount from the federal Lifeline Assistance fund. The other plan provides for greater customer savings by allowing for waiver of the entire Subscriber Line Charge ("SLC") (\$3.50 per month) insofar as the waived amount is matched by the state. Under this plan,

¹ 47 C.F.R. § 54.400-.417. Section .405 of those regulations requires all eligible telecommunications carriers to make Lifeline service available to all qualifying low-income customers.

² On September 29, 1997, the Federal Communications Commission ("FCC") released Public Notice DA-1892 in which it announced procedures for State commissions to notify the FCC and the Universal Service Administrative Company ("USAC") on certain universal service matters by December 31, 1997.

³ Final Order, Case No. PUC970063, June 30, 1997.

the customer's bill may be reduced by at least twice the amount of the SLC. The state "matching" funds for both programs come in the form of reductions provided by the ILEC.

New federal regulations change current levels of federal support for Lifeline assistance programs and may also impose certain eligibility requirements on both subscribers and providers.⁴

For example, 47 C.F.R. § 54.403 states:

(a) The federal baseline Lifeline support amount shall equal \$3.50 per qualifying low-income consumer. If the state commission approves an additional reduction of \$1.75 in the amount paid by consumers, additional federal Lifeline support in the amount of \$1.75 will be made available to the carrier providing Lifeline service to that consumer. Additional federal Lifeline support in an amount equal to one-half the amount of any state Lifeline support will be made available to the carrier providing Lifeline service to a qualifying low-income consumer if the state commission approves an additional reduction in the amount paid by that consumer equal to the state support multiplied by 1.5. The federal Lifeline support amount shall not exceed \$7.00 per qualifying low-income consumer.

The new baseline federal assistance of \$3.50 per month is used to eliminate the residential federal subscriber line charge from the bills of program participants. The new regulations also make possible the adoption of further federal assistance not to exceed an additional \$3.50 per month. Federal assistance for the first additional \$1.75 per month and for one-half the amount of any additional state-ordered support appears to be available beginning January 1, 1998. Federal support for the Link-Up program, to reduce initial connection charges to obtain service, will also continue to be available.

Accordingly, the Commission seeks comment from interested parties on the following issues, and any other issues deemed pertinent to the matter by interested parties:

1. How do the new federal support regulations impact ILECs in Virginia that currently participate in the two previously described plans?

2. Should the Commission approve the additional \$1.75 per month reduction in local rates for VUSP customers that would be funded from the federal universal service fund? If so, when should the rates become effective?

3. Should the Commission order additional local rate reductions to be matched on a 1 for 2 basis by federal funds, or do existing plans that reduce local rates by an amount at least equal to the SLC already qualify for such federal support?

⁴ According to 47 C.F.R. § 54.405, all eligible telecommunications carriers, as designated under § 214(e) of the Act, must make Lifeline service available to qualifying low-income customers.

4. Should consumer qualifying criteria necessary for ILECs to receive federal funding for VUSP (Medicaid or Food Stamp recipients), adopted in Case No. PUC960036, be extended to all participating local exchange carriers in Virginia?

5. To the extent ILECs desire to waive only the SLC and provide no further intrastate rate reductions under the new federal program, beginning in 1998 must they be considered as providing no state Lifeline support under 47 C.F.R. § 54.409(b)? If so, should they be required to offer Lifeline service to consumers under the federal qualifying criteria as opposed to the VUSP criteria?

6. Are changes needed in any carrier's VUSP and Link-Up tariffs to make them compliant with the federal regulations referenced herein? For example, does each carrier comply with the toll limitation service requirements contained in the federal regulations?

7. Should the Commission designate whether flat, message or measured service, or combinations thereof, be provided to VUSP subscribers, or should carriers be allowed to tailor their offerings to their particular customers? Is this latter course compliant with federal regulations?

Accordingly, IT IS ORDERED THAT:

(1) This proceeding is established and assigned Case No. PUC970166.

(2) Comments or requests for hearing shall be filed in this proceeding on or before December 1, 1997. Any request for hearing should state with specificity the evidence the requesting party expects or intends to introduce at a hearing, together with an explanation of why such evidence can not be adequately presented through comments.

(3) Each local exchange carrier currently participating in the VUSP shall report to the Division of Communications, not later than December 5, 1997, "the number of qualifying low-income customers and the amount of state assistance" pursuant to 47 C.F.R. § 54.401(d).

(4) This matter is continued for further orders of the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: All Certificated Local Exchange Telephone Companies as set out in Appendix A; all Certificated Interexchange Carriers as set out in Appendix B; Thomas B. Nicholson, Senior Assistant Attorney, Division of Consumer Counsel, Office of the Attorney General, 900 East Main Street, Second Floor, Richmond, Virginia 23219; Jean Ann Fox, Virginia Citizens Consumer Council, 114 Coachman Drive, Yorktown, Virginia 23693; Dennis R. Bates, Esquire, Fairfax County, 12000 Government Center Parkway, Fairfax, Virginia 22035-0064; Ralph L. Frye, Executive Director, Virginia Telecommunications Industry, 11 South 12th Street, Suite 310, Richmond, Virginia 23219; and the Commission's Divisions of Communications and Economics and Finance.

VA.R. Doc. No. R98-103; Filed November 17, 1997, 4:06 p.m.

EDITOR'S NOTICE: The distribution lists which are referenced in the following order as Appendices A and B are not being published. However, these lists are available for public inspection at the State Corporation Commission, Document Control Center, Tyler Building, 1st Floor, 1300 East Main Street, Richmond, Virginia, from 8:15 a.m. to 5 p.m., Monday through Friday.

AT RICHMOND, NOVEMBER 17, 1997

COMMONWEALTH OF VIRGINIA, ex rel.,
STATE CORPORATION COMMISSION

CASE NO. PUC970166

Ex Parte, in re: Consideration of
changes in universal service support
for low-income customers as required
by federal regulations

AMENDED ORDER FOR COMMENTS

The Telecommunications Act of 1996, 47 U.S.C. § 251 *et seq.* (the "Act"), and associated federal regulations,¹ require the Commission to take various actions with regard to the provision of universal telecommunications service.² These actions include designating telecommunications carriers eligible to receive universal service support, which the Commission has undertaken in Case No. PUC970135, and implementing discounts for telecommunications services for eligible schools and libraries throughout the Commonwealth, which was done in Case No. PUC970063.³

On November 7, 1997, the Commission entered an Order for Comments, directing interested parties to file comments on or before December 1, 1997. The Commission has decided to extend the comment period to December 12, 1997, in order that notice of this proceeding may be published in the Virginia Register, which will next appear on December 8, with sufficient time for interested parties to file comments thereafter.

In this docket, the Commission will consider comments on the Virginia Universal Service Plan ("VUSP"), under which eligible lower-income Virginians may obtain reduced charges for telephone services, and will consider changes that might be necessary to conform the VUSP to federal requirements.

Currently, all incumbent local exchange carriers ("ILECs") in Virginia participate in one of the two federal Lifeline Assistance plans, as well as the federal Link-Up program.

¹ 47 C.F.R. § 54.400-417. Section 405 of those regulations requires all eligible telecommunications carriers to make Lifeline service available to all qualifying low-income customers.

² On September 29, 1997, the Federal Communications Commission ("FCC") released Public Notice DA-1892 in which it announced procedures for State commissions to notify the FCC and the Universal Service Administrative Company ("USAC") on certain universal service matters by December 31, 1997.

³ Final Order, Case No. PUC970063, June 30, 1997.

General Notices/Errata

One plan provides for a qualifying subscriber's telephone bill to be reduced by \$3.50 per month. That customer's ILEC receives half of this amount from the federal Lifeline Assistance fund. The other plan provides for greater customer savings by allowing for waiver of the entire Subscriber Line Charge ("SLC") (\$3.50 per month) insofar as the waived amount is matched by the state. Under this plan, the customer's bill may be reduced by at least twice the amount of the SLC. The state "matching" funds for both programs come in the form of reductions provided by the ILEC.

New federal regulations change current levels of federal support for Lifeline assistance programs and may also impose certain eligibility requirements on both subscribers and providers.⁴

For example, 47 C.F.R. § 54.403 states:

(a) The federal baseline Lifeline support amount shall equal \$3.50 per qualifying low-income consumer. If the state commission approves an additional reduction of \$1.75 in the amount paid by consumers, additional federal Lifeline support in the amount of \$1.75 will be made available to the carrier providing Lifeline service to that consumer. Additional federal Lifeline support in an amount equal to one-half the amount of any state Lifeline support will be made available to the carrier providing Lifeline service to a qualifying low-income consumer if the state commission approves an additional reduction in the amount paid by that consumer equal to the state support multiplied by 1.5. The federal Lifeline support amount shall not exceed \$7.00 per qualifying low-income consumer.

The new baseline federal assistance of \$3.50 per month is used to eliminate the residential federal subscriber line charge from the bills of program participants. The new regulations also make possible the adoption of further federal assistance not to exceed an additional \$3.50 per month. Federal assistance for the first additional \$1.75 per month and for one-half the amount of any additional state-ordered support appears to be available beginning January 1, 1998. Federal support for the Link-Up program, to reduce initial connection charges to obtain service, will also continue to be available.

Accordingly, the Commission seeks comment from interested parties on the following issues, and any other issues deemed pertinent to the matter by interested parties:

1. How do the new federal support regulations impact ILECs in Virginia that currently participate in the two previously described plans?
2. Should the Commission approve the additional \$1.75 per month reduction in local rates for VUSP customers that

would be funded from the federal universal service fund? If so, when should the rates become effective?

3. Should the Commission order additional local rate reductions to be matched on a 1 for 2 basis by federal funds, or do existing plans that reduce local rates by an amount at least equal to the SLC already qualify for such federal support?

4. Should consumer qualifying criteria necessary for ILECs to receive federal funding for VUSP (Medicaid or Food Stamp recipients), adopted in Case No. PUC960036, be extended to all participating local exchange carriers in Virginia?

5. To the extent ILECs desire to waive only the SLC and provide no further intrastate rate reductions under the new federal program, beginning in 1998 must they be considered as providing no state Lifeline support under 47 C.F.R. § 54.409(b)? If so, should they be required to offer Lifeline service to consumers under the federal qualifying criteria as opposed to the VUSP criteria?

6. Are changes needed in any carrier's VUSP and Link-Up tariffs to make them compliant with the federal regulations referenced herein? For example, does each carrier comply with the toll limitation service requirements contained in the federal regulations?

7. Should the Commission designate whether flat, message or measured service, or combinations thereof, be provided to VUSP subscribers, or should carriers be allowed to tailor their offerings to their particular customers? Is this latter course compliant with federal regulations?

Accordingly, IT IS ORDERED that:

- (1) This proceeding is established and assigned Case No. PUC970166.

- (2) Comments or requests for hearing shall be filed in this proceeding on or before December 12, 1997. Any request for hearing should state with specificity the evidence the requesting party expects or intends to introduce at a hearing, together with an explanation of why such evidence can not be adequately presented through comments.

- (3) Each local exchange carrier currently participating in the VUSP shall report to the Division of Communications, not later than December 5, 1997, "the number of qualifying low-income customers and the amount of state assistance" pursuant to 47 C.F.R. § 54.401(d).

- (4) The Staff of the State Corporation Commission shall cause this order to be published in the Virginia Register.

- (5) This matter is continued for further orders of the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: All Certificated Local Exchange Telephone Companies as set out in Appendix A; all Certificated Interexchange Carriers as set out in Appendix B; Thomas B. Nicholson, Senior Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General,

⁴ According to 47 C.F.R. § 54.405, all eligible telecommunications carriers, as designated under § 214(e) of the Act, must make Lifeline service available to qualifying low-income customers.

900 East Main Street, Richmond, Virginia 23219; Jean Ann Fox, Vice President, Virginia Citizens Consumer Council, 114 Coachman Drive, Yorktown, Virginia 23693; Dennis R. Bates, Esquire, Senior Assistant County Attorney, Fairfax County, 12000 Government Center Parkway, Suite 549, Fairfax, Virginia 22035-0064; Ralph L. Frye, Executive Director, Virginia Telecommunications Industry Association, 11 South 12th Street, Suite 310, Richmond, Virginia 23219; and the Commission's Divisions of Communications and Economics and Finance.

VA.R. Doc. No. R98-103; Filed November 17, 1997, 4:06 p.m.

Bureau of Insurance

November 7, 1997

ADMINISTRATIVE LETTER 1997-12

TO: All Insurers Licensed to Market Credit Life Insurance or Credit Accident and Sickness Insurance in Virginia

RE: Credit Life Insurance and Credit Accident and Sickness Insurance Premium Rates Effective January 1, 1998

On August 19, 1997, the Virginia State Corporation Commission (the "Commission") issued an *Order Adopting Adjusted Prima Facie Rates for the Triennium Commencing January 1, 1998*, Case No. INS970158. A technical, non-substantive *Amending Order* was issued by the Commission on September 24, 1997. All insurers licensed to market credit life insurance or credit accident and sickness insurance in Virginia were mailed a copy of the Order and the adopted rates on August 21, 1997, and a copy of the Amending Order on October 3, 1997. Pursuant to § 38.2-3725 E of the Code of Virginia, the adjusted prima facie rates for the triennium commencing January 1, 1998, will remain in effect until January 1, 2001.

In accordance with §§ 38.2-3728 A and 38.2-3729 C of the Code of Virginia, each company that markets credit life insurance or credit accident and sickness insurance in Virginia will be required to file an actuarial memorandum setting forth the rates, rate formulas and refund formulas that it intends to use in Virginia effective January 1, 1998. This memorandum should include, but not be limited to, the specific single premium and monthly outstanding balance (MOB) rates and rate formulas, the methodology used to calculate the credit accident and sickness MOB rates, all premium and refund formulas, including examples of each, and any other information required to document the development of these rates. The memorandum should also specify the date of previously approved formulas, provide the form numbers to which each rate or formula will apply, and provide a description of the referenced forms.

A request for approval of a deviated premium rate or rates to be effective on or after January 1, 1998, may be included

as part of the actuarial memorandum referenced above. Please contact the Bureau of Insurance for the specific requirements for such a filing if needed. It should be noted that previously approved deviated premium rates can only be used through December 31, 1997, in accordance with § 38.2-3728 C 1 of the Code of Virginia. This section of the Code states that in no event will deviated rates remain in effect after the effective date that new prima facie rates are effective as set forth in § 38.2-3730 of the Code of Virginia.

My staff will review filings as promptly as possible, however, companies that delay making filings cannot be assured that our review can be completed by January 1, 1998. Any insurer that does not have revised rates and refund formulas approved by the Commission on or before January 1, 1998, must cease marketing credit life insurance or credit accident and sickness in Virginia as of January 1, 1998, and must cease charging premiums for existing MOB contracts as January 1, 1998, until such date that it has received the Commission's approval, as noted above.

Any questions with regard to any of the above matters should be directed to:

Robert F. Grissom
Senior Insurance Market Examiner
State Corporation Commission
Bureau of Insurance
Life and Health Division - Forms and Rates Section
P.O. Box 1157
Richmond, Virginia 23218
804-371-9152

/s/ Alfred W. Gross, Commissioner of Insurance

VA.R. Doc. No. R98-101; Filed November 17, 1997, 4:06 p.m.

Bureau of Insurance

November 7, 1997

ADMINISTRATIVE LETTER 1997-13

TO: All Life Insurance Companies Licensed in Virginia and All Other Parties With An Interest In The Licensing Of Viatical Settlement Providers And Viatical Settlement Brokers

RE: Instructions for Applying for Viatical Settlement Provider and Viatical Settlement Broker Licenses

The 1997 Virginia General Assembly enacted **Chapter 57 of Title 38.2 of the Code of Virginia** (Viatical Settlements Act), which, among other things, authorized the State Corporation Commission to adopt regulations to implement the requirements of the new law. On September 16, 1997, the Commission issued an Order Adopting Regulation, pursuant to which the Commission adopted **14 VAC 5-71-10 et seq. - Rules Governing Viatical Settlement Providers and Viatical Settlement Brokers**. The effective date of 14 VAC 5-71-10 et seq. was October 15, 1997. Both the statute

General Notices/Errata

and the regulation require those engaging in the business of viatical settlements in Virginia to obtain appropriate license authority from and to have their viatical settlement contracts and certain disclosure forms approved by the Bureau of Insurance on or before January 1, 1998. The purpose of this administrative letter is to provide interested parties with information and forms for seeking such licensure, as well as information regarding submission of forms.

The following definitions may prove useful to the reader in reviewing this administrative letter:

DEFINITIONS

Viatical settlement broker means any person who, for another and for a fee, commission or other valuable consideration, offers or advertises the availability of viatical settlements, introduces viators to viatical settlement providers, or offers or attempts to negotiate viatical settlements between a viator and one or more viatical settlement providers; however, viatical settlement broker does not include an attorney, accountant or financial planner who is not paid by the viatical settlement provider and who is retained to represent the viator.

Viatical settlement contract means a written agreement between a viatical settlement provider and a person who owns a life insurance policy or who owns or is covered under a group policy insuring the life of a person who has a catastrophic or life-threatening illness or condition; under the terms of the agreement, the viatical settlement provider will pay compensation or other valuable consideration, which is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider. *Viatical settlement contracts* do not include accelerated death benefit provisions contained in life insurance policies, whether issued with the original policy or as a rider, according to the regulations Rules Governing Accelerated Benefits Provisions (14 VAC 5-70-10 et seq.) promulgated by the Commission.

Viatical settlement provider means a person that conducts the business of viatical settlements directly or indirectly as agent or attorney-in-fact for one or more persons entering into or attempting to enter into a viatical settlement contract. *Viatical settlement provider* does not include:

(i) any bank, savings bank, savings institution, credit union or other licensed lending institution which takes an assignment of a life insurance policy as collateral for a loan;

(ii) the issuer of a life insurance policy which makes a policy loan on a policy that it has issued, permits surrender of the policy or pays other policy benefits, including accelerated benefits according to regulations promulgated by the Commission; or

(iii) any individual who enters into only one agreement in a calendar year for the transfer of the death benefit or ownership of the insurance policy or certificate for any value less than the expected death benefit.

LICENSE REQUIREMENTS FOR VIATICAL SETTLEMENT PROVIDERS

1. The following persons (individuals, partnerships or corporations) are required to be licensed as a VIATICAL SETTLEMENT PROVIDER:

- a) A person who acts as a viatical settlement provider in Virginia and maintains an office in Virginia either directly or as a member or employee of a firm or association, or an officer, director or employee of a corporation; or
- b) A person who acts as a viatical settlement provider in Virginia without maintaining an office in Virginia.

2. A license issued to a viatical settlement provider will, unless otherwise suspended, revoked, or terminated, remain in effect until the second June 30 following its date of issue, at which date it will expire unless previously renewed in a timely manner.

3. Initial and renewal applications must be submitted in a form acceptable to the Commission.

4. A renewal application and a renewal fee of \$500 must be submitted by April 1 of the year in which the license will expire. The renewal application will specify the information that will be required in order for the license renewal to be approved.

LICENSE REQUIREMENTS FOR VIATICAL SETTLEMENT BROKERS

1. The following persons (individuals, partnerships or corporations) are required to be licensed as a VIATICAL SETTLEMENT BROKER:

- a) A person who acts as a viatical settlement broker in Virginia and maintains an office in Virginia; or
- b) A person who acts as a viatical settlement broker in Virginia without maintaining an office in Virginia.

2. A license issued to a viatical settlement broker will, unless otherwise suspended, revoked, or terminated, remain in effect until August 1 next following its date of issue, at which date it will expire unless previously renewed in a timely manner.

3. The following items must be submitted to the Bureau as part of the initial application:

- a) A \$50 nonrefundable application fee; and
- b) A completed application form PIN 250A, attached.

The Bureau will process each broker's application within five (5) business days of its receipt. However, should additional information be required, the Bureau will return the broker's application along with a license application return form outlining the reason(s) for rejecting the application.

4. A renewal application and a renewal fee of \$50 must be submitted by July 31 in order for the license to be renewed effective August 1. The renewal application will specify the information that will be required in order for the license renewal to be approved.

REPORTING REQUIREMENTS

1. Viatical settlement providers will be required to file with the Bureau by March 1 of each calendar year an annual statement in a form prescribed by the Bureau. The annual statement shall contain the information required pursuant to 14 VAC 5-71-70 A. The form in which the annual statement is to be submitted will be provided to all licensed viatical settlement providers in December of the reporting year. The Bureau is permitted to modify the data requirements of the annual statement form on an annual basis or as needed. Notice of any such modifications shall be provided to all persons described in the Purpose Section 14 VAC 5-71-10, in the form of an administrative letter.

2. Viatical settlement brokers will be required to file with the Bureau by March 1 of each calendar year an annual statement in a form prescribed by the Bureau. The annual statement shall contain the information required pursuant to 14 VAC 5-71-70 B. The form in which the annual statement is to be submitted will be provided to all licensed viatical settlement brokers in December of the reporting year. The Bureau is permitted to modify the data requirements of the annual statement form on an annual basis or as needed. Notice of any such modifications shall be provided to all persons described in the Purpose Section 14 VAC 5-71-10, in the form of an administrative letter.

APPROVAL OF CONTRACTS AND DISCLOSURE FORMS

1. Viatical settlement contract forms must be filed with and approved by the Bureau pursuant to § 38.2-5704 A. The Bureau shall notify the viatical settlement provider within thirty (30) days of receipt of the viatical settlement contract form of its approval or disapproval. The Bureau at its discretion may extend this period up to an additional thirty (30) days. Any form received but neither approved nor disapproved by the Bureau shall be deemed approved at the expiration of the thirty (30) days if the period is not extended, or at the expiration of the extended period, if applicable. However, no such form shall be deemed approved until the Bureau has been provided with no less than 10 days' written notice of the filer's intent to use the form, together with a copy of the form and the original transmittal letter thereof.

Viatical settlement providers should follow the guidelines prescribed in 14 VAC 5-100-10 et seq. when preparing submissions for approval.

2. Viatical settlement providers wishing to utilize disclosure forms the wording of which differs substantially from that contained in 14 VAC 5-71-30 G may not utilize such forms until they have been filed with and approved by the Bureau.

Viatical settlement provider and viatical settlement broker applications are attached. Questions regarding the contents of this letter and submission of completed applications with required attachments should be directed to:

Raquel C. Pino-Moreno
Insurance Analyst
State Corporation Commission
Bureau of Insurance -- Life and Health Division

Post Office Box 1157
Richmond, Virginia 23218
Telephone: (804) 371-9859
Telefax: (804) 371-9944

/s/ Alfred W. Gross, Commissioner of Insurance

COMMONWEALTH OF VIRGINIA



ALFRED W. GROSS
COMMISSIONER OF INSURANCE

STATE CORPORATION COMMISSION
BUREAU OF INSURANCE

P.O. BOX 1157
RICHMOND, VIRGINIA 23218
TELEPHONE: (804) 371-9741
TDD/VOICE: (804) 371-9206
<http://www.state.va.us/scc>

RE: Requirements for Viatical Settlement Provider Companies
Seeking to Do Business in Virginia

To do business in Virginia, a viatical settlement provider company must obtain a license from the Bureau of Insurance. To be considered for a license, a viatical settlement provider must submit a completed Viatical Settlement Provider Application form and required Biographical Affidavits to the Financial Regulation Division.

If you have a change in name, address, etc., you are required to file an Information Supplement.

All items listed in this letter are attached.

COMMONWEALTH OF VIRGINIA



ALFRED W. GROSS
COMMISSIONER OF INSURANCE

STATE CORPORATION COMMISSION
BUREAU OF INSURANCE

P.O. BOX 1157
RICHMOND, VIRGINIA 23218
TELEPHONE: (804) 371-9741
TDD/VOICE: (804) 371-9206
<http://www.state.va.us/scc>

APPLICATION FOR INITIAL LICENSE AS A VIATICAL SETTLEMENT PROVIDER
(Please read these instructions completely before filing an application)

Section I. Initial Review Documents and Disclosure

In its initial application, an applicant for a license as a viatical settlement provider must submit or disclose the following:

1. Non-refundable Application Fee of \$500.00
2. Name of Applicant _____
3. Street Address of Applicant _____

4. Mailing Address _____

5. Organizational Structure

 Individual Corporation Trust Sole Proprietor
 Partnership Other
6. City and State of Incorporation (if appl.) _____ City _____ State
7. Federal Employer Identification number _____ or
Social Security Number _____

*off. 11-17-97
(date filed with Registrar)*

8. Contact Person _____

9. Phone Number () - _____

10. Toll Free Number (800) - _____

11. Fax Number () - _____

12. Resident Status

Resident of Virginia Non-Resident of Virginia Alien
(Outside of U.S.A.)

13. Designated Resident Agent for Service of Process and Address

If the applicant is not a resident of Virginia, the applicant shall designate the clerk of the Commission as agent for service of process and must furnish the clerk of the Commission with the name and address of a resident of this Commonwealth upon whom notices or orders of the Commission or process affecting such nonresident viatical settlement provider may be served. This should be done only after the applicant has been tentatively approved and is directed to proceed under Section II of these instructions. The applicant shall promptly notify the clerk of the Commission in writing of every change in its designated resident agent for service of process, and such change shall not become effective until acknowledged by the Commission.

14. Submit a copy of an executed surety bond in the amount of \$100,000

15. Submit a plan of operation for Virginia. Include in the plan a description of how the applicant advertises and markets its viatical settlement business in general. More particularly, detail how the applicant contacts and communicates with individual clients/viators. Submit a copy of all advertising or solicitation materials that the applicant uses or plans to use to attract potential viators, or to otherwise market, promote or publicize its business or services. Explain how marketing

representatives and other individuals who have direct contact with clients/viators are recruited, trained and compensated.

16. Escrow Account

List the name and address of the qualified financial institution(s) where the applicant has established an escrow account pursuant to § 38.2-5705 C of the Code of Virginia. Describe in detail what steps the applicant has taken to ensure immediate access to viator funds.

Name	Address	Account #
_____	_____	_____
_____	_____	_____
_____	_____	_____

17. Medical Information

Explain applicant's procedures for keeping all medical information confidential. Attach and describe applicant's form letters, form medical releases, or other formatted written material used for this purpose.

18. Type of Business

Disclose the other types of businesses (e.g., viatical settlements contracts, financial investments, etc.), if any, that applicant transacts and the geographical locations where it engages in a particular type of business. If the applicant is a member of a holding company system, please provide an organizational chart which depicts the affiliate relationships among the members.

19. Provide a listing of all states in which an application for a viatical settlement provider license is currently pending.

20. Provide a list of all states in which the applicant is currently licensed or registered as a viatical settlement provider.

21. Provide a list of all the states for which a viatical settlement provider application has been refused or denied.

24. **Certification:**

I certify that the proposed provider, and all members, officers, and designated employees who are conducting the business of the viatical settlement provider:

1. Have not made any material misrepresentation in this application including any and all attachments.
2. Have not been found guilty of fraudulent or dishonest practices.
3. Have not been subject to a final administrative action or have otherwise been shown to be untrustworthy or incompetent to act as a viatical settlement provider.
4. Have not demonstrated a pattern of unreasonable payments to viators.
5. Have not been convicted of a felony or any misdemeanor involving moral turpitude.
6. Are engaging in the business of viatical settlements lawfully in all states.
7. Have not violated any provisions of Chapter 57 (§ 38.2-5700 et seq.) of Title 38.2 of the Code of Virginia or other applicable provisions of Title 38.2.

Signature of the Officer or
Director of the Provider

Full Legal Name of the Provider
(Type or Print)

Title

Date

It is the intent of the Bureau to process all applications in a timely manner. When necessary, the Bureau will contact the applicant regarding the need for any additional information in order to continue and complete the review process. Failure by the applicant to respond adequately to requests for such additional information within a reasonable timeframe, or failure to demonstrate compliance with the licensing standards prescribed by law, will be grounds for denial of the application, *subject to the applicant's right to demand a hearing before the Commission* (§ 38.2-5701 H of the Code of Virginia).

Non-resident applicants who meet Virginia's licensing standards will be directed to proceed under Section II below. The Bureau will issue a license to *resident* applicants once it determines from the material submitted in Section I that the applicant meets these licensing standards. Section II does not apply to *resident* applicants, who are expected to record their existence under applicable Virginia law prior to filing an initial application.

Section II. Tentative Approval (Non-Resident Applicants Only)

For non-resident or alien applicants who are organized as corporations, limited liability companies, or partnerships: If the Bureau concludes that the applicant is a qualified candidate for licensure pursuant to Chapter 57 (§ 38.2-5700 et seq.) of Title 38.2 of the Code of Virginia and 14 VAC 5-71-30, it will issue a letter of tentative approval directing the applicant to complete the remaining requirements for licensure. The applicant must make appropriate filings with the Clerk of the State Corporation Commission to record properly its existence in accordance with the Code of Virginia. For filing instructions and forms, the applicant should contact the Clerk's Office as follows:

Clerk of the State Corporation Commission
P. O. Box 1197
Richmond, VA 23218
(804) 371-9672

For non-resident applicants which are not organized as corporations, limited liability companies, or partnerships: the applicant must record its existence to the extent required by appropriate governing statutes of Virginia, and provide evidence to the Bureau that such existence has been properly registered.

The Bureau will issue a license to the non-resident applicant once the Bureau determines that the applicant has completed the requirements under Section II.

Section III Miscellaneous

A viatical settlement provider licensed under Chapter 57 of Title 38.2 of the Code of Virginia may not solicit business in Virginia until its viatical settlement contracts and disclosure forms are approved for use in Virginia. Upon receiving a license, a provider should request filing instructions from and submit its contracts and forms for approval to the following:

Jacqueline K. Cunningham, Supervisor
State Corporation Commission
Bureau of Insurance - Life and Health Division
P. O. 1157
Richmond, VA 23218

NOTARIAL ACKNOWLEDGMENT REQUIRED OF ALL APPLICANTS

STATE OF _____ COUNTY OR CITY OF _____

_____ being duly sworn according to law, deposes and says that the answers to the questions and the declarations contained in this application are true and correct.

Signature of Applicant

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____
DAY OF _____, 19__

MY COMMISSION EXPIRES _____ DAY OF _____

Signature of Notary

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
BUREAU OF INSURANCE

BIOGRAPHICAL AFFIDAVIT
(Print or Type)

Full Name and Address of Company (Do Not Use Group Names).

In connection with the above-named company, I herewith make representations and supply information about myself as hereinafter set forth. (Attach addendum or separate sheet if space hereon is insufficient to answer any question fully). IF ANSWER IS "NO" OR "NONE", SO STATE.

- 1. Affiant's Full Name (Initials Not Acceptable).
- 2. a. Have you ever had your name changed? _____ If yes, give the reason for the change.
- b. Other names used at any time _____
- 3. Affiant's Social Security Number _____
- 4. Date and Place of Birth _____
- 5. Affiant's Business Address _____
 Business Telephone _____
- 6. List your residences for the last ten (10) years starting with your current address:

DATE	ADDRESS	CITY AND STATE

- 7. Education: Dates, Names, Locations and Degrees
- College _____
- Graduate Studies _____
- Other _____

- 8. List memberships in Professional Societies and Associations.

- 9. Present or Proposed Position(s) with the Applicant Company.

- 10. List complete employment record (begin with current employment, include jobs, positions, directorates or officerships for the past twenty (20) years, using the following format):

DATES	EMPLOYER AND ADDRESS	TITLE

- 11. (Circle One) Present employer may be contacted: Yes No
 (Circle One) Former employer may be contacted: Yes No

- 12. a. Have you ever been in a position which required a fidelity bond? Yes _____, No _____. If any claims were made on the bond, give details.

- b. Have you ever been denied an individual or position schedule fidelity bond, or had a bond cancelled or revoked? _____
 If yes, give details.

- 13. List any professional, occupational, and vocational licenses issued by any public or governmental licensing agency or regulatory authority which you presently hold or have held in the past (include date license issued, issuer of license, date terminated, reason for termination.)

14. During the last ten (10) years, have you ever been refused a professional, occupational, or vocational license by any public or governmental licensing agency or regulatory authority, or has any such license held by you ever been suspended or revoked? If yes, give details.

15. List any business in which you control directly or indirectly or own legally or beneficially 10% or more of the outstanding stock (in voting power) or its equivalent.

If any of the stock is pledged or hypothecated in any way, give details.

16. Will you or members of your immediate family subscribe to or own, beneficially or of record, shares of stock of the applicant insurance company or its affiliates? If any of the shares of stock are pledged or hypothecated in any way, give details.

17. Have you ever been adjudged a bankrupt?

18. a. Have you ever been convicted or had a sentence imposed or suspended or had pronouncement of a sentence suspended or been pardoned for conviction of or pleaded guilty or nolo contendere to an information or indictment charging any felony, or charging a misdemeanor involving embezzlement, theft, larceny, or mail fraud, or charging a violation of any corporate securities statute or any insurance law, or have you been the subject of any disciplinary proceedings of any federal or state regulatory agency? If yes, give details.

b. Has any company been so charged, allegedly as a result of any action or conduct on your part? If yes, give details.

19. Have you ever been an officer, director, trustee, investment committee member, key employee, or controlling stockholder of any insurer which, while you occupied any such position or capacity with respect to it, become insolvent or was placed under supervision or in receivership, rehabilitation, liquidation or conservatorship?

20. Has the certificate of authority or license to do business of any insurance company of which you were an officer or director or key management person ever been suspended or revoked while you occupied such position? If Yes, give details.

Date and signed this _____ day of _____, 19____ at _____

I hereby certify under penalty of perjury that I am acting on my own behalf and that the foregoing statements are true and correct to the best of my knowledge and belief.

State of _____ (Signature of Affiant) County of _____

Personally appeared before me the above named _____ personally known to me, who, being duly sworn, deposes and says that he/she executed the above instrument and that the statements and answers 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____.

(SEAL) _____ Notary Public

My Commission Expires: _____

SCC631/830
(09/96)

**APPLICATION FOR RESERVATION OR FOR
RENEWAL OF RESERVATION OF CORPORATE NAME**

The undersigned applies, pursuant to the provisions of Section 13.1-631 or Section 13.1-830 of the Code of Virginia, for (MARK APPROPRIATE BOX):

- reservation of the following corporate name for a period of 120 days
- renewal of the reservation of the following corporate name for an additional period of 120 days

CORPORATE NAME: _____

NOTE: If this name reservation is for a stock corporation (Va. Code Section 13.1-631), then the name should include a corporate designation as follows: "Corporation," "Incorporated," "Company" or "Limited" OR the abbreviation "Corp.," "Inc.," "Co.," or "Ltd."

Signature of applicant: _____

Printed name of applicant: _____

Printed address: _____

Phone number of applicant: _____

INSTRUCTIONS

SEND THIS APPLICATION ALONG WITH THE FILING FEE OF \$10.00 TO THE CLERK OF THE STATE CORPORATION COMMISSION, P. O. BOX 1197, RICHMOND, VA 23218-1197. (Street address: 1300 East Main Street, Richmond, VA 23219). MAKE CHECK PAYABLE TO STATE CORPORATION COMMISSION. (804) 371-9733.

FOR SCC USE:

DCN _____ EXP. _____ R _____

**SCC759/921 APPLICATION FOR A CERTIFICATE OF AUTHORITY
(09/96) TO TRANSACT BUSINESS IN VIRGINIA**

Name of the corporation (include any "for use in Virginia" name): _____

State or country of incorporation _____

Date of incorporation _____ Period of duration _____

Street address of the corporation's principal office:

(Number and street) (City or town) (State) (ZIP code)

Address of the VIRGINIA registered office of the corporation:

(Number and street) (City or town) VA (ZIP code)

The corporation's registered office in Virginia is located in the City or County of _____

Name of the VIRGINIA registered agent: _____

The registered agent is (mark appropriate box(es)):

- (1) An individual who is a resident of Virginia and
 - an officer of the corporation
 - a director of the corporation
 - a member of the Virginia State Bar

OR
- (2) A professional corporation or professional limited liability company of attorneys registered under § 54.1-3902, Code of Va.

NAME AND TITLE	OFFICERS	BUSINESS ADDRESS
_____	_____	_____
_____	_____	_____
_____	_____	_____

NAME	DIRECTORS	BUSINESS ADDRESS
_____	_____	_____
_____	_____	_____
_____	_____	_____

NO. OF SHARES AUTHORIZED	STOCK	CLASS AND SERIES
_____	_____	_____
_____	_____	_____
_____	_____	_____

The undersigned executes this application in the name of the corporation and declares the facts stated herein to be true:

(Signature) (Printed name and corporate title) (Date)

See instructions on the reverse

INSTRUCTIONS

When completing the application, the information should be typewritten.

1. **Name:** The name of the corporation must be stated exactly as it appears in its charter without alteration or abbreviation.

A stock corporation name must contain the word "corporation," "incorporated," "company" or "limited"; or the abbreviation "corp.," "inc.," "co." or "ltd." If the name of the corporation does not satisfy this requirement, it must add one of the above to its name for use in Virginia. (A nonstock corporation name need not meet this requirement.)

If the corporation's real name is not available, it must adopt a designated name for use in Virginia. State the "for use in Virginia" name in the first line of the application, along with the corporation's real name. See Va. Code Sections 13.1-762, 924.

2. **Period of duration:** Unless the corporation's charter states a limited corporate life, the period of duration is "perpetual."

3. **Registered office and registered agent:** Provide the complete post office address (which must include a street address, if any, or a rural route and box number in rural areas) of the corporation's registered office in Virginia. The registered office address in Virginia is the business office address of the registered agent.

Provide the name of the city or county where the registered office is physically located. (Cities and counties in Virginia are separate local jurisdictions.)

Provide the name of the Virginia registered agent. The qualifications of the registered agent are set forth on the front of this form - no other person or entity may serve as the registered agent. See Sections 13.1-759, 763; 13.1-921, 925.

4. **Officers:** Include names, titles and complete business addresses of all officers of the corporation.

5. **Directors:** Include names and business addresses of all directors. The trustees of a nonstock corporation, by whatever name they are called, are to be listed as directors. If directors are not required by the state or country of incorporation, then a statement to that effect must be made in the space provided for director information.

6. **Shares:** List the total number of shares (not number of dollars) the corporation is authorized to issue, as stated in the corporation's charter (the number in the charter must match the number on the application). Itemize by class and, if any, series within each class. A nonstock corporation would write NONE in that section of the application. See Section 13.1-759.

7. **Signature:** The application must be executed in the name of the corporation by its chairman or any vice-chairman of the board of directors, the president or any other of its officers authorized to act on behalf of the corporation. See Sections 13.1-604, 13.1-804.

8. The application must be delivered to the Clerk of the Commission with a copy of the corporation's charter (articles of incorporation and all amendments thereto), authenticated on a recent date by the official having custody of corporate records in the state or country of incorporation. See Sections 13.1-759, 13.1-921.

SEND THE APPLICATION AND THE AUTHENTICATED COPY OF THE CORPORATION'S CHARTER, ALONG WITH THE FEES SPECIFIED BELOW, TO THE CLERK OF THE STATE CORPORATION COMMISSION, P. O. BOX 1197, RICHMOND VA 23218-1197. (Street address: 1300 East Main Street, Richmond, VA 23219) (804) 371-9733.

Entrance fee: 1,000,000 or fewer authorized shares - \$50 for each 25,000 shares or fraction thereof; more than one million shares - \$2,500. **Filing fee:** \$25. SEND BOTH FEES IN THE SAME CHECK, MADE PAYABLE TO STATE CORPORATION COMMISSION. **Nonstock corporation:** \$75 total (\$50 entrance fee plus \$25 filing fee). See Sections 13.1-615.1, 616; 13.1-815.1, 816.

Note: If the corporation is a professional corporation, on an attachment, list the names and addresses of all stockholders of the corporation that will be performing the professional service in Virginia and state whether or not the stockholder is duly licensed to perform the professional service in Virginia.

STATE CORPORATION COMMISSION, BUREAU OF INSURANCE
BOX 1157, RICHMOND, VIRGINIA 23218
(804)371-9631

APPLICATION FOR INDIVIDUAL
VIATICAL SETTLEMENT BROKER LICENSE --- \$50.00

The fee is paid on an annual basis, and the license must be renewed prior to August 1 of each calendar year. A license issued at any time prior to August 1, 1998, will expire on July 31, 1999. After August 1, 1998, no matter when during the year that your license is issued, it expires on July 31.

Official forms may not be duplicated except on the same color paper as the original forms issued by the Bureau of Insurance. Payment must be by certified check, bank or teller's check, or money order made payable to the State Corporation Commission. No personal checks or cash will be accepted. Each application must be accompanied by a separate check or money order. The annual fee is not refundable.

Social Security Number	First Name	Middle Name (Initial or None)	Last Name
Physical Street Address (Resident/Home)		Business Name	
P.O. Box (if applicable)		Business Address	
City	State	Zip	City State Zip
Home Phone Number	Birth Date	Business Phone Number	
() -		() -	
Assumed or Fictitious Name (if viatical settlement broker is transacting business under a name other than his/her own)			

PART 1 - NOTARIAL ACKNOWLEDGMENT REQUIRED OF ALL APPLICANTS

STATE OF _____ COUNTY OR CITY OF _____

_____ being duly sworn according to law, deposes and says that the answers to the questions and the declarations contained on both sides of this application are true and correct.

Signature of Applicant

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ DAY OF _____, 19 _____

MY COMMISSION EXPIRES _____ DAY OF _____

OFFICE USE ONLY

RIRS CHECK

Date Initial

Signature of Notary

PLEASE COMPLETE EVERY BLANK ON BOTH SIDES. IF NOT APPLICABLE, MARK "NA."

PART 2

- Has this or any other insurance department ever refused to allow you the authority to act as an insurance agent, insurance consultant, or viatical settlement broker, or suspended or revoked or requested a voluntary surrender of your authority?
 Yes No
If so, and you have not previously filed this information with this Bureau, attach a sheet with a complete explanation.
- Have you ever been subject to a final administrative action or have been shown to be untrustworthy or incompetent to act as a viatical settlement broker?
 Yes No
If so, and you have not previously filed this information with this Bureau, attach a sheet with a complete explanation.
- Have you ever been charged with a misdemeanor or felony, or convicted of any misdemeanor or felony, or convicted of a violation of law, other than minor traffic violations?
 Yes No
If so, and you have not previously filed this information with this Bureau, attach a certified and authenticated copy of the court order regarding any convictions arising from the trial proceedings, along with a letter explaining the circumstances surrounding the offense and a current (no more than 90 days old) copy of the criminal history record from the State Police in your state of residence verifying the type of charge - misdemeanor or felony.

PART 3 - TO BE COMPLETED BY NON-RESIDENTS ONLY

- In accordance with § 38.2-5702 of the Code of Virginia, do you hereby appoint the Clerk of the Commission the agent for the service of process in any action or proceeding arising in this Commonwealth out of or in connection with the exercise of this license?
 Yes No

PART 4 - IMPORTANT NOTICE

Section 38.2-5703 of the Code of Virginia, requires each viatical settlement broker to report to the Commission, in writing, any change in his/her residence or business address or name within 30 days of the change.

By applying for this license, you are agreeing that personal information relevant to your status as a licensed viatical settlement broker in Virginia, including but not limited to your name, residence address, social security number (subject to state or federal limitations), date of birth, license and appointment status, and investigation or disciplinary action summary data may be reported to the National Association of Insurance Commissioners and to other state insurance regulatory authorities or other interested parties.

THIS APPLICATION FORM IS USED WHEN APPLYING FOR THE ORIGINAL VIATICAL SETTLEMENT BROKER LICENSE AND THE RENEWAL OF THE VIATICAL SETTLEMENT BROKER LICENSE.

PLEASE COMPLETE EVERY BLANK ON BOTH SIDES. IF NOT APPLICABLE, MARK "NA".

(804)371-9631 PIN250B
October 1997

**STATE CORPORATION COMMISSION
BUREAU OF INSURANCE
P.O. BOX 1157
RICHMOND, VIRGINIA 23218**

**APPLICATION FOR AGENCY
VIATICAL SETTLEMENT BROKER LICENSE — \$50.00**

The fee is paid on an annual basis, and the license must be renewed prior to August 1 of each calendar year. A license issued at any time prior to August 1, 1998, will expire on July 31, 1999. After August 1, 1998, no matter when during the year that your license is issued, it expires on July 31.

This form is to be completed by a partnership (duly recorded in local courts), a corporation (duly chartered in its state of domicile), a limited liability company (duly organized in its state of domicile), or a limited partnership (duly certified in its state of domicile). A sole proprietorship is not required to be licensed as an agency. Submit a money order, bank or teller's check, certified check, or insurance company check payable to the State Corporation Commission. No personal checks, or cash will be accepted. Each application must be accompanied by a separate check or money order. The fee is not refundable. Official forms may not be duplicated except on the same color paper as the original forms issued by the Bureau of Insurance.

FEIN	Agency Name	
Street Address		
P.O. Box (if applicable)		
City	State	Zip Code
Telephone Number		
Agency Trade Name (If different from agency name)		

State of Incorporation	Charter Number	Incorporation Date (Month, Day, Year)
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OR

State of Organization	ID Number	Organization Date (Month, Day, Year)
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OR

State Where Partnership Formed	Recordation Date (Month, Day, Year)
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OFFICE USE ONLY

RIRS CHECK	
Date	Initial

PLEASE COMPLETE EVERY BLANK ON BOTH SIDES. IF NOT APPLICABLE, MARK "NA".

General Notices/Errata

PART 1 - ALL APPLICANTS

1. Do you understand that if the agency is a partnership, each active partner and each employee who will solicit, negotiate, procure, or effect insurance in the name of the firm, must obtain and hold a license of the same type as if the agency is a corporation, each officer, director, and employee who will solicit, negotiate, procure, or effect insurance in the name of the corporation must obtain and hold a license of the same type?
 Yes No
2. Has this or any other insurance department ever refused to allow the agency the authority to transact the business of insurance or suspended or revoked or requested a voluntary surrender of its authority?
 Yes No "NA"
If so, and this information has not previously been filed with this Bureau, attach a sheet and give full particulars.
3. Has the agency ever been subject to a final administrative action or has been shown to be untrustworthy or incompetent to act as a vatical settlement broker?
 Yes No "NA"
If so, and this information has not previously been filed with this Bureau, attach a sheet and give full particulars.

PART 2 - RESIDENTS ONLY

1. Virginia domiciled corporations, limited liability companies, or limited partnerships must attach a copy of the portion of the Charter, Articles of Incorporation or Articles of Organization, indicating that the corporation, limited liability company, or limited partnership is authorized to act as an insurance agent or agency in the Commonwealth of Virginia. A partnership must attach a copy of the filing with the Clerk of the Commission.

PART 3 - NON-RESIDENTS ONLY

1. In accordance with §38.2-5702 of the Code of Virginia, do you hereby appoint the Clerk of the Commission the agent for the service of process in any action or proceeding arising in this Commonwealth out of or in connection with the exercise of this license?
 Yes No
2. Pursuant to §38.2-1835 of the Code of Virginia, attach a current certification, (no more than 90 days old), from your home state certifying that the applicant is licensed or otherwise authorized in that state to practice in that state, or, if not, provide to solicit, negotiate, procure, or effect the classes of insurance for which the license is being sought in this Commonwealth.
 In addition, a "certificate of authority" issued by the Clerk of the Commission must be attached.

OR
 For those states that do not license corporations, partnerships, or limited liability companies, but which permit such entities to engage in the insurance business, certification that the entity is so permitted will be sufficient. In addition, a corporate applicant must submit a copy of the portion of its charter indicating that the corporation is authorized to do the business of insurance in its state of incorporation; a limited liability company applicant must submit a copy of the portion of its articles of organization indicating that the limited liability company is authorized to do the business of insurance in its state of organization; and a partnership applicant must submit a copy of its recordation (filing) with the Clerk of the Court in the appropriate jurisdiction. A "certificate of authority" issued by the Clerk of the Commission must be attached.

PART 4 - CERTIFICATION

THE UNDERSIGNED, ON BEHALF OF THE APPLICANT, HEREBY CERTIFIES THAT THE INFORMATION PROVIDED ON BOTH SIDES OF THIS APPLICATION IS TRUE AND CORRECT.

 Signature

 Title

 Name (Printed)

 Date

Sections 38.2-1822 and 38.2-5703 of the Code of Virginia require each vatical settlement broker to report to the Commission in writing any change in its address or name within 30 days of the change, and to immediately notify the Commission upon adoption of an assumed or fictitious name (trade name).

PLEASE COMPLETE EVERY BLANK ON BOTH SIDES, IF NOT APPLICABLE, MARK "NA"

**STATE BOARD OF HEALTH AND DEPARTMENT OF
MEDICAL ASSISTANCE SERVICES**

**Legal Notice of Proposed Request for Certificate of
Public Need Applications**

Pursuant to the authority vested in the State Board of Health (Board) and the Department of Medical Assistance Services (DMAS) by § 32.1-102.3:2 of the Code of Virginia of 1950, as amended, notice is hereby given of a public comment period on a proposed Request For Applications (RFA). This RFA is a request for certificate of public need (COPN) applications for projects which will result in an increase in the number of beds in which nursing facility services are provided in the Commonwealth of Virginia. The RFA issuance process is outlined in the *Virginia Medical Care Facilities COPN Rules and Regulations* at 12 VAC 5-220-335 B.

Any person objecting to the contents of this proposed RFA may notify, within 14 days of the publication date of this notice, the Board and the State Health Commissioner (Commissioner) of his objection and the objection's regulatory basis. Objections to the proposed RFA will be accepted in the office of the Director, Center for Quality Health Care Services and Consumer Protection, 3600 West Broad Street, Room 216, Richmond, Virginia 23230, until 5 p.m. on December 22, 1997.

**Eligible Planning Districts and the Total Nursing Facility
Beds Available for Authorization**

In the review cycles established by this RFA, the Commissioner will consider requests for COPNs which propose increases in nursing facility beds in the following listed planning districts. COPN requests which propose increases in nursing facility beds in planning districts not found on the following list will not be accepted. Only COPN requests which propose the establishment of Medicaid-certified nursing facility units dedicated to the provision of complex, high acuity care for pediatric patients (persons under the age of 21) will be accepted for review. Only COPN requests which propose no more than 15 nursing facility beds will be accepted for review.

1. **Planning District 5** also known as the Fifth Planning District, consisting of the Counties of Alleghany, Botetourt, Craig and Roanoke and the Cities of Clifton Forge, Covington, Roanoke and Salem.
2. **Planning District 7** also known as the Lord Fairfax Planning District, consisting of the Counties of Clarke, Frederick, Page, Shenandoah and Warren and the City of Winchester.
3. **Planning District 11** also known as the Central Virginia Planning District, consisting of the counties of Amherst, Appomattox, Bedford and Campbell and the Cities of Bedford and Lynchburg.

4. **Planning District 12** also known as the West Piedmont Planning District, consisting of the Counties of Franklin, Henry, Patrick and Pittsylvania and the Cities of Danville and Martinsville.

5. **Planning District 15** also known as the Richmond Regional Planning District, consisting of the Counties of Charles City, Chesterfield, Goochland, Hanover, Henrico, New Kent and Powhatan and the City of Richmond.

Basis for the Request for Applications

In 1991, the Virginia Department of Medical Assistance Services (DMAS) implemented a program in the nursing facility environment to provide high acuity skilled care to Medicaid recipients who had been traditionally difficult to discharge from the acute care hospital setting to long-term care facilities because of the cost of their care and the intensity of their service needs. These Medicaid patients include those who depend on mechanical ventilation, require extensive wound care, require a high intensity of rehabilitation services, or demonstrate a need for complex nursing care and ongoing medical intervention. The Specialized Care program is structured to provide for care to two distinct age groups; the adult population, defined as persons aged 21 and older, and the pediatric population, under age 21.

DMAS has seen an increased need for high acuity long-term care services for children in the last five years. Children without adequate support for maintenance in the home with community-based services are staying in acute care hospital beds for extended periods of time because of a shortage of appropriate long-term care settings for their discharge. In some cases, acute care hospital stays have been measured in years. However, since the initiation of the Specialized Care program, only one nursing home, Iliff Nursing Home in Fairfax County, has developed a specialized care unit for children with complex medical and long-term care needs. This facility has a dedicated 38-bed pediatric unit with a typical census of 22 to 25 children. In the Tidewater area DMAS has a long-stay acute care hospital contract with Lake Taylor Hospital in Norfolk to provide specialized care to children. These services are comparable to the services defined in the Specialized Care program.

While nursing homes have not come forward to meet the growing need for pediatric long-term institutional care, some hospitals have expressed an interest to DMAS in providing this needed level of care. However, the introduction of nursing home services by hospitals or an expansion of an existing hospital-based nursing facility that would result in an increase in the number of nursing facility beds in the Commonwealth is a "project," as defined in § 32.1-102.1 of the Code of Virginia, requiring authorization by the Commissioner of Health through the issuance of a certificate of public need (COPN). Under existing law (§ 32.1-102.3:2 of the Code of Virginia), the commissioner can only approve additional nursing facility beds in the Commonwealth, with the exception of certain retirement community nursing facility

General Notices/Errata

beds, when such beds are requested pursuant to a Request for Applications.

Because medically complex infants or small children in need of skilled nursing facility care can often benefit greatly from the participation of their families in their care, DMAS seeks to have several regional providers of pediatric specialized nursing facility care established at a size which will allow them to efficiently provide such care for a regional catchment area. The five planning districts targeted in this proposed RFA have been chosen based on a DMAS assessment of the regions in which pediatric nursing facility development will allow for appropriate availability and accessibility to this service.

Intended Outcome of Project Review

It is the intention of the commissioner, in consultation with DMAS, to award no more than one COPN for the establishment of a specialized pediatric nursing facility unit of no more than 15 beds in each of the five targeted planning districts. If it is determined, in the future, that a greater need exists in these districts or that a need exists for development of specialized pediatric nursing facility units in other planning districts of the Commonwealth, appropriate action will be taken by the Virginia Department of Health and DMAS to accommodate these needs.

Basis for Review

The Commissioner, in his review of COPN requests submitted pursuant to the final RFA, will consider each of the 20 factors enumerated in § 32.1-102.3.B. of the Code of Virginia, as applicable. He will also consider applicable standards of the *State Medical Facilities Plan*, 12 VAC 5-360-10 et seq.

Projection of Potential Fiscal Impact

Because of the limited Virginia experience with the provision of pediatric specialized nursing facility care, it is difficult to precisely forecast the cost savings to the Commonwealth of transferring pediatric patients from the acute hospital to the specialized nursing facility setting. However, some approximate per diem cost savings can be estimated. Most of the children ultimately eligible for transfer to a pediatric specialized care program spend some time in a hospital neonatal intensive care unit (NICU). By the time these children can be safely transferred to a specialized pediatric nursing facility unit, they will have "stepped-down" from the NICU level of care, and DMAS will be paying the hospital acute per diem rate for their care. The average acute hospital per diem rate for the hospitals with DMAS-authorized NICU programs is \$951.34. Based on the average pediatric specialized care per diem of \$291.74, an average saving of \$659.60 per day can be forecast for those days diverted from the acute hospital setting to the specialized pediatric nursing facility setting. Given that children eligible for pediatric specialized care tend to have very long lengths of stay, the potential savings per patient are substantial.

Schedule for Review

COPN requests filed in response to this RFA shall be filed in accordance with the provisions of 12 VAC 5-220-355. The following review schedule will be applicable to COPN requests filed in response to this RFA. Both letters of intent and applications must be received by both the applicable regional health planning agency and the Division of COPN of the Virginia Department of Health by the indicated dates in order to qualify for consideration in the specified review cycle.

Planning District 5, Planning District 7, and Planning District 15

- Letter of intent must be received by April 1, 1998.
- Application must be received by May 1, 1998.
- Review cycle will begin June 10, 1998.

Planning District 11

- Letter of intent must be received by May 1, 1998.
- Application must be received by May 31, 1998.
- Review cycle will begin July 10, 1998.

Planning District 12

- Letter of intent must be received by June 1, 1998.
- Application must be received by July 1, 1998.
- Review cycle will begin August 10, 1998.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates

In accordance with the public notice requirements of 42 CFR 447.205, the Department of Medical Assistance Services hereby gives notice of an upcoming change in the methodology for establishing reimbursement rates for clinical nurse specialist-psychiatric.

Chapter 730 of the 1997 Virginia Acts of Assembly requires the BMAS to promulgate regulations which reimburse licensed clinical nurse specialists (CNS) at rates based upon reasonable criteria, including the professional credentials for licensure. This requirement adds licensed clinical nurse specialists-psychiatric to the list of providers that may directly enroll and be reimbursed as Medicaid providers.

Clinical nurse specialists are licensed as registered nurses and have an additional certification as a CNS. The Board of Nursing has 440 clinical nurse specialists currently licensed in Virginia. The number of those specializing as CNS-psychiatric is not available. Currently, 1,078 psychiatrists and 1,160 psychologists are enrolled as Medicaid providers. The regulatory changes necessary to directly enroll licensed clinical social workers and licensed professional counselors are in process.

This action is expected to shift services from one provider type to others, not increase the number of services. Greater

access to care will be provided to recipients because of an expanded provider base.

The changes may result in a slight increase in utilization with a decrease in the reimbursement per unit. The services that will be reimbursed for these provider types are based on the scope of practice licensing criteria. The total affect is expected to be close to budget neutral with the potential for a slight savings.

Section 32.1-325 C of the Code of Virginia specifically requires DMAS to set reimbursement rates based on the providers' licensing requirements. DMAS is currently promulgating regulations to decrease the reimbursement rate for psychologists from 100% to 90% of the rate for psychiatrists. Licensed clinical social workers and licensed professional counselors will be reimbursed at 75% of the reimbursement rate for psychologists. Clinical nurse specialists-psychiatric will also be reimbursed at 75% of the rate for psychologists, consistent with licensed clinical social workers and licensed professional counselors.

Copies of the emergency regulation may be obtained from Victoria P. Simmons or Roberta J. Jonas. Public comments regarding this notice may be submitted to Sally Rice, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, Virginia 23219, telephone (804) 371-8850.

STATE WATER CONTROL BOARD

Proposed Consent Special Order Colonial Williamsburg Foundation

The State Water Control Board proposes to take enforcement action against the Colonial Williamsburg Foundation. The enforcement action will be a Consent Special Order that will require the facility to come into compliance with appropriate Virginia laws and regulations. The order contains a provision for the payment of a civil charge. The Colonial Williamsburg Foundation will implement a supplemental environmental project in lieu of partial payment of the civil charge.

The Department of Environmental Quality will receive written comments relating to the board's proposed Consent Special Order for 30 days from the date of publication of this notice. Comments should be addressed to Maria R. Nold, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, Virginia 23462. The proposed order may be examined at the above address and copies of the order may be obtained in person or by mail.

VIRGINIA CODE COMMISSION

Notice to Subscribers

Beginning with Volume 14, Issue 1 of the Virginia Register (14:1 VA.R. September 29, 1997), the format of the Register changed slightly. Regulations and other information previously published in the State Corporation Commission, Marine Resources Commission, State Lottery Department, and Tax Bulletin sections have been merged into the Proposed Regulations, Final Regulations, Emergency Regulations, or General Notices sections as appropriate. In addition, regulations appear in order by Virginia Administrative Code (VAC) title order to correspond with the VAC.

Notice to State Agencies

Mailing Address: 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 FAX two copies and do not follow up with a mailed copy. Our FAX number is: (804) 692-0625.

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 may be obtained from: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

Internet: Forms and other *Virginia Register* resources may be printed or downloaded from the *Virginia Register* web page: <http://legis.state.va.us/codecomm/regindex.htm>

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 OBJECTIONS
- RR08

ERRATA

DEPARTMENT OF HEALTH

Title of Regulation: 12 VAC 5-210-10. Charges and Payment Requirements by Income Levels.

Publication: 14:4 VA.R. 673-681 November 10, 1997.

Corrections to Final Regulation:

General Notices/Errata

Page 674, 12 VAC 5-210-10, Chart 1, text for CPT Code 99202 should read as follows:

CPT CODE	MEDICAL CARE SERVICES	MAXIMUM CHARGE PER VISIT/SERVICE	INCOME LEVEL A (0%)	INCOME LEVEL B (10%)	INCOME LEVEL C (25%)	INCOME LEVEL D (50%)	INCOME LEVEL E (75%)	INCOME LEVEL F (100%)
99202	Visit Included All Three Components: *expanded problem focused history *expanded problem focused examination *straightforward medical decision making		\$0.00	\$3.50 \$3.80	\$8.75 \$9.50	\$17.50 \$19.00	\$26.25 \$27.50	\$35.00 \$38.00

Page 678, 12 VAC 50-210-20, Chart 2, text for CPT Code 99202 should read as follows:

CPT CODE	MEDICAL CARE SERVICES	MAXIMUM CHARGE PER VISIT/SERVICE	INCOME LEVEL A (0%)	INCOME LEVEL B (10%)	INCOME LEVEL C (25%)	INCOME LEVEL D (50%)	INCOME LEVEL E (75%)	INCOME LEVEL F (100%)
99202	Visit Included All Three Components: *expanded problem focused history *expanded problem focused examination *straightforward medical decision making		\$0.00	\$3.00 \$4.20	\$9.75 \$10.50	\$19.50 \$21.00	\$29.25 \$31.50	\$39.00 \$42.00

CALENDAR OF EVENTS

Symbol 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) 698-1500 or Senate Information and Constituent Services at (804) 698-7410 or (804) 698-7419/TDD☎, or visit the General Assembly web site's Legislative Information System (<http://leg1.state.va.us/lis.htm>) and select "Meetings."

VIRGINIA CODE COMMISSION

EXECUTIVE

BOARD FOR ACCOUNTANCY

December 15, 1997 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 5th Floor, Richmond, Virginia.♿
(Interpreter for the deaf provided upon request)

A meeting to discuss request for proposals and regulatory review. All meetings and times are subject to change. Call the board office within 24 hours of the meeting for confirmation. A public comment period will be held at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Board for Accountancy, Board of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD☎

† **January 20, 1998 - 10 a.m.** -- Open Meeting
† **January 21, 1998 - 8 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Richmond, Virginia.♿

An open meeting to discuss regulatory review, request for proposals for privatization, committee reports, disciplinary cases and other matters requiring board action. All meetings are subject to cancellation. The meeting time is subject to change. Call the board within 24 hours of the meeting for confirmation. A public comment period will be held at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter

services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590 or (804) 367-9753/TDD☎

BOARD OF AGRICULTURE AND CONSUMER SERVICES

December 11, 1997 - 9 a.m. -- Open Meeting
State Capitol, Capitol Square, House Room 4, Richmond, Virginia.♿

A meeting to discuss regulations and to consider matters relating to its responsibilities. The board will entertain public comment as the first item of business for a period not to exceed 15 minutes. Any person who needs any accommodations in order to participate at the meeting should contact Roy Seward at least five days before the meeting date so that suitable arrangements can be made.

Contact: Roy Seward, Secretary to the Board, Board of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Room 211, Richmond, VA 23219, telephone (804) 786-3538 or FAX (804) 371-7679.

December 11, 1997 - 1:30 p.m. -- Public Hearing
State Capitol, Capitol Square, House Room 4, Richmond, Virginia.

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 amend regulations entitled: **2 VAC 5-180-10 et seq. Rules and Regulations Governing Pseudorabies in Virginia.**

Calendar of Events

Pseudorabies is a disease that exacts a high death toll among the animals it infects, many of which are domesticated animals. Among the animals that can be infected with pseudorabies are cattle, sheep, dogs, cats, and notably, swine. There is no known evidence that humans can contract pseudorabies. Most kinds of animals infected with pseudorabies die before they can infect other animals (death usually occurs within 72 hours after infection). Swine are a different matter. Although pseudorabies can kill swine (the younger the swine, the higher the rate of mortality), they also can recover from the disease and spread it to other swine and to other kinds of animals. Virginia's regulations to eradicate pseudorabies from swine are part of a national program designed to rid the nation of pseudorabies.

This regulation provides rules to govern the program for the eradication of pseudorabies from swine in Virginia. The purpose of this action is to revise the regulation and increase its effectiveness, including but not limited to amending the regulation to allow Virginia to participate in the national program to eradicate pseudorabies at whatever stage its circumstance at a particular time would allow--whether Stage I or Stage V, or any stage in between.

Statutory Authority: §§ 3.1-724, 3.1-726 and 3.1-730 of the Code of Virginia.

Contact: Thomas R. Lee, Program Supervisor, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Suite 600, Richmond, VA 23219, telephone (804) 786-2483 or FAX (804) 371-2380.

December 11, 1997 - 1:30 p.m. -- Public Hearing
State Capitol, Capitol Square, House Room 4, Richmond, Virginia.

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 amend regulations entitled: **2 VAC 5-205-10 et seq. Rules and Regulations Pertaining to Shooting Enclosures.** This regulation provides rules to govern shooting enclosures in Virginia. The purpose of this action is to promulgate regulations providing for licensing shooting enclosures, establishing a licensing fee, and establishing criteria for the operation and management of the enclosures to include the health status of the animals held in the enclosure. The regulation also establishes which animals can be held in the shooting enclosures: goats, sheep and swine.

Statutory Authority: § 3.1-763.5:5 of the Code of Virginia.

Contact: Thomas R. Lee, Program Supervisor, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Suite 600, Richmond, VA 23219, telephone (804) 786-2483 or FAX (804) 371-2380.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Virginia Corn Board

December 17, 1997 - 9 a.m. -- Open Meeting
Wallace Manor, 3821 North Courthouse Road, Providence Forge, Virginia.☎

A meeting to discuss checkoff revenues and the financial status resulting from the sales of the 1997 corn crop, as well as hear reports from the Chairman, U.S. Feed Grains Council, National Corn Development Foundation and other committee representatives. The nomination and election of 1998 officers will also take place at the meeting. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodations in order to participate at the meeting should contact Phil Hickman at least five days before the meeting date so that suitable arrangements can be made.

Contact: Phil Hickman, Program Director, Virginia Corn Board, Department of Agriculture and Consumer Services, 1100 Bank St., Room 1005, Richmond, VA 23219, telephone (804) 371-6157 or FAX (804) 371-7786.

Virginia Irish Potato Board

December 15, 1997 - 7 p.m. -- Open Meeting
Eastern Shore Agricultural Research and Extension Center, Research Drive, Painter, Virginia.☎

A meeting to discuss programs (promotion, research and education), the annual budget, and other business that may come before the board. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodations in order to participate at the meeting should contact J. William Mapp at least five days before the meeting date so that suitable arrangements can be made.

Contact: J. William Mapp, Program Director, Virginia Irish Potato Board, P.O. Box 26, Onley, VA 23418, telephone (757) 787-5867 or FAX (757) 787-1041.

Pesticide Control Board

† **January 15, 1998 - 9 a.m.** -- Open Meeting
Washington Building, 1100 Bank Street, Board Room, Room 204, Richmond, Virginia.☎

Committee meetings and 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 board's agenda beginning at 9 a.m. Any person who needs any accommodations in order to participate

at the meeting should contact Dr. Marvin A. Lawson at least 10 days before the meeting date so that suitable arrangements can be made.

Contact: Dr. Marvin A. Lawson, Program Manager, Office of Pesticide Services, Department of Agriculture and Consumer Services, 1100 Bank St., Room 401, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-6558 or toll-free 1-800-552-9963.

Virginia Plant Pollination Advisory Board

February 6, 1998 - 10 a.m. -- Open Meeting
Washington Building, 1100 Bank Street, 4th Floor Conference Room, Richmond, Virginia. ☎

A regular meeting to receive reports from members on the past year's activity in their respective disciplines as it relates to apiculture, pollination, education and the production of food and fiber in the Commonwealth. The board will also consider matters for the future in the aforementioned categories. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs special assistance in order to participate at the meeting should contact Robert G. Wellemeyer at least five days before the meeting date so that suitable arrangements can be made.

Contact: Robert G. Wellemeyer, Secretary-Treasurer, Virginia Plant Pollination Advisory Board, 234 West Shirley Ave., Warrenton, VA 22186, telephone (540) 347-6380, FAX (540) 347-6384, or (804) 371-6344/TDD ☎

Virginia Small Grains Board

January 7, 1998 - Noon -- Open Meeting
January 8, 1998 - 7:30 a.m. -- Open Meeting
Roanoke Airport Hilton, 2801 Hershberger Road, N.W., Roanoke, Virginia. ☎

A meeting to hear additional FY 1997-98 project proposals and allocate funding for those projects. Additionally, the board will make funding decisions for U.S. Wheat Associates for FY 1998-99, and action will be taken on any other new business that comes before the board. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodations in order to participate at the meeting should contact Philip T. Hickman at least five days before the meeting date so that suitable arrangements can be made.

Contact: Philip T. Hickman, Program Director, Virginia Small Grains Board, Washington Bldg., 1100 Bank St., Room 1005, Richmond, VA 23219, telephone (804) 371-6157 or FAX (804) 371-7786.

Virginia Soybean Board

December 8, 1997 - 2:30 p.m. -- Open Meeting
Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, Virginia. ☎

A meeting to discuss checkoff revenues and the financial status resulting from sales of the 1997 soybean crop. Reports will be heard from the chairman, United Soybean Board representatives and from other committee representatives. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodations in order to participate at the meeting should contact Phil Hickman at least five days before the meeting date so that suitable arrangements can be made.

Contact: Philip T. Hickman, Program Director, Virginia Soybean Board, 1100 Bank St., Suite 1005, Richmond, VA 23219, telephone (804) 371-6157 or FAX (804) 371-7786.

STATE AIR POLLUTION CONTROL BOARD

† January 14, 1998 - 10 a.m. -- Public Hearing
Department of Environmental Quality, 629 East Main Street, First Floor, Training Room, Richmond, Virginia.

February 6, 1998 - Public comments may be submitted until 4:30 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 Air Pollution Control Board intends to amend regulations entitled: **Regulations for the Control and Abatement of Air Pollution: 9 VAC 5-20-10 et seq. General Provisions; 9 VAC 5-50-10 et seq. New and Modified Stationary Sources; and 9 VAC 5-80-10 et seq. Permits for Stationary Sources.** The regulation applies to the construction or reconstruction of new stationary sources or expansions (modifications) to existing ones. Exemptions are provided for smaller facilities. With some exceptions, the owner must obtain a permit from the agency prior to the construction or modification of the source. The owner of the proposed new or modified source must provide information as may be needed to enable the agency to conduct a preconstruction review in order to determine compliance with applicable control technology and other standards and to assess the impact of the emissions from the facility on air quality. The regulation also provides the basis for the agency's final action (approval or disapproval) on the permit depending upon the results of the preconstruction review. The regulation provides a sourcewide perspective to determine applicability based solely upon the emissions changes directly resultant from the physical or operational change. The regulation provides for the use of a plantwide applicability limit (PAL). Under this concept, a source owner could make physical or operational changes to emissions units covered by the PAL without being subject to the permit program as long as the overall emissions did not exceed the PAL. Concurrent construction, i.e., construction while waiting for the permit to be issued, is allowed. Under this

Calendar of Events

arrangement the source owner would assume full liability should the permit not be issued. Provisions covering general permits are included. Procedures for making changes to permits are included. The regulation also allows consideration of additional factors for making Best Available Control Technology (BACT) determinations for sources subject to minor new source review. In addition, 9 VAC 5-80-10 (Permits - new and modified stationary sources) and 9 VAC 5-80-11 (Stationary source permit exemption levels) are to be repealed.

Request for Comments: The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

Localities Affected: There is no locality which will bear any identified disproportionate material air quality impact due to the proposed regulation which would not be experienced by other localities.

Location of Proposal: The proposal, an analysis conducted by the department (including: a statement of purpose, a statement of estimated impact and benefits of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, identification of and comparison with federal requirements, and a discussion of alternative approaches) and any other supporting documents may be examined by the public at the department's Office of Program Development (Eighth Floor), 629 East Main Street, Richmond, Virginia and the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.

Southwest Regional Office
Department of Environmental Quality
355 Deadmore Street
Abingdon, Virginia
Ph: (540) 676-4800

West Central Regional Office
Department of Environmental Quality
3019 Peters Creek Road
Roanoke, Virginia
Ph: (540) 562-6700

Lynchburg Satellite Office
Department of Environmental Quality
7705 Timberlake Road
Lynchburg, Virginia
Ph: (804) 582-5120

Valley Regional Office
Department of Environmental Quality
4411 Early Road
Harrisonburg, Virginia 22801
Ph: (540) 574-7800

Fredericksburg Satellite Office
Department of Environmental Quality
300 Central Road, Suite B
Fredericksburg, Virginia
Ph: (540) 899-4600

Northern Regional Office
Department of Environmental Quality
13901 Crown Court
Woodbridge, Virginia
Ph: (703) 583-3800

Piedmont Regional Office
Department of Environmental Quality
4949-A Cox Road
Glen Allen, Virginia
Ph: (804) 527-5020

Tidewater Regional Office
Department of Environmental Quality
5636 Southern Boulevard
Virginia Beach, Virginia
Ph: (757) 518-2000

Public comments may be submitted until 4:30 p.m. February 6, 1998, to the Director, Office of Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Contact: Mary E. Major, Environmental Program Manager, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4423 or toll-free 1-800-592-5482.

ALCOHOLIC BEVERAGE CONTROL BOARD

December 8, 1997 - 9:30 a.m. – Open Meeting

December 22, 1997 - 9:30 a.m. – Open Meeting

Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia. 

A meeting to receive and discuss reports and activities of staff members. Other matters have not been determined.

Contact: W. Curtis Coleburn, Secretary to the Board, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4409 or FAX (804) 213-4442.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS

December 18, 1997 - 9 a.m. – Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special

accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

Interior Design Section

December 11, 1997 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

VIRGINIA BOARD FOR ASBESTOS AND LEAD

December 8, 1997 - 9 a.m. -- Open Meeting
National Assessment Institute, 3813 Gaskins Road, Richmond, Virginia. ♿

Two board members and invited subject matter experts will meet to conduct an exam workshop for the lead abatement examination. No board business will be conducted.

Contact: George O. Bridewell, Examination Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8572 or (804) 367-9753/TDD ☎

December 17, 1997 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 5 West, Richmond, Virginia. ♿

A meeting to conduct routine business. A public comment period will be held at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad

St., Richmond, VA 23230-4917, telephone (804) 367-8595 or (804) 367-9753/TDD ☎

AUCTIONEERS BOARD

December 11, 1997 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 4W, Richmond, Virginia. ♿

The board and invited subject matter experts will meet to conduct an exam workshop. A public comment period will be held at the beginning of the workshop. After the public comment period the workshop will be conducted in closed executive session under authority of § 2.1-344 A 11 of the Code of Virginia due to the confidential nature of the examination. The public will not be admitted to the closed executive session.

Contact: George O. Bridewell, Examination Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8572 or (804) 367-9753/TDD ☎

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

† **January 15, 1998 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A meeting to discuss comments received on proposed regulations.

Contact: Senita Booker, Program Support Technician Senior, Board of Audiology and Speech-Language Pathology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7390, FAX (804) 662-9523 or (804) 662-7197/TDD ☎

† **January 21, 1998 - 2 p.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A meeting to discuss general business.

Contact: Senita Booker, Program Support Technician Senior, Board of Audiology and Speech-Language Pathology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7390, FAX (804) 662-9523 or (804) 662-7197/TDD ☎

Legislative/Regulatory Committee

December 11, 1997 - 8 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A meeting to discuss legislative proposals of definitions.

Contact: Senita Booker, Program Support Technician Senior, Board of Audiology and Speech-Language Pathology,

Calendar of Events

6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7390, FAX (804) 662-9523 or (804) 662-7197/TDD ☎

VIRGINIA AVIATION BOARD

December 17, 1997 - 3 p.m. -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular bimonthly meeting of the board. Applications for state funding will be presented to the board and other matters of interest to the Virginia aviation community will be discussed. Individuals with disabilities should contact Cindy Waddell 10 days prior to the meeting if assistance is needed.

Contact: Cindy Waddell, Department of Aviation, 5702 Gulfstream Road, Richmond International Airport, VA 23250-2422, telephone (804) 236-3625 or (804) 236-3624/TDD ☎

BOARD FOR BRANCH PILOTS

December 9, 1997 - 9:30 a.m. -- Open Meeting
Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia. ☎

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

December 15, 1997 - 10 a.m. -- Open Meeting
Department of Social Services, 730 East Broad Street, Lower Level, Conference Room 3, Richmond, Virginia.

A meeting to conduct general business and to review local Chesapeake Bay Preservation Area programs and the 1999 Competitive Grants Program Request for Proposals. Public comment will be taken early in the meeting. A tentative agenda will be available by December 1 from the department.

Contact: Carolyn J. Elliott, Executive Secretary, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701, Richmond, VA 23219, telephone (804) 225-3440, FAX (804) 225-3447 or toll-free 1-800-243-7229/TDD ☎

CHILD DAY-CARE COUNCIL

December 11, 1997 - 9 a.m. -- Open Meeting
Theater Row Building, 730 East Broad Street, 7th Floor Conference Room, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The council will meet to discuss issues and concerns that impact child day centers, camps, school age programs, and preschool/nursery schools. Public comment will be received at noon. Please call ahead of time for possible changes in meeting time.

Contact: Rhonda Harrell, Division of Licensing Programs, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1775 or FAX (804) 692-2370.

STATE CHILD FATALITY REVIEW TEAM

† **December 18, 1997 - 10 a.m.** -- Open Meeting
Tyler Building, 1300 East Main Street, 3rd Floor Conference Room, Richmond, Virginia. ☎

A meeting to discuss confidential case information and to review the report on child death in Virginia in 1994. In addition, the team will adopt recommendations for training, prevention, and education.

Contact: Suzanne J. Keller, Coordinator, State Child Fatality Review Team, 9 N. 14th St., Richmond, VA 23219, telephone (804) 786-1047, FAX (804) 371-8595, or toll-free 1-800-447-1706.

COMPENSATION BOARD

December 18, 1997 - 11 a.m. -- Open Meeting
Ninth Street Office Building, 202 North Ninth Street, 10th Floor Conference Room, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A routine business meeting.

Contact: Bruce W. Haynes, Executive Secretary, P.O. Box 710, Richmond, VA 23218-0710, telephone (804) 786-0786, FAX (804) 371-0235, or (804) 786-0786/TDD ☎

COMMONWEALTH COMPETITION COUNCIL

† **December 10, 1997 - 2 p.m.** -- Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room B, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular business meeting.

Contact: Peggy Robertson, Executive Assistant, Commonwealth Competition Council, James Madison Bldg., 109 Governor St., P.O. Box 1475, Richmond, VA 23218-1475, telephone (804) 786-0240 or FAX (804) 786-1594.

BOARD OF CONSERVATION AND RECREATION

December 11, 1997 - 10 a.m. -- Open Meeting
Department of Conservation and Recreation, 203 Governor Street, Suite 200, Richmond, Virginia.

A regular business meeting to discuss the proposed action to adopt final stormwater management regulations.

Contact: Leon E. App, Regulatory Coordinator, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-4570 or FAX (804) 786-6141.

BOARD FOR CONTRACTORS

Recovery Fund Committee

December 10, 1997 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting to consider claims filed under the Virginia Contractor Transaction Recovery Fund Act. This meeting will be open to the public; however, a portion of the board's business may be conducted in executive session. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact Pratt Stelly so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: Pratt P. Stelly, Assistant Director, Enforcement Division, Post-Adjudication, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-2683 or (804) 367-9753/TDD ♿

Tradesman Certification Committee

† **December 16, 1997 - 10 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 5 W, Richmond, Virginia. ♿

A quarterly meeting of the committee to consider items of interest relating to the tradesmen section of the Board for Contractors.

Contact: Steven L. Arthur, Administrator, Tradesman Certification Program, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-6166.

BOARD OF CORRECTIONAL EDUCATION

† **December 18, 1997 - 10 a.m.** -- Open Meeting
Department of Correctional Education, James Monroe Building, 101 North 14th Street, 7th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A monthly meeting to discuss general business.

Contact: Patty Ennis, Board Clerk, Board of Correctional Education, James Monroe Bldg., 101 N. 14th St., 7th Floor, Richmond, VA 23219, telephone (804) 225-3314.

BOARD OF DENTISTRY

Advertising Committee

December 18, 1997 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to discuss advertising issues. Public comment will be received at the beginning of the meeting.

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906 or (804) 662-7197/TDD ♿

Legislative/Regulatory Committee

† **December 12, 1997 - 8 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to discuss (i) legislation regarding compensation of board members serving as examiners at board-approved clinical examinations; (ii) proposing regulations resulting from the regulatory review report; and (iii) surveys from the Commonwealth Dental Hygienists Association and Blue Ridge Dental Hygienists Association. Public comment will be received at the beginning of the meeting.

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906 or (804) 662-7197/TDD ♿

Calendar of Events

VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP

Virginia Tourism Corporation

December 16, 1997 - 10 a.m. -- Open Meeting
Department of Economic Development, 901 East Byrd Street,
Riverfront Plaza, West Tower, 19th Floor, Board Room,
Richmond, Virginia. (Interpreter for the deaf provided upon
request)

A meeting of the Board of Directors to discuss strategic
planning and budgets related to the Virginia Tourism
Corporation. The agenda is available upon request.
Public comment will be taken at the beginning of the
meeting.

Contact: Judy H. Bulls, Assistant to the President and CEO,
Virginia Tourism Corporation, 901 East Byrd St., Richmond,
VA 23219, telephone (804) 371-8174, FAX (804) 786-1919 or
(804) 371-0327/TDD

LOCAL EMERGENCY PLANNING COMMITTEE - CITY OF ALEXANDRIA

† **December 10, 1997 - 6 p.m.** -- Open Meeting
Potomac Electric Power Company, 1400 North Royal Street,
Alexandria, Virginia. (Interpreter for the deaf provided upon
request)

An open meeting with committee members and facility
emergency coordinators to conduct business in
accordance with SARA Title III, Emergency Planning and
Community Right-to-Know Act of 1986.

Contact: Charles McRorie, Emergency Preparedness
Coordinator, P.O. Box 178, Alexandria, VA 22313, telephone
(703) 838-3825 or (703) 838-5056/TDD

DEPARTMENT OF ENVIRONMENTAL QUALITY

† **December 19, 1997 - 9 a.m.** -- Open Meeting
Department of Environmental Quality, 629 East Main Street,
First Floor, Training Room, Richmond, Virginia. (Interpreter
for the deaf provided upon request)

A working meeting of the regulatory ad hoc group
engaged in the development of 9 VAC 5-80-10 et seq.,
Regulations for the Control and Abatement of Air
Pollution (Rev. J97), new source review for sources of
hazardous air pollutants.

Contact: Karen Sabasteanski, Policy Analyst, Department of
Environmental Quality, P.O. Box 10009, Richmond, VA
23240, telephone (804) 698-4426, FAX (804) 698-4510, toll-
free 1-800-592-5482 or (804) 698-4021/TDD

† **January 8, 1998 - 5:30 p.m.** -- Open Meeting
Department of Environmental Quality, Piedmont Regional
Office, 4949-A Cox Road, Glen Allen, Virginia. (Interpreter for the deaf provided upon request)

A meeting to provide explanation of the proposed repeal
of 9 VAC 25-420-10 et seq., James River 3(c)
Wastewater Management Plan Peninsula Area, and to
invite comments related to the proposal including the
costs and benefits of the proposed action or other
alternatives the public may wish to provide.

Contact: Erlinda L. Patron, Environmental Engineer
Consultant, Department of Environmental Quality, P.O. Box
10009, Richmond, VA 23240-0009, telephone (804) 698-
4047 or FAX (804) 698-4136.

FAMILY AND CHILDREN'S TRUST FUND BOARD

December 19, 1997 - 10 a.m. -- Open Meeting
† **January 16, 1998 - 10 a.m.** -- Open Meeting
† **February 20, 1998 - 10 a.m.** -- Open Meeting
Department of Social Services, 730 East Broad Street,
Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular monthly meeting. Contact the trust fund for
more information or for a copy of the agenda.

Contact: Margaret Ross Schultze, Executive Director,
Family and Children's Trust Fund Board, 730 E. Broad St.,
8th Floor, Richmond, VA 23219, telephone (804) 692-1823 or
FAX (804) 692-1869.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

January 8, 1998 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
4th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A general board meeting. Public comment will be
received during the first 15 minutes of the meeting. A
formal hearing will follow the general board meeting.

Contact: Elizabeth Young Tisdale, Executive Director, Board
of Funeral Directors and Embalmers, 6606 W. Broad St., 4th
Floor, Richmond, VA 23230-1717, telephone (804) 662-9907
or (804) 662-7197/TDD

BOARD OF GAME AND INLAND FISHERIES

January 8, 1998 - 9 a.m. -- Open Meeting
† **January 9, 1998 - 9 a.m.** -- Open Meeting
Department of Game and Inland Fisheries, 4000 West Broad
Street, Richmond, Virginia. (Interpreter for the deaf
provided upon request)

A meeting to address regulation amendments proposed
at its October 23, 1997, meeting pertaining to wildlife
permitting generally and permitting for raptor propagation
and for use of gill nets specifically. The board will solicit
comments from the public during the public hearing
portion of the meeting, at which time any interested
citizen present shall be heard. The board will determine
whether the proposed regulation amendments will be

adopted as final regulations. The board reserves the right to adopt final amendments which may be more liberal than or more stringent than the regulations currently in effect or the regulations proposed at the October 23, 1997, board meeting, as necessary for the proper management of wildlife resources. The board will address the agency's legislative proposals and other legislation which is anticipated during the 1998 Session of the General Assembly. General and administrative issues may be discussed by the board. The board may hold an executive session before the public session begins on January 8. If the board completes its entire agenda on January 8, it may not convene on January 9.

Contact: Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 W. Broad St., Richmond, VA 23230, telephone (804) 367-8341 or FAX (804) 367-2311.

BOARD FOR HEARING AID SPECIALISTS

January 27, 1998 - 8:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 5 West, Richmond, Virginia. 

A routine business meeting. A public comment period will be held at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact David Dick at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD 

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

December 12, 1997 - 8 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, 9th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

The Resources Committee will meet at 8 a.m.; the Planning Committee will meet at 11 a.m.; and the Outreach Committee will meet at 12 p.m. The full council will hold its regular meeting at 1 p.m.

Contact: Pamela H. Landrum, Administrative Staff Assistant, State Council of Higher Education, James Monroe Bldg., 101 N. 14th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2602 or FAX (804) 371-7911.

Executive Committee

December 19, 1997 - 8:30 a.m. -- Open Meeting
Piedmont Virginia Community College, Board Room, Charlottesville, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting.

Contact: Pamela H. Landrum, Administrative Staff Assistant, State Council of Higher Education, James Monroe Bldg., 101 N. 14th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2602 or FAX (804) 371-7911.

HOPEWELL INDUSTRIAL SAFETY COUNCIL

January 6, 1998 - 9 a.m. -- Open Meeting
February 3, 1998 - 9 a.m. -- Open Meeting
March 3, 1998 - 9 a.m. -- Open Meeting
Hopewell Community Center, Second and City Point Road, Hopewell, Virginia.  (Interpreter for the deaf provided upon request)

Local Emergency Preparedness Committee meeting on emergency preparedness as required by SARA Title III.

Contact: Robert Brown, Emergency Services Coordinator, 300 N. Main St., Hopewell, VA 23860, telephone (804) 541-2298.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

† December 16, 1997 - 11 a.m. -- Open Meeting
Virginia Housing Development Authority, 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 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 Street, Richmond, VA 23220, telephone (804) 782-1986.

Calendar of Events

VIRGINIA INTERAGENCY COORDINATING COUNCIL

December 10, 1997 - 9:30 a.m. -- Open Meeting
Henrico Area Mental Health/Mental Retardation Services, 10299 Woodman Road, Glen Allen, VA 23060. (Interpreter for the deaf provided upon request)

The council meets quarterly to advise and assist the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services as lead agency for Part H (of IDEA), early intervention for infants and toddlers with disabilities and their families. Discussion will focus on issues related to Virginia's implementation of the Part H program.

Contact: Nicole Rada, Part H Office Services Specialist, Department of Mental Health, Mental Retardation and Substance Abuse Services, Early Intervention 10th Floor, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-3710 or FAX (804) 371-7959.

DEPARTMENT OF LABOR AND INDUSTRY

Virginia Apprenticeship Council

December 11, 1997 - 9:30 a.m. -- Open Meeting
Norfolk Technical Vocational Center, 1330 North Military Highway, Norfolk, Virginia. (Interpreter for the deaf provided upon request)

A regular quarterly council meeting. The council will receive the subcommittee report on tradesmen certification and discuss request for apprenticeship ability for (i) Howmet Corp., Hampton: Facilitator, 183 167 018; Layout Inspector, 600 281 014 and (ii) Northor-Grumman, Ft. Eustis: Pollution Control Tech, 029 261 014.

Contact: Patti C. Bell, Administrative Staff Specialist, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 225-3083, FAX (804) 786-8418 or (804) 786-2376/TDD

LITTER CONTROL AND RECYCLING FUND ADVISORY BOARD

† January 7, 1998 - 10 a.m. -- Open Meeting
Plantation House, 1108 East Main Street, Second Floor, Conference Center, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A quarterly meeting to promote the control, prevention and elimination of litter from the Commonwealth and encourage recycling and advise the Director of the Department of Environmental Quality on other litter control and recycling matters. For details, call Paddy Katzen.

Contact: Paddy Katzen, Special Assistant to the Secretary of Natural Resources, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 698-4488 or e-mail pmkatzen@deq.state.va.us.

LONGWOOD COLLEGE

Board of Visitors

† December 17, 1997 - 2 p.m. -- Open Meeting
Longwood College, Lancaster 215, Farmville, Virginia.

A meeting to conduct routine business.

Contact: Patricia P. Cormier, Longwood College, 201 High St., Farmville, VA 23909, telephone (804) 395-2004 or FAX (804) 395-2821.

VIRGINIA MANUFACTURED HOUSING BOARD

† December 10, 1997 - 10 a.m. -- Open Meeting
Department of Housing and Community Development, The Jackson Center, 501 North 2nd Street, Richmond, Virginia.

A monthly meeting of the board.

Contact: Curtis L. McIver, Associate Director, Department of Housing and Community Development, Manufactured Housing Office, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7160 or (804) 371-7089/TDD

MARINE RESOURCES COMMISSION

† December 16, 1997 - 9 a.m. -- Open Meeting
Marine Resources Commission, 2600 Washington Avenue, Newport News, Virginia. (Interpreter for the deaf provided upon request)

The commission will hear and decide marine environmental matters at 9 a.m., including permit applications for projects in wetlands, bottom lands, coastal primary sand dunes and beaches; appeals of local wetland board decisions; policy and regulatory issues. The commission will hear and decide fishery management items at approximately noon. Items to be heard include: regulatory proposals, fishery management plans; fishery conservation issues; licensing; shellfish leasing. Meetings are open to the public. Testimony will be taken under oath from parties addressing agenda items on permits and licensing. Public comments will be taken on resource matters, regulatory issues and items scheduled for public hearing. The commission is empowered to promulgate regulations in the areas of marine environmental management and marine fishery management.

Contact: LaVerne Lewis, Secretary to the Commission, Marine Resources Commission, P.O. Box 756, Newport

News, VA 23607-0756, telephone (757) 247-2261, toll-free 1-800-541-4646 or (757) 247-2292/TDD ☎

BOARD OF MEDICAL ASSISTANCE SERVICES

December 16, 1997 - 10 a.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia.

A meeting to discuss medical assistance services policy and to take action on issues pertinent to the board.

Contact: Cynthia K. Morton, Board Liaison, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-8099 or FAX (804) 371-4981.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Pharmacy Liaison Committee

† **December 15, 1997 - 1 p.m.** -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor, Board Room, Richmond, Virginia. ♿

A meeting to finalize pharmacy services cost savings reports to be presented to the 1998 Session of the General Assembly.

Contact: David Shepherd, R.Ph., Supervisor, Pharmacy Unit, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-2773.

BOARD OF MEDICINE

† **December 12, 1997 - 9 a.m.** -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

Pursuant to § 54.1-2912.1 of the Code of Virginia, the Board of Medicine shall prescribe by regulation such requirements as may be necessary to ensure continued practitioner competence.

Contact: Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 West Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

Informal Conference Committee

December 9, 1997 - 9:30 a.m. -- Open Meeting
Sheraton Inn, 2801 Plank Road, Fredericksburg, Virginia.

December 11, 1997 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia.

January 8, 1998 - 10 a.m. -- Open Meeting
Roanoke Airport Marriott, 2801 Hershberger Road, N.W., Roanoke, Virginia.

The Informal Conference Committee, composed of three members of the board, will 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 A 7 and A 15 of the Code of Virginia. Public comment will not be received.

Contact: Karen W. Perrine, Deputy Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7693, FAX (804) 662-9517 or (804) 662-7197/TDD ☎

STATE BOARD OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

† **December 11, 1997 - 10 a.m.** -- Open Meeting

† **December 12, 1997 - 10 a.m.** -- Open Meeting
Doubletree Hotel, Charlottesville, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular business meeting.

Contact: Marlene Butler, State Board Secretary, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-7945 or FAX (804) 371-2308.

BOARD OF NURSING

Special Conference Committee

December 8, 1997 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The committee will conduct informal conferences with licensees or certificate holders or both. Public comment will not be received.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

Calendar of Events

VIRGINIA OUTDOORS FOUNDATION

Board of Trustees

† **December 10, 1997 - 10 a.m.** -- Open Meeting
State Capitol, Capitol Square, Richmond, Virginia. ♿
(Interpreter for the deaf provided upon request)

A regular meeting of the Board of Trustees to discuss business and acceptance of conservation easements. Public input will be accepted after the meeting.

Contact: Tamara A. Vance, Executive Director, Virginia Outdoors Foundation, 203 Governor St., Room 317, Richmond, VA 23219, telephone (804) 225-2147 or FAX (804) 371-4810.

BOARD OF PHARMACY

December 9, 1997 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ♿

A general business meeting and to respond to public comment received on proposed Virginia Board of Pharmacy Regulations, 18 VAC 110-20-10 et seq., concerning automated dispensing devices in hospitals and to anticipate adopting as final regulations. Public comments will be received at the beginning of the meeting.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9911 or FAX (804) 662-9313.

† **December 15, 1997 - 1 p.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ♿

A formal hearing before a panel of the board. Public comment will not be received.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9911 or FAX (804) 662-9313.

POLYGRAPH EXAMINERS ADVISORY BOARD

December 16, 1997 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, Richmond, Virginia. ♿
(Interpreter for the deaf provided upon request)

A meeting to discuss regulatory review and other matters requiring board action. In addition, the Polygraph Examiners Licensing Examination will be administered to eligible polygraph examiner interns. All meetings and times are subject to change. Call the board office within 24 hours of the meetings for confirmation. A public comment period will be held at the beginning of the meeting. Persons desiring to participate in the meeting

and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made for appropriate accommodations. The department fully complies with the Americans with Disabilities Act. Please call the board 24 hours in advance to confirm that the meeting will take place.

Contact: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD ♿

BOARD OF LICENSED PROFESSIONAL COUNSELORS, MARRIAGE AND FAMILY THERAPISTS AND SUBSTANCE ABUSE TREATMENT PROFESSIONALS

Regulatory Committee

December 8, 1997 - 1 p.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ♿

An information-gathering meeting to hear issues and concerns pertaining to licensure requirements for substance abuse treatment practitioners.

Contact: Janet Delorme, Deputy Executive Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9575, FAX (804) 662-9943 or (804) 662-7197/TDD ♿

BOARD OF PSYCHOLOGY

January 27, 1998 - 10 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. ♿

A regular meeting to discuss general board business, receive committee reports and consider proposed amendments to the Regulations Governing the Practice of Psychology, 18 VAC 125-20-10 et seq., pursuant to Executive Order 15 (94). Public comment will be received at the beginning of the meeting.

Contact: LaDonna Duncan, Administrative Assistant, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9913 or FAX (804) 662-9943.

VIRGINIA RACING COMMISSION

December 15, 1997 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Racing Commission

intends to amend regulations entitled: **11 VAC 10-70-10 et seq. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Stewards.** The purpose of the proposed action is to establish procedures for stewards hearings and establishes a steward to oversee the operation of satellite facilities.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Contact: William H. Anderson, Policy, Analyst, Virginia Racing Commission, 10700 Horsemen's Rd., New Kent, VA 23124, telephone (804) 966-4200 or FAX (804) 966-8906.

December 15, 1997 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Racing Commission intends to amend regulations entitled: **11 VAC 10-90-10 et seq. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Formal Hearings.** The purpose of the proposed action is to establish procedures by which the Virginia Racing Commission may conduct reviews of decisions taken by the stewards.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Contact: William H. Anderson, Policy, Analyst, Virginia Racing Commission, 10700 Horsemen's Rd., New Kent, VA 23124, telephone (804) 966-4200 or FAX (804) 966-8906.

December 17, 1997 - 9:30 a.m. -- Open Meeting
Tyler Building, 1300 East Main Street, Richmond, Virginia.

A regular monthly meeting to include a review of the regulation pertaining to criteria for unlimited license facilities.

Contact: William H. Anderson, Policy, Analyst, Virginia Racing Commission, 10700 Horsemen's Rd., New Kent, VA 23124, telephone (804) 966-4200 or FAX (804) 966-8906.

REAL ESTATE BOARD

December 10, 1997 - 2 p.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to review board policies. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least two weeks prior to the meeting. The department fully complies with the Americans with Disabilities Act.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475, or (804) 367-9753/TDD

December 10, 1997 - 2 p.m. -- Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

December 27, 1997 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Real Estate Board intends to amend regulations entitled: **18 VAC 135-20-10 et seq. Virginia Real Estate Board Licensing Regulations.** The purpose of the proposed action is to replace emergency regulations governing the duties of real estate brokers and salespersons and to incorporate statutory changes effective July 1, 1995, and July 1, 1996.

Statutory Authority: § 54.1-2105 of the Code of Virginia.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552.

December 11, 1997 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least two weeks prior to the meeting. The department fully complies with the Americans with Disabilities Act.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475, or (804) 367-9753/TDD

Education Committee

December 11, 1997 - 8 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least two weeks prior to the meeting. The department fully complies with the Americans with Disabilities Act.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475, or (804) 367-9753/TDD

Calendar of Events

Fair Housing Committee

December 11, 1997 - 8:15 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☎

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least two weeks prior to the meeting. The department fully complies with the Americans with Disabilities Act.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475, or (804) 367-9753/TDD ☎

VIRGINIA RECYCLING MARKETS DEVELOPMENT COUNCIL

December 9, 1997 - 10 a.m. -- Open Meeting
Central Virginia Waste Management Authority, 2104 West Laburnum Avenue, Board Room, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

A quarterly meeting to discuss legislation from the 1997 Session of the General Assembly which impacted the council. The council was established by the General Assembly in 1993 to develop strategies to enhance the markets for recyclables. Meetings are dependent on a quorum of 10. Subcommittee meetings may be held prior to or after the general council meeting. Call Paddy Katzen for details or e-mail pmkatzen@deq.state.va.us.

Contact: Paddy Katzen, Special Assistant to the Secretary of Natural Resources, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 698-4488.

BOARD OF REHABILITATIVE SERVICES

† **December 18, 1997 - 10 a.m.** -- Open Meeting
† **January 29, 1998 - 10 a.m.** -- Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular business meeting of the board.

Contact: John R. Vaughn, Commissioner, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23230, telephone (804) 662-7010, toll-free 1-800-552-5019/TDD and Voice or (804) 662-9040/TDD ☎

VIRGINIA RESOURCES AUTHORITY

December 9, 1997 - 9:30 a.m. -- Open Meeting
The Mutual Building, 909 East Main Street, Suite 700, Richmond, Virginia.

A meeting to approve minutes of the meeting of the prior month, to review the authority's operations for the prior month, and to consider other matters and take other actions as the authority may deem appropriate. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. Public comments will be received at the beginning of the meeting.

Contact: Shockley D. Gardner, Jr., Executive Director, Virginia Resources Authority, P.O. Box 1300, Richmond, VA 23218, telephone (804) 644-3100 or FAX (804) 644-3109.

RICHMOND HOSPITAL AUTHORITY

Board of Commissioners

December 11, 1997 - 5 p.m. -- Open Meeting
Richmond Nursing Home, 1900 Cool Lane, 2nd Floor Classroom, Richmond, Virginia. ☎

A monthly board meeting to discuss nursing home operations and related matters.

Contact: Marilyn H. West, Chairman, Richmond Hospital Authority, P.O. Box 548, 700 E. Main St., Suite 904, Richmond, VA 23219-0548, telephone (804) 782-1938.

VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

Loan Committee

December 9, 1997 - 10 a.m. -- Open Meeting
Department of Business Assistance, 901 East Byrd Street, 19th Floor, Main Board Room, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

A meeting to review applications for loans submitted to the authority for approval. Contact the authority for confirmation of meeting time.

Contact: Cathleen M. Surface, Executive Director, Virginia Small Business Financing Authority, 901 E. Byrd St., 19th Floor, Richmond, VA 23219, telephone (804) 371-8254, FAX (804) 225-3384, or (804) 371-0327/TDD ☎

STATE BOARD OF SOCIAL SERVICES

December 8, 1997 - 9 a.m. -- Open Meeting
Department of Social Services, Central Region Office, Wythe Building, 1604 Santa Rosa Road, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

A work session and business meeting.

Contact: Pat Rengnerth, Administrative Staff Specialist, Department of Social Services, 730 E. Broad St., Richmond,

VA 23219, telephone (804) 692-1826, FAX (804) 692-1949, toll-free 1-800-552-3431, or toll-free 1-800-552-7096/TDD ☎

BOARD FOR PROFESSIONAL SOIL SCIENTISTS

† **December 17, 1997 - 10 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ♿

A regularly scheduled meeting of the board to address policy and procedural issues and other business matters which may require board action. The meeting is open to the public; however, a portion of the meeting may be discussed in executive session. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department in advance so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: Geralde W. Morgan, Senior Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-2785 or (804) 367-9753/TDD ☎

VIRGINIA SOIL AND WATER CONSERVATION BOARD

December 9, 1997 - 3 p.m. -- Open Meeting
Fort Magruder Inn, 6945 Route 60 East, Williamsburg, Virginia.

A joint meeting with the Virginia Association of Soil and Water Conservation Districts and regular bimonthly business meeting.

Contact: Linda J. Cox, Administrative Staff Assistant, Virginia Soil and Water Conservation Board, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-2123, FAX (804) 786-6141, or (804) 786-2121/TDD ☎

COMMONWEALTH TRANSPORTATION BOARD

† **December 17, 1997 - 2 p.m.** -- Open Meeting
Department of Transportation, 1401 East Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A work session of the board and the Department of Transportation staff.

Contact: Robert E. Martinez, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-8032.

† **December 18, 1997 - 10 a.m.** -- Open Meeting
Department of Transportation, 1401 East Broad Street, 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. Separate committee meetings may be held on call of the chairman. Contact Department of Transportation Public Affairs at (804) 786-2715 for schedule.

Contact: Robert E. Martinez, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-8032.

VIRGINIA VETERANS CARE CENTER

Board of Trustees

† **December 12, 1997 - 1:30 p.m.** -- Open Meeting
Virginia Veterans Care Center, 4550 Shenandoah Avenue, Roanoke, Virginia. ♿

The second quarterly meeting of the board to review operations.

Contact: Duane A. Kavka, Executive Director, Virginia Veterans Care Center, P.O. Box 6334, Roanoke, VA 24017-0334, telephone (540) 857-6974, FAX (540) 857-6954, toll-free 1-800-220-8387, or (540) 342-8810/TDD ☎

BOARD FOR THE VISUALLY HANDICAPPED

January 20, 1998 - 1 p.m. -- Open Meeting
Department for the Visually Handicapped, Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The board is responsible for advising the Governor, the Secretary of Health and Human Resources, the Commissioner, and the General Assembly on the delivery of public services to the blind and the protection of their rights. The board also reviews and comments on policies, budgets and requests for appropriations for the department. At this regular quarterly meeting, the board members will receive information regarding department activities and operations, review expenditures from the board's institutional fund, and discuss other issues raised by board members.

Contact: Katherine C. Proffitt, Executive Secretary Senior, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140, toll-free 1-800-622-2155, or (804) 371-3140/TDD ☎

Calendar of Events

STATE WATER CONTROL BOARD

December 16, 1997 - 9:30 a.m. – Open Meeting
The Library of Virginia, 800 East Broad Street, Lecture Hall,
Richmond, Virginia.

A regular meeting.

Contact: Cindy M. Berndt, Department of Environmental
Quality, P.O. Box 10009, Richmond, VA 23240, telephone
(804) 698-4378.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

January 8, 1998 - 8:30 a.m. – Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Richmond, Virginia.

A meeting to discuss regulatory review and other matters
requiring board action, including disciplinary cases. All
meetings are subject to cancellation. Time of the
meeting is subject to change. Call the board office within
24 hours of the meeting to confirm meeting date and
time. A public comment period will be held at the
beginning of the meeting. Persons desiring to participate
in the meeting and requiring special accommodations or
interpreter services should contact the department so
that suitable arrangements can be made. The board fully
complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director,
Department of Professional and Occupational Regulation,
3600 W. Broad St., Richmond, VA 23230-4917, telephone
(804) 367-8590 or (804) 367-9753/TDD ☎

LEGISLATIVE

JOINT SUBCOMMITTEE STUDYING THE STATUS AND NEEDS OF AFRICAN-AMERICAN MALES IN VIRGINIA - HJR 570 (1997)

Criminal/Judicial System Task Force

† **December 17, 1997 - 10 a.m.** – Open Meeting
General Assembly Building, 910 Capitol Square, 4th Floor
West Conference Room, Richmond, Virginia. ☎ (Interpreter
for the deaf provided upon request)

A regular meeting. Please submit all questions to
Brenda Edwards or Micah Yarbrough, Division of
Legislative Services, (804) 786-3591. Individuals
requiring interpreter services or other special assistance
should contact Committee Operations at least 10 days
prior to the meeting.

Contact: Dawn B. Smith, Committee Operations, House of
Delegates, State Capitol, P.O. Box 406, Richmond, VA
23218, telephone (804) 698-1540 or (804) 786-2369/TDD ☎

Education Task Force

December 18, 1997 - 10 a.m. – Open Meeting
General Assembly Building, 910 Capitol Square, 6th Floor
Conference Room, Richmond, Virginia. ☎ (Interpreter for the
deaf provided upon request)

The task force will have a roundtable discussion on the
"African-American Perspective on Education." Please
submit all questions to Brenda Edwards or Micah
Yarbrough, Division of Legislative Services, (804) 786-
3591. Individuals requiring interpreter services or other
special assistance should contact Committee Operations
at least 10 days prior to the meeting.

Contact: Dawn B. Smith, Committee Operations, House of
Delegates, State Capitol, P.O. Box 406, Richmond, VA
23218, telephone (804) 698-1540 or (804) 786-2369/TDD ☎

JOINT SUBCOMMITTEE STUDYING AGRICULTURAL AND FORESTAL DISTRICTS HJR 468

December 10, 1997 - 1 p.m. – Open Meeting
General Assembly Building, 910 Capitol Square, House
Room C, Richmond, Virginia. ☎ (Interpreter for the deaf
provided upon request)

A regular meeting. Members of the public who wish to
see copies of the bill drafts to be considered by the
committee may call Nicole Beyer at (804) 786-3591 on or
after November 25, 1997. Please direct any questions to
Nicole Beyer, Division of Legislative Services, 910
Capitol Square, 2nd Floor, Richmond, VA 23219.
Individuals requiring interpreter services should contact
Barbara Regen at least 10 working days prior to the
meeting. Persons making audio-visual presentations
should call for specifications.

Contact: Barbara L. Regen, Committee Operations, House
of Delegates, State Capitol, P.O. Box 406, Richmond, VA
23218, telephone (804) 698-1540 or (804) 786-2369/TDD ☎

COMMISSION ON EARLY CHILDHOOD AND DAY CARE PROGRAMS

December 15, 1997 - 6:30 p.m. – Public Hearing
General Assembly Building, 910 Capitol Square, Senate
Room B, Richmond, Virginia. ☎ (Interpreter for the deaf
provided upon request)

A public hearing on JLARC's recommended legislative
changes. Individuals requiring interpreter services or
other accommodations should contact Brian Taylor.

Contact: Brian B. Taylor, Senate Committee Operations,
P.O. Box 396, Richmond, VA 23218, telephone (804) 698-
7450 or (804) 698-7419/TDD ☎

VIRGINIA CODE COMMISSION

December 16, 1997 - 10 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, 6th Floor, Richmond, Virginia. ♿

A meeting to review Titles 14.1 (Costs, Fees, Salaries and Allowances) and 17 (Courts of Record) of the Code of Virginia for recodification.

Contact: Jane D. Chaffin, Deputy Registrar, General Assembly Bldg., 2nd Floor, 910 Capitol Square, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 692-0625 or e-mail jchaffin@leg.state.va.us.

HOUSE COMMITTEE FOR COURTS OF JUSTICE

† **December 11, 1997 - 1:30 p.m.** -- Open Meeting
† **December 12, 1997 - 9 a.m.** -- Open Meeting
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia. ♿

A meeting to conduct judicial interviews. Questions about the scheduling of interviews should be addressed to Mary K. Geisen, Division of Legislative Services, (804) 786-3591.

Contact: Anne R. Howard, Courts of Justice Clerk, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1541.

SENATE COMMITTEE FOR COURTS OF JUSTICE

December 11, 1997 - 2 p.m. -- Open Meeting
December 12, 1997 - 9:30 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia. ♿

A meeting to conduct judicial interviews.

Contact: Susan Clarke Schaar, Clerk of the Senate, P.O. Box 396, Richmond, VA 23218, telephone (804) 698-7450.

JOINT SUBCOMMITTEE STUDYING POTENTIAL CHANGES IN RESTRUCTURING THE ELECTRICAL UTILITIES INDUSTRY IN THE COMMONWEALTH - SJR 259 (1997)

† **December 17, 1997 - 10 a.m.** -- Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room B, Richmond, Virginia. ♿

A regular meeting. Individuals requiring interpreter services or other accommodations should contact Tommy Gilman by December 8.

Contact: Thomas C. Gilman, Coordinator, Committee Operations, Senate of Virginia, P.O. Box 396, Richmond, VA 23218, telephone (804) 698-7450 or (804) 698-7419/TDD ♿

VIRGINIA HOUSING STUDY COMMISSION

† **December 15, 1997 - 1 p.m.** -- Public Hearing
General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia. ♿

A meeting to discuss HB 554 (indoor plumbing assistance), HB 1634 (interest on residential rental security deposits), HB 2453 (condemnation by public housing authorities), HB 2543 (amending condominium/property owners' associations declarations); reconciliation of Property Owners' Association Act and Subdivided Land Sales Act; affordable assisted living options for the elderly; education, licensing, and regulatory issues relating to the multifamily rental industry; and Virginia Housing Partnership Fund allocation trends and patterns.

Contact: Nancy D. Blanchard, Virginia Housing Study Commission, 601 South Belvidere St., Richmond, VA 23220, telephone (804) 782-1986, ext. 5565.

SPECIAL AGRICULTURE SUBCOMMITTEE STUDYING THE IMPACT OF INDUSTRIAL SWINE PRODUCTION IN VIRGINIA - HJR 573

† **December 8, 1997 - 10 a.m.** -- Open Meeting
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia. ♿

A regular subcommittee meeting. Any questions concerning the agenda should be addressed to Nicole Beyer, Staff Attorney, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other special assistance should contact Committee Operations at least 10 days prior to the meeting.

Contact: Kathleen Myers, Committee Operations, House of Delegates, State Capitol, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TDD ♿

JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION

December 8, 1997 - 9:30 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia. ♿

Staff briefings on highway location siting.

Contact: Phillip A. Leone, Director, Joint Legislative Audit and Review Commission, General Assembly Building, 910 Capitol St., Suite 1100, Richmond, VA 23219, telephone (804) 786-1258.

† **December 18, 1997 - 9:30 a.m.** -- Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia. ♿

Staff briefings on the Department of Conservation and Natural Resources.

Calendar of Events

Contact: Phillip A. Leone, Director, Joint Legislative Audit and Review Commission, General Assembly Building, 910 Capitol St., Suite 1100, Richmond, VA 23219, telephone (804) 786-1258.

VIRGINIA COMMISSION ON THE FUTURE OF PUBLIC EDUCATION - HJR 196

December 11, 1997 - 10 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia. ☎

A regular meeting.

Contact: Helen G. Rolfe, Ph.D., Project Manager, Commission on the Future of Public Education, 919 W. Franklin St., P.O. Box 843061, Richmond, VA 23284-3061, telephone (804) 828-6252 or FAX (804) 786-3216.

JOINT SUBCOMMITTEE STUDYING THE FUTURE DELIVERY OF PUBLICLY FUNDED MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES - HJR 240

† **December 8, 1997 - 7 p.m.** -- Public Hearing
Marshall High School Auditorium, 7731 Leesburg Pike, Falls Church, Virginia.

† **December 9, 1997 - 2 p.m.** -- Public Hearing
Virginia Highlands Community College Auditorium, Abingdon, Virginia.

† **December 10, 1997 - 10:30 a.m.** -- Public Hearing
Chesapeake City Council Chambers, City Hall, 306 Cedar Road, First Floor, Chesapeake, Virginia.

† **December 16, 1997 - 4 p.m.** -- Public Hearing
General Assembly Building, 910 Capitol Square, Senate Room B, Richmond, Virginia.

For additional information contact Gayle Vergara, (804) 786-3591. Persons interested in speaking at one of the hearings should contact House Committee Operations, (804) 698-1540. Speakers are requested to provide a copy of comments and, because of time restraints, confine comments to five minutes. Individuals requiring interpreter services or other assistance should call Committee Operations prior to the hearings.

Contact: Anne R. Howard, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TDD ☎

† **December 17, 1997 - 10 a.m.** -- Open Meeting
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

The final meeting of the subcommittee.

Contact: Anne R. Howard, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TDD ☎

COMMISSION ON STATE AND LOCAL GOVERNMENT RESPONSIBILITY AND TAXING AUTHORITY - HJR 532 (1997)

December 16, 1997 - 2 p.m. -- Public Hearing
† **December 16, 1997 - 6:30 p.m.** -- Public Hearing
General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A public hearing on all state and local tax issues. All interested parties are encouraged to attend and present their views on these topics. Persons wishing to speak before the subcommittee are requested to contact Committee Operations. Speakers will be allowed three minutes each to present their remarks and are requested to provide at least one written copy for the record. Persons wishing to mail comments to the commission may write to the Commission on State and Local Government Responsibility and Taxing Authority, c/o Brandon Merchant, at the address below. Questions concerning the meeting agenda should be addressed to Joan Putney, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or special assistance should contact Brandon Merchant at least 10 working days prior to the meeting.

Contact: Brandon Merchant, Committee Operations, House of Delegates, State Capitol, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TDD ☎

CONFERENCE STEERING COMMITTEE

† **December 8, 1997 - 10 a.m.** -- Open Meeting
General Assembly Building, 910 Capitol Square, 6th Floor Conference Room, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular meeting to discuss conference findings and determine final recommendations on the Commission on the Impact of Certain Federal Court Decisions on the Commonwealth's Institutions of Higher Education (HJR 525), the Dr. Martin Luther King, Jr. Memorial Commission, and the African/American Males Subcommittee (HJR 570). Questions regarding the agenda should be addressed to Brenda Edwards, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other accommodations should contact Dawn Smith at least 10 working days prior to the meeting.

Contact: Dawn B. Smith, Committee Operations, House of Delegates, State Capitol, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TDD ☎

**JOINT COMMISSION ON TECHNOLOGY AND
SCIENCE**

CHRONOLOGICAL LIST

Civil and Criminal Laws Committee

December 15, 1997 - 10 a.m. – Open Meeting
General Assembly Building, 910 Capitol Square, House
Room C, Richmond, Virginia.☎ (Interpreter for the deaf
provided upon request)

A meeting of Advisory Committee #5 to discuss civil and
criminal laws involving technology. The public is invited
to attend. The final agenda for this meeting can be
obtained via the commission's website at
<http://legis.state.va.us/agencies.htm>.

Contact: Diane E. Horvath, Director, Joint Commission on
Technology and Science, 910 Capitol St., 2nd Floor,
Richmond, VA 23219, telephone (804) 786-3591 or FAX
(804) 371-0169.

**COMMISSION ON THE FUTURE OF
TRANSPORTATION IN VIRGINIA - HJR 160**

December 10, 1997 - 10 a.m. – Open Meeting
General Assembly Building, 910 Capitol Square, House
Room D, Richmond, Virginia.☎ (Interpreter for the deaf
provided upon request)

A regular meeting. Individuals requiring interpreter
services or special assistance should contact Chad
Hudson at least 10 working days prior to the meeting.

Contact: Chad Hudson, Committee Operations, House of
Delegates, State Capitol, P.O. Box 406, Richmond, VA
23218, telephone (804) 698-1540 or (804) 786-2369.

**JOINT SUBCOMMITTEE STUDYING ALTERNATIVES
FOR WELFARE RECIPIENTS WHO REACH THE
LIFETIME LIMIT ON BENEFITS**

December 11, 1997 - 1 p.m. – Open Meeting
General Assembly Building, 910 Capitol Square, Senate
Room B, Richmond, Virginia.☎ (Interpreter for the deaf
provided upon request)

A regular meeting. Please call Amy Marschean or
Gayle Vergara, Division of Legislative Services at (804)
786-3591 for questions concerning the agenda.
Individuals requiring interpreter services or other
accommodations should contact Thomas C. Gilman by
December 3, 1997.

Contact: Thomas C. Gilman, Senate Committee Operations,
P.O. Box 396, Richmond, VA 23218, telephone (804) 698-
7450 or (804) 698-7419/TDD ☎

OPEN MEETINGS

December 8

Agriculture and Consumer Services, Department of
- Virginia Soybean Board
Alcoholic Beverage Control Board, Virginia
Asbestos and Lead, Virginia Board for
† Industrial Swine Production in Virginia, Special
Agriculture Subcommittee Studying the Impact of
Legislative Audit and Review Commission, Joint
Nursing, Board of
- Special Conference Committee
Professional Counselors, Marriage and Family
Therapists and Substance Abuse Treatment
Professionals, Board of Licensed
- Regulatory Committee
Social Services, State Board of
† Steering Committee, Conference

December 9

Branch Pilots, Board for
Medicine, Board of
- Informal Conference Committee
Pharmacy, Board of
Recycling Markets Development Council, Virginia
Resources Authority, Virginia
Small Business Financing Authority, Virginia
- Loan Committee
Soil and Water Conservation Board, Virginia

December 10

Agricultural and Forestal Districts, Joint Subcommittee
Studying
† Competition Council, Commonwealth
Contractors, Board for
- Recovery Fund Committee
† Emergency Planning Committee, Local - City of
Alexandria
Interagency Coordinating Council, Virginia
† Manufactured Housing Board, Virginia
† Outdoors Foundation, Virginia
- Board of Trustees
Real Estate Board
Transportation in Virginia, Commission on the Future of

December 11

Agriculture and Consumer Services, Board of
Architects, Professional Engineers, Land Surveyors and
Landscape Architects, Board for
- Board for Interior Design
Auctioneers Board
Audiology and Speech-Language Pathology, Board of
- Legislative and Regulatory Committee
Child Day-Care Council
Conservation and Recreation, Board of
† Courts of Justice, House Committee for
Courts of Justice, Senate Committee for

Calendar of Events

Labor and Industry, Department of
- Virginia Apprenticeship Council
Medicine, Board of
- Informal Conference Committee
† Mental Health, Mental Retardation and Substance Abuse Services, State Board of
Public Education, Virginia Commission on the Future of Real Estate Board
- Education Committee
- Fair Housing Committee
Richmond Hospital Authority
- Board of Commissioners
Welfare Recipients Who Reach the Lifetime Limit on Benefits, Joint Subcommittee Studying Alternatives for

December 12

† Courts of Justice, House Committee for
Courts of Justice, Senate Committee for
† Dentistry, Board of
- Legislative/Regulatory Committee
Higher Education for Virginia, State Council of
† Mental Health, Mental Retardation and Substance Abuse Services, State Board of
† Veterans Care Center, Virginia
- Board of Trustees

December 15

Accountancy, Board for
Agriculture and Consumer Services, Department of
- Virginia Irish Potato Board
Chesapeake Bay Local Assistance Board
† Medical Assistance Services, Department of
- Pharmacy Liaison Committee
† Pharmacy, Board of
Technology and Science, Joint Commission on
- Civil and Criminal Laws Committee

December 16

Code Commission, Virginia
† Contractors, Board for
- Tradesman Certification Committee
Economic Development Partnership, Virginia
- Virginia Tourism Corporation
† Housing Development Authority, Virginia
† Marine Resources Commission
Medical Assistance Services, Board of
Polygraph Examiners Advisory Board
Water Control Board, State

December 17

† African-American Males in Virginia, Joint Subcommittee Studying the Status and Needs of
- Criminal/Judicial System Task Force
Agriculture and Consumer Services, Department of
- Virginia Corn Board
Asbestos and Lead, Virginia Board for
Aviation Board, Virginia
† Electrical Utilities Industry in the Commonwealth, Joint Subcommittee Studying Potential Changes in Restructuring the
† Longwood College

- Board of Visitors
† Mental Health, Mental Retardation and Substance Abuse Services, Joint Subcommittee Studying the Future Delivery of Publicly Funded
Racing Commission, Virginia
† Soil Scientists, Board for Professional
† Transportation Board, Commonwealth

December 18

African-American Males in Virginia, Joint Subcommittee Studying the Status and Needs of
- Education Task Force
Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
† Child Fatality Review Team, State Compensation Board
† Correctional Education, Board of
Dentistry, Board of
- Advertising Committee
† Legislative Audit and Review Commission, Joint
† Rehabilitative Services, Board of
† Transportation Board, Commonwealth

December 19

† Environmental Quality, Department of
Family and Children's Trust Fund Board
Higher Education for Virginia, State Council of
- Executive Committee

December 22

Alcoholic Beverage Control Board, Virginia

January 6, 1998

Hopewell Industrial Safety Council

January 7

Agriculture and Consumer, Department of
- Virginia Small Grains Board
† Litter Control and Recycling Fund Advisory Board

January 8

Agriculture and Consumer, Department of
- Virginia Small Grains Board
† Environmental Quality, Department of
Funeral Directors and Embalmers, Board of
Game and Inland Fisheries, Board of
Medicine, Board of
- Informal Conference Committee
Waterworks and Wastewater Works Operators, Board for

January 9

Game and Inland Fisheries, Board of

January 15

† Agriculture and Consumer Services, Department of
- Pesticide Control Board
† Audiology and Speech-Language Pathology, Board of

January 16

† Family and Children's Trust Fund Board

January 20

† Accountancy, Board for

Visually Handicapped, Board for the

January 21

† Accountancy, Board for
† Audiology and Speech-Language Pathology, Board of

January 27

Hearing Aid Specialists, Board for
Psychology, Board of

January 29

† Rehabilitative Services, Board of

February 3

Hopewell Industrial Safety Council

February 6

Agriculture and Consumer Services, Department of
- Virginia Plant Pollination Advisory Board

February 20

† Family and Children's Trust Fund Board

March 3

Hopewell Industrial Safety Council

PUBLIC HEARINGS

December 8

† Mental Health, Mental Retardation and Substance
Abuse Services, Joint Subcommittee Studying the Future
Delivery of Publicly Funded

December 9

† Mental Health, Mental Retardation and Substance
Abuse Services, Joint Subcommittee Studying the Future
Delivery of Publicly Funded

December 10

† Mental Health, Mental Retardation and Substance
Abuse Services, Joint Subcommittee Studying the Future
Delivery of Publicly Funded
Real Estate Board

December 11

Agriculture and Consumer Services, Board of

December 12

† Medicine, Board of

December 15

Early Childhood and Day Care Programs, Legislative
Commission on
† Housing Study Commission, Virginia

December 16

Local Government Responsibility and Taxing Authority,
Commission on State and
† Mental Health, Mental Retardation and Substance
Abuse Services, Joint Subcommittee Studying the Future
Delivery of Publicly Funded

January 14, 1998

† Air Pollution Control Board

