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CUMULATIVE TABLE OF VIRGINIA ADMINISTRATIVE CODE SECTIONS ADOPTED, AMENDED, OR REPEALED

The table printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Fall 2000 VAC Supplement includes final regulations published through *Virginia Register* Volume 16, Issue 24, dated August 14, 2000). Emergency regulations, if any, are listed, followed by the designation "emer," and errata pertaining to final regulations are listed. Proposed regulations are not listed here. The table lists the sections in numerical order and shows action taken, the volume, issue and page number where the section appeared, and the effective date of the section.

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
Title 2. Agriculture			
2 VAC 5-330-30	Amended	17:8 VA.R. 1192	2/5/01
2 VAC 5-430-10 et seq.	Repealed	17:8 VA.R. 1192	1/31/01
Title 4. Conservation and Natural Resources			
4 VAC 15-20-50	Amended	17:6 VA.R. 919	1/1/01
4 VAC 15-20-130	Amended	17:6 VA.R. 920	1/1/01
4 VAC 15-30-40	Amended	17:6 VA.R. 921	1/1/01
4 VAC 15-250-30	Amended	17:6 VA.R. 923	1/1/01
4 VAC 15-320-30	Amended	17:6 VA.R. 924	1/1/01
4 VAC 15-320-100	Amended	17:6 VA.R. 925	1/1/01
4 VAC 15-320-120	Amended	17:6 VA.R. 925	1/1/01
4 VAC 15-320-170	Added	17:6 VA.R. 925	1/1/01
4 VAC 15-330-30	Amended	17:6 VA.R. 926	1/1/01
4 VAC 15-330-50	Amended	17:6 VA.R. 926	1/1/01
4 VAC 15-330-60	Amended	17:6 VA.R. 926	1/1/01
4 VAC 15-330-100	Amended	17:6 VA.R. 926	1/1/01
4 VAC 15-330-120	Amended	17:6 VA.R. 926	1/1/01
4 VAC 15-330-160	Amended	17:6 VA.R. 927	1/1/01
4 VAC 15-330-190	Amended	17:6 VA.R. 927	1/1/01
4 VAC 15-360-10	Amended	17:6 VA.R. 928	1/1/01
4 VAC 15-360-60	Amended	17:6 VA.R. 928	1/1/01
4 VAC 20-110-10	Amended	17:5 VA.R. 698	10/30/00
4 VAC 20-110-15	Added	17:5 VA.R. 698	10/30/00
4 VAC 20-110-20 through 4 VAC 20-110-50	Amended	17:5 VA.R. 698	10/30/00
4 VAC 20-110-55	Added	17:5 VA.R. 699	10/30/00
4 VAC 20-110-60	Amended	17:5 VA.R. 699	10/30/00
4 VAC 20-110-65	Added	17:5 VA.R. 699	10/30/00
4 VAC 20-252-30	Amended	17:5 VA.R. 699	10/30/00
4 VAC 20-337-10 through 4 VAC 20-337-30	Added	17:5 VA.R. 700-702	11/1/00
4 VAC 20-490-20	Amended	17:3 VA.R. 386	10/15/00
4 VAC 20-490-40	Amended	17:3 VA.R. 387	10/15/00
4 VAC 20-490-60	Amended	17:3 VA.R. 387	10/15/00
4 VAC 20-540-30	Amended	17:5 VA.R. 702	1/1/01
4 VAC 20-540-40	Amended	17:5 VA.R. 702	1/1/01
4 VAC 20-560-40	Amended	17:7 VA.R. 1035	12/1/00
4 VAC 20-560-50	Amended	17:7 VA.R. 1035	12/1/00
4 VAC 20-620-40	Amended	17:5 VA.R. 703	10/30/00
4 VAC 20-720-20	Amended	17:3 VA.R. 387	10/1/00
4 VAC 20-720-40	Amended	17:3 VA.R. 388	10/1/00
4 VAC 20-720-50	Amended	17:3 VA.R. 388	10/1/00
4 VAC 20-720-60	Amended	17:3 VA.R. 389	10/1/00
4 VAC 20-720-70	Amended	17:3 VA.R. 389	10/1/00
4 VAC 20-720-80	Amended	17:3 VA.R. 390	10/1/00
4 VAC 20-754-30	Amended	17:3 VA.R. 393	10/1/00
4 VAC 20-755-10	Amended	17:5 VA.R. 704	10/30/00

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-755-20	Amended	17:5 VA.R. 704	10/30/00
4 VAC 20-755-30	Amended	17:5 VA.R. 704	10/30/00
4 VAC 20-890-20	Amended	16:25 VA.R. 3227	10/1/00
4 VAC 20-890-25	Amended	17:1 VA.R. 62	9/21/00
4 VAC 20-890-30	Amended	17:1 VA.R. 62	9/21/00
4 VAC 20-890-40	Amended	16:25 VA.R. 3227	10/1/00
4 VAC 20-900-10 emer	Amended	16:25 VA.R. 3330	7/28/00-8/24/00
4 VAC 20-900-25	Amended	17:1 VA.R. 63	9/1/00
4 VAC 20-900-25 emer	Amended	16:25 VA.R. 3330	7/28/00-8/24/00
4 VAC 20-900-25 emer	Amended	17:5 VA.R. 832	10/20/00-11/19/00
4 VAC 20-900-25	Amended	17:7 VA.R. 1036	11/17/00
4 VAC 20-910-45	Amended	17:3 VA.R. 393	11/1/00
4 VAC 20-950-10	Amended	17:3 VA.R. 394	10/1/00
4 VAC 20-950-45	Amended	17:3 VA.R. 394	10/1/00
4 VAC 20-995-20	Amended	17:5 VA.R. 705	10/30/00
4 VAC 20-995-30	Amended	17:5 VA.R. 706	10/30/00
4 VAC 25-30 (Forms)	Amended	17:4 VA.R. 613	--
4 VAC 25-30 (Forms)	Amended	17:8 VA.R. 1201	--
4 VAC 25-40 (Forms)	Amended	17:4 VA.R. 613	--
4 VAC 25-40 (Forms)	Amended	17:8 VA.R. 1201	--
4 VAC 25-90 (Forms)	Amended	17:4 VA.R. 613	--
4 VAC 25-100 (Forms)	Amended	17:4 VA.R. 613	--
4 VAC 25-130 (Forms)	Amended	17:4 VA.R. 614	--
4 VAC 25-130 (Forms)	Amended	17:8 VA.R. 1201	--
4 VAC 25-170 (Forms)	Amended	17:8 VA.R. 1203	--
Title 6. Criminal Justice and Corrections			
6 VAC 20-190-10 through 6 VAC 20-190-200	Amended	17:3 VA.R. 395-398	11/23/00
6 VAC 20-190 (Forms)	Added	17:8 VA.R. 1204	--
Title 8. Education			
8 VAC 20-21-10	Amended	17:8 VA.R. 1193	1/31/01
8 VAC 20-21-50	Amended	17:8 VA.R. 1194	1/31/01
8 VAC 20-21-80	Amended	17:8 VA.R. 1195	1/31/01
8 VAC 20-21-260	Amended	17:8 VA.R. 1196	1/31/01
8 VAC 20-80-10	Amended	17:5 VA.R. 707	1/1/01
8 VAC 20-80-10	Erratum	17:8 VA.R. 1217	--
8 VAC 20-80-20	Repealed	17:5 VA.R. 717	1/1/01
8 VAC 20-80-30	Amended	17:5 VA.R. 717	1/1/01
8 VAC 20-80-30	Erratum	17:8 VA.R. 1217	--
8 VAC 20-80-40	Amended	17:5 VA.R. 721	1/1/01
8 VAC 20-80-40	Erratum	17:8 VA.R. 1217	--
8 VAC 20-80-45	Added	17:5 VA.R. 722	1/1/01
8 VAC 20-80-45	Erratum	17:8 VA.R. 1217	--
8 VAC 20-80-50	Amended	17:5 VA.R. 725	1/1/01
8 VAC 20-80-52	Added	17:5 VA.R. 727	1/1/01
8 VAC 20-80-54	Added	17:5 VA.R. 728	1/1/01
8 VAC 20-80-54	Erratum	17:8 VA.R. 1217	--
8 VAC 20-80-56	Added	17:5 VA.R. 731	1/1/01
8 VAC 20-80-56	Erratum	17:8 VA.R. 1217	--
8 VAC 20-80-58	Added	17:5 VA.R. 735	1/1/01
8 VAC 20-80-60	Amended	17:5 VA.R. 736	1/1/01
8 VAC 20-80-62	Added	17:5 VA.R. 738	1/1/01
8 VAC 20-80-62	Erratum	17:8 VA.R. 1217	--
8 VAC 20-80-64	Added	17:5 VA.R. 746	1/1/01
8 VAC 20-80-65	Added	17:5 VA.R. 748	1/1/01
8 VAC 20-80-66	Added	17:5 VA.R. 748	1/1/01
8 VAC 20-80-68	Added	17:5 VA.R. 752	1/1/01

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
8 VAC 20-80-70	Amended	17:5 VA.R. 756	1/1/01
8 VAC 20-80-70	Erratum	17:8 VA.R. 1217	--
8 VAC 20-80-72	Added	17:5 VA.R. 765	1/1/01
8 VAC 20-80-74	Added	17:5 VA.R. 767	1/1/01
8 VAC 20-80-76	Added	17:5 VA.R. 768	1/1/01
8 VAC 20-80-76	Erratum	17:8 VA.R. 1217	--
8 VAC 20-80-78	Added	17:5 VA.R. 776	1/1/01
8 VAC 20-80-80 through 8 VAC 20-80-150	Amended	17:5 VA.R. 778-786	1/1/01
8 VAC 20-80-80	Erratum	17:8 VA.R. 1217	--
8 VAC 20-80-152	Added	17:5 VA.R. 786	1/1/01
8 VAC 20-80-152	Erratum	17:8 VA.R. 1217	--
8 VAC 20-80-155	Added	17:5 VA.R. 787	1/1/01
8 VAC 20-80-160	Amended	17:5 VA.R. 787	1/1/01
8 VAC 20-80-160	Erratum	17:8 VA.R. 1217	--
8 VAC 20-80-170	Repealed	17:5 VA.R. 788	1/1/01
8 VAC 20-80-180	Repealed	17:5 VA.R. 789	1/1/01
8 VAC 20-80-190	Amended	17:5 VA.R. 790	1/1/01
8 VAC 20-80-200	Repealed	17:5 VA.R. 790	1/1/01
8 VAC 20-80 Appendix A	Erratum	17:8 VA.R. 1217	--
8 VAC 20-131-10 through 8 VAC 20-131-150	Amended	16:25 VA.R. 3228-3237	9/28/00
8 VAC 20-131-170	Amended	16:25 VA.R. 3237	9/28/00
8 VAC 20-131-180	Amended	16:25 VA.R. 3237	9/28/00
8 VAC 20-131-210	Amended	16:25 VA.R. 3238	9/28/00
8 VAC 20-131-220	Amended	16:25 VA.R. 3239	9/28/00
8 VAC 20-131-240	Amended	16:25 VA.R. 3239	9/28/00
8 VAC 20-131-250	Repealed	16:25 VA.R. 3240	9/28/00
8 VAC 20-131-260 through 8 VAC 20-131-320	Amended	16:25 VA.R. 3240-3249	9/28/00
8 VAC 20-131-325	Added	16:25 VA.R. 3249	9/28/00
8 VAC 20-131-340	Amended	16:25 VA.R. 3250	9/28/00
8 VAC 20-570-10 et seq.	Repealed	17:5 VA.R. 706	1/1/01
8 VAC 20-640-10	Added	17:8 VA.R. 1198	1/31/01
Title 9. Environment			
9 VAC 5-60-120 through 9 VAC 5-60-180	Added	17:4 VA.R. 585	1/1/01
9 VAC 5-60-150	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-50 through 9 VAC 5-80-120	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-180 through 9 VAC 5-80-300	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-305	Repealed	17:4 VA.R. 585	1/1/01
9 VAC 5-80-310 through 9 VAC 5-80-350	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-355	Repealed	17:4 VA.R. 585	1/1/01
9 VAC 5-80-360 through 9 VAC 5-80-380	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-400 through 9 VAC 5-80-460	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-480	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-490	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-510	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-540 through 9 VAC 5-80-570	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-610	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-620	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-650	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-660	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-680	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-700	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-705	Repealed	17:4 VA.R. 585	1/1/01
9 VAC 5-80-720	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-90-10 et seq.	Repealed	17:1 VA.R. 63	10/25/00
9 VAC 5-100-10 et seq.	Repealed	17:1 VA.R. 63	10/25/00
9 VAC 5-121-10 et seq.	Repealed	17:4 VA.R. 585	1/1/01

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 20-60-18	Amended	17:2 VA.R. 220	11/8/00
9 VAC 25-31-10	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-30	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-40	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-100	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-120	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-121 (renumbered from 9 VAC 25-31-125)	Added	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-170	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-190	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-200	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-230	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-280	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-340	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-390	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-500	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-570	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-580	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-590	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-620	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-660	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-670	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-710	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-720	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-750	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-770	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-780	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-800	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-810	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-840	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-210-10	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-210-50	Amended	16:25 VA.R. 3254	9/27/00
9 VAC 25-210-110	Amended	16:25 VA.R. 3254	9/27/00
9 VAC 25-210-110	Erratum	17:3 VA.R. 433	--
9 VAC 25-400-10	Amended	16:25 VA.R. 3255	9/27/00
9 VAC 25-630-10 through 9 VAC 25-630-60	Amended	17:3 VA.R. 399-409	12/1/00
9 VAC 25-630-30	Erratum	17:7 VA.R. 1112	--
9 VAC 25-630-50	Erratum	17:7 VA.R. 1112	--
9 VAC 25-630 (Forms)	Amended	17:8 VA.R. 1207	--
Title 11. Gaming			
11 VAC 10-100-30	Amended	16:25 VA.R. 3261	8/8/00
11 VAC 10-100-110	Amended	16:25 VA.R. 3261	8/8/00
11 VAC 10-100-170	Amended	16:25 VA.R. 3262	8/8/00
11 VAC 10-100-210	Amended	16:25 VA.R. 3262	8/8/00
11 VAC 10-110-30	Amended	16:25 VA.R. 3262	8/8/00
11 VAC 10-110-90	Amended	16:25 VA.R. 3262	8/8/00
11 VAC 10-110-230	Added	16:25 VA.R. 3263	8/8/00
11 VAC 10-120-50	Amended	16:26 VA.R. 3507	8/14/00
11 VAC 10-120-80	Amended	16:26 VA.R. 3508	8/14/00
11 VAC 10-120-90	Amended	16:26 VA.R. 3508	8/14/00
11 VAC 10-130-10	Amended	17:4 VA.R. 586	10/16/00
11 VAC 10-130-20	Amended	17:4 VA.R. 587	10/16/00
11 VAC 10-130-40	Amended	17:4 VA.R. 588	10/16/00
11 VAC 10-130-60	Amended	17:4 VA.R. 588	10/16/00
11 VAC 10-130-70	Amended	17:4 VA.R. 589	10/16/00
11 VAC 10-130-76	Amended	17:4 VA.R. 589	10/16/00
11 VAC 10-130-77	Amended	17:4 VA.R. 589	10/16/00

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
11 VAC 10-130-80	Amended	17:4 VA.R. 590	10/16/00
11 VAC 10-150-10	Amended	16:26 VA.R. 3510	8/14/00
11 VAC 10-150-20	Amended	16:26 VA.R. 3510	8/14/00
11 VAC 10-150-30	Amended	16:26 VA.R. 3510	8/14/00
11 VAC 10-150-40	Amended	16:26 VA.R. 3510	8/14/00
11 VAC 10-150-80	Amended	16:26 VA.R. 3510	8/14/00
11 VAC 10-150-90	Amended	16:26 VA.R. 3511	8/14/00
11 VAC 10-150-120	Amended	16:26 VA.R. 3511	8/14/00
11 VAC 10-150-130	Amended	16:26 VA.R. 3511	8/14/00
11 VAC 10-150-170	Amended	16:26 VA.R. 3511	8/14/00
Title 12. Health			
12 VAC 5-371-150	Amended	17:1 VA.R. 64	10/27/00
12 VAC 5-371-260	Amended	17:1 VA.R. 64	10/27/00
12 VAC 5-410-220	Amended	17:1 VA.R. 65	10/27/00
12 VAC 30-10-150	Amended	17:5 VA.R. 791	1/1/01
12 VAC 30-40-345	Amended	17:3 VA.R. 410	11/22/00
12 VAC 30-50-30	Amended	17:5 VA.R. 792	1/1/01
12 VAC 30-50-70	Amended	17:5 VA.R. 792	1/1/01
12 VAC 30-50-130	Amended	17:5 VA.R. 792	1/1/01
12 VAC 30-50-229.1	Amended	17:5 VA.R. 798	1/1/01
12 VAC 30-50-250	Amended	17:5 VA.R. 793	1/1/01
12 VAC 30-50-480	Amended	17:5 VA.R. 801	1/1/01
12 VAC 30-60-170	Amended	17:5 VA.R. 802	1/1/01
12 VAC 30-80-21	Added	17:5 VA.R. 793	1/1/01
12 VAC 30-80-111	Added	17:5 VA.R. 803	1/1/01
12 VAC 30-130-850 through 12 VAC 30-130-890	Added	17:5 VA.R. 794-796	1/1/01
12 VAC 30-130-880	Erratum	17:6 VA.R. 932	--
12 VAC 30-130-900 through 12 VAC 30-130-950	Added	17:5 VA.R. 803-806	1/1/01
Title 13. Housing			
13 VAC 5-51-71	Amended	17:7 VA.R. 1036	1/17/01
13 VAC 5-51-81	Amended	17:7 VA.R. 1037	1/17/01
13 VAC 5-51-130	Amended	17:7 VA.R. 1038	1/17/01
13 VAC 5-51-150	Amended	17:7 VA.R. 1038	1/17/01
13 VAC 5-51-170	Amended	17:7 VA.R. 1040	1/17/01
13 VAC 10-160-10	Amended	16:26 VA.R. 3512	9/1/00
13 VAC 10-160-30	Amended	16:26 VA.R. 3513	9/1/00
13 VAC 10-160-41	Repealed	16:26 VA.R. 3514	9/1/00
13 VAC 10-160-51	Repealed	16:26 VA.R. 3514	9/1/00
13 VAC 10-160-55 through 13 VAC 10-160-90	Amended	16:26 VA.R. 3515-3518	9/1/00
Title 14. Insurance			
14 VAC 5-200-20 through 14 VAC 5-200-60	Amended	17:4 VA.R. 594-597	12/1/00
14 VAC 5-200-65	Added	17:4 VA.R. 597	12/1/00
14 VAC 5-200-70	Amended	17:4 VA.R. 598	12/1/00
14 VAC 5-200-90	Amended	17:4 VA.R. 598	12/1/00
14 VAC 5-200-110	Amended	17:4 VA.R. 599	12/1/00
14 VAC 5-200-120	Amended	17:4 VA.R. 601	12/1/00
14 VAC 5-200-150	Amended	17:4 VA.R. 601	12/1/00
14 VAC 5-200-155	Added	17:4 VA.R. 602	12/1/00
14 VAC 5-200-170	Amended	17:4 VA.R. 602	12/1/00
14 VAC 5-200-175	Added	17:4 VA.R. 603	12/1/00
14 VAC 5-200-180	Repealed	17:4 VA.R. 603	12/1/00
14 VAC 5-200-185	Added	17:4 VA.R. 603	12/1/00
14 VAC 5-200-187	Added	17:4 VA.R. 605	12/1/00
14 VAC 5-200-200	Amended	17:4 VA.R. 606	12/1/00
14 VAC 5-370-20	Amended	16:25 VA.R. 3264	9/30/00
14 VAC 5-370-100	Amended	16:25 VA.R. 3264	9/30/00

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
Title 16. Labor and Employment			
16 VAC 15-30-20	Amended	17:1 VA.R. 66	10/25/00
16 VAC 15-30-200	Amended	17:1 VA.R. 66	10/25/00
16 VAC 15-30-210	Added	17:1 VA.R. 68	10/25/00
16 VAC 15-30-220	Added	17:1 VA.R. 68	10/25/00
16 VAC 15-30-230	Added	17:1 VA.R. 69	10/25/00
16 VAC 25-120-1917.1	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.2	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.3	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.23	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.25	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.26	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.27	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.30	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.42 through 16 VAC 25-120-1917.45	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.50	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.71	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.73	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.92	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.95	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.112	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.117 through 16 VAC 25-120-1917.122	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.124	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.151	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.152	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.153	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.156	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120 Appendix I	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.1	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.2	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.24	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.25	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.37	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.41	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.42	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.43	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.51	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.52	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.54	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.61	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.62	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.65	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.66	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.69	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.85	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.86	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.94	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.97	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.98	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.100	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.102	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.105	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130 Appendix II	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130 Appendix IV	Amended	16:25 VA.R. 3265	10/1/00

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
Title 18. Professional and Occupational Licensing			
18 VAC 45-20-5	Added	17:7 VA.R. 1041	2/1/01
18 VAC 45-20-10	Amended	17:7 VA.R. 1041	2/1/01
18 VAC 45-20-20	Amended	17:7 VA.R. 1042	2/1/01
18 VAC 45-20-30	Amended	17:7 VA.R. 1042	2/1/01
18 VAC 45-20-40	Amended	17:7 VA.R. 1042	2/1/01
18 VAC 45-20-50	Added	17:7 VA.R. 1043	2/1/01
18 VAC 85-20-131 emer	Amended	17:4 VA.R. 610	10/13/00-10/12/01
18 VAC 85-20-140	Amended	17:8 VA.R. 1198	1/31/01
18 VAC 85-31-10 through 18 VAC 85-31-160	Repealed	16:25 VA.R. 3266-3270	9/27/00
18 VAC 85-110-100 emer	Amended	17:7 VA.R. 1091	11/17/00-11/16/01
18 VAC 90-20-36 emer	Added	17:2 VA.R. 221	9/19/00-9/18/01
18 VAC 90-30-120	Amended	17:7 VA.R. 1047	1/17/01
18 VAC 110-20-10	Amended	17:7 VA.R. 1047	1/17/01
18 VAC 110-20-20	Amended	17:7 VA.R. 1050	1/17/01
18 VAC 110-20-425	Added	17:7 VA.R. 1050	1/17/01
18 VAC 110-30-10	Amended	17:7 VA.R. 1058	1/17/01
18 VAC 110-30-15	Added	17:7 VA.R. 1058	1/17/01
18 VAC 110-30-20	Amended	17:7 VA.R. 1058	1/17/01
18 VAC 110-30-30	Amended	17:7 VA.R. 1059	1/17/01
18 VAC 110-30-35	Added	17:7 VA.R. 1059	1/17/01
18 VAC 110-30-50	Amended	17:7 VA.R. 1059	1/17/01
18 VAC 110-30-60	Repealed	17:7 VA.R. 1059	1/17/01
18 VAC 110-30-80	Amended	17:7 VA.R. 1059	1/17/01
18 VAC 110-30-90	Amended	17:7 VA.R. 1059	1/17/01
18 VAC 110-30-100	Amended	17:7 VA.R. 1060	1/17/01
18 VAC 110-30-110	Amended	17:7 VA.R. 1060	1/17/01
18 VAC 110-30-160	Amended	17:7 VA.R. 1060	1/17/01
18 VAC 110-30-170	Amended	17:7 VA.R. 1061	1/17/01
18 VAC 110-30-190	Amended	17:7 VA.R. 1061	1/17/01
18 VAC 110-30-200	Amended	17:7 VA.R. 1061	1/17/01
18 VAC 110-30-210	Amended	17:7 VA.R. 1061	1/17/01
18 VAC 110-30-220	Amended	17:7 VA.R. 1062	1/17/01
18 VAC 110-30-240	Amended	17:7 VA.R. 1062	1/17/01
18 VAC 110-30-255	Added	17:7 VA.R. 1062	1/17/01
18 VAC 110-30-260	Amended	17:7 VA.R. 1062	1/17/01
18 VAC 110-30-270	Amended	17:7 VA.R. 1062	1/17/01
18 VAC 110-40-10 through 18 VAC 110-40-70	Added	17:7 VA.R. 1066-1067	1/17/01
18 VAC 112-10-10 through 18 VAC 112-10-120 emer	Added	17:4 VA.R. 611-612	10/17/00-10/16/01
18 VAC 112-20-10 through 18 VAC 112-20-150	Added	16:25 VA.R. 3266-3270	9/27/00
Title 20. Public Utilities and Telecommunications			
20 VAC 5-200-21	Amended	16:25 VA.R. 3274	7/28/00
20 VAC 5-200-30	Amended	16:25 VA.R. 3296	7/28/00
20 VAC 5-200 Appendix	Amended	16:25 VA.R. 3298	7/28/00
20 VAC 5-202-10 through 20 VAC 5-202-50	Added	17:5 VA.R. 819-824	10/20/00
Title 22. Social Services			
22 VAC 30-20-10 through 22 VAC 30-20-60	Amended	17:7 VA.R. 1067-1076	1/17/01
22 VAC 30-20-80 through 22 VAC 30-20-130	Amended	17:7 VA.R. 1076-1086	1/17/01
22 VAC 30-20-150	Amended	17:7 VA.R. 1086	1/17/01
22 VAC 30-20-160	Amended	17:7 VA.R. 1087	1/17/01
22 VAC 30-20-170	Amended	17:7 VA.R. 1088	1/17/01
22 VAC 30-20-181	Amended	17:7 VA.R. 1088	1/17/01
22 VAC 30-20-200	Amended	17:7 VA.R. 1090	1/17/01
22 VAC 40-35-10	Amended	17:5 VA.R. 825	12/20/00
22 VAC 40-35-125	Amended	17:5 VA.R. 827	12/20/00
22 VAC 40-35-126	Added	17:5 VA.R. 827	12/20/00

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
22 VAC 40-35-127	Added	17:5 VA.R. 828	12/20/00
22 VAC 40-35-128	Added	17:5 VA.R. 828	12/20/00
22 VAC 40-60 (Forms)	Amended	17:1 VA.R. 72	--
22 VAC 40-170 (Forms)	Amended	17:5 VA.R. 833	--
22 VAC 40-180 (Forms)	Amended	16:25 VA.R. 3331-3332	--
22 VAC 40-600-10	Amended	17:1 VA.R. 70	10/25/00
22 VAC 40-600-50	Amended	17:1 VA.R. 70	10/25/00
22 VAC 40-600-70	Amended	17:1 VA.R. 70	10/25/00
22 VAC 40-600-90	Repealed	17:1 VA.R. 71	10/25/00
22 VAC 40-600-130	Amended	17:1 VA.R. 71	10/25/00
22 VAC 40-600-140	Amended	17:1 VA.R. 71	10/25/00
22 VAC 40-600-170	Amended	17:1 VA.R. 71	10/25/00
22 VAC 40-600-200	Amended	17:1 VA.R. 71	10/25/00
22 VAC 40-600-210	Amended	17:1 VA.R. 71	10/25/00
22 VAC 40-680-10	Amended	17:5 VA.R. 830	12/20/00
22 VAC 40-680-20	Amended	17:5 VA.R. 830	12/20/00
Title 24. Transportation and Motor Vehicles			
24 VAC 30-380-10	Amended	16:26 VA.R. 3518	8/23/00

NOTICES OF INTENDED REGULATORY ACTION

Symbol Key

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

TITLE 2. AGRICULTURE

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Agriculture and Consumer Services intends to consider amending regulations entitled: **2 VAC 5-530-10 et seq. Rules and Regulations Governing the Production, Handling and Processing of Milk for Manufacturing Purposes and Establishing Minimum Standards for Certain Dairy Products to be Used for Human Food.** The purpose of the proposed action is to review the regulation for effectiveness and continued need, including amending the regulation to (i) include the milk of goats, sheep, water buffalo, and other mammals if the milk or dairy products are intended for human consumption; (ii) be consistent with the USDA recommended requirements for milk for manufacturing purposes and plant purposes; and (iii) develop alternative requirements to foster the developing goats, sheep, and water buffalo industries in Virginia. The agency invites comment on whether there should be an adviser. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 3.1-530.1 and 3.1-530.2 of the Code of Virginia.

Public comments may be submitted until March 19, 2001.

Contact: John A. Beers, Program Supervisor, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Room 505, Richmond, VA 23219, telephone (804) 786-1453 or FAX (804) 371-7792.

VA.R. Doc. No. R01-64; Filed December 14, 2000, 2:49 p.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

BOARD OF CORRECTIONS

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 Corrections intends to consider amending regulations entitled: **6 VAC 15-20-10 et seq. Regulations Governing Certification and Inspection.** The current regulations have been in place since July 1, 1997. Since that time the board and department have

determined that revisions to the regulations are necessary to accommodate new recommendations and to ensure further the health and safety standards in facilities and services. The purpose of the proposed action is to revise, where necessary, the language in the standards to reflect changes to the pre- and post-audit process in state, local and community correctional facilities. Amendments in current organization structure and terminology, as well as in the administration of appeals and variances granted by the board, require possible revision. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 53.1-5 of the Code of Virginia.

Public comments may be submitted until February 1, 2001.

Contact: Joe Hagenlocker, Manager, Compliance and Accreditation Unit, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3576 or FAX (804) 674-3587.

VA.R. Doc. No. R01-67; Filed December 15, 2000, 8:02 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 Board of Corrections intends to consider amending regulations entitled: **6 VAC 15-40-10 et seq. Minimum Standards for Jails and Lockups.** The current regulations have been in place since 1995. Since the adoption of the standards, a significant number of regional jails have opened. Updated standards will provide additional guidance on supervision of inmates and bring Board of Corrections standards in conformance with American Correction Association standards. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 53.1-5, 53.1-68 and 53.1-131 of the Code of Virginia.

Public comments may be submitted until February 1, 2001.

Contact: Donna Lawrence, Supervisor, Compliance and Accreditation Unit, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3237 or FAX (804) 674-3587.

VA.R. Doc. No. R01-66; Filed December 15, 2000, 8:02 a.m.

Notices of Intended Regulatory Action

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION 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 State Air Pollution Control Board intends to consider amending regulations entitled: **9 VAC 5-40-10 et seq. Existing Stationary Sources** and **9 VAC 5-91-10 et seq. Regulations for the Control of Motor Vehicle Emissions in the Northern Virginia Area** and promulgating regulations entitled: **9 VAC 5-180-10 et seq. Regulation for Mobile Sources (Rev. I-00)**. The purpose of the proposed action is to adopt a regulation that establishes controls for visible emissions from motor vehicles and repeal or amend other existing regulations as appropriate.

Purpose: The purpose of the proposed action is to (i) adopt a new regulation that meets current air quality needs and (ii) repeal the existing regulation because certain of its provisions have been determined to no longer be required by federal mandate and no longer essential to protect the health or welfare of citizens. This determination was made pursuant to the review of existing regulations mandated by Executive Order 15(94).

Need: Rule 4-41 (9 VAC 5-40-5650 et seq.) is no longer essential (i) to protect the health or welfare of citizens or (ii) for the efficient and economical performance of an important governmental function. An explanation as to how this conclusion was reached is set forth below.

The regulation is no longer needed for air quality planning purposes. The regulation was adopted in order to implement the policy set forth in the Virginia Air Pollution Control Law and to fulfill the Commonwealth's responsibilities under the federal Clean Air Act to provide a legally enforceable State Implementation Plan for the control of criteria pollutants. These statutes still remain in force, but the provisions that initiated adoption of the regulation have changed.

Analysis reveals that the regulation is not consistent with applicable state and federal regulations, statutory provisions, and judicial decisions. Factors and circumstances (federal statutes, original intent, state air quality program and air pollution control methodology and technology) which justified the initial issuance of the regulation have changed to a degree that would justify a change to the basic requirements of the regulation.

Federal guidance on states' approaches to air pollution control has varied considerably over the years, ranging from very general in the early years of the Clean Air Act to very specific in more recent years. This regulation, Rule 4-41, was adopted in 1972, when no detailed guidance existed. Therefore, the legally binding federal mandate for this regulation is general, not specific, consisting of the Clean Air Act's broad-based directive to states to meet the air quality standard for particulate matter that is emitted by mobile sources.

Since Rule 4-41 was adopted in 1972, important changes have been made to the State Implementation Plan that have

resulted in significantly better control of the emissions this regulation was designed to limit. For instance, under the 1990 amendments of the Clean Air Act, most motor vehicles in Virginia's metropolitan urban areas (one and a quarter million vehicles out of the statewide total of five million) are now subject to inspection and maintenance (I/M) programs, which will provide for a higher level of stringency for control of visible emissions and other pollutants than the level provided for by Rule 4-41. In addition, the enforcement of anti-tampering prohibitions is accomplished through statewide safety inspections carried out by the Department of State Police. (The anti-tampering provisions of Rule 4-41 merely duplicate those of § 46.2-1048 of the Code of Virginia.) In light of these newer and more effective controls, the regulation should be replaced. The replacement regulation (9 VAC 5 Chapter 180) will focus on the control of visible emissions from motor vehicles, which are the major concern of the general public. It contains provisions addressing anti-tampering, visible emission standards, commercial and public service motor vehicles, and export/import of motor vehicles.

Potential Issues: The potential issues that need to be addressed as the regulation is developed are as follows:

1. Repeal the existing rule for Emission Standards for Mobile Sources, Article 41 (9 VAC 5-40-5650 et seq.) of Part II of 9 VAC 5 Chapter 40 because certain of its provisions have been determined to be no longer required by federal mandate and no longer essential to protect the health or welfare of citizens.
2. Promulgate a new Regulation for Mobile Sources, 9 VAC 5 Chapter 180 (9 VAC 5-180-10 et seq.) that meets current air quality needs.
3. Amend the existing Regulation for the Control of Motor Vehicle Emissions in the Northern Virginia Area, 9 VAC 5 Chapter 91 (9 VAC 5-91-190 and 9 VAC 5-91-210) to render it consistent with the new regulatory provisions developed pursuant to issue 2 above.

Alternatives: Alternatives to the proposed amendments to the regulation are being considered by the department. The department has tentatively determined that the fourth alternative is appropriate as it is the least burdensome and least intrusive alternative that fully meets the purpose of the regulatory action. The alternatives being considered by the department, along with the reasoning by which the department has rejected any of the alternatives being considered, are as follows:

1. Take no action to amend Rule 4-41. This option was not chosen for the reason specified in 4 below.
2. Repeal Rule 4-41. This option was not chosen because citizens continue to register complaints about visible emissions from motor vehicles. The provisions addressing this problem should, therefore, be retained.
3. Repeal or amend Rule 4-41 and develop a model ordinance which local governments may adopt if they wish to implement a control program similar to that provided by Rule 4-41. This was done with Rule 4-40 (open burning); however, there are important differences between the two programs. Before the deregulation of open burning, many local governments already had

Notices of Intended Regulatory Action

sufficient and experienced staff capable of overseeing an open burning control program. But virtually no local government has any staff with sufficient experience or expertise to oversee a mobile source control program. To oversee such a program requires considerably more technical skill and resources than does an open burning control program. For instance, a mobile source program requires annual training in the evaluation of visible emissions and in the ability to determine whether air pollution control equipment has been tampered with. Most local governments do not have the funding or staff necessary to enforce such a control program. For these reasons, this option was not chosen.

4. Replace Rule 4-41 with more limited provisions. This option was chosen because the regulation is no longer needed for air quality planning purposes. Since the adoption of Rule 4-41, changes to the State Implementation Plan have resulted in more effective methods to control some of the emissions the regulation was designed to limit. Nonetheless, certain provisions need to be retained, as explained in 2 above.

Public Participation: The department is soliciting comments on (i) the intended regulatory action, to include ideas to assist the department in the development of the proposal, and (ii) the costs and benefits of the alternatives stated in this notice or other alternatives. All comments must be received by the department by 4:30 p.m. on the first business day after public meeting (see information below) in order to be considered. It is preferred that all comments be provided in writing to the department, along with any supporting documents or exhibits; however, oral comments will be accepted at the meeting. Comments may be submitted by mail, facsimile transmission, e-mail, or by personal appearance at the meeting, but must be submitted to Kathleen Sands, Policy Analyst, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia, 23240 (e-mail: krsands@deq.state.va.us) (fax number: (804) 698-4510). Comments by facsimile transmission will be accepted only if followed by receipt of the signed original within one week. Comments by e-mail will be accepted only if the name, address and phone number of the commenter are included. All testimony, exhibits and documents received are a matter of public record. Only comments (i) related to the potential issues, alternatives, and costs and benefits (see supporting information below) as specified in this notice and (ii) provided in accordance with the procedures specified in this notice will be given consideration in the development of the proposed regulation amendments.

A public meeting will be held by the department on February 16, 2001, 9 a.m., at Main Street Center, 600 East Main Street, Lower Level Conference Room, Richmond, Virginia to receive comments on and to discuss the intended action. Information on the date, time, and place of the meeting is published in the Calendar of Events section of the Virginia Register. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

After publication in the Virginia Register of Regulations, the department will hold at least one public hearing to provide

opportunity for public comment on any regulation amendments drafted pursuant to this notice.

Ad Hoc Advisory Group: The department is soliciting comments on the advisability of forming an ad hoc advisory group, utilizing a standing advisory committee or consulting with groups or individuals registering interest in working with the department to assist in the drafting and formation of any proposal. The primary function of any group, committee or individuals that may be utilized is to develop recommended regulation amendments for department consideration through the collaborative approach of regulatory negotiation and consensus. Any comments relative to this issue must be submitted to the agency contact in writing by 4:30 p.m. the last day of the comment period.

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

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

Public comments may be submitted until February 19, 2001.

Contact: Dr. Kathleen Sands, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413 or FAX (804) 698-4510.

VA.R. Doc. No. R01-69; Filed December 21, 2000, 8:34 a.m.

STATE WATER 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 State Water Control Board intends to consider promulgating regulations entitled: **9 VAC 25-650-10 et seq. Closure Plans and Demonstration of Financial Responsibility.** The purpose of the proposed action is to establish requirements for closure plans and demonstration of financial responsibility from owners of certain privately-owned sewerage system or sewerage treatment works.

Need: The unanticipated abandonment of a sewage treatment facility by its owner or operator creates a substantial and imminent threat to the public health or the environment because of the facility ceasing operations while still receiving sewage. When a sewage treatment facility is privately owned, there exists the threat of cessation of operations at the facility resulting from abandonment such that it would be reasonable to expect that operation at the facility will not be resumed by the owner or operator. When such a facility treats domestic waste generated by private residences, abatement of sewage flow to the facility is often impractical or impossible, as this may require the condemnation of property and eviction of homeowners or residents. Therefore, untreated sewage may be discharged directly to state waters, resulting in a substantial and imminent threat to public health and the environment. To protect public health and the environment, it has become necessary to continue operation of such facilities and/or connect to a publicly owned sewerage treatment works using public funds.

To ensure that there is a plan in place for continued operation in the event that a privately-owned sewerage treatment system

Notices of Intended Regulatory Action

ceases operation because of abandonment and to reduce the potential for continued operation of such system using public funds, the State Water Control Board has determined that a closure plan and the demonstration of financial capability to implement the plan is appropriate.

Potential issues that may need to be addressed as the regulation is developed include the following:

1. Sections 62.1-44.15:1.1 and 62.1-44.18:3 have identical requirements regarding closure plans and demonstration of financial capability. However, § 62.1-44.18:3 is very specific as to the population of facilities to which the law applies. Section 62.1-44.15:1.1 is not specific at all in this regard. The issue is, therefore, to what facilities other than as specified in § 62.1-44.18:3 the regulation will apply.

2. The instruments by which the State Water Control Board can require closure plans and demonstration differ under the two sections of the State Water Control Law. Section 62.1-44.15:1.1 limits the board to the issuance of special orders in compliance with the Administrative Process Act, whereas § 62.1-44.18:3 does not. The issue is that if the population of facilities to which the regulation applies is expanded beyond those specified in § 62.1-44.18:3, this disparity will need to be addressed in the regulation.

3. If a facility is sold or transferred in the ordinary course of business or a permit transfer in accordance with board regulations is effected, the board may be required to return the instrument of financial assurance to the previous owner or operator or permit holder. The potential then exists for cessation of operations after return of the instrument of financial assurance to the previous owner or operator but before receipt of financial assurance from the new owner or operator. For the regulation to be effective, the board needs to ensure the new owner or operator will satisfy the financial assurance requirements.

Substance: This proposed regulation will require owners or operators of privately-owned sewerage systems or sewerage treatment works to file with the State Water Control Board a closure plan to abate, control, remove, or contain any substantial or imminent threat to public health or the environment that is reasonably likely to occur if such facility ceases operations. Such plan shall also include a demonstration of financial capability to implement the plan. Financial capability may be demonstrated by the creation of a trust fund, a submission of a bond, a corporate guarantee based upon audited financial statements, or such other instruments as the board may deem appropriate.

The regulation would not apply to facilities that qualify for a VPDES general permit for facilities that discharge 1,000 gallons per day or less. For those systems or works discharging more than 1,000 gallons per day and less than 40,000 gallons per day, the requirements will be incorporated into the VPDES permitting process. The regulation will require submittal of the closure plan as part of the application for a VPDES permit and compliance with the regulation will become an enforceable condition of the permit. In addition,

the proposed regulation will include systems or works discharging 40,000 gallons or more per day (those subject to § 62.1-44.15:1.1). These systems or works will be required to submit a closure plan and financial assurance documentation through a special order, not a VPDES permit, and the requirement would be a condition for discharge to state waters. The proposed regulation will address the different means of requiring closure plans and, if possible, result in a single method of requiring closure plans preferably through the permitting process instead of an enforcement mechanism.

For the purposes of the regulation, a privately-owned sewerage system or privately-owned sewage treatment works will be defined as a facility that treats wastes generated by private residences. Private residences include, but are not limited to, single family homes, townhouses, condominiums, mobile homes, and apartments.

For the purposes of the regulation, “ceases operation” will mean to cease conducting the normal operation of a facility under circumstances where it would be reasonable to expect that such operation will not be resumed by the owner or operator at the facility. The term shall not include the sale or transfer of a facility in the ordinary course of business or a permit transfer in accordance with board regulations.

Alternatives: The Department of Environmental Quality will be considering alternatives in the development of this regulation. Although several alternatives are presented here, it is anticipated that additional alternatives may be considered during the development of the regulation and the public participation process. Although one alternative presented (Alternative 6) currently forms the basis for the proposed regulation, no one alternative is currently recommended by the Department of Environmental Quality. However, some alternatives under consideration are not recommended. Alternatives already considered or to be considered include, but are not limited to, the following:

1. No Action Alternative. This alternative is not recommended. Section 62.1-44.18:3 of the Code of Virginia mandates that the Department of Environmental Quality promulgate regulations necessary to carry out the provisions of the section.

2. Limit Regulation to Facilities Identified in § 62.1-44.18:3 of the Code of Virginia. This alternative is under consideration but is not recommended. Section 62.1-44.18:3 requires that the State Water Control Board promulgate regulations to implement the provisions of the act to be effective within 280 days of its enactment. To meet this requirement, the Department of Environmental Quality is developing an emergency regulation in accordance with § 9-6.14:4.1(c)(5) of the Administrative Process Act. Section 62.1-44.15:1.1 of the Code of Virginia contains requirements for closure plans and demonstration of financial capability identical to the requirements of § 62.1-44.18:3, but does not restrict the population of facilities to which it applies to those discharging more than 1,000 gallons per day and less than 40,000 gallons per day. The threat to public health or the environment created if a privately-owned sewage treatment system ceases to operate is not diminished if such a facility discharges in excess of 40,000 gallons per

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day. Therefore, the population of facilities subject to regulation should be increased, as authorized under § 62.1-44.15:1.1 of the Code of Virginia.

3. Apply Regulation to All Facilities Permitted by the State Water Control Board. This alternative is not recommended. Under this alternative the regulation would apply to all facilities subject to the Virginia Pollution Elimination System (VPDES) Permit Regulation (9 VAC 25-31-10 et seq.) or to the Virginia Pollution Abatement (VPA) Permit Regulation (9 VAC 25-32-10 et seq.). The intent of the regulation is to reduce the potential for continued operation of privately-owned sewage treatment systems using public funds. Under this alternative, municipal sewage treatment systems, which are already operated using public funds, would be included. Therefore, this alternative is considered overly intrusive and burdensome.

4. Apply Regulation to All Privately Owned Facilities Permitted by the State Water Control Board. This alternative is under consideration. Under this alternative the regulation would apply to all privately-owned facilities subject to the Virginia Pollution Elimination System (VPDES) Permit Regulation (9 VAC 25-31-10 et seq.) and discharges subject to the Virginia Pollution Abatement (VPA) Permit Regulation (9 VAC 25-32-10 et seq.). This alternative is less intrusive than the previous alternative in that publicly-owned treatment facilities would be excluded.

Privately-owned facilities that treat wastes generated by industrial facilities and pollution management activities would be required to submit a plan and demonstration of financial assurance. This alternative would thereby reduce the potential that proper decommissioning and closure of such treatment facilities would not need to be performed using public funding in the event of facility abandonment. Pollution management activities, as defined by the VPA Permit Regulation, include, but are not limited to: animal feeding operations, storage or land application of sewage, sludge, industrial waste or other waste; or the complete reuse or recycle of wastewater.

5. Apply Regulation to All Privately-Owned Sewage Treatment Systems Permitted by the State Water Control Board that Treat Domestic Waste Generated by Private Residences. This alternative is under consideration. Under this alternative the regulation would apply to all privately owned facilities subject to the Virginia Pollution Elimination System (VPDES) Permit Regulation (9 VAC 25-31-10 et seq.) or the Virginia Pollution Abatement (VPA) Permit Regulation (9 VAC 25-32-10 et seq.) that treat domestic waste generated by private residences. This alternative further reduces the population of affected facilities by limiting the regulation to privately owned facilities and pollution management activities that treat or handle domestic sewage and/or treatment by-products generated by private residences.

6. Apply Regulation to Privately Owned Sewage Treatment Systems subject to the Virginia Pollution Discharge Elimination System (VPDES) Permit Regulation (9 VAC 25-31-10 et seq.) that Treat Domestic

Waste Generated by Private Residences. This alternative is under consideration and forms the current basis for the proposed regulation. It is the least intrusive and burdensome alternative under consideration that addresses the requirements of both §§ 62.1-44.15:1.1 and 62.1-44.18:3 of the Code of Virginia. This alternative limits the population of facilities to those subject to the VPDES permit regulation and treats domestic sewage generated by private residences. Facilities that exclusively treat industrial wastes and pollution management activities subject to the VPA Permit Regulation (9 VAC 25-32-10 et seq.) are excluded from the regulation in this alternative.

Public Participation: The board is seeking comments on the intended regulatory action, including ideas to assist in the development of a proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Public meetings will be held on the following dates:

January 22, 2001 - 7 p.m.

Department of Environmental Quality, Southwest Regional Office, 355 Deadmore Street, Abingdon, Virginia.

January 23, 2001 - 1 p.m.

Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, Virginia.

January 23, 2001 - 7 p.m.

Department of Environmental Quality, Valley Central Regional Office, 411 Early Road, Harrisonburg, Virginia.

January 24, 2001 - 1 p.m.

Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, Virginia.

January 24, 2001 - 7 p.m.

Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia.

January 25, 2001 - 1 p.m.

Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, Virginia.

More information on the meetings may be found in the Calendar of Events section of the Virginia Register of Regulations.

Participatory Approach: The board seeks comment from the public on whether to use the participatory approach to assist the Department of Environmental Quality in the development of the proposed regulation. If sufficient interest is shown, the Department of Environmental Quality intends to form a Technical Advisory Committee (TAC) of affected owners or operators, environmental organizations, citizen groups, private citizens and other interested parties. Therefore, concerned parties interested in participating in a TAC are encouraged to show such interest by attending the public meeting or by contacting the individual named below.

The decision to form a TAC will be made based on the level of interest and public input received at the public meeting.

Notices of Intended Regulatory Action

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

Statutory Authority: §§ 62.1-44.18:3 and 62.1-44.15(10) of the Code of Virginia.

Public comments may be submitted until February 1, 2001.

Contact: Jon van Soestbergen, P.E., Office of Water Permit Programs, Division of Water Program Coordination, Department of Environmental Quality, 629 East Main Street, P.O. Box 10009, Richmond, VA 23240, voice (804) 698-4117, FAX (804) 698-4032, e-mail jvansoest@deq.state.va.us.

VA.R. Doc. No. R01-50; Filed November 14, 2000, 8:47 a.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to consider promulgating regulations entitled: **12 VAC 5-31-10 et seq. Virginia Emergency Medical Services Regulations.** The purpose of the proposed action is to consolidate diverse provisions and place them in a logical order, remove outdated provisions, and reflect current technological standards. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 32.1-111.3 of the Code of Virginia.

Public comments may be submitted until February 16, 2001.

Contact: Dave Cullen, Regulatory and Compliance Manager, Department of Health, 1538 E. Parham Rd., Richmond, VA 23228, telephone (804) 371-3500 (Ext. 3512) or FAX (804) 371-3543.

VA.R. Doc. No. R01-71; Filed December 20, 2000, 12:39 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 State Board of Health intends to consider promulgating regulations entitled: **12 VAC 5-407-10 et seq. Regulations for the Submission of Health Maintenance Organization Quality of Care Performance Information.** These regulations, required by Senate Bill 533 (2000 Acts of Assembly, c. 897) will help Virginia consumers make informed health insurance decisions by requiring the annual submission of HMO quality of care performance information. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 32.1-276.3, 32.1-276.4, 32.1-276.5 and 32.1-276.8 of the Code of Virginia.

Public comments may be submitted until February 16, 2001.

Contact: Margot Fritts, Senior Policy Analyst, Department of Health, P.O. Box 2448, Richmond, VA 23218, telephone (804) 892-0808 or FAX (804) 371-0116.

VA.R. Doc. No. R01-70; Filed December 20, 2000, 12:39 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

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 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.** The purpose of the proposed action is to add the coverage of certain substance abuse treatment services to the State Plan for Medical Assistance. 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 31, 2001, to Catherine Hancock, Analyst, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

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

VA.R. Doc. No. R01-62; Filed December 11, 2000, 1:46 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

† 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 Medicine intends to consider amending regulations entitled: **18 VAC 85-50-56, 18 VAC 85-50-115 and 18 VAC 85-50-170. Regulations Governing the Practice of Physician Assistants.** The purpose of the proposed action is to (i) streamline the renewal process, reduce paperwork, and make the process of oversight of Continuing Education and renewal consistent with other regulated professions; (ii) clarify that the regulation addresses routine duties of the physician assistant; and (iii) move the section concerning fees to the beginning of the regulation for consistency with regulations of other professions. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400 and 54.1-2951.1 of the Code of Virginia.

Notices of Intended Regulatory Action

Public comments may be submitted until February 14, 2001.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908 or FAX (804) 662-9943.

VA.R. Doc. No. R01-63; Filed December 14, 2000, 12:33 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 Medicine intends to consider amending regulations entitled: **18 VAC 85-110-100. Regulations Governing the Practice of Licensed Acupuncturists.** The amendment is necessary pursuant to Chapter 814 of the 2000 Acts of Assembly to specify a form to be provided to a patient receiving treatment from a licensed acupuncturist recommending a diagnostic examination. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400 and 54.1-2956.9 of the Code of Virginia.

Public comments may be submitted until January 17, 2001.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908 or FAX (804) 662-9943.

VA.R. Doc. No. R01-52; Filed November 17, 2000, 1:56 p.m.

BOARD OF PSYCHOLOGY

† 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 Psychology intends to consider amending regulations entitled: **18 VAC 125-30-10 et seq. Regulations Governing the Certification of Sex Offender Treatment Providers.** The purpose of the proposed action is to redistribute the hours required in the five sex offender treatment training areas to put greater emphasis on the more essential areas; change generic fees to conform with the fees of other boards in the agency; and make other minor changes for clarification. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400 and 54.1-3605 of the Code of Virginia.

Public comments may be submitted until February 14, 2001.

Contact: Evelyn Brown, Executive Director, Board of Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9967 or FAX (804) 662-7250.

VA.R. Doc. No. R01-73; Filed December 27, 2000, 10:07 a.m.

REAL ESTATE 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 Real Estate Board intends to consider amending regulations entitled: **18 VAC 135-50-10 et seq. Fair Housing Regulations.** The purpose of the proposed action is to amend and clarify existing fair housing regulations that describe discriminatory housing practices and outline investigative and conciliation procedures. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 36-96.20 of the Code of Virginia.

Public comments may be submitted until January 18, 2001.

Contact: John Cancelleri, Fair Housing Administrator, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8581, FAX (804) 367-2475 or (804) 367-9753/TTY ☎

VA.R. Doc. No. R01-55; Filed November 16, 2000, 1:20 p.m.

TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR THE DEAF AND HARD-OF-HEARING

† 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 for the Deaf and Hard-of-Hearing intends to consider amending regulations entitled: **22 VAC 20-20-10 et seq. Regulations Governing Eligibility Standards and Application Procedures of the Distribution of Technological Assistive Devices.** The purpose of the proposed action is to add a requirement for program participants to provide proof of income and proof of residency. In addition, definitions and language will be updated for accuracy and clarity. The agency intends to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until March 2, 2001.

Contact: Leslie G. Hutcheson, Regulatory Coordinator, Department for the Deaf and Hard-of-Hearing, 1602 Rolling Hills Dr., Suite 203, Richmond, VA 23229-5012, telephone (804) 662-9703 or FAX (804) 662-9718.

VA.R. Doc. No. R01-68; Filed December 15, 2000, 12:19 p.m.

PUBLIC COMMENT PERIODS - PROPOSED REGULATIONS



PUBLIC COMMENT PERIODS REGARDING STATE AGENCY REGULATIONS

This section gives 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

VIRGINIA WASTE MANAGEMENT BOARD

February 5, 2001 - 1:30 p.m. -- Public Hearing
Salem Church Library, 2607 Salem Church Road, Library
Room B, Fredericksburg, Virginia.

February 6, 2001 - 10:30 a.m. -- Public Hearing
Tidewater Regional Office, Department of Environmental
Quality, 5636 Southern Boulevard, Virginia Beach, Virginia.

February 13, 2001 - 1 p.m. -- Public Hearing
West Central Regional Office, Department of Environmental
Quality, 3019 Peters Creek Road, Roanoke, Virginia.

March 16, 2001 - 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 Waste Management Board intends to amend regulations entitled: **9 VAC 20-70-10 et seq. Financial Assurance Regulations for Solid Waste Facilities.** The proposed amendments will incorporate statutory changes, update provisions to maintain consistency with federal regulations and require submittal of documentation to verify that financial assurance mechanisms are funded to required amounts.

Statutory Authority: §§ 10.1-1402 and 10.1-1410 of the Code of Virginia.

Contact: Melissa Porterfield, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4238.

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

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 20-70-50 through 9 VAC 20-70-75, 9 VAC 20-70-81, 9 VAC 20-70-90, 9 VAC 20-70-111, 9 VAC 20-70-112, 9 VAC 20-70-113, 9 VAC 20-70-150 through 9 VAC 20-70-230, and 9 VAC 20-70-260; adding 9 VAC 20-70-290; repealing 9 VAC 20-70-41, 9 VAC 20-70-240, 9 VAC 20-70-280, and Appendices I through VI).**

Statutory Authority: §§ 10.1-1402 and 10.1-1410 of the Code of Virginia.

Public Hearing Date:

February 5, 2001 - 1:30 p.m. (Fredericksburg)

February 6, 2001 - 10:30 a.m. (Virginia Beach)

February 13, 2001 - 1 p.m. (Roanoke)

Public comments may be submitted until March 16, 2001.
(See Calendar of Events section
for additional information)

Agency Contact: Melissa Porterfield, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240, telephone (804) 698-4238.

Basis: Section 10.1-1402 of the Virginia Waste Management Act authorizes the Virginia Waste Management Board to promulgate and enforce regulations necessary to carry out its powers and duties and the intent of the chapter and federal law. Section 10.1-1410 of the Act authorizes the board to promulgate regulations that ensure that, if a solid waste treatment, transfer or disposal facility is abandoned, the costs associated with protecting the public health and safety from the consequences of such abandonment may be recovered from the person abandoning the facility.

During the 2000 Session of the General Assembly, § 10.1-1410 was amended to include transfer facilities in the universe of facilities required to provide financial assurance. The Code of Virginia was also amended to require insurance to be written by an insurer licensed pursuant to Chapter 10 (§ 38.2-1000 et seq.) of Title 38.2 of the Code of Virginia. This amendment incorporates the changes that were made to the Code of Virginia during the 2000 Session of the General Assembly.

Any amended details of the regulation not expressly mandated by state law are designed to set adequate levels of funding and otherwise insure that funding for closure and post-closure care is effective in securing the mandated financial assurance. Virginia regulations require all landfills, material recovery facilities, medical waste treatment facilities, incinerators, and composting facilities to provide financial

assurance. This amendment adds requirements for transfer stations, including barge receiving facilities, to provide financial assurance with the department. The regulations are also being amended to change the local government financial test to require local governments that have total environmental liabilities between 20% to 43% of their total annual revenues to establish a restricted sinking fund or escrow account to fund the closure and post-closure care of the facility. Facilities required to monitor groundwater will also be required to provide \$1 million in financial assurance with the department if they exceed groundwater protection standards.

Federal law mandates federal criteria for solid waste landfill management as a guide for the states. In general, § 6912(a) of Subtitle D of the Resource Recovery and Conservation Act (42 USC § 6901 et seq.) authorizes the administrator to prescribe such regulations as are necessary to carry out his functions with regards to solid waste. Specifically, § 6907(a)(3) authorizes the administrator to provide minimum criteria to be used by the states to define those solid waste management practices which constitute the open dumping of solid waste. The guidelines also must include minimum information for use in deciding the adequate location, design, and construction of solid waste management facilities. Section 6944(a) requires the administrator to promulgate regulations containing criteria for determining which facilities shall be classified as sanitary landfills and which shall be classified as open dumps. Section 6949a (c) provides for the promulgation of revisions to existing criteria and additional criteria for municipal solid waste facilities. Pursuant to this authority the federal government adopted multiple criteria for solid waste landfills, including groundwater monitoring and financial assurance criteria. 40 CFR Part 258 provides the federal criteria applicable to sanitary landfills, including subpart G which specifically provides the financial assurance criteria. This part contemplates that states will use the federal criteria to design their own programs.

Federal law requires states to use the federal criteria as a guide in developing and implementing their own solid waste permit programs. 40 CFR Part 239 contains the requirements for state solid waste permit programs to obtain final approval from EPA. The department intends to apply for final program approval from EPA. By obtaining final approval, the department will be able to act as the primary enforcement and implementation authority for this program.

Federal law and regulation mandates that states develop criteria for sanitary landfills; therefore, the existing financial assurance regulation was promulgated pursuant to a federal mandate. Federal law mandates the proposed amendments, in that they are necessary to bring the regulation into conformance with federal law and regulation. However, the amendments are also necessary to provide an appropriate level of protection for the public against bearing the costs of caring for abandoned solid waste facilities.

Proposed Regulations

Purpose: This regulation must be amended to incorporate statutory changes and to be more protective of the health, safety and welfare of the citizens of the Commonwealth.

The goals of this amendment are to structure and enhance the department's ability to monitor the financial assurance being provided for solid waste management facilities and to ensure funding is available for closure, post-closure, and corrective action costs. Cost estimates and financial mechanism information are to be submitted to the department for approval. Submission of this information assists the department in monitoring compliance with the regulations and, therefore, protects local governments and the Commonwealth from the burden of paying for closure of an abandoned facility.

Facilities that have statistically exceeded groundwater protection standards are also being required to provide \$1 million using any of the available financial mechanisms. This money will be available to the department for additional financial assurance in the case of facility abandonment during the process of selecting a corrective action remedy and this money will be returned to the facility after it is determined that a facility is no longer statistically exceeding groundwater protection standards.

Substance: These regulations must be amended to incorporate statutory changes that have taken place since the regulations were last amended. The regulations are being amended to be more reliably protective of the Commonwealth in the cases of facility abandonment.

This amendment includes submission of documentation that enables DEQ to verify that mechanisms are funded to the required amounts. This amendment provides more reliable protection to the Commonwealth, that in the case of facility abandonment, the funding provided by the facility will be available for DEQ to conduct closure, post-closure or corrective action at the facility.

The local government financial test mechanism has been revised to require facilities that have total environmental liabilities between 20% to 43% of the local government's total annual revenues establish a fund for the purpose of saving for the closure care of the facility. This change strengthens the financial test by requiring cash to be placed in a fund where it is readily available for closure of the facility. Previously there was no requirement for funds to be set aside for the closure costs of the facility if a locality was using the local government financial test.

Facilities that have statistically exceeded groundwater protection standards must provide \$1 million using any of the available financial mechanisms. This money will be available to the Department for additional financial assurance in the case of facility abandonment during the selection of a corrective action remedy or prior to entry into the corrective action program. This money will be returned to the facility after it has been determined that a facility is no longer statistically exceeding groundwater protection standards.

Issues: The primary advantage to the public and local government is the protection from having to pay for the closure and post-closure care of abandoned solid waste management facilities. There is no disadvantage to the

public. By amending the regulations, the board is continuing to protect human health and the environment.

The primary advantage to the Commonwealth is that the Commonwealth will be better protected from having to pay for the closure and post-closure costs associated with an abandoned solid waste management facility. The requirement to provide \$1 million financial assurance with the department upon exceeding groundwater protection standards further protects the department from the expense of paying for facility closure.

The primary disadvantage to the regulated community will be that they will be required to provide financial assurance for more facilities, including transfer stations and barge receiving facilities. These facilities are required by statute to provide financial assurance.

Public Participation: In addition to any other comments, the board is seeking comments on the costs and benefits of the proposal. The board is also seeking comments on how the revised financial test and the requirement of establishing a restricted sinking fund or escrow account will impact local government's budgets.

Anyone wishing to submit written comments for the public comment file may do so at the public meeting or by mail. Written comments must include the name, address and phone number of the commenter and must be received by the close of the comment period.

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 25 (98). 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 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. The Virginia Waste Management Act (§ 10.1-1410) requires that owners/operators of solid waste treatment facilities, transfer facilities, and disposal facilities demonstrate financial responsibility as a condition of operation to ensure that the costs of abandoning these facilities will be recovered from the person abandoning the facility. The proposed regulations require that the owners/operators of transfer stations and barge receiving facilities also provide financial assurance. Additionally, the proposed regulations change the financial test requirements for local governments with high environmental liabilities, and add financial assurance requirements for facilities that are required to monitor groundwater if they exceed the groundwater protection standards.

Estimated economic impact.

Transfer Stations and Barge Receiving Facilities. Currently, transfer stations and barge receiving facilities are not required to demonstrate their financial wherewithal in order to operate in the Commonwealth. This proposed regulation would require the owners of these facilities to demonstrate financial responsibility. The amount of the financial assurance required will depend on the estimated costs of closure and post-closure cleanup costs. These facilities may employ various financial assurance mechanisms.

Financial responsibility can be demonstrated by: (i) financial test of self-insurance; (ii) surety bond guaranteeing payment or performance; (iii) letter of credit; (iv) trust fund; (v) insurance; (vi) certificate of deposit; (vii) guarantee; or (viii) multiple financial mechanisms. Based on the current experience with solid waste facilities, most local governments that own transfer stations and barge receiving facilities are expected to use the financial test of self-insurance method to meet the financial responsibility requirements. The figures in Table 1 indicates that 84% of the facilities owned by local governments have consistently used the financial test of self-insurance method. This method is also popular among the private facilities. Over 23% of the private facilities have employed this method of financial assurance as can be seen in Table 1.

Under the self-insurance option, the owner/operator provides a financial statement indicating a net worth at least equal to the amount required to demonstrate financial responsibility. The financial test must be accompanied by an independent Certified Public Accountant (CPA) report. The cost of the self-insurance method would vary between \$0 - \$3,000 depending on the fees charged by the accounting firm as indicated in Table 2. Some accounting firms may not charge any fees for preparation of the CPA report. There will be essentially a small amount of staff time in document preparation as well.

The surety bond is the most used mechanism by the private facilities (28% of total). The cost of this method is about 1% to 3% of the total bond amount as indicated in Table 2. The cost may be lower depending on the financial strength of the owner/operator of the facility and the facility's condition and operation. The bonding company may require collateral if the owner/operator is not financially strong. The bond must be accompanied by a standby trust agreement that costs \$750 approximately.

Table 1

The types of financial mechanisms used by private and local government entities owning or operating solid waste facilities in Virginia.		
	Local Governments	Private Facilities
Financial Test of Self-insurance	112 (84%)	30 (23%)
Surety Bond	3 (2%)	37 (28%)
Letter of Credit	13 (10%)	26 (20%)
Trust Fund	5 (4%)	13 (10%)
Insurance Policy		9 (7%)
Certificate of Deposit		6 (5%)

Financial Test/Corporate Guarantee		9 (7%)
TOTAL	133	130

Notes:

- 1) Percent of total in parentheses.
- 2) The figures do not include 14 local governments, and 10 private facilities that are not required to demonstrate financial assurance, but are permitted facilities.

Source: Department of Environmental Quality

The cost of the letter of credit will heavily depend on the length and the quality of the relationship between the issuing institution and the owner/operator. An approximate maintenance fee is 0.75% to 2% percent of the face amount indicated in the letter of credit.

In the trust fund method, the owner/operator must incur trustee fees for managing the money. The amount of the fees depends on the amount of the money in the trust fund. In addition, the owner/operator must make annual contributions equal to the total estimated closure or post-closure clean up costs divided by the number of years in the facility's operating life.

The insurance method would cost the owner/operator 1% to 3% of the face value of the policy. These estimates may be lower for financially strong owners/operators. In the certificate of deposit method, there is no annual maintenance fee but the amount must be deposited.

The guarantee method requires that a guarantor provide a letter from its financial officer demonstrating that it has adequate funding to meet the financial test requirements and that it establishes a fully funded trust fund in the event the guarantor must pay on the guarantee. The guarantor does incur costs in that it is accepting contingent liability. Presumably, the owner/operator will compensate the guarantor for its acceptance of that contingent liability.

Table 2

A comparison of the costs of obtaining a solid waste financial assurance mechanism.			
Mechanism Type	Face Amount of Financial Mechanism		
	\$500,000	\$1,000,000	\$3,000,000
Corporate Financial Test/Guarantee	\$0 to \$3,000 (Cost of CPA report)	\$0 to \$3,000 (Cost of CPA report)	\$0 to \$3,000 (Cost of CPA report)
Local Government Financial Test/Guarantee	\$0 to \$3,000 (Cost of CPA report)	\$0 to \$3,000 (Cost of CPA report)	\$0 to \$3,000 (Cost of CPA report)
Surety Bond with Standby Trust Agreement	\$5,750 to \$15,750 (1% to 3%)	\$10,750 to \$30,750 (1% to 3%)	\$30,750 to \$90,750 (1% to 3%)

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Letter of Credit	\$3,750 to \$10,000 (.75% to 2%)	\$7,500 to \$20,000 (.75% to 2%)	\$22,500 to \$60,000 (.75% to 2%)
Trust Fund	\$2,500 to \$4,750 + annual payment	\$2,500 to \$6,500 + annual payment	\$2,500 to \$10,500 + annual payment
Insurance Policy	\$5,000 to \$15,000 (1% to 3%)	\$10,000 to \$30,000 (1% to 3%)	\$30,000 to \$90,000 (1% to 3%)
Certificate of Deposit	\$500,000 (one time price)	\$1,000,000 (one time price)	\$3,000,000 (one time price)

Source: Department of Environmental Quality

The proposed regulations will require 61 transfer stations to provide financial assurance. Currently, there are no barge receiving facilities that will be required to demonstrate financial responsibility. DEQ believes there is the potential for the establishment of one to five such facilities in the future. The proof of financial responsibility is required once a year from the owners/operators of these facilities. Currently, similar facilities such as sanitary landfills and composting facilities are providing between \$3,570 and \$45,460,000 of financial assurance per facility. DEQ estimates that individual transfer stations will be required to provide between \$2,800 and \$140,000 of financial assurance per facility. According to DEQ, a total amount of \$446,053,692 in financial assurance is currently demonstrated by solid waste facilities. DEQ estimates that roughly an additional financial assurance between \$1,830,000 to \$3,660,000 will be required from transfer stations and barge receiving facilities. The total costs of proposed financial assurance requirements to these facilities will vary depending on the method chosen.

In addition to the costs incurred by the owners/operators of the transfer and barge receiving facilities, DEQ estimates that an additional twenty hours of staff time in a week will be required for verifying the appropriateness of financial assurances required by the proposed changes.

This proposed regulation may provide some benefit to the Commonwealth in that it would force some financially unstable owners/operators to cease operations and likely sell their operations to more financially secure entities. Owners/operators that cannot demonstrate financial responsibility would be required to close their facilities. In such cases it seems likely that the owner/operator would sell their facility in order to get some return from their property. If an owner/operator is unable to pay for the closure and post-closure cleanup costs and declares bankruptcy, the state conducts the cleanup and general funds may be used to pay for it. Other alternative sources of cleanup costs, in these cases, could be the Virginia Environmental Emergency Response Fund and special funds from the Environmental Protection Agency. Thus by decreasing the number of owners/operators that are incapable of paying their share of the costs of potential cleanup costs, the proposed regulation decreases the likelihood that the state will be required to pay for the cleanup costs of a bankrupt owner/operator. This

could reduce the amount of state funds used for closure and post-closure cleanup costs.

It is also possible that the proposed regulation would discourage financially weak owners/operators from purchasing these facilities. Among these potential entrants, a firm or an individual may have just enough funds to purchase a facility, but not enough to demonstrate financial responsibility to pay for their share of potential cleanup costs. Such an entity would likely be dissuaded from their purchase since they would not be permitted to operate and earn revenue. In this way, the proposed regulation could limit the number of entrants into the industry that are not capable of paying for potential cleanup costs. Again, this could reduce by a small margin the amount of state funds used for the closure and post-closure costs of these facilities.

Reducing the number of owners/operators that are incapable of paying their share of the closure and post-closure cleanup costs would likely also reduce some delays in cleanup. Thus, the proposed regulation has the potential to decrease the frequency and the length of cleanup delays, which would be beneficial for the environment as well as for third parties affected by the closure.

Additionally, it seems probable that financially troubled owners/operators are less likely to incur the expense of proper maintenance and safety procedures than would more financially secure owners/operators. Thus, reducing the number of owners/operators that are incapable of paying their share of the costs of closure may to a small degree decrease the likelihood of the need for closure and post-closure cleanup.

Local Governments with High Environmental Liabilities. The proposed changes will require local governments whose environmental liabilities at their waste facilities are between 20% to 43% percent of their total annual revenues, and who wish to meet the financial assurance requirement via the financial test of self-insurance to establish a restricted sinking fund or escrow account in addition to passing the financial test of self-insurance. According to DEQ, seven local governments fall into this category. Thus, these seven local governments will be required to establish a restricted sinking fund or an escrow account, or switch to a different method of meeting the financial assurance regulation. Restricted sinking funds are similar to savings accounts. The local government would set money aside on a periodic basis that could not be used for anything else. The escrow account involves appointing a third party such as a bank or attorney to escrow the account. The escrow agent requires a fee for the services. The local governments could use interest earned by the sinking fund or the escrow account for other purposes as they wish.

Both methods will require the local governments to put the required amount of money aside on a periodic basis. Although these funds can earn interest, the localities will not have discretion on using the principal. This feature of the proposed changes may introduce some difficulties on revenue-expenditure designations. In cases where revenues are just enough to cover expenditures, some of the localities may have to increase their revenues by increasing taxes or they may have to reduce their expenditures. The possible

ways of readjusting revenue-expenditure relationships is beyond the scope of this analysis. In cases where the local government is able to borrow at the interest rate applied to these funds no real effect should be expected. However, the interest rate on the borrowed funds will, in general, depend on many other individual characteristics of the locality such as its borrowing capacity and financial strength. Thus, it would be likely that most local governments can expect to pay a higher interest rate on the borrowed funds than the interest rate they receive on the funds set aside.

Requiring the local governments that have high environmental liabilities to establish a restricted sinking fund or an escrow account would likely reduce some delays in cleanup. The local governments that can pass the financial test of self-insurance may require significant time to adjust revenue-expenditure designations in order to raise funds required for cleanup. In addition the funds required for cleanup may be large for these localities since they have high environmental liabilities. Thus the proposed regulation has the potential to decrease the length of cleanup delays since the sinking fund or escrow account could be used immediately for cleanup. Reducing the delays in clean up would be beneficial for the environment as well as for third parties affected by the closure.

Additionally, these seven local governments may need to revise their annual budgets to incorporate the costs associated with establishing a restricted sinking fund or an escrow account. This may introduce a small amount of additional costs to revise their annual budgets.

Facilities Required to Monitor Groundwater. With the proposed changes, solid waste facilities required to monitor groundwater will be required to provide an additional \$1 million in financial assurance when the ground water protection standards are exceeded. Currently, the total number of landfill facilities is 198. DEQ roughly expects only 10 to 20 of these facilities to not meet the groundwater protection standards. Thus, these 10 to 20 facilities will be required to provide \$1 million financial assurance.

The costs of financial assurance are essentially the same as the costs estimated in Table 2. However, the required amount of the financial assurance from these facilities is a standard \$1 million regardless of the cost estimate of closure and post-closure cleanup. Similar to the transfer stations, this proposed regulation might provide some benefit to the Commonwealth in that it would force some financially unstable owners/operators of facilities required to monitor groundwater to cease operations and likely sell their operations to more financially secure entities. Owners/operators of the facilities exceeding groundwater protection standards that cannot demonstrate financial responsibility would be required to close their facilities. In such cases it seems likely that the owner/operator would sell their facility in order to get some return from their property. Thus, by decreasing the number of owners/operators that are incapable of paying their share of potential cleanup costs, the proposed regulation decreases the likelihood that the state will be required to pay for the cleanup costs of a bankrupt owner/operator. This could reduce the amount of state funds

used for closure and post-closure cleanup costs of facilities that are exceeding groundwater protection standards.

It is also possible that the proposed regulation would discourage financially weak owners/operators from purchasing these facilities that are exceeding groundwater protection standards. Among these potential entrants, a firm or an individual may have just enough funds to purchase a facility, but not enough to demonstrate financial responsibility to pay for their share of potential cleanup costs. Such an entity would likely be dissuaded from their purchase since they would not be permitted to operate and earn revenue. In this way, the proposed regulation could limit the number of entrants into the industry that are not capable of paying for potential cleanup costs. This could reduce by a small margin the amount of state funds used for the closure and post-closure costs of these facilities.

Reducing the number of owners/operators that are incapable of paying their share of the closure and post-closure cleanup costs would likely also reduce some delays in cleanup. Thus the proposed regulation has the potential to decrease the frequency and the length of cleanup delays, which would be beneficial for the environment as well as for third parties affected by the closure. Decreasing the frequency and length of cleanup delays would reduce the length of time the public is exposed to contaminate ground water.

Additionally, it seems probable that financially troubled owners/operators are less likely to incur the expense of proper maintenance and safety procedures than would more financially secure owners/operators. Thus, reducing the number of owners/operators that are incapable of paying their share of the costs of closure may to small degree decrease the likelihood of the need for closure and post-closure cleanup.

Summary of analysis. In summary, the benefits of these proposed amendments to the regulation include the potential for significant reduction in state expenditures on cleanup costs and reduced delays in cleanup, which in turn would minimize the public's exposure to potential health risks. The costs derive from additional financial assurance responsibilities for certain owners/operators, and financial assurance responsibilities for two new categories. Demonstrating financial responsibility would involve costs that vary depending upon the situation of the facility owner/operator. Though it seems probable that the potential benefits of the proposed regulation outweigh the potential costs, there is insufficient data to determine that conclusively.

Businesses and entities affected. The proposed changes to the regulation will affect the 61 transfer facility owners/operators, seven local governments with high level of environmental liabilities, and about 10 to 20 facilities required to monitor groundwater standards.

Localities particularly affected. The proposed changes to the regulation affect localities throughout the Commonwealth.

Projected impact on employment. The proposed changes to this regulation are not expected to significantly affect net employment. A small number of financially weak operators may cease operations. But more financially secure operators,

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who would likely employ approximately the same number of workers, would most likely purchase those facilities.

Effects on the use and value of private property. The value of facilities whose owners/operators are unable to demonstrate financial responsibility will decrease from their perspective.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has one comment on the analysis. The amended regulations include a requirement for solid waste facilities to provide \$1 million additional financial assurance upon exceeding Groundwater Protection Standards. In the Business and Entities Affected section, the Department of Planning and Budget states "about 10 to 20 facilities will be required to monitor groundwater standards."

Current solid waste management regulations require most land disposal facilities to monitor groundwater. These facilities are monitoring for impacts to the groundwater and may be required to establish Groundwater Protection Standards. A facility would then be required to provide additional financial assurance when constituents are detected above Groundwater Protection Standards. At this time there are 10 to 20 facilities exceeding Groundwater Protection Standards that would be required to provide additional financial assurance under the amended regulation.

Summary:

The amendments require submission of documentation that enables the department to verify that mechanisms are funded to the required amounts, incorporate statutory changes that have been enacted since the regulations were last amended, and maintain consistency with federal regulations.

9 VAC 20-70-10. Definitions.

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

"Abandoned facility" means any inactive solid waste management facility that has not met closure and post-closure care requirements.

"Active life" means the period of operation beginning with the initial receipt of solid waste and ending at the completion of closure activities required by 9 VAC 20-80-10 et seq. Active life does not include the post-closure care monitoring period.

"Anniversary date" means the date of issuance of a financial mechanism.

"Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

"Authority" means an authority created under the provisions of the Virginia Water and 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 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 that has been properly secured in accordance with the ~~facility closure plan~~ requirements of 9 VAC 20-80-10 et seq., 9 VAC 20-101-10 et seq., 9 VAC 20-120-10 et seq., or 9 VAC 20-170-10 et seq. A closed facility may be undergoing post-closure care.

"Closure" means the act of securing a solid waste management facility pursuant to the requirements of this chapter and any other applicable solid waste management standards.

"Commercial transporter" means any person who transports for the purpose of commercial carriage of solid wastes or regulated medical wastes as cargo.

"Corrective action" means all actions necessary to mitigate the public health or environmental threat from a release to the environment of solid waste or constituents of solid waste from an operating, abandoned, or closed solid waste management facility and to restore the environmental conditions as required.

"Current annual inflation factor" means the annual 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.

"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 dollars" means the figure represented by the total of the cost estimate multiplied by the current annual inflation factor.

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

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

"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 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~~ 9 VAC 20-60-12 et seq.).

"Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill.—See as defined by the Solid Waste Management Regulations (9 VAC 20-80-10 et seq.) for further detail.

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

"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 ~~a person who owns a solid waste management facility or part of a solid waste management facility.~~ 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, solid waste management facility~~ or the services or facilities to be rendered thereby shall be considered an owner.

"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 director to own, operate, modify, or construct a solid waste management facility.

"Person" means an individual, a corporation, a partnership, ~~an~~ association, 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 and safety are protected for a specified number of years after closure.

"Receiving facility" means a facility, vessel or operation that receives solid wastes or regulated medical wastes transported, loaded or unloaded upon the navigable waters of the Commonwealth, to the extent allowable under state law, by a commercial transporter. A receiving facility is considered as a solid waste management facility. A facility that receives solid waste from a ship, barge or other vessel and is regulated under § 10.1-1454.1 of the Code of Virginia shall be considered a transfer facility for purposes of this chapter.

"Regulated medical waste" means solid waste so defined to ~~be regulated medical waste in Part III of~~ by the Regulated Medical Waste Management Regulations (9 VAC 20-120-10 et seq.) as promulgated by the Virginia Waste Management Board.

"Sanitary landfill" means 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~~

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~~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 all land and structures, other appurtenances, and improvements thereon used for treating, storing, and disposing of solid waste. This term includes adjacent land *within the property boundary* 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 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 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.

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

"Treatment" means any method, technique, or process, including ~~but not limited to~~ incineration or neutralization, designed to change the physical, chemical, or biological character or composition of any waste to ~~render it more stable~~ neutralize it or render it less hazardous or nonhazardous, 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.

9 VAC 20-70-41. Analysis of this chapter. (Repealed.)

~~A. Within three years after 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 the following permitted or unpermitted waste management facilities to be operated on their property:

1. Solid waste treatment, *transfer* and disposal facilities regulated under the Virginia Solid Waste Management Regulations (9 VAC 20-80-10 et seq.);
2. Facilities regulated under *the* Vegetative Waste Management and Yard Waste Composting Regulations (9 VAC 20-101-10 et seq.); ~~or~~
3. Medical waste treatment, *transfer* or disposal facilities regulated under *the* Regulated Medical Waste Management Regulations (9 VAC 20-120-10 et seq.); ~~or~~
4. *Receiving facilities as defined herein or otherwise regulated under the Transportation of Solid and Medical Wastes on State Waters Regulations (9 VAC 20-170-10 et seq.)*

B. Exemptions.

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;

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 20-101-60 and 9 VAC 20-101-70 of the Vegetative Waste Management and Yard Waste Composting 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~~ 9 VAC 20-60-12 et seq.) are exempt from this chapter as far as such units are concerned.

C. 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~~ 9 VAC 20-60-12 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~~ *liable* 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, 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 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.

B. All administrative enforcement actions ~~and taken under this chapter are subject to the provisions of the Waste Management Act and § 10.1-1186 of the Code of Virginia.~~ All 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.

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.

The 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, 9 VAC 20-120-790 and 9 VAC 20-120-810 of the Regulated Medical Waste Regulations, 9 VAC 20-101-200 of the Vegetative Waste Management and Yard Waste Composting Regulations, and 9 VAC 20-170-130 of the Transportation of Solid and Medical Wastes on State Waters Regulations. Failure to provide or maintain adequate financial assurance in accordance with these regulations shall be a basis for revocation of such facility permit. 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.

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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.), *the Transportation of Solid and Medical Wastes on State Waters Regulations* (9 VAC 20-170-10 et seq.), *the Vegetative Waste Management and Yard Waste Composting Regulations* (9 VAC 20-101-10 et seq.), or any other legal obligations for the consequences of abandonment of any facility.

9 VAC 20-70-81. General purpose and scope.

A. 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 *solid* 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 the amount calculated as in the cost estimate *approved by the department* using the procedures set forth in Article 3 (9 VAC 20-70-111 et seq.) of this part.

B. 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.

C. 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 ~~480~~ 120 days of the effective date of the amendment.

D. 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~~ 120 days of receipt of ~~the~~ a complete financial assurance mechanism of the tentative decision to accept or reject the proposed evidence.

9 VAC 20-70-90. Closure, post-closure care and corrective action requirements.

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 closure standards applicable to the solid waste management facilities are described in ~~9 VAC 20-80-200 D~~ 9 VAC 20-80-210 B, ~~9 VAC 20-80-210 A 7~~ 9 VAC 20-80-210 B 2, 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 20-80-340 E, ~~9 VAC 20-80-350~~ 9 VAC 20-80-360 E, 9 VAC 20-80-370 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 20-101-150 of the Vegetative Waste Management and Yard Waste Composting Regulations. *The closure requirements for receiving facilities are specified in 9 VAC 20-170-90 A of the Transportation of Solid and Medical Wastes on State Waters Regulations.*

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~~ B 2, or 9 VAC 20-80-310 of the Solid Waste Management Regulations, as applicable.

D. *During any appeal of a determination of the amount of financial assurance required, the owner or operator of a landfill facility not closed in accordance with 9 VAC 20-80-10 et seq. shall demonstrate financial assurance by using one or more of the approved mechanisms listed in Article 4 (9 VAC 20-80-140 et seq.) of this part for the lesser of the following:*

1. *The amount requested by the director.*
2. *The following default amounts:*
 - a. *\$200,000 per acre of fill for sanitary landfills.*
 - b. *\$150,000 per acre of fill for construction demolition debris landfills and industrial landfills.*

9 VAC 20-70-111. Cost estimate for facility closure.

A. The owner or operator shall ~~have~~ submit to the department a detailed written cost estimate, in current dollars, of the cost of closing the facility in accordance with the requirements of 9 VAC 20-70-90 A *as part of any permit application, or at the request of the director.* The owner or operator shall also submit to the department a revised cost estimate in current dollars when requesting a permit modification that changes the closure cost estimate. The closure cost estimate shall be approved by the director.

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 wastes, facility structures or equipment, land or other facility assets at the time of partial or final closures.

B. During the active life of the facility, the owner or operator shall adjust the closure cost estimate *annually* for inflation within 60 days prior to the anniversary date of the establishment of the financial mechanisms used to comply with this ~~part~~ *chapter*. 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~~ *shall* 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 *also* 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 *the current cost of* 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~~ *request a reduction* in 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~~ *active* 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~~ *submit a revised cost estimate with the justification for the reduction to the director when requesting a reduction in the amount of the closure cost estimate and the amount of financial assurance provided. The justification shall include an itemization of all closure costs. No reduction request shall be reviewed until a complete cost estimate acceptable to the department has been submitted. A request for a reduction in the closure cost estimate shall be reviewed in a timely manner.*

9 VAC 20-70-112. Cost estimate for facility post-closure.

A. The owner or operator shall ~~have~~ *submit to the department* 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~~ *submit the estimate to the director that and place the estimate has been placed* in the operating record. *The post-closure cost estimate shall be approved by the director.*

1. The cost estimate for post-closure care shall be based on the ~~most expensive~~ *total* 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 annually* 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 no later than 30 days after a revision has been made to the post-closure plan or where a change in the solid waste disposal unit conditions increase the maximum costs of post-closure care.~~

4. The owner or operator may ~~reduce~~ *request a reduction* in 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~~ *submit a revised post closure cost estimate with the justification for the reduction to the director when requesting a reduction in the amount of the post-closure cost estimate and the amount of financial assurance provided. The justification shall include an itemization of all post-closure costs. No reduction request shall be reviewed until a complete cost estimate acceptable to the department has been submitted. A request for a reduction in the post-closure cost estimate shall be reviewed in a timely manner.*

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 *current* 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

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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 active~~ 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. Upon statistically exceeding Groundwater Protection Standards established as required by 9 VAC 20-80-250 D 6, or Appendix 5.6 D of 9 VAC 20-80-10 et seq. as applicable, an owner or operator of a landfill or other unit subject to groundwater monitoring shall post \$1 million financial assurance with the department using the mechanisms listed under Article 4 (9 VAC 20-70-140 et seq.) of this part.

~~A.~~ B. 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~~ submit to the director 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. *The corrective action cost estimate shall be approved by the director.*

1. The owner or operator shall ~~annually~~ adjust the estimate ~~annually~~ 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 ~~until the corrective action program is completed~~. 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 the 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 no later than 30 days after revisions to the corrective action program or where a change in the solid waste management unit conditions increase the maximum costs of corrective action.~~

3. The owner or operator may ~~reduce~~ request a reduction in 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~~ submit a revised cost

estimate with the justification for the reduction to the director when requesting a reduction in the amount of the corrective action cost estimate and the amount of financial assurance provided. The justification shall include an itemization of all corrective action costs. No reduction request shall be reviewed until a complete cost estimate acceptable to the department has been submitted. A request for a reduction in the corrective action cost estimate shall be reviewed in a timely manner.

~~B.~~ C. 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~~ in the amount specified by the most ~~recent~~ recently approved corrective action ~~program~~ plan in accordance with 9 VAC 20-70-140. The owner or operator shall provide continuous coverage for corrective action until released from financial assurance requirements for corrective action by the director.

9 VAC 20-70-150. Trust fund.

A. The owner or operator of a *solid* 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~~ triplicate 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~~ active or the remaining life of the *solid* waste management facility unit, whichever is shorter. In the case of a trust fund for closure or post-closure care, ~~or over this is known as the "pay-in period."~~ In the case of a trust fund for corrective action for known releases, the "corrective action pay-in period" is 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 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. *The amount of the first payment shall be determined by the formula:*

$$\text{First payment is the } \frac{\text{Cost Estimate}}{\text{Total Years}} \text{ or } \frac{\text{CE}}{\text{TY}}$$

where CE is the current closure and post-closure cost estimate and TY is 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:

$$\frac{\text{Next payment} = \text{CE} - \text{CV}}{\text{TY}}$$

Next Payment is the $\frac{\text{Cost Estimate - Current Value of the trust fund}}{\text{Remaining Years}}$ or $\frac{\text{CE} - \text{CV}}{\text{RY}}$

where CE is the current closure and post-closure care cost estimate (updated for inflation), CV is the current value of the trust fund, and RY is the number of years remaining in the pay-in period.

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 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:

$$\frac{\text{Next payment} = \text{RB} - \text{CV}}{\text{CARY}}$$

Next payment is $\frac{\text{The most recent estimate of the trust fund balance - the Current Value of the trust fund}}{\text{Corrective Action Remaining Years}}$

Or $\frac{\text{RB} - \text{CV}}{\text{CARY}}$

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 CARY 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. The owner or operator must submit to the director no less than 15 days prior to the anniversary date:

1. The calculation for determining the appropriate payment amount into the trust;
2. A statement from the trustee documenting the current fund value used to calculate the appropriate trust payment (this is the CV value); and
3. A statement from the trustee indicating the amount of the deposit into the trust fund.

F. 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.

G. 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 F of this section, as applicable. Owners and operators of solid waste management units other than landfills shall deposit the full amount of the cost estimate at the time the fund is established.

H. 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.

I. 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.

J. Within 60 days after receiving a request from the owner or operator for release of funds specified in subsections G through H and I 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.

K. 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. Requests for reimbursement will be granted by the director only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, post-closure care, or corrective action. 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.

L. 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.

M. The wording of the trust agreement shall be identical to the wording specified in Appendix 9 VAC 20-70-290 A and the trust agreement shall be accompanied by a formal

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certification of acknowledgment. Schedule A of the trust agreement, as described in Appendix 1 9 VAC 20-70-290 A, 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 *original* 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; 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 *and must be licensed pursuant to Chapter 10 (§ 38.2-1000 et seq.) of Title 38.2 of the Code of Virginia.*

B. The surety bond shall name the facility operator or owner as the principal and name the *Department of Environmental Quality*, 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~~ a closure 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. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator shall notify the director by certified mail of such commencement.

~~G.~~ H. 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.~~ I. 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.~~ J. 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.~~ K. 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~~ *action* is pending.

~~K.~~ L. 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 *Department of Environmental Quality*, Commonwealth of Virginia.

~~L.~~ M. 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.~~ N. The director will notify the surety if the owner or operator provides alternate financial assurance as specified in this article.

~~N.~~ O. 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.~~ P. In regard to closure or post-closure performed either by the owner or operator or by the surety, proper final closure of a *solid* 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.

Q. The director shall call or cash the surety bond if it is not replaced 30 days prior to expiration with alternate financial assurance acceptable to the director or if the owner or operator fails to fulfill the conditions of the bond.

~~P.~~ R. The wording of the surety bond shall be identical to the wording specified in ~~Appendix II~~ 9 VAC 20-70-290 B.

9 VAC 20-70-170. Letter of credit.

A. An owner or operator of a *solid* 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 *original* letter of credit to the director. The letter of credit shall be effective before the initial receipt of waste or before 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 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~~ *action* is pending. ~~If the letter of credit is canceled by~~ *Within 60 days of receipt of notice from the issuing institution that it does not intend to extend the letter of credit, the owner or operator shall obtain alternate financial assurance and submit it to the director.*

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~~ *shall call or cash* 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 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 letter of credit will be deposited by the surety directly into the standby trust fund. Payments from the trust fund shall be approved by the trustee.

I. The director shall call or cash the letter of credit if it is not replaced prior to 30 days of expiration with alternate financial assurance acceptable to the director.

~~G.~~ J. The wording of the letter of credit shall be identical to the wording specified in ~~the Appendix III~~ 9 VAC 20-70-290 C.

9 VAC 20-70-180. Certificate of deposit of ~~acceptable collateral.~~

A. An owner or operator of a *solid* waste management facility (with the exception of sanitary landfills) may satisfy the requirements of this article, wholly or in part, by ~~filling with the director a collateral bond payable~~ *assigning all rights, title and interest of a certificate of deposit* to the Department of Environmental Quality, 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~~ *certificate of deposit* shall be at least equal to the estimated closure, post-closure care or corrective action cost for the site for which the permit

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application has been filed or any part thereof not covered by other financial responsibility mechanisms. Liability of such ~~bond certificate of deposit 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. B. The owner or operator shall be entitled to demand, receive and recover the interest and income from said mechanisms the certificate of deposit as it becomes due and payable as long as the market value of the mechanisms certificate of deposit plus any other mechanisms used continue to at least equal the amount of the estimated current 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. C. 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 call or cash the certificate of deposit.~~

~~D. The wording of the assignment shall be identical to the wording specified in 9 VAC 20-70-290 D.~~

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 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 insurer must be licensed pursuant to Chapter 10 (§ 38.2-1000 et seq.) of Title 38.2 of the Code of Virginia. The owner or operator shall notifiy provide the director that a with an original signed copy of the insurance policy has been placed and place a copy in the operating~~

record. *The department shall be listed as an additional insured on the policy, but the department will not be obligated for payment of the premium in any manner.*

B. The insurance policy shall guarantee that funds will be available to close the *solid* 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 *and maintained* 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 has been submitted to and approved by the director.~~ 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 Within 60 days of receipt of notice from the insurer that it does not intend to renew the policy, the owner or operator shall obtain alternate financial assurance as specified in this section and submit it to the director.~~

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 20-70-290 E.

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) ~~Supply documentation demonstrating that the owner or operator has a current rating for its most recent bond issuance senior unsubordinated debt 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~~ *An original* letter signed by the owner's or operator's chief financial officer and worded as specified in ~~Appendix V~~ 9 VAC 20-70-290 F.

(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. 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) A copy of the owner's or operator's audited financial statements for the latest completed fiscal year.

~~(3)~~ (4) 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.

(5) A certification from the corporation's chief financial officer stating the method for funding closure and post-closure costs, and the amount currently designated for closure and post-closure costs in the corporation's budget worded as specified in 9 VAC 20-70-290 H.

b. An owner or operator shall submit the items specified in subdivision 2 of this section before the initial receipt of waste or before 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

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information must consist of all ~~three~~ *five* 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~~ *9 VAC 25-590-10 et seq.*, 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 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~~ *supply the director with documentation demonstrating that the owner or operator has* 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 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~~

~~(3)~~ (2) 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 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 submit to the department~~ the following items ~~in the facility's operating record~~:

(1) ~~An original letter signed by the local government's chief financial officer that:~~ worded as specified in 9 VAC 20-70-290 G.

~~(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 (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~~ shall state the procedures 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.

(5) A certification from the local government's chief executive officer stating in detail the method selected by the local government for funding closure and post-closure costs. If the method selected by the local government is a trust fund, escrow account or similar mechanism, there shall be included a certification from the local government's chief financial officer indicating the current reserve obligated to closure and post-closure care cost. If the method selected by local governments is the use of annual operating budget and Capital Investment Funds, there shall be a certification from the local government's chief financial officer so indicating. Nothing herein shall be construed to prohibit the local government from revising its plan for funding closure and post-closure care cost if such revision provides economic benefit to the local government and if such revision provides adequate means for funding closure and post-closure care cost. This certification shall be worded as specified in 9 VAC 20-70-290 H.

(6) If the local government is required under this section to fund a restricted sinking fund or escrow account, an original letter signed by the local government's chief financial officer and worded as specified in 9 VAC 20-70-290 I must be submitted.

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 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 *and submit*

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the updated documentation described in subdivisions 3 a (1) through (4) to the department 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 a copy of the financial assurance mechanism in the operating record, and notify submit the original financial assurance mechanism to 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%~~ 20% 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~~ 9 VAC 25-590-10 et seq., 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%~~ 20% of the local government's total annual revenue.

c. 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 exceed 20% of the local government's total annual revenue or the sum of the revenue of constituent governments in the case of regional authorities but must not exceed 43% of the local government's total annual revenue or the sum of total revenues of constituent governments in the case of regional authorities. The locality must establish one of the following:

(1) A restricted sinking fund for the purposes of funding closure of the facility; or

(2) An escrow account managed by a third party escrow agent for the purpose of funding closure of the facility.

d. 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 9 VAC 25-590-10 et seq., 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 20-60-12 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 environmental obligations assured through the financial test may exceed 20% of the local government's total annual revenue or the sum of the revenue of constituent governments in the case of regional authorities but do not exceed 43% of the local government's total annual revenue or the sum of total revenues of constituent governments in the case of regional authorities. The locality must establish one of the following:

(1) A restricted sinking fund for the purposes of funding closure of the facility; or

(2) An escrow account managed by a third party escrow agent for the purpose of funding closure of the facility.

~~e.~~ e. 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 V~~ 9 VAC 20-70-290 J. 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.

4. *A certification from the corporation's chief financial officer stating the method for funding closure and post-closure costs, and the amount currently designated for closure and post-closure costs in the corporation's budget worded as specified in 9 VAC 20-70-290 H.*

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~~ *shall*:

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 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

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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 *acceptable to the director*, place evidence of the alternate assurance in the facility operating record, and ~~notify~~ *submit the alternate assurance to the director.*

C. Recordkeeping and reporting.

1. The owner or operator shall ~~place a certified copy of the guarantee~~ *submit a signed original guarantee on the form in 9 VAC 20-70-290 K to the director* along with items required under subdivision 3 of 9 VAC 20-70-210 and *place a copy of the document* into the facility's operating record before the initial receipt of waste or before 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 *acceptable to the director*, place evidence of the alternate assurance in the facility operating record, and ~~notify~~ *submit alternate assurance to 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.

4. *A certification from the local government's chief executive officer stating in detail the method selected by the local government for funding closure and post-closure costs. If the method selected by the local government is a trust fund, escrow account or similar mechanism, there shall be included a certification from the local government's chief financial officer indicating the current reserve obligated to closure and post-closure care cost. If the method selected by local governments is the use of annual operating budget and Capital Investment Funds, there shall be a certification from the local government's chief financial officer so indicating. Nothing herein shall be construed to prohibit the local government from*

revising its plan for funding closure and post-closure care cost if such revision provides economic benefit to the local government and if such revision provides adequate means for funding closure and post-closure care cost. This certification shall be worded as specified in 9 VAC 20-70-290 H.

9 VAC 20-70-240. ~~Other mechanisms.~~ (Repealed.)

~~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 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 laws.~~

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 *submit a written* request to the director for an immediate decision in which case the director shall respond within 10 days after receipt of such request.

Article 7.
Discounting.

~~9 VAC 20-70-280. Discounting. (Repealed.)~~

~~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.~~

9 VAC 20-70-290. Wording of financial mechanisms.

APPENDIX I. A. Wording of trust agreements.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the 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 has established certain regulations applicable to the Grantor, requiring that the owner or operator of a (solid) (regulated medical) (yard) waste (disposal) (*transfer station*) (*receiving*) (management) facility must provide assurance that funds will be available when needed for (closure, 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 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, *corrective action* 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 cash or securities, which are acceptable to the Trustee, described in Schedule 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, 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, 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

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trust fund solely in the interest of the 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 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 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 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 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. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon 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 director of the Department of Environmental Quality, Commonwealth of Virginia, and the present 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 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 Director of the Department of Environmental Quality, Commonwealth of Virginia, to the Trustee will be in writing, signed by the 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 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 Director of the Department of Environmental Quality, Commonwealth of Virginia, or by the Trustee and the 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 Director of the Department of Environmental Quality, Commonwealth of Virginia, or by the Trustee and the 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 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 9 VAC 20-70-290 A of the Financial Assurance regulations for Solid Waste Management Facilities Regulations, as such regulations were constituted on the date shown immediately below.~~

(Signature of Grantor) _____ (Date) _____

By: (Title) _____ (Date) _____
Attest: _____ (Date) _____

(Title) _____ (Date) _____
(Seal) _____
(Signature of Trustee) _____

By _____
Attest: _____

(Title) _____ (Date) _____
(Seal) _____

Certification of Acknowledgment:

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

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Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(Signature of Notary Public)

~~APPENDIX II. B. Wording of surety bond guaranteeing performance.~~

(NOTE: instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.)

PERFORMANCE BOND

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, 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 (solid, regulated medical, yard) waste 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, post-closure care, corrective action), whenever required to do so, of the facility identified above in accordance with the (closure, 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, post-closure care, corrective action) following an order to begin (closure, 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 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 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 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, 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 guaranteed for the facility to the Commonwealth of Virginia.

Upon notification by the Director of the Department of Environmental Quality, Commonwealth of Virginia, that the Principal has been found in violation of an order to begin (closure, post-closure care, corrective action), the Surety must either perform (closure, post-closure care, corrective action) in accordance with the order or forfeit the amount of the (closure, 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 shall in no way alleviate its obligation on this bond.

For purposes of this bond, (closure, post-closure care, corrective action) shall be deemed to have been completed when the Director of the Department of Environmental Quality, Commonwealth of Virginia, determines that the conditions of the approved plan have been met.

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 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 director as shown on the signed return receipt; or (2) while ~~a compliance procedure~~ an *enforcement action* 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 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 I hereby certify 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 9 VAC 20-70-290 B of the Financial Assurance Regulations for Solid Waste Management Facilities as such regulations were constituted on the date shown immediately below.

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 III. C. Wording of irrevocable standby letter of credit.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.)

IRREVOCABLE STANDBY LETTER OF CREDIT

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 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 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 I hereby certify 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 9 VAC 20-70-290 C of the Financial Assurance Regulations for Solid Waste Management Facilities as such regulations were constituted on the date shown immediately below.

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.")

D. Assignment of certificate of deposit account.

City _____, 20__

FOR VALUE RECEIVED, the undersigned assigns all right, title and interest to the Virginia Department of Environmental Quality and its successors and assigns the Virginia Department of Environmental Quality the principal amount of the instrument, including all monies deposited now or in the future to that instrument, indicated below:

[] If checked here, this assignment includes all interest now and hereafter accrued.

Certificate of Deposit Account No. _____

This assignment is given as security to the Virginia Department of Environmental Quality in the amount of _____ Dollars (\$_____).

Continuing Assignment. This assignment shall continue to remain in effect for all subsequent terms of the automatically renewable certificate of deposit.

Assignment of Document. The undersigned also assigns any certificate or other document evidencing ownership to the Virginia Department of Environmental Quality.

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This contract is subject to the additional terms and provisions contained on the reverse side, which are made part of this contract.

The party or parties to this Assignment set their hand or seals, or if corporate, has caused this assignment to be signed in its corporate name by its duly authorized officers and its seal to be affixed by authority of its Board of Directors the day and year above written.

_____ SEAL

[Owner]

_____ SEAL

[Owner]

THE FOLLOWING SECTION IS TO BE COMPLETED BY THE BRANCH OR LENDING OFFICE:

The signature(s) as shown above compare correctly with the name(s) as shown on record as owner(s) of the Certificate of Deposit indicated above. The above assignment has been properly recorded by placing a hold in the amount of \$ _____ for the benefit of the Department of Environmental Quality.

[] If checked here, the accrued interest on the Certificate of Deposit indicated above has been maintained to capitalize versus being mailed by check or transferred to a deposit account.

_____ [Signature]

_____ [Date]

_____ [Title]

ASSIGNMENT OF CERTIFICATE OF DEPOSIT ACCOUNT

Additional Security. This assignment shall secure the payment of any financial obligation of the [name of owner/operator] to the Virginia Department of Environmental Quality for ["closure" "post closure care" "corrective action"] at the [facility name and permit number] located [physical address]

Application of Funds. The undersigned agrees that all or any part of the funds of the indicated account or instrument may be applied to the payment of any and all financial assurance obligations of [name of owner/operator] to the Virginia Department of Environmental Quality for ["closure" "post closure care" "corrective action"] at the [facility name and address]. The undersigned authorizes the Virginia Department of Environmental Quality to withdraw any principal amount on deposit in the indicated account or instrument including any interest, if indicated, and to apply it in the Virginia Department of Environmental Quality's discretion to fund ["closure" "post closure care" "corrective action"] at the [facility name] or in the event of [owner or operator's] failure to comply with the Virginia Financial Assurance Regulations for Solid Waste Management Facilities, 9 VAC 20-70-10 et seq. The undersigned agrees that the Virginia Department of Environmental Quality may withdraw any principal and/or interest from the indicated account or instrument without demand or notice agrees to

assume any and all loss of penalty due to federal regulations concerning the early withdrawal of funds. Any partial withdrawal of principal or interest shall not release this assignment.

APPENDIX IV. E. Wording of certificate of insurance.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the 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 9 VAC 20-70-290 E of the Financial Assurance Regulations for Solid Waste Management Facilities 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 V. F. Wording of letter from chief financial officer.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses removed.)

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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 20-70-420~~ 9 VAC 20-70-200 of the 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 (9 VAC 25-590-10 et seq.), 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, post-closure care, corrective action or any other environmental obligation cost estimates. Identify each cost estimate as to whether it is for closure, 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 is demonstrated through the corporate test specified in 9 VAC 20-70-200 or its equivalent in other applicable regulations. The current cost estimates covered by the test are shown for each facility:

2. This firm guarantees, through the corporate guarantee specified in 9 VAC 20-70-220, the financial assurance for the following facilities owned or operated by subsidiaries of this firm. The current cost estimates so guaranteed are shown for each facility:

3. This firm, as owner or operator or guarantor, is demonstrating financial assurance for the following facilities through the use of a financial test. The current cost estimates covered by such a test are shown for each facility:

4. This firm is the owner or operator of the following waste management facilities for which financial assurance is not demonstrated through the financial test or any other financial assurance mechanism. The current 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 9 VAC 20-70-200 1 a (1) are used. Fill in Alternative II if the criteria of 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-

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-

4 Total liabilities (if any portion of the closure, 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 line 5.) \$ _____

5 Net worth \$ _____

YES NO

Is line 4 divided by line 5 less than 2.0?

ALTERNATIVE III-

6 Total liabilities \$ _____

7 The sum of net income plus depreciation, depletion, and amortization minus \$10 million* \$ _____

Is line 7 divided by line 6 greater than 0.1? YES NO

I hereby certify that the wording of this letter is identical to the wording specified in ~~Article 4 (9 VAC 20-70-140 et seq.) of Part III~~ 9 VAC 20-70-290 F of the Financial Assurance Regulations for Solid Waste Management Facilities as such regulations were constituted on the date shown immediately below.

(Signature)

(Name)

(Title)

(Date)

G. Wording of the Local Government Letter from Chief Financial Officer.

[NOTE: Instructions in brackets are to be replaced with the relevant information and the brackets deleted.]

Proposed Regulations

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the financial test to demonstrate financial responsibility for ["closure care" "post-closure care" "corrective action costs"] arising from operating a solid waste management facility.

The following facilities are assured by this financial test: [List for each facility: the name and address of the facility, the permit number, the closure, post-closure and/or corrective action costs, whichever applicable, for each facility covered by this instrument].

This owner's or operator's financial statements were prepared in conformity with Generally Accepted Accounting Principles for governments and have been audited by ["an independent certified public accountant" "Auditor of Public Accounts"]. The owner or operator has not received an adverse opinion or a disclaimer of opinion from ["an independent certified public accountant" "Auditor of Public Accounts"] on its financial statements for the latest completed fiscal year.

This owner or operator is not currently in default on any outstanding general obligation bond. Any outstanding issues of general obligation or revenue bonds, if rated, have a Moody's rating of Aaa, Aa, A, or Baa or a Standard and Poor's rating of AAA, AA, A or BBB; if rated by both firms, the bonds have a Moody's rating of Aaa, Aa, A or Baa and a Standard and Poor's rating of AAA, AA, A, or BBB.

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].

[Please complete Alternative I or Alternative II]

(Fill in Alternative I if the criteria in 40 CFR 258.74 (f)(1)(A) are used. Fill in Alternative II if the criteria of 40 CFR 258.74(f)(1)(B) are used.)

ALTERNATIVE I – BOND RATING TEST

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding general obligation bond issues that are being used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows: [complete table]:

Issue Date	Maturity Date	Outstanding Amount	Bond Rating	Rating Agency
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Any outstanding issues of general obligation or revenue bonds, if rated, have a Moody's rating of Aaa, Aa, A, or Baa or a Standard and Poor's rating of AAA, AA, A or BBB; if rated by both firms, the bonds have a Moody's rating of Aaa, Aa, A or Baa and a Standard and Poor's rating of AAA, AA, A or BBB.

1) Sum of current closure, post-closure and corrective action cost estimates (total of all cost estimates listed above) \$ _____

*2) Operating Deficit

(a) latest completed fiscal year [insert year] \$ _____

(b) previous fiscal year [insert year] \$ _____

*3) Total Revenue

(a) latest completed fiscal year [insert year] \$ _____

(b) previous fiscal year [insert year] \$ _____

4) Other self-insured environmental costs

(a) Amount of aggregate underground injection control systems financial assurance insured by a financial test under 40 CFR 144.62 \$ _____

(b) Amount of annual underground storage tank aggregate coverage insured by a financial test under 40 CFR Part 280 and 9 VAC 25-590-10 et seq. \$ _____

(c) Amount of aggregate costs associated with PCB storage facilities insured by a financial test under 40 CFR Part 761 \$ _____

(d) Amount of annual aggregate hazardous waste financial assurance insured by a financial test under 40 CFR Parts 264 and 265 and 9 VAC 20-60-10 et seq. \$ _____

(e) Total of lines 4(A) through 4(d) \$ _____

YES NO

5) Is (line 2a , line 3a) < 0/05? _____

6) Is (line 2b , line 3b) < 0.05? _____

7) Is (line 1 + line 4e) £ (line 3a x 0.43)? _____

8) Is (line 1 + line 4e) £ (line 3a x .20)? _____

If the answer to line 7 is yes and the answer to line 8 is no, please attach a letter from the agent/trustee stating the current balance of the account/fund as of the latest fiscal reporting year to this form.

ALTERNATIVE II – FINANCIAL RATIO TEST

1) Sum of current closure, post-closure and corrective action cost estimates \$ _____

*2) Operating Deficit

(a) latest completed fiscal year [insert year] \$ _____

(b) previous fiscal year [insert year] \$ _____

*3) Total Revenue

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- (a) latest completed fiscal year [insert year] \$ _____
- (b) previous fiscal year [insert year] \$ _____
- 4) Other self-insured environmental costs
- (a) Amount of aggregate underground injection control systems financial assurance insured by a financial test under 40 CFR 144.62 \$ _____
- (b) Amount of annual underground storage tank aggregate coverage insured by a financial test under 40 CFR Part 280 and 9 VAC 25-590-10 et seq. \$ _____
- (d) Amount of aggregate costs associated with PCB storage facilities insured by a financial test under 40 CFR Part 761 \$ _____
- (d) Amount of annual aggregate hazardous waste financial assurance insured by a financial test under 40 CFR Parts 264 and 265 and 9 VAC 20-60-10 et seq. \$ _____
- (e) Total of lines 4(a) through 4(d) \$ _____

- *5) Cash plus marketable securities \$ _____
- *6) Total Expenditures \$ _____
- *7) Annual Debt Service \$ _____

- | | YES | NO |
|---|-----|-----|
| 8) Is (line 2a , line 3a) < 0.05? | ___ | ___ |
| 9) Is (line 2b , line 3b) < 0.05? | ___ | ___ |
| 10) Is (line 1 + line 4e) £ (line 3a x 0.43)? | ___ | ___ |
| 11) Is (line 5 , line 6) ³ 0.05? | ___ | ___ |
| 12) Is (line 7 , line 6) £ 0.20? | ___ | ___ |
| 13) Is (line 1 + line 4e) £ (line 3a x .20) | ___ | ___ |

(The owner or operator must answer "Yes" to questions 8-12 to qualify to use this Alternative)

If the answer to line 13 is no, has a restricted sinking fund or escrow account been established? _____

I hereby certify that the wording of this letter is identical to 9 VAC 20-70-290 G of the Financial Assurance Regulations for Solid Waste Management Facilities.

I hereby certify that the wording of this letter is identical to the wording in 9 VAC 20-70-290 F of the Financial Assurance Regulations for Solid Waste Management Facilities as such regulations were constituted on the date shown immediately below.

[Signature] _____

[Name of person signing] _____

[Title of person signing] _____

[Date] _____

H. Certification of funding.

Certification of Funding

I certify the following information details the current plan for funding closure and post closure at the solid waste management facilities listed below.

Facility	Permit #	Source for funding closure and post closure

Name of Locality or Corporation: _____

Signature _____ Printed Name _____ Date _____

_____ Title _____

I. Certification of escrow/sinking fund balance.

Certification of Escrow/Sinking Fund Balance

I am the Chief Financial Officer of (name of locality) and hereby certify that as of (date) the current balance in the (type of fund) fund restricted to landfill closure costs is \$ _____.

The calculation used to determine the amount required to be funded is as follows:

[Show the values that were used in the following formula:

$$(CE * CD) - E$$

Where CE is the current closure cost estimate, CD is the capacity of landfill used to date, and E is current year expenses for closure.]

Therefore, this account has been funded in accordance with the Financial Assurance Regulations for Solid Waste Facilities, 9 VAC 20-70-10 et seq.

[Signature] _____

[Name of person signing] _____

[Title of person signing] _____

[Date] _____

APPENDIX VI. J. Wording of corporate guarantee.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses removed.)

CORPORATE GUARANTEE

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

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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 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, address, and permit number, if any. Indicate for each whether guarantee is for closure, post-closure care, 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 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 20-101-10 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 "corrective action") of the above facility(ies) in accordance with the closure or post-closure care plans and other (requirements of the) permit or (the order) whenever required to do so, the guarantor shall do so or establish a trust fund as specified in 9 VAC 20-70-140 in the name of (owner or operator) in the amount of the current cost estimates.

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 director and to (owner or operator) that he intends to provide alternate financial assurance as specified in 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 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 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, post-closure care, or corrective action, he shall establish alternate financial assurance as specified in 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 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 or *Transportation of Solid and Medical Wastes on State Waters*) 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 Article 4 of Part III of the Regulations for the above-listed facilities, except 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).

11. Guarantor agrees that if (owner or operator) fails to provide alternate financial assurance as specified in Article 4 of Part III of the Regulations, and obtain written approval of such assurance from the director within 90 days after a notice of cancellation by the guarantor is received by the director from guarantor, guarantor shall provide such alternate financial assurance in the name of (owner or operator).

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 V~~ 9 VAC 20-70-290 J of the *Financial Assurance Regulations for Solid Waste Management Facilities* as such regulations were constituted on the date ~~first above written~~ shown immediately below.

(Name of guarantor) Effective date:.....

(Authorized signature for guarantor)

(Name of person signing)

(Title of person signing)

Signature of witness or notary:.....

K. Wording of local government guarantee.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses removed.)

LOCAL GOVERNMENT GUARANTEE

Guarantee made this (date) by (name of guaranteeing entity), a local government created under the laws of the state of Virginia, herein referred to as guarantor. This guarantee is made on behalf of the (owner or operator) of (address), to the Virginia Department of Environmental Quality (“Department”), obligee.

Recitals

1. Guarantor meets or exceeds the financial test criteria in 9 VAC 20-70-210 and agrees to comply with the reporting requirements for guarantors as specified in 9 VAC 20-70-230 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, address, and permit number, if any. Indicate for each whether guarantee is for closure, post-closure care, 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 the Solid Waste Management Regulations (9 VAC 20-80-10 et seq.) or Vegetative Waste Management and Yard Waste Composting Regulation (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 “corrective action”) of the above facility(ies) in accordance with the closure or post-closure care plans and other (requirements of the) permit or (the order) whenever required to do so, the guarantor shall do so or establish a trust fund as specified in 9 VAC 20-70-150 in the name of (owner or operator) in the amount of the current cost estimates.

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 director and to (owner or operator) that he intends to provide alternate financial assurance as specified in 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 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 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, post-closure care, or corrective action, he shall establish alternate financial assurance as specified in 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 the 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) 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 Article 4 of Part III of the Regulations for the above-listed facilities, except as provided in paragraph 10 of this agreement.

10. 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.

11. Guarantor agrees that if (owner or operator) fails to provide alternate financial assurance as specified in Article 4 of Part III of the Regulations, and obtain written approval of such assurance from the director with 90 days after a notice of cancellation by the guarantor is received by the director from guarantor, guarantor shall provide such alternate financial assurance in the name of (owner or operator).

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 9 VAC 20-70-290 K of the Financial Assurance Regulations for Solid Waste Management Facilities as such regulations were constituted on the date shown immediately below.

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(Name of guarantor) Effective date:.....

(Authorized signature for guarantor)

(Name of person signing)

(Title of person signing)

Signature of witness or notary:.....

VA.R. Doc. No. R00-91; Filed December 13, 2000, 9:09 a.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 change from the proposed text of the regulation.

TITLE 2. AGRICULTURE

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 A 17 of the Code of Virginia, which excludes the Commissioner of Agriculture and Consumer Services in promulgating regulations pursuant to § 3.1-398, which conform, insofar as practicable, with those promulgated under the federal Food, Drug and Cosmetic Act (21 USC § 301 et seq.).

Title of Regulation: **2 VAC 5-600-5 et seq. Regulations Pertaining to Food for Human Consumption.**

Statutory Authority: § 3.1-398 of the Code of Virginia.

Effective Date: December 14, 2000.

Summary:

The regulation ensures that the same standards are applied to foods by food establishments under the jurisdiction of the Department of Agriculture and Consumer Services that are applied by the U.S. Food and Drug Administration to food establishments. This regulatory action brings the regulations up to date and ensures their consistency with current federal regulations.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from James A. Morano, Jr., Department of Agriculture and Consumer Services, 1100 Bank Street, 5th Floor, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3520.

2 VAC 5-600-5. Petitions.

The Board of Agriculture and Consumer Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision of this regulation.

2 VAC 5-600-10. Adoption by reference.

A. Regulations from Title 21, Chapter 1, Subchapter A, Code of Federal Regulations. The Board of Agriculture and Consumer Services hereby adopts the following provisions of Chapter 1 of Title 21, Subchapter A of the Code of Federal Regulations (Rev. April 1, 1999) as regulations applicable in the enforcement of the Virginia Food Act by reference:

Part 73, Listing of color additives exempt from certification, Subpart A – Foods.

Part 74, Listing of color additives subject to certification, Subpart A – Foods.

Part 81, General specifications and general restrictions for provisional color additives for use in foods, drugs and cosmetics.

Part 82, Listing of certified provisionally listed colors and specifications, Subpart B - Foods, Drugs and Cosmetics.

A. B. Regulations from Title 21, Chapter 1, Subchapter B, Code of Federal Regulations. The Board of Agriculture and Consumer Services hereby adopts the following provisions of Chapter 1 of Title 21, Subchapter B of the Code of Federal Regulations (Rev. April 1, 1999) as regulations applicable in the enforcement of the Virginia Food Act by reference:

Part 100, General.

Part 101, Food labeling.

Part 102, Common or usual name for nonstandardized foods.

~~Part 103, Quality standards for foods with no identity standards.~~

Part 104, Nutritional quality guidelines for foods.

Part 105, Foods for special dietary use.

Part 109, Unavoidable contaminants in food for human consumption and food-packaging material.

Part 110, Current good manufacturing practice in manufacturing, packing, or holding human food.

Part 111, Current good manufacturing practice for dietary supplements.

Part 113, Thermally processed low-acid foods packaged in hermetically sealed containers.

Part 114, Acidified foods.

Part 129, Processing and bottling of bottled drinking water.

Part 133, Cheeses and related cheese products.

Part 136, Bakery products.

Part 137, Cereal flours and related products.

Part 139, Macaroni and noodle products.

Part 145, Canned fruits.

Part 146, Canned fruit juices.

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Part 150, Fruit butters, jellies, preserves, and related products.

Part 152, Fruit pies.

Part 155, Canned vegetables.

Part 156, Vegetable juices.

Part 158, Frozen vegetables.

Part 160, Eggs and egg products.

Part 161, Fish and shellfish.

Part 163, Cacao products.

Part 164, Tree nut and peanut products.

Part 165, Beverages.

Part 166, Margarine.

Part 168, Sweeteners and table sirups.

Part 169, Food dressings and flavorings.

§ 170.19, Pesticide chemicals in processed foods.

Part 172, Food additives permitted for direct addition to food for human consumption.

Part 173, Secondary direct food additives permitted in food for human consumption.

Part 174, Indirect food additives: General.

Part 175, Indirect food additives: Adhesives and components of coatings.

Part 176, Indirect food additives: Paper and paperboard components.

Part 177, Indirect food additives: Polymers.

Part 178, Indirect food additives: Adjuvants, production aids, and sanitizers.

Part 179, Irradiation in the production, processing and handling of food.

Part 180, Food additives permitted in food or in contact with food on an interim basis pending additional study, Subpart B - Specific requirements for certain food additives.

Part 181, Prior-sanctioned food ingredients.

Part 182, Substances generally recognized as safe.

Part 184, Direct food substances affirmed as generally recognized as safe.

Part 186, Indirect food substances affirmed as generally recognized as safe.

Part 189, Substances prohibited from use in human food.

C. Regulations from Title 21, Chapter 1, Subchapter L, Code of Federal Regulations. The Board of Agriculture and Consumer Services hereby adopts the following provisions of Chapter 1 of Title 21, Subchapter L of the Code of Federal

Regulations (Rev. April 1, 1999) as regulations applicable in the enforcement of the Virginia Food Act by reference:

§ 1240.61, Mandatory pasteurization for all milk and milk products in final package form intended for direct human consumption.

B- D. Regulations from Title 40, Chapter 1, Subchapter E, Code of Federal Regulations. The Board of Agriculture and Consumer Services hereby adopts the following provisions of Chapter 1 of Title 40, Subchapter E of the Code of Federal Regulations (Rev. July 1, 1999) as regulations applicable to the enforcement of the Virginia Food Act by reference:

Part 180, Tolerances and exemptions from tolerances for pesticide chemicals in [~~or on raw agricultural commodities~~ foods].

Part 185, Tolerances for pesticides in food.

<p>NOTICE: The forms used in administering 2 VAC 5-600-10, Regulations Pertaining to Food for Human Consumption, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.</p>
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FORMS

Inspection Report, Form VDACS-06017.

Sample Collection Report.

Form FDA 481(A) - CG (rev. 10/96).

Form FDA 481(C) - CG (rev. 9/84).

Form FDA 481 (E) - CG (rev. 11/95).

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Suspension of Regulatory Process

Title of Regulation: **Regulations for the Control and Abatement of Air Pollution (Rev. K97).**

9 VAC 5-80-10 et seq. Permits for Stationary Sources (suspending 9 VAC 5-80-310 through 9 VAC 5-80-355)

The Department of Environmental Quality, on behalf of the State Air Pollution Control Board, is suspending Article 2 (9 VAC 5-80-310 through 9 VAC 5-80-355) of Part II of 9 VAC 5 Chapter 80 pending reconsideration by the board of the final amendments to Article 2. The final action was published in 17:4 VA.R. 585 November 6, 2000, and the amendments were to become effective January 1, 2001. Only the aforementioned sections are suspended; the remainder of the amendments to Revision K97 that were published in 17:4 VA.R. 585 November 6, 2000, will become effective January 1, 2001.

Agency Contact: Cindy M. Berndt, Agency Regulatory Coordinator, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4378, e-mail cberndt@deq.state.va.us.

VA.R. Doc. No. R98-44; Filed December 27, 2000, 11:33 a.m.

VIRGINIA WASTE MANAGEMENT BOARD

REGISTRAR'S NOTICE: Final action on Part IV (9 VAC 20-170-200 through 9 VAC 20-170-230), Standards for Vessels Transporting Solid Wastes or Regulated Medical Wastes, and Part V (9 VAC 20-170-240, 9 VAC 20-170-250 and 9 VAC 20-170-260), Registration of Vessels Transporting Solid Wastes or Regulated Medical Wastes, has been deferred by the Virginia Waste Management Board for later consideration.

Title of Regulation: **9 VAC 20-170-10 et seq. Transportation of Solid Medical Wastes on State Waters Regulations.**

Statutory Authority: §§ 10.1-1402 and 10.1-1454.1 of the Code of Virginia.

Effective Date: February 16, 2001.

Summary:

The regulation sets forth guidelines for the permitting of the facilities receiving solid wastes and regulated medical wastes from a ship, barge or other vessel transporting such wastes upon the navigable waters of the Commonwealth to the extent allowable under state law. It also includes provisions governing the commercial transport, loading and off-loading of solid wastes and regulated medical wastes by ship, barge or other vessel upon the navigable waters of the Commonwealth to the extent allowable under state law.

The regulation establishes a permits-by-rule requirement, including permit fees, for facilities receiving solid wastes and regulated medical wastes from a ship, barge or other vessel; and prescribes specific siting, design/construction, and operational standards for the receiving facilities. In addition, the proposed regulation will establish a registration requirement, including registration fees, for any ship, barge or other vessel transporting solid wastes or regulated medical wastes upon the navigable waters of the Commonwealth to the extent allowable under state law. The regulation prescribes specific design/construction and operational standards for these vessels and the containers holding wastes and establishes a financial responsibility requirement for the owners and operators of these vessels. Specific requirements for containers include a performance standard, testing requirement, manifest system, and stacking restrictions.

Changes to the proposed regulation include the addition of a new section, 9 VAC 20-170-85, that contains a detailed description of the design, certification, and testing required for the containers to be used to transport solid and regulated medical wastes on state waters. Other changes made are concerned with the handling of waste at a facility, the handling of empty containers, and the requirement that any container used must be in compliance with new section 9 VAC 20-170-85. Also, the definition of the worst case scenarios for the release of wastes into state waters was modified. Action on Part IV and Part V was deferred for later consideration by the board and a new Part VII was added.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from Robert G. Wickline, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219, telephone (804) 698-4213.

CHAPTER 170.

TRANSPORTATION OF SOLID MEDICAL WASTES ON STATE WATERS [REGULATIONS].

PART I.

DEFINITIONS AND PROGRAM ADMINISTRATION.

9 VAC 20-170-10. Definitions.

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

"Affiliated company" means (i) any company that directly or indirectly owns, controls, or holds, with power to vote, 10% or more of the outstanding voting securities of a pure captive insurer or (ii) any company of which 10% or more of the voting securities are directly or indirectly owned, controlled, or held, with power to vote, by a parent, subsidiary, or associated company.

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"Anniversary date" means the date of issuance of a financial mechanism.

"Applicant" means any and all persons seeking or holding a permit required under this chapter.

"Associated company" means any company in the same corporate system with a pure captive insurer.

"Association captive insurer" means any insurer transacting the business of insurance and reinsurance only on risks, hazards, and liabilities of the members of an insurance association.

"Beneficial use" means both instream and offstream uses of state waters. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. Offstream beneficial uses include, but are not limited to, domestic (including public water supply), agricultural, electric power generation, commercial and industrial uses. Public water supply uses for human consumption shall be considered the highest priority.

"Board" means the Virginia Waste Management Board.

"Bodily injury" means the death or injury of any person incident to a waste deposit from a vessel, but not including any death, disablement, or injuries covered by [~~worker's~~ workers'] compensation, disability benefits or unemployment compensation law or other similar law. Bodily injury may include payment of medical, hospital, surgical, and funeral expenses arising out of the death or injury of any person. This term shall not include those liabilities that, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

"Captive insurer" means any pure captive insurer or any association captive insurer.

"Certificant" means an owner or operator who has been issued a Certificate of Financial Responsibility under this chapter.

"Certificate applicant" means an owner or operator who has applied for a Certificate of Financial Responsibility or for the renewal of a Certificate of Financial Responsibility under this chapter.

"Certificate of Financial Responsibility" or "certificate" means a Certificate of Financial Responsibility issued under Part VI ([~~9 VAC 20-170-200~~ 9 VAC 20-170-270] et seq.) of this chapter, unless otherwise indicated.

"Certified copy" means a legible copy certified as accurate by a notary public or other person authorized to take oaths in the United States.

"CFR" means Code of Federal Regulations.

"Charter by demise" means to hire for exclusive use through a lease.

"Closure" means the act of securing a solid waste management facility pursuant to the requirements of this chapter.

"Commercial transport" means transportation for the purposes of commercial carriage of solid wastes or regulated medical wastes as cargo.

"Commercial transporter" means any person who transports for the purposes of commercial carriage of solid wastes or regulated medical wastes as cargo.

"Container" means any watertight structure that meets the provisions of this chapter.

"Containment and cleanup" means abatement, containment, removal and disposal of solid wastes or regulated medical wastes that have been deposited to state waters or adjoining shorelines, and the restoration of the environment to its existing state prior to a deposit of the wastes.

"Demise charterer" means a person with whom the owner of the vessel enters into a demise charter. The charterer takes over all possession and control of the vessel from the owner of the vessel and becomes subject to the duties and responsibilities of ownership. The charterer is also responsible for directing the operations of the vessel and providing the master and crew.

"Department" means the Virginia Department of Environmental Quality.

"Destination facility" means a facility that treats, disposes of, or recycles solid wastes or regulated medical wastes in accordance with applicable federal and state regulations.

"Director" means the Director of the Virginia Department of Environmental Quality or an authorized representative.

"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, that 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 (§ [~~54.1-3404~~ 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 that 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 abilities 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.

"Existing facility" means any receiving facility that is constructed prior to [~~the effective date of this chapter~~ February 16, 2001].

"Generator" means any person, by site, whose act or process produces solid wastes or regulated medical wastes, or whose act first causes solid wastes or regulated medical wastes to become subject to this chapter.

"Insurance association" means any group of individuals, corporations, partnerships, associations, or governmental units or agencies whose members collectively own, control, or hold with power to vote all of the outstanding voting securities of an association captive insurer.

"Key personnel" means the applicant itself and any person employed by the applicant in a managerial capacity, or empowered to make discretionary decisions, with respect to the solid waste or hazardous waste operations of the applicant in Virginia, but shall not include employees exclusively engaged in the physical or mechanical collection, transportation, treatment, storage, or disposal of solid or hazardous waste and such other employees as the director may designate by regulation. If the applicant has not previously conducted solid waste or hazardous waste operations in Virginia, the term also includes any officer, director, partner of the applicant, or any holder of 5.0% or

more of the equity or debt of the applicant. If any holder of 5.0% or more of the equity or debt of the applicant or of any key personnel is not a natural person, the term includes all key personnel of that entity, provided that where such entity is a chartered lending institution or a reporting company under the Federal Security and Exchange Act of 1934, the term does not include key personnel of such entity. Provided further that the term means the chief executive officer of any agency of the United States or of any agency or political subdivision of the Commonwealth, and all key personnel of any person, other than a natural person, that operates a landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste under contract with or for one of those governmental entities.

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

"Load Line Certificate" means a certificate issued by the American Bureau of Shipping (ABS) or other similarly qualified organizations authorized by the Secretary of Transportation (U.S. Department of Transportation) to the owner of the vessel, in accordance with 46 USC Chapter 51.

"Manifest" means the shipping document originated and signed by the generator in accordance with the provisions of this chapter. For transportation of regulated medical wastes, the hazardous materials shipping paper requirements under 49 CFR Part 172 Subpart C may be reflected in the manifest.

"Medical waste" or "regulated medical waste" means solid wastes defined to be regulated medical wastes by Part III of the Regulated Medical Waste Management Regulations (9 VAC 20-120-10 et seq.). Solid waste packaged as regulated medical waste is regulated medical waste. Medical wastes that have been sterilized, treated or incinerated in accordance with the Regulated Medical Waste Management Regulations (9 VAC 20-120-10 et seq.) are no longer considered as regulated medical waste.

"Navigable waters of the Commonwealth" means state water being used or susceptible of being used, in its natural and ordinary condition, as a highway for commerce, on which trade and travel are or may be conducted in the customary modes of trade and travel on water.

"New facility" means any receiving facility which is constructed on or after [~~the effective date of this chapter~~ February 16, 2001].

"Odors" means any emissions which cause an odor objectionable to individuals of ordinary sensibility.

"Operator" means, in the case of a receiving facility, any person responsible for the overall operation of a receiving facility that handles solid wastes or regulated medical wastes. In the case of a vessel, it means any person who operates,

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charters by demise, rents or otherwise exercises control over or responsibility for a vessel.

"Owner" means, in the case of a receiving facility, any person who owns a receiving facility or part of a receiving facility, that handles solid wastes or regulated medical wastes as cargo for hire. In the case of a vessel, it means any person who owns a vessel or a part of a vessel that transports solid wastes or regulated medical wastes as cargo for hire.

"Parent" means a corporation, partnership, governmental unit or agency, or individual who directly or indirectly owns, controls or holds, with power to vote, more than 50% of the outstanding voting securities of a pure captive insurer.

"Permit by rule" means provisions including public participation of this chapter stating that a facility or activity is deemed to have a permit if it meets the requirements of the provision.

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

"Property damage" means the loss or destruction of, or damage to, the property of any third party including any loss, damage or expense incident to a waste deposit from a vessel. This term shall not include those liabilities that, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage.

"Provider of financial responsibility" means an entity that provides financial responsibility to an owner and operator of a vessel transporting solid wastes or regulated medical wastes through one of the mechanisms listed in [~~9 VAC 20-170-240~~ 9 VAC 20-170-310], including a financial institution, surety, or issuer of a letter of credit.

"Public vessel" means a vessel that is owned or demise chartered and operated by the United States government or a government of a foreign country and that is not engaged in commercial service.

"Pure captive insurer" means any insurer transacting the business of insurance and reinsurance only on risks, hazards, and liabilities of its parent, subsidiary companies of its parent, and associated and affiliated companies.

"Receiving facility" means a facility, vessel or operation that receives solid wastes or regulated medical wastes transported, loaded, or unloaded upon the navigable waters of the Commonwealth, to the extent allowable under state law, by a commercial transporter. A receiving facility is considered as a solid waste management facility.

"Solid waste" means any garbage, refuse, sludge and other discarded material, including solid, liquid, semisolid or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations, or community activities but does not include (i) materials regulated as hazardous wastes under the Virginia Hazardous Waste Management Regulations (9 VAC 20-60-10 et seq.); (ii) scrap

metal, dredged material and source-separated recyclables; (iii) solid or dissolved material in domestic sewage; (iv) solid or dissolved material in irrigation return flows or in industrial discharges that are sources subject to a permit from the State Water Control Board; or (v) source, special nuclear, or byproduct material as defined by the Federal Atomic Energy Act of 1954, as amended.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction.

"Subsidiary company" means any corporation of which 50% or more of the outstanding voting securities are directly or indirectly owned, controlled, or held, with power to vote, by a parent or by a company that is a subsidiary of the parent.

["~~Surface waters~~" means:

~~1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;~~

~~2. All interstate waters, including interstate wetlands;~~

~~3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:~~

~~a. That are or could be used by interstate or foreign travelers for recreational or other purposes;~~

~~b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or~~

~~c. That are used or could be used for industrial purposes by industries in interstate commerce;~~

~~4. All impoundments of waters otherwise defined as surface waters under this definition;~~

~~5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;~~

~~6. The territorial sea; and~~

~~7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition.~~

"Surface water" means any water in the Commonwealth, except ground water as defined in § 62.1-255 of the Code of Virginia.]

"Transport" or "transportation" means any movement of solid wastes or regulated medical wastes, and any packing, loading, unloading or storage incidental thereto.

"USC" means the U.S. Code.

"Vehicle" means any motor vehicle, rolling stock or other artificial contrivance for transport whether self-propelled or otherwise, except vessels.

"Vessel" includes every description of watercraft or other contrivance used as a means of transporting on water, whether self-propelled or otherwise, and shall include barges and tugs.

"Waste deposit" or "deposit of waste" means any solid waste or regulated medical waste from a vessel or a receiving facility that is placed, discharged, spilled, dropped, or leaked into state waters or adjoining shorelines.

9 VAC 20-170-20. Purpose.

This chapter establishes standards and procedures pertaining to the commercial transport, loading and off-loading of solid wastes or regulated medical wastes upon the navigable waters of the Commonwealth to the extent allowable under state law in order to protect the public health, safety and welfare, and to protect the environment and natural resources from pollution, impairment or destruction.

9 VAC 20-170-30. Applicability.

This chapter applies to each owner and/or operator of a vessel transporting solid wastes or regulated medical wastes for the purposes of commercial carriage as cargo, and each owner or operator of a receiving facility. This chapter also applies to the receiving facilities and vessels transporting solid wastes or regulated medical wastes upon the navigable waters of the Commonwealth to the extent allowable under state law.

9 VAC 20-170-40. Exclusions.

This chapter does not apply to a public vessel as defined under 9 VAC 20-170-10, the owner and operator of a public vessel, vessels transporting solid wastes or regulated medical wastes incidental to their predominant business or purposes, vessels transporting solid wastes or regulated medical wastes generated during normal operations of the vessel, solid wastes or regulated medical wastes generated during the normal operations of the vessel, and solid wastes excluded pursuant to 9 VAC 20-80-150 or conditionally exempted pursuant to 9 VAC 20-80-160 of the Virginia Solid Waste Management Regulations.

9 VAC 20-170-50. Relationship to other regulations.

A. The Solid Waste Management Regulations (9 VAC 20-80-10 et seq.) prescribe requirements for the solid waste management facilities in general. While a facility utilized to receive solid wastes or regulated medical wastes transported, loaded, or unloaded upon the navigable waters of the Commonwealth, to the extent allowable under state law, by a commercial transporter is a solid waste management facility, this chapter herein prescribes specific requirements, including siting, design/construction, operation, and permitting, for this type of facilities. If there is any overlapping requirement between these two regulations, whichever is more stringent shall apply.

B. The Regulated Medical Waste Management Regulations (9 VAC 20-120-10 et seq.) address special needs for regulated medical waste management. A facility utilized to receive regulated medical waste transported, loaded, or unloaded upon the navigable waters of the Commonwealth, to the extent allowable under state law, by a commercial

transporter is a regulated medical waste facility and it must conform to any applicable sections of the Regulated Medical Waste Management Regulations adopted by the board. If there is any overlapping requirement between these two regulations, whichever is more stringent shall apply.

C. This chapter does not exempt any receiving facility from obtaining a Virginia Water Protection Permit as required by the Virginia Water Protection Permit Regulation (9 VAC 25-210-10 et seq.), whenever it is applicable.

9 VAC 20-170-60. Enforcement, inspections, and right of entry.

A. Any person violating any requirement of this chapter is liable for a civil penalty of not more than \$25,000 per violation. Each day of a continuing violation is a separate violation.

B. The owner or operator of a receiving facility or a vessel shall allow the director or his designee, upon presentation of appropriate credentials or other documents as may be required by law, to [:]

1. Enter at reasonable times upon any premises where a regulated facility or activity is located or conducted, or where records must be kept under the provisions of this chapter;
2. Have access to and copy, at reasonable times, any records that must be kept under the provisions of this chapter;
3. Inspect at reasonable times any facilities, equipment, practices, or operations regulated or required under the provisions of this chapter; and
4. Sample or monitor at reasonable times, for the purposes of assuring compliance with the provisions of this chapter.

9 VAC 20-170-70. Delegation of authority.

The director may perform any act of the board provided under this chapter, except as limited by § 10.1-1405 of the Code of Virginia.

PART II. STANDARDS FOR RECEIVING FACILITIES.

Article 1.

Standards for [~~Containers and Receiving Facilities Design and Operation~~].

9 VAC 20-170-80. Siting.

A. The receiving facility shall be adjacent to or have direct access to roads which are paved or surfaced and capable of withstanding anticipated load limits.

B. The receiving facility shall be located so as to minimize waterborne traffic congestion and navigational hazards. Sites shall allow for sufficient room to minimize land traffic congestion and allow for safe operation.

C. No loading, unloading, or receiving areas shall be located closer than 50 feet to any property line (excluding the property line along the water side), nor closer than 200 feet to

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any occupied dwelling, a health care facility, school or recreational park area, or similar type public institution.

[9 VAC 20-170-85. Design, operation and maintenance of containers used to transport solid wastes and regulated medical wastes on Virginia waters.

A. Each container used to transport solid wastes or regulated medical wastes on state waters shall be watertight and leak-proof; prevent the loss or spillage of waste, liquids or odors; and prevent the loss or spillage of waste or leachate during transport, during normal handling and in the event of an accident.

B. Each container shall be designed, constructed and maintained to contain any liquids, including any leachate that may be generated, and prevent the loss of liquids during loading, transport or unloading of the container. Each container shall be designed, constructed and maintained to prevent the entry of liquids into the container during normal transport, during handling and in the event it is lost overboard. Each container must be completely enclosed, rigid and constructed of nonpermeable material. Each container must be designed to remain upright in the event that it is lost overboard.

C. Each container must meet all applicable U.S. Department of Transportation specifications.

D. Each container shall have a gas pressure activated relief valve or equivalent device that will allow the escape of gases to prevent the unsafe buildup of decomposition gases. Such release device shall minimize the escape of odors, liquids and waste and shall include safety measures for the planned opening of the container.

E. At least once in every six months, each container shall be tested and certified by the American Bureau of Shipping (ABS) to be in compliance with the requirements of this section. The ABS certification shall include, at least, the following items:

1. Each container shall be certified and bear a plate (CSC plate) showing certification of compliance with the International Convention for Safe Containers standards for ocean shipping containers.
2. Each container shall be certified as meeting the ABS's General Specifications (See Rules for Certification of Cargo Containers, 1987, Section 6) including weathertightness for general service. Each container must have affixed to it in a visible and accessible location a decal including the ABS general service emblem, a notice and date of certification, and the names, addresses and telephone numbers of the person performing the test and the owner of the container.
3. Each container shall be certified as having passed the following test: each container shall be tested using applied soap and maintenance of internal gas pressure of 5.0 pounds per square inch (gauge) in accordance with "Section 2, Material Handling, Recommended Practices for Installation of Underground Liquid Storage Systems" (PEI/RP100-2000) by Petroleum Equipment Institute. To pass the test, an internal gas pressure of 5.0 pounds per

square inch (gauge) shall be maintained for one hour with no appreciable loss of pressure and an inspection shall have not revealed any appreciable leakage. (Note: Petroleum Equipment Institute, Post Office Box 2380, Tulsa, Oklahoma 74101-2380.)

F. Owners of all containers must keep a record of testing of each container for at least the preceding 12 months and provide copies of the log and certification to persons who lease or handle the container and to the department. The container owner shall certify to the department that such testing has been conducted in accordance with subsection E of this section, and that the container is watertight, leak-proof and otherwise in compliance with this chapter. The certification shall so be endorsed by a decal (located near the ABS decal and CSC plate), including the last testing date, and shall be legible, accessible, and permanently marked with indelible ink on each container. The certification shall explicitly indicate compliance of the container with the requirements contain in this section.]

9 VAC 20-170-90. Design [/ and] construction [of facilities].

~~[A. Containers used to transport solid wastes or regulated medical wastes shall be watertight, designed, and constructed so as to prevent the escape of wastes, liquids, and odors, and to prevent the loss or spillage of wastes during transport, normal handling, and in the event of an accident. A container is considered to be watertight if it passes the watertightness test. It is demonstrated by filling the tested unit with a minimum head of water of 24 inches for at least 15 minutes and the exterior is free from the penetration of water.~~

~~B. Each container shall meet the U.S. Department of Transportation specifications and be certified by the American Bureau of Shipping (ABS) and affixed with a decal signifying that the container meets the requirements including watertightness for its general service.~~

~~G. A.] An all-weather road suitable for loaded transfer vehicles shall be provided from the entrance gate to the loading, unloading, or receiving area.~~

~~[D. B. Any solid waste or liquid deriving from solid waste shall be properly managed and not be allowed to contact or mix with storm water.] The loading, unloading, or receiving areas shall be constructed of easily cleanable materials; equipped with containment or diversionary structures, drains or pumps, or equivalent means to facilitate the removal of wastewater for proper storage or disposal; and equipped with appropriate storm water management systems so as to prevent storm water from contacting wastes and/or contaminating state waters.~~

~~[E. C.] Sufficient on-site queuing capacity shall be provided for the expected traffic so that the waiting transfer vehicles do not back up onto the public road.~~

9 VAC 20-170-100. Operation.

A. [At facilities handling] containers used to transport solid wastes or regulated medical wastes [on state waters, all containers, including empty containers,] shall be secured and maintained so as to prevent the escape of wastes, liquids,

and odors, and to prevent the loss or spillage of wastes during transport, normal handling, and in the event of an accident.

~~[B. Containers shall be tested at least once every six months for watertightness. The container owner shall certify that such testing has been conducted in accordance with 9 VAC 20-170-90 A and it has shown that the container is watertight. Such certification including a current testing date shall be legible, accessible, and permanently marked on each container.~~

No person shall load solid waste or regulated medical waste into a container to be commercially transported on state waters if the container is not fully in compliance with 9 VAC 20-170-85. No person shall unload solid waste or regulated medical waste from a container that is not fully in compliance with 9 VAC 20-170-85. No person shall receive or unload from a vessel commercially transporting container containing solid waste or regulated medical waste if the container is not fully in compliance with 9 VAC 20-170-85. No person shall operate a vessel commercially transporting on state waters a container of solid waste or regulated medical waste if the container is not fully in compliance with 9 VAC 20-170-85.]

C. The owner or operator of a receiving facility shall not receive solid wastes or regulated medical wastes in containers not meeting the requirements of this part, nor [shall] such containers [shall] be received without a properly signed manifest, as specified under subsection D of this section. The owner or operator of the receiving facility shall sign and date each copy of the manifest to certify that the waste covered by the manifest was received [~~Note~~ , noting] any significant discrepancies on each copy of the manifest. A copy of the properly signed manifest shall be delivered to the next transporter and, subsequently, the destination facility.

D. The manifest shall include, but not be limited to, the following information:

1. An identification number of each container;
2. A general description of the wastes being transported (solid wastes or regulated medical wastes) in each container;
3. The total quantity of the wastes being transported in each container;
4. The name and address of the generator, transporter or transporters, receiving facility, and destination facility; and
5. For transportation of solid wastes, a certification statement signed by the generator as follows [7 :]

"I hereby certify that the above-named materials meet the quality acceptable to the destination facility according to applicable federal and state regulations; have been properly described, classified and packaged; and are in proper condition for transportation according to applicable federal and state regulations."

For transportation of regulated medical waste, a certification statement signed by the generator as follows [7 :]

"I hereby certify that the above-named materials do not contain any radioactive, explosive, toxic, or hazardous waste as defined by 40 CFR Part 261 or the Virginia Hazardous Waste Management Regulations; have been properly described, classified, packaged, marked and labeled; and are in proper condition for transportation according to applicable federal and state regulations."

6. A certification of receipt of materials signed by the transporter or transporters, the owner or operator of the receiving facility, and the owner or operator of the destination facility.

E. Containers loaded with solid wastes or regulated medical wastes shall not be kept on site more than 72 hours once they arrive at the receiving facility by vessels during normal operation. In the event of inclement weather or equipment malfunction, containers may be kept on site up to seven days provided a written justification [is] filed with the appropriate department regional office. Loaded containers shall not be stacked more than two high in the loading or unloading areas.

F. Empty containers shall be maintained watertight to prevent any escape of residual wastes, liquids, and odors during normal handling and in the event of an accident. Any remaining liquids inside of the containers shall be managed as leachate.

G. The owner or operator of a receiving facility shall load and off-load solid wastes or regulated medical wastes to assure that any deposit of solid wastes or regulated medical wastes into state waters or adjoining shorelines is prevented. Receiving facilities shall employ containment or diversionary structures and any other appropriate equipment [to limit the dispersion of wastes or leachate in the event of a spill].

H. In the event of a deposit of solid wastes or regulated medical wastes into state waters or adjoining shorelines as a result of any facility operation or failure of the integrity of the containers, the owner or operator of a receiving facility shall immediately notify the appropriate department regional office, the United State Coast Guard (USCG) National Response Center at 1-800-424-8802, the cleanup contractor as identified under subdivision 3 g of 9 VAC 20-170-110, the emergency coordinator of the local jurisdiction, the local office of the state Health Department, and any federal or state wildlife or natural resource authority or private natural resource management entity whose reserves could be affected by the incident. Such verbal notification shall be followed by written notification to the department regional office within five days.

I. In the event of a deposit of solid wastes or regulated medical wastes into state waters or adjoining shorelines, the owner or operator of a receiving facility shall immediately take all necessary actions, in accordance with the receiving facility's Response and Mitigation Plan as specified under

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subdivision 3 of 9 VAC 20-170-110, to contain and remove such waste.

J. The owner or operator of the receiving facility shall have a placard located at the facility where it will be readily visible to persons involved in waste handling indicating the individuals responsible for notifying the appropriate department regional office, the USCG National Response Center, and the cleanup contractor as identified under subdivision 3 g of 9 VAC 20-170-110, in the event of a deposit of solid wastes or regulated medical wastes into state waters or adjoining shorelines.

1. The telephone numbers for the individuals responsible for notification shall be visibly and legibly displayed on the placard.
2. The telephone numbers for the individuals responsible for notification shall be designated by the owner or operator of the receiving facility.
3. The individuals responsible for notification must be a supervisory employee responsible for waste handling activities or an officer of the company owning or operating the receiving facility who is responsible for some aspect of waste handling activities (e.g., vice president in charge of operations).

K. Adequate numbers and types of properly maintained equipment shall be available for operation. Provision shall be made for substitute equipment to be available within 24 hours should the former become inoperable or unavailable. In the event of a deposit of solid wastes or regulated medical wastes into state waters or adjoining shorelines, and initiation of cleanup activities, operation shall not be continued unless adequate cleanup equipment is available on site [and cleanup is proceeding in an effective and expeditious manner].

L. The receiving facility shall operate under the direct supervision of a Class I waste management facility operator licensed by the Board for Waste Management Facility Operators. During the facility's operating hours, the licensed operator shall be present at the facility or be readily available to direct the facility personnel in the proper handling of solid wastes or regulated medical wastes.

M. An operating record to include date, quantity by weight or volume, source and type of the wastes received and processed shall be maintained on site for at least three years and be made available to the department for examination or use when requested. A copy of the manifest shall be maintained in the operating record.

N. The owner or operator shall conduct daily inspections of the receiving facility. The inspection shall include, but is not limited to, visual inspection of the integrity of the containers, [equipments equipment], and loading, unloading, and receiving areas to ensure that the provisions of this chapter are met. The owner or operator shall keep an inspection log or summary including at least the date and time of inspection, the printed name and the handwritten signature of the inspector, a notation of observations made and the date and nature of any repairs or corrective action. The log or summary shall be kept on site as part of the operating record.

O. All new or modified receiving facilities shall be inspected by the department to verify that the provisions of this chapter and the permit have been met prior to the commencement of operations. All facilities shall be inspected by the department regional office on at least a quarterly basis to verify that the provisions of this chapter and the permit are met. These inspections may include, but are not limited to, documentation verification and visual inspections of the receiving facility and containers.

P. The specifications and methods adopted by the owner or operator to meet these waste handling practice standards shall be identified in the Operation and Maintenance manual.

9 VAC 20-170-110. Operation and Maintenance Manual.

The Operation and Maintenance Manual shall contain the following information:

1. Housekeeping and recordkeeping procedures, on-site traffic control, schedules for waste loading and unloading, wastewater and storm water collections, odor control, noise control, and methods of enforcement of traffic flow plans for the waste transfer vehicles.
2. A description of the basic operation and maintenance measures adopted by the receiving facility to implement the requirements of 9 VAC 20-170-90 and 9 VAC 20-170-100; and
3. A Response and Mitigation Plan. The plan shall include the following information:
 - a. Name of the facility, geographic location on the applicable 7.5 minute USGS quadrangle map, and the access routes to the facility by road and water;
 - b. Name of the facility operators and owners, including address and telephone number;
 - c. A physical description of the facility consisting of a plan of the facility which identifies the waste loading and unloading areas, staging areas, cranes, wharves, roadways, pollution control devices, diversionary structures within the facility boundary, and adjacent easements and leased property;
 - d. A complete listing, including 24-hour numbers, of all federal, state and local agencies, to be notified in the event of a deposit of wastes to state waters or adjoining shorelines due to any facility operation or failure of the integrity of the containers. This listing shall include the appropriate department regional office, the USCG National Response Center, the cleanup contractor as identified under subdivision 3 g of this section, the emergency coordinator of the local jurisdiction, the local office of the state Health Department and any federal or state wildlife or natural resource authority or private natural resource management entity whose reserves could be affected by the incident described in 9 VAC 20-170-100 H. This list shall also include the adjacent property owners;
 - e. The position title of the individuals responsible for making the required notifications and a copy of the notification check-off list;

f. The position title, address and phone number of the individuals authorized to act on behalf of the owner or operator to initiate containment and cleanup actions and ensure compliance with all applicable federal, state and local requirements. These individuals shall be available on a 24-hour basis to ensure the appropriate containment and cleanup actions are undertaken;

g. Identification and insurance by contract or other means acceptable to the department of the availability of the facility and/or private personnel and equipment necessary to contain and cleanup the worst case circumstance. This contract or agreement shall ensure a certain response within the shortest feasible time. The department will accept a letter of understanding between the operator and the response contractors which attests to this capability being readily available. Membership in a cleanup cooperative or other response organization is also acceptable. A listing of contractor or cooperative capabilities, including an inventory of the on-site and off-site equipment, and means to conduct a monitoring program to assess the effects of the incident, shall be included;

h. Assessment of the worst case circumstance, including measures to limit the dispersion of floating and sinking wastes as well as those wastes that are miscible in water, the recovery strategy, disposal plan and monitoring plan. For the purpose of this chapter, the worst case circumstance is [(i)] the instantaneous release of the contents of the [~~largest~~ maximum number of] waste handling [~~container capable of utilization at the facility,~~ containers that may be on site at any given time and (ii) the instantaneous release of the contents of the maximum number of waste handling containers that may be on a barge traveling to the facility] which is deposited into [~~near shore~~ state] waters. Facilities shall take into consideration the types of wastes that may be solid wastes or regulated medical wastes; the forms of wastes that may be solid, liquid, semisolid or contained gaseous materials; and the dispersion of the wastes due to downstream flow or tidal influences within 72 hours of the event;

i. Identification and location of natural resources at risk due to the worst case circumstance listed in subdivision 3 h of this section. These resources are, but are not limited to, all surface waters as indicated on the applicable USGS quadrangle maps, groundwater, public and agricultural water supplies, public and private water wells and springs, state or federal wildlife management areas, wildlife refuges, public or private management areas, sanctuaries, shoreline habitats, wetlands, property listed on the National Register of Historic Places and property listed on the National Register of Natural Landmarks. The identification shall include priorities for protection, the means of protecting these resources and respective monitoring programs to ensure protection and recovery of these resources and their beneficial uses; and

j. Identification of risks to human health due to the worst case circumstance listed in subdivision 3 h of this section. These risks shall include water borne and air borne pathogens; alterations of the physical, chemical or biological properties of the affected waters that would deny or prevent full beneficial uses of these waters; and the impairment or destruction of commercial or recreational fisheries, including shellfish. The identification shall include priorities of the risks and means of notification of closure of affected areas, if necessary. The facility shall provide for the monitoring and restoration of the affected areas in cooperation with the local emergency coordinator, health department and fisheries regulatory agencies.

Article 2. Facility Closure.

9 VAC 20-170-120. Closure standards.

A. The owner or operator shall close the receiving 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 escape of residual waste, surface runoff, or waste decomposition products to the groundwater, surface water, or to the atmosphere.

B. At closure, the owner or operator shall remove or decontaminate all waste residues, contaminated containment systems, containers, contaminated subsoils, and structures and equipment contaminated with waste.

C. The owner or operator shall complete closure activities in accordance with the closure plan and within six months after receiving the final volume of wastes.

9 VAC 20-170-130. Closure plan and amendment of plan.

A. The owner or operator of a receiving facility shall prepare a written closure plan. The plan shall identify the steps necessary to completely close the facility at its full operation. 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.

B. The owner or operator with the approval of the department may amend his closure plan at any time during the active life of the facility. At least 45 days prior to the submittal of the amended plan for the department's approval, the owner or operator shall publish a notice in a major local newspaper of general circulation informing the public that he intends to amend the closure plan. Results of the public participation effort including a summary of and the permittee's response to the comments received shall be submitted along with the amended closure plan for approval. The approved plan shall be placed in the operating record.

C. At least 90 days prior to beginning closure of the receiving facility, the owner or operator shall notify the director of the intent to close.

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9 VAC 20-170-140. Inspection.

The department shall inspect all receiving facilities that have been closed to determine if the closing is complete and adequate. It shall notify the owner of a closed facility, in writing, if the closure is satisfactory, and shall order necessary construction or such other steps as may be necessary to bring unsatisfactory sites into compliance with this part.

PART III. PERMITTING OF RECEIVING FACILITIES.

9 VAC 20-170-150. Applicability.

A. This part applies to a receiving facility as defined under 9 VAC 20-170-10 and its owner or operator.

B. Each receiving facility's permit shall be limited to one site and shall be nontransferable between sites.

9 VAC 20-170-160. Compliance dates.

No new or existing facilities shall receive any solid wastes or regulated medical wastes from a ship, barge, or other vessel without a permit issued in accordance with this part.

9 VAC 20-170-170. Permit by rule.

The owner or operator of the receiving facility shall be deemed to have a solid waste management facility permit if the provisions in 9 VAC 20-170-180 and 9 VAC 20-170-190 are met.

9 VAC 20-170-180. Permit certification procedures.

A. The owner or operator of a receiving facility shall submit the permit certification fee in accordance with 9 VAC 20-170-190 and a certification package including the following documents:

1. A notice of intent which notifies the director of his intent to operate such a facility and a statement certifying that the siting standards have been met by the facility in accordance with 9 VAC 20-170-80;
2. Plans and specifications of the receiving facility and a certificate signed by a registered professional engineer that the facility has been designed and constructed in accordance with 9 VAC 20-170-90 [~~C, D and E~~];
3. An Operation and Maintenance Manual and a statement certifying that the Operation and Maintenance Manual will be implemented prior to the commencement of operation in accordance with 9 VAC 20-170-110;
4. A certification from the governing body of the county, city or town in which the facility is or is to be located that the location and operation of the facility is consistent with all applicable ordinances. If the applicant proposes to locate the facility on property not governed by any county, city or town zoning ordinance, a certification from the governing body that it has held a public hearing to receive public comment on the proposed facility;
5. A disclosure statement for all key personnel;
6. Results of the public participation effort conducted in accordance with the requirements contained in

subsection B of this section, including a summary of and the applicant's response to the comments received; and

7. A closure plan and a statement certifying that a closure plan has been prepared in accordance with 9 VAC 20-170-120.

B. Public participation.

1. Before the initiation of any construction of a new receiving facility or operation of an existing facility, the owner or operator shall publish a notice as a display ad in a major local newspaper of general circulation informing the public that he intends to construct and/or operate a facility eligible for a permit by rule. The notice shall include:

- a. A brief description of the new or existing facility;
- b. A statement that the purpose of the public participation is to acquaint the public with the technical aspects of the facility and how the standards and the requirements of this chapter will be met;
- c. Announcement of a 30-day comment period in accordance with subdivision 4 of this subsection, and the name and address of the owner's or operator's representative where comments shall be sent;
- d. Announcement of the date, time, and place for a public meeting in accordance with subdivision 3 of this subsection; and
- e. Location where copies of the documentation to be submitted to the department in support of the permit by rule notification and any supporting documents can be viewed and copied.

2. The owner or operator shall place a copy of the documentation and support documents in a location accessible to the public in the vicinity of the proposed facility.

3. The owner or operator shall hold a public meeting not earlier than 15 days after the publication of the notice required in subdivision 1 of this subsection and no later than seven days before the close of the 30-day comment period. The meeting shall be held to the extent practicable in the vicinity of the new or existing facility.

4. The public shall be provided 30 days to comment on the technical and the regulatory aspects of the proposal. The comment period shall begin on the date the owner or operator publishes the notice in the local newspaper.

C. Upon receiving the certifications and other required documents, the director will review and make determination of the technical and administrative completeness of the certification package within 60 days. If the applicant's submission is incomplete, the applicant will be notified that the facility will not be considered to have a permit by rule until the missing certifications or other documents are submitted and approved.

D. Change of ownership. A permit by rule shall not be transferred by the permittee to a new owner or operator without proper notification to and approval by the department.

In the event that the property transfer takes place without proper closure, at least 30 days in advance of the property transfer, the new owner shall notify, in writing, the department of the sale, agree to abide by the provisions of this chapter, and submit a disclosure statement and an updated Operation and Maintenance Manual in accordance with subsection A of this section. Upon receipt and approval of such notification, the department will release the old owner from its closure and issue a new permit by rule in the name of the new owner.

E. Facility modifications. The owner or operator of a facility operating under a permit by rule may modify its permit by rule by furnishing the department the permit fee in accordance with 9 VAC 20-170-190 and a new documentation required under subsection A of this section, as applicable. Whenever modifications in the permit by rule affect the provisions of the approved closure plan, the owner or operator shall also submit an amended closure plan in accordance with 9 VAC 20-170-130 and subdivision A 7 of this section.

F. Loss of permit by rule status. In the event that a facility operating under a permit by rule violates any applicable siting, design, construction, or closure provisions of Article 1 (9 VAC 20-170-80 et seq.) of Part II of this chapter, or the owner or operator fails to submit the inspection fee in accordance with 9 VAC 20-170-190, the owner or operator of the facility will be considered to be operating an unpermitted facility and shall be required to either obtain a new permit by rule in accordance with subsection A of this section or close the facility in accordance with Article 2 (9 VAC 20-170-120 et seq.) of Part II of this chapter.

G. Revocation or amendment of permits. Any permit issued by the director pursuant to this chapter may be revoked, amended or suspended in accordance with the provisions of § 10.1-1409 and Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.

9 VAC 20-170-190. Permit fee requirements.

A. Purpose. The purpose of this section is to establish schedules and procedures pertaining to the payment and collection of fees from any owner or operator of a receiving facility seeking a new permit by rule or seeking a modification to an existing permit by rule. It also establishes schedules and procedures pertaining to the payment and collection of inspection fees from any owner or operator of a receiving facility.

B. Payment, deposit and use of fees.

1. Due date. All permit certification fees are due on the submittal day of the certification package. The inspection fees for the first year or portion of a year are due as part of the permit certification. Thereafter, all inspection fees are due March 1.

2. Method of payment. Fees shall be paid by check, draft or postal money order made payable to "Treasurer of Virginia/DEQ", and shall be sent to the Department of Environmental Quality, Receipts Control, P.O. Box 10150, Richmond, VA 23240.

3. Incomplete payments. All incomplete payments will be deemed nonpayments.

4. Late payment. No certifications will be deemed complete until [the department receives] proper payment [~~is received by the department~~]. In the event that the inspection fee is not received by the department on or prior to March 1, the owner or operator of the facility will be considered to be operating an unpermitted facility.

5. Deposit and use of fees. The department shall collect the permit fees pursuant to this chapter and deposit them into a separate account within the Virginia Waste Management Board Permit Program Fund. All moneys collected shall be used solely for the purposes of this chapter.

6. Fee schedules. Each certification for a permit by rule or each certification for a modification to a permit by rule is a separate action and shall be assessed a separate fee. The amount of the permit certification fee is based on the costs associated with the permitting program required by this chapter. An inspection fee will be collected annually and its amount is based on the costs associated with the inspections program conducted by the department on at least a quarterly basis. The fee schedules are shown in the following table.

Type of Action	Fee
Initial certification	\$6,200
Modification	
with a closure plan amendment	\$2,500
without a closure plan amendment	\$1,250
Inspections	\$10,000

**PART IV.
STANDARDS FOR VESSELS TRANSPORTING SOLID WASTES OR REGULATED MEDICAL WASTES.**

[Final Regulatory Action Deferred]

**PART V.
REGISTRATION OF VESSELS TRANSPORTING SOLID WASTES OR REGULATED MEDICAL WASTES.**

[Final Regulatory Action Deferred]

**PART VI.
FINANCIAL RESPONSIBILITY REQUIREMENTS FOR VESSELS TRANSPORTING SOLID WASTES OR REGULATED MEDICAL WASTES.**

9 VAC 20-170-270. General purpose and scope.

A. This part sets forth the procedures by which an owner and operator of a vessel transporting solid wastes or regulated medical wastes upon the navigable waters of the Commonwealth, to the extent allowable under state law, may establish and maintain evidence of financial responsibility to cover liability of the owner and operator arising from a deposit of solid wastes or regulated medical wastes into state waters.

B. In order to ensure that the costs associated with protecting public health, welfare and property from the consequences of such a deposit of solid wastes or regulated

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medical wastes are to be recovered from the owner and operator of a vessel transporting solid wastes or regulated medical waste, the owner and operator of such a vessel shall obtain one or a combination of the financial mechanisms described in this part.

C. The director may reject the proposed evidence of financial responsibility if the mechanism or mechanisms submitted do not adequately ensure that funds will be available to accomplish the purpose of this part.

9 VAC 20-170-280. Applicability

A. This part applies to all persons who own or operate a vessel transporting solid wastes or regulated medical wastes on the navigable waters of the Commonwealth, to the extent allowable under state law, unless otherwise exempt.

B. For purposes of this part, when a vessel is chartered by demise, the demise charterer rather than the title owner is the owner of the chartered vessel.

C. Owners or operators of such vessels 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 part.

D. If separate, nonexempt persons own or operate a vessel subject to this part, the owner and operator shall be jointly and severally liable for meeting the requirements of this part. If either the owner or operator is exempt, as provided in subsection C of this section, then the other person shall be responsible for meeting the requirements of this part. If both the owner and the operator are exempt, as provided in subsection C of this section, then the requirements of this part are not applicable to that vessel.

9 VAC 20-170-290. Certificate of Financial Responsibility.

A. No vessel shall transport solid waste or regulated medical waste upon the navigable waters of the Commonwealth, to the extent allowable under state law, without a valid Certificate of Financial Responsibility (certificate).

B. Application requirements.

1. Each owner and operator shall file an application for a certificate with the department. If the owner and operator are the same entity, only one application is required to be filed with the department. The application shall be in the standard form approved by the board. The application and all supporting documents shall be in English. All monetary terms must be expressed in United States dollars.

2. A certificate applicant may include more than one vessel on the application.

3. Each completed application form shall be accompanied by valid evidence of financial responsibility from the certificate applicant in accordance with 9 VAC 20-170-310, in the amounts specified in 9 VAC 20-170-300 and valid evidence of liability coverage in accordance with 9 VAC 20-170-330.

4. An authorized official of the certificate applicant shall sign the application. The title of the signer must be shown in the space provided on the application. The application must be accompanied by a written statement providing authority to sign, where the signer is not disclosed as an individual (sole proprietor) certificate applicant, a partner in a partnership certificate applicant, or a director, chief executive officer, or any other duly authorized officer of a corporate certificate applicant.

5. If, before the issuance of a certificate, the certificate applicant becomes aware of a change in any of the facts contained in the application or supporting documentation, the certificate applicant shall, within five business days of becoming aware of the change, notify the director, in writing, of the change.

C. Issuance and carriage requirements.

1. Within 60 days of receipt of a complete application and acceptable evidence of financial responsibility in accordance with subsection B of this section from both the owner and operator, the director will issue a Certificate of Financial Responsibility. The original certificate or a certified copy shall be carried aboard the vessel covered by the certificate and a copy shall remain on file with the department. The director shall issue an individual certificate for each vessel for which a completed application has been submitted by the owner and the operator.

2. Each vessel transporting solid wastes or regulated medical waste on the navigable waters of the Commonwealth, to the extent allowable under state law, shall carry an original or certified copy of a valid certificate in the name of the owner and operator. The carriage of a valid certificate or certified copy indicates compliance with this chapter. Failure to carry a valid certificate or certified copy subjects the vessel to enforcement action, except where a certificate is removed temporarily from a vessel for inspection by a state official.

3. The certificate applicant or an authorized officer of the certificate applicant may submit to the director a letter requesting that additional vessels be added to a previously submitted application for an individual certificate. The letter must provide the following information: vessel name, vessel owner and operator, gross tonnage, and type of wastes to be transported. The certificate applicant or an authorized official also shall submit or cause to be submitted acceptable evidence of financial responsibility in accordance with subsection B of this section for these additional vessels.

D. Renewal requirements.

1. The Certificate of Financial Responsibility shall expire one year from the date of issuance.

2. Each owner and operator shall file a written application, in the form provided by the department, for the renewal of a certificate at least 60 days before the expiration date of the certificate. The certificate applicant shall identify in the renewal application any changes

[~~which that~~] have occurred since the original application for which a certificate was filed, and set forth the correct information in full.

E. Denial or revocation of certificate.

1. The director may deny a certificate when a certificate applicant:

- a. Willfully or knowingly makes a false statement in connection with an application for an initial or renewal certificate;
- b. Fails to establish acceptable evidence of financial responsibility as required by this part;
- c. Fails to comply with or respond to lawful inquiries, regulations, or orders of the department pertaining to the activities subject to this part; or
- d. Fails to timely file requested statements, data, notifications, affidavits, or other information.

2. The director may revoke a certificate when a certificant:

- a. Willfully or knowingly makes a false statement in connection with an application for an initial or a renewal certificate, or in connection with any other filing required by this part;
- b. Fails to comply with or respond to lawful inquiries, regulations, or orders of the department pertaining to the activities subject to this part;
- c. Fails to timely file required statements, data, notifications, or affidavits;
- d. Fails to maintain acceptable evidence of financial responsibility as required by this part; or
- e. Alters any certificate or copy of a certificate except as permitted by this part in connection with notarized certifications of copies.

3. The director shall advise the certificate applicant or certificant, in writing, of the intention to deny or revoke a certificate under subdivision 1 or 2 of this subsection and shall state the reason therefore. Written advice from the director that an incomplete application will be considered withdrawn unless it is completed within a stated period, shall be the equivalent of a denial.

4. If the intended revocation under subdivision 2 of this subsection is based on failure to timely file the required financial statements, data, notifications, or affidavits, the revocation is effective 10 days after the date of the notice of intention to revoke, unless, before revocation, the certificant demonstrates to the satisfaction of the director that the required documents were timely filed or have been filed.

5. Except in the case of subdivisions 3 and 4 of this subsection, the director may deny or revoke a certificate only after a conference, or a waiver of a conference, in accordance with § 9-6.14:1 et seq. of the Code of Virginia. A certificate subject to revocation under this

subdivision remains valid until the director issues a written decision revoking the certificate.

9 VAC 20-170-300. Amount and scope of financial responsibility requirement.

Each owner and operator of a vessel transporting solid waste and/or regulated medical waste upon the navigable waters of the Commonwealth, to the extent allowable under state law, shall demonstrate financial responsibility for the total cost of cleanup and containment of a solid waste and/or regulated medical waste deposit into state waters, and the potential impairment of beneficial use of these waters in the following amounts:

1. For each owner and operator of a vessel transporting solid wastes only: \$1 million or \$300 per gross ton of such vessel, whichever is larger. If the owner or operator owns or operates more than one vessel transporting waste, the amount of financial responsibility shall equal \$1 million or \$300 per gross ton of the owned or operated vessel with the largest transporting capacity, whichever is larger.

2. For each owner and operator of a vessel transporting regulated medical waste or a combination of regulated medical waste and solid waste: \$5 million or \$300 per gross ton of such vessel. If the owner or operator owns or operates more than one vessel transporting waste, the amount of financial responsibility shall equal \$5 million or \$300 per gross ton of the owned or operated vessel with the largest transporting capacity, whichever is larger.

9 VAC 20-170-310. Allowable financial mechanisms.

A. Each owner and operator shall demonstrate financial responsibility by establishing and maintaining a financial mechanism, or combination of mechanisms, in the amounts specified in 9 VAC 20-170-300. The mechanisms used to demonstrate financial responsibility shall ensure that the funds necessary to meet the costs of cleanup and containment and the restoration of beneficial uses of state waters will be available whenever they are needed. The owner and operator shall provide continuous coverage until released by the director.

B. Each owner and operator shall submit the original financial mechanism or combination of mechanisms together with the application for a certificate as specified in 9 VAC 20-170-290 B.

C. Owners and operators shall demonstrate financial responsibility using one or more of the following financial mechanisms:

1. Trust fund.

a. The owner or operator of a vessel may satisfy the requirements of subsection A of this section by establishing a trust fund that conforms to the requirements of this section and by submitting an originally signed 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 a federal agency or the State Corporation Commission.

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b. The trust fund shall be irrevocable and shall continue until terminated at the written direction of the director and the trustee. Upon termination of the trust, all remaining trust property, less final trust administration expenses, shall be delivered to the owner or operator. The wording of the trust agreement must be identical to the wording specified in APPENDIX I, except that instructions in brackets must be replaced with the relevant information and the brackets deleted, and must be accompanied by a formal certification of acknowledgment as specified in APPENDIX I.

c. The owner or operator initially shall submit the original, signed trust agreement to the director as a part of the application for a certificate as specified in 9 VAC 20-170-290 B.

d. The irrevocable trust fund, when established, must be funded for the full financial responsibility amount as specified in 9 VAC 20-170-300, or funded for part of the required amount and used in combination with other mechanisms that provide the remaining required amount.

e. If the value of the trust fund is greater than the required financial responsibility amount as specified in 9 VAC 20-170-300, the owner or operator may submit a written request to the director for release of the excess.

f. If another financial mechanism as specified in this part is substituted for all or part of the trust fund, the owner or operator may submit a written request to the director for release of the excess.

g. Within 60 days after receiving a request from the owner or operator for release of funds as specified in subdivision 1 e or 1 f of this subsection, the director will instruct the trustee to release to the owner or operator such funds as the director deems appropriate, if any, in writing.

h. Whenever the required financial responsibility amount as specified in 9 VAC 20-170-300 changes after the establishment of the trust fund, the owner or operator shall compare the new amount with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the required amount, the owner or operator shall, within 60 days of the change in the required amount specified in 9 VAC 20-170-300, deposit a sufficient amount into the fund so that its value after payment at least equals the new financial responsibility amount, or obtain another financial mechanism or combination of mechanisms as specified in this part to cover the difference. If the value of the trust fund is greater than the new financial responsibility amount, the owner or operator may submit a written request to the director for release of the amount that is in excess of the new amount.

i. After beginning a cleanup or containment operation in accordance with the approved Response and Mitigation Plan, an owner or operator or any other

person authorized to conduct cleanup or containment, may request reimbursement for cleanup or containment expenditures by submitting itemized bills to the director. Within 60 days after receiving bills for cleanup or containment activities, the director shall instruct the trustee to make reimbursements in those amounts as the director determines are justified.

j. If at any time after the trust is funded, the amount in the trust is reduced below the full amount of coverage required, the owner or operator providing the mechanism shall by the anniversary date of the trust:

(1) Replenish the value of the trust to equal the full amount of coverage required pursuant to [~~9-VAC 20-170-230~~ 9 VAC 20-170-300]; or

(2) Acquire another financial responsibility mechanism for the amount by which the funds in the trust have been reduced.

2. Standby trust fund.

a. An owner or operator using any one of the mechanisms authorized by subdivisions 3 and 4 of this subsection or 9 VAC 20-170-330 C 3 and 4 must establish a standby trust fund when the mechanism is acquired and submit the original standby trust agreement to the director. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or the State Corporation Commission.

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

c. An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this section.

3. Surety bond guaranteeing payment.

a. An owner or operator may satisfy the requirements of subsection A of this section by obtaining a surety bond that conforms to the requirements of this section and submitting the original bond to the director. The surety company issuing the bond shall be licensed to operate as a surety in the Commonwealth of Virginia and be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

b. The surety bond must be worded identically as specified in APPENDIX II, except that instructions in brackets must be replaced with the relevant information and the brackets deleted.

c. The owner or operator initially shall submit the original bond to the director as a part of the application for a certificate as specified in 9 VAC 20-170-290 B.

d. The surety bond shall name the vessel operator or owner as the principal and name the Commonwealth of Virginia as the obligee.

e. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. The surety's liability is limited to the penal sum of the bond.

f. The owner or operator who uses a surety bond to satisfy the requirements of subsection A of this section must establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the director under 9 VAC 20-170-360. This standby trust fund shall meet the requirements specified in subdivision 2 of this subsection.

g. Whenever the financial responsibility amount specified in 9 VAC 20-170-300 increases to an amount greater than the penal sum of the bond, the owner or operator shall, within 60 days of the increase, cause the penal sum of the bond to be increased to an amount at least equal to the amount specified in 9 VAC 20-170-300 or obtain another financial mechanism or combination of mechanisms as specified in this article to cover the increase. Whenever the financial responsibility amount specified in 9 VAC 20-170-300 decreases, the penal sum of the bond may be reduced to the new amount following written approval by the director. The surety shall send the notice of an increase or decrease in the amount of the bond to the director by certified mail within 60 days of the change.

4. Letter of credit.

a. An owner or operator may satisfy the requirements of subsection A of this section by obtaining an irrevocable standby letter of credit that satisfies the requirements of this section and by submitting the original letter of credit to the director. 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 owner or operator initially shall submit the original letter of credit to the director as a part of the application for a certificate as specified in 9 VAC 20-170-290 B.

c. 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 amount specified in 9 VAC 20-170-300. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year. If the letter of credit is canceled by the issuing institution, the owner or operator shall obtain alternate evidence of financial responsibility in accordance with this part.

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

e. An owner or operator who uses a letter of credit to satisfy the requirements of subsection A of this section must also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the board will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the board under 9 VAC 20-170-360. This standby trust fund must meet the requirements specified in subdivision 2 of this subsection.

f. Whenever the financial responsibility amount specified in 9 VAC 20-170-300 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 amount specified in 9 VAC 20-170-300 or obtain another financial mechanism or combination of mechanisms as specified in this part to cover the increase. Whenever the financial responsibility amount specified in 9 VAC 20-170-300 decreases, the letter of credit may be reduced to the new amount 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.

9 VAC 20-170-320. Multiple mechanisms.

An owner or operator may satisfy the requirements of this part by establishing more than one financial mechanism, except that mechanisms guaranteeing performance, rather than payment, may not be combined with other mechanisms. The mechanisms shall be as specified in 9 VAC 20-170-310 C 1 through 4, except that evidence of financial responsibility in the amount at least equal to the amount specified in 9 VAC 20-170-300 may be provided by a combination of mechanisms, rather than a single mechanism.

9 VAC 20-170-330. Liability requirement.

A. The owner and operator of a vessel or a group of such vessels transporting solid wastes or regulated medical wastes upon the navigable waters of the Commonwealth, to the extent allowable under state law, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden and/or nonsudden accidental occurrences arising from a deposit of solid wastes and/or regulated medical waste into the navigable waters of the Commonwealth. The owner or operator shall establish and maintain liability coverage in the following amounts:

1. For sudden and/or nonsudden accidental occurrences, arising from the deposit of solid wastes from a vessel into the navigable waters of the Commonwealth, to the extent allowable under state law, at least \$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs; and

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2. For sudden and/or nonsudden accidental occurrences, arising from the deposit of regulated medical wastes, or a combination of solid wastes and regulated medical wastes, from a vessel into the navigable waters of the Commonwealth, to the extent allowable under state law, at least \$3 million per occurrence with an annual aggregate of at least \$6 million, exclusive of legal defense costs.

B. Liability coverage shall include coverage for waste deposits that occur from loading and unloading the vessels.

C. An owner or operator may demonstrate liability coverage with the following mechanisms:

1. An insurance policy(s) that conforms to the requirements of this section from a qualified insurer.

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

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

c. The owner or operator initially shall submit an original certificate of insurance or endorsement and a copy of the entire insurance policy to the director as a part of the application for a certificate as specified in 9 VAC 20-170-290 B. After the initial submission, the owner or operator shall submit an original certificate of insurance or endorsement evidencing policy renewal as a part of the application for renewal of the vessel's certificate as specified in 9 VAC 20-170-290 D.

d. An owner or operator shall submit a copy of the entire insurance policy to the department within 30 days of the director's written request.

e. Each insurance policy must be issued by an insurer that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or approved surplus lines insurer in the Commonwealth of Virginia. The insurer shall not be a captive insurer.

f. Each insurance policy shall provide first dollar coverage. The insurer shall be liable for the payment of all amounts within any deductible applicable to the policy to the damaged third party, as provided in this chapter, with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in subdivisions 2 through 4 of this subsection.

2. A trust agreement as specified in 9 VAC 20-170-310 C 1 except that the amount of the trust shall be equal to the amount specified in subsection A of this section. The

trust agreement must be worded identically as specified in APPENDIX VI, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

3. A surety bond as specified in 9 VAC 20-170-310 C 2 except that the amount of the bond shall be equal to the amount specified in subsection A of this section. The surety bond must be worded identically as specified in APPENDIX VII, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

4. A letter of credit as specified in 9 VAC 20-170-310 C 3 except that the face amount of the letter of credit shall be equal to the amount specified in subsection A of this section. The letter of credit must be worded identically as specified in APPENDIX VIII, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

D. An owner or operator shall notify the director in writing within 30 days:

1. Whenever a claim for bodily injury or property damages caused by a waste deposit into state waters is made against the owner or operator or an instrument providing financial responsibility for liability coverage under subsection A of this section; or

2. Whenever the amount of financial responsibility for liability coverage under subsection A of this section provided by a financial instrument authorized by subsection C of this section is reduced.

E. An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, trust funds, surety bonds, and letters of credit. The amounts of coverage demonstrated shall total at least the minimum amounts required by subsection A of this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial responsibility mechanisms under subsection C of this section, the owner or operator shall specify at least one such mechanism as "primary" coverage and shall specify other mechanism as "excess" coverage.

9 VAC 20-170-340. Substitution of financial responsibility mechanisms by owner or operator.

A. An owner or operator may substitute any alternate financial responsibility mechanism as specified in this part, provided that at all times the owner or operator maintains an effective financial responsibility mechanism or combination of mechanisms that satisfies the requirements of 9 VAC 20-170-310 C if the mechanism or mechanisms are submitted to comply with the requirements of 9 VAC 20-170-310 A and subsection C of this section if the mechanism or mechanisms are submitted to comply with the requirements of subsection A of this section.

B. After obtaining an alternate financial responsibility mechanism, or combination of mechanisms, as specified in this part and written approval from the director, an owner or

operator may cancel a financial responsibility mechanism by providing notice to the provider of financial responsibility.

9 VAC 20-170-350. Cancellation or nonrenewal by a provider of financial responsibility.

A. Except as otherwise provided, a provider of financial responsibility may cancel or fail to renew a financial responsibility mechanism by sending a notice of termination by certified mail to the owner or operator and the director.

1. Termination of a surety bond or a letter of credit may not occur until 120 days after the date on which the director and the owner or operator receive the notice of termination, as evidenced by the return receipts.

2. Termination of insurance coverage, except for nonpayment or misrepresentation by the insured may not occur until 60 days after the date on which the director and the owner or operator receive the notice of termination, as evidenced by the return receipts. Termination for nonpayment of premium or misrepresentation by the insured may not occur until a minimum of 30 days after the date on which the director and the owner or operator receives the notice of termination, as evidenced by the return receipts.

B. If a provider of financial responsibility cancels or fails to renew, the owner or operator must obtain alternate coverage as specified in this section within 60 days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator must immediately notify the board of such failure and submit:

1. The name and address of the provider of financial responsibility;
2. The effective date of termination; and
3. The evidence of the financial responsibility mechanism subject to the termination maintained in accordance with 9 VAC 20-170-310 A or 9 VAC 20-170-340 A.

9 VAC 20-170-360. Drawing on a financial responsibility mechanism.

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

1. a. The owner or operator fails to obtain and submit an alternate financial responsibility mechanism, or combination of mechanisms within 60 days after receiving notice of cancellation of the surety bond or letter of credit described in this subsection; or

b. The director determines or [~~suspects~~ has a reasonable belief] that a deposit of solid wastes and/or regulated medical wastes into state waters has occurred and so notifies the owner and operator, or the owner or operator has notified the director pursuant to 9 VAC 20-170-210 of a waste deposit into state waters from a vessel covered by the mechanism; or

2. The conditions of subsection B of this section are satisfied.

B. The director may draw on a standby trust fund or funds when:

1. The director makes a final determination that a waste deposit has occurred and immediate or long-term cleanup and/or containment for the waste deposit is needed, or the beneficial uses of state waters have been impaired as a result of the waste deposit and the owner and operator, after appropriate notice and opportunity to comply, have not conducted cleanup or containment as required under 9 VAC 20-170-210 H; or

2. The director has received either:

a. Certification from the owner or operator and the third-party liability claimants and from attorneys representing the owner or operator and the third-party liability claimants that a third-party liability claim should be paid. The certification must be worded identically as specified in APPENDIX IX, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted;

b. A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by a waste deposit from a vessel covered by financial responsibility under this part and the board determines that the owner or operator has not satisfied the judgment.

C. If the director determines that the amount of cleanup and/or containment costs or beneficial use impact costs and third-party liability claims eligible for payment under subsection B of this section may exceed the balance of the standby trust fund and the obligation of the provider of financial responsibility, the first priority for payment shall be the cleanup and containment activities necessary to protect human health and the environment. The board shall direct payment from the standby trust fund for third-party liability claims in the order in which the board receives certifications under subdivision B 2 a of this section and valid court orders under subdivision B 2 b of this section.

9 VAC 20-170-370. Replenishment of letters of credit or surety bonds.

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

1. Replenish the value of the financial responsibility mechanism to equal the full amount of coverage required; or

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

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B. For purposes of this section, the full amount of coverage required is the amount of coverage to be provided under 9 VAC 20-170-300 or 9 VAC 20-170-340 A if the owner or operator is demonstrating financial responsibility for liability coverage. If a combination of mechanisms was used to provide the financial responsibility funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

9 VAC 20-170-380. 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.

B. An owner or operator who fulfills the requirements 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 responsibility 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 another financial responsibility mechanism, or combination of mechanisms, within 60 days of such event. If the owner or operator does not obtain alternate coverage within 60 days after such notification, he shall immediately notify the director in writing.

9 VAC 20-170-390. Service of process.

A. When executing the forms required by this part, each certificate applicant shall designate on the face of the application, a person located in Virginia as its agent for service of process for purposes of this part and for receipt of notices of designations and presentations of claims under this regulation. Each designated agent shall acknowledge the director with a letter showing that he has agreed in advance to act as the registered agent for service of process for the certificate applicant or certificant in question.

B. If any certificate applicant or certificant desires, for any reason, to change any designated agent, the certificate applicant or certificant shall notify the director of the change and furnish the relevant information, including the new agent's acknowledgment in accordance with subsection A of this section. In the event of death, disability, or unavailability of a designated agent, the certificate applicant or certificant shall designate another agent in accordance with paragraph A of this section within 10 days of knowledge of any such event. The certificate applicant or certificant shall submit the new designation to the director. The director may revoke a certificate if a certificate applicant or certificant fails to designate and maintain an agent for service of process.

C. If a designated agent can not be served because of death, disability, unavailability, or similar event and another agent has not been designated under this section, then service of process on the director will constitute valid service of process. Service of process on the director will not be effective unless the server

1. Sends the certificate applicant or certificant by registered mail, at its last known address on file with the director a copy of each document served on the director; and

2. Attests to this registered mailing, at the time process is served upon the director, indicating that the intent of the mailing is to effect service of process on the certificate applicant or certificant and that service on the designated agent is not possible, stating the reason why.

9 VAC 20-170-400. Release from financial responsibility requirements.

Within 60 days after termination of vessel registration is accomplished pursuant to [9 VAC] 20-170-250 G, the director shall notify the owner and operator in writing that they are no longer required to maintain financial responsibility and liability coverage for the vessel. Such notice shall release the owner and operator only from the requirements for financial responsibility for the vessel; it does not release him from legal responsibility for meeting any other requirements of this chapter.

APPENDIX I.

(NOTE: Instructions in [parentheses brackets] are to be replaced with the relevant information and the [parentheses brackets] deleted.)

TRUST AGREEMENT

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the vessel 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 has established certain regulations applicable to the Grantor, requiring that the owner and operator of a vessel transporting solid and/or regulated medical waste upon the navigable waters of the Commonwealth must provide assurance that funds will be available when needed for cleanup or containment of a waste deposit into such waters,

[Insert the following paragraph if this Trust is established as the financial responsibility mechanism pursuant to 9 VAC 20-170-310 C 1:

Whereas, the Grantor has elected to establish a trust to assure all or part of such financial responsibility for the vessels identified herein,]

[Insert the following paragraph if this Trust is established as a standby trust agreement:

Whereas the Grantor has elected to establish [insert either "a surety bond," or "letter of credit"] to provide all or part of such financial responsibility for its covered vessels and is required to establish a standby trust fund able to accept payments from the instrument,]

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 Vessels. This Agreement pertains to vessels and amounts identified on attached Schedule A. (NOTE: On Schedule A, for each vessel list, as applicable, the vessel name, gross tonnage, owner and operator and the amount of financial responsibility demonstrated by this Agreement.)

[Insert the following paragraph if this Trust is established as a standby trust agreement:

This Agreement pertains to the [identify the financial responsibility mechanism, either a letter of credit or a surety bond from which the standby trust fund is established to receive payments.]

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. [Insert the following sentence if this Trust is established as the financial responsibility mechanism pursuant to 9 VAC 20-170-310 C 1: The Fund is established initially as property consisting of cash or securities, which are acceptable to the Trustee, described in Schedule B attached hereto.] [Insert the following sentence if the fund is established as a standby trust fund: The Fund is established initially as a standby to receive payments and shall not consist of any property.] 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 Containment and Clean up of a Waste Deposit. 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 cleanup and containment of any

deposit of waste from a vessel covered by this Agreement or the costs to restore any beneficial uses impaired by such a waste deposit. The Trustee will reimburse such persons as specified by the Department of Environmental Quality, Commonwealth of Virginia, from the Fund for 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 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 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.

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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 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 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

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.* The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon 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 Director of the Department of Environmental Quality, Commonwealth of Virginia, and the present 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 Section 9.

Section 14. *Instructions to the Trustee.* All orders, requests and instructions by the Grantor to the Trustee will be in writing, signed by 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 Director of the Department of Environmental Quality, Commonwealth of Virginia, to the Trustee will be in writing, signed by the 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.* If a payment has been made under Section 4 of this Trust, the Grantor shall, on or

before the anniversary date of the establishment of the Fund following such a payment, either make payments to the Trustee in amounts sufficient to cause the Trust to return to its value immediately prior to the payments made under Section 4, or shall provide written proof to the Trustee that other financial assurance as required by 9 VAC 20-170-10 et seq. has been obtained equaling the amount necessary to return the Trust to its value prior to the payments made under Section 4. If the Grantor does not either make payments to the Trustee or provide the Trustee with such proof, the Trustee shall within 10 working days after the anniversary date of the establishment of the Fund provide a written notice of nonpayment to the Director of the Department of Environmental Quality, Commonwealth of Virginia.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Director of the Department of Environmental Quality, Commonwealth of Virginia, or by the Trustee and the 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 Director of the Department of Environmental Quality, Commonwealth of Virginia, or by the Trustee and the 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 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 Acknowledgment:

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]

SCHEDULE A

IDENTIFICATION OF COVERED VESSELS

The Trust Agreement, by and between [insert Grantor Name and Trustee Name] dated [insert date of Agreement] is applicable to the following vessels:

Total Financial Responsibility Amount:

Vessel Name Gross tons Owner [Operator]

APPENDIX II

(NOTE: instructions in [parentheses brackets] are to be replaced with the relevant information and the [parentheses brackets] deleted.)

SURETY BOND GUARANTEEING PAYMENT

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]

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Vessels covered by this bond (see attached Schedule A):.....

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 registration number issued by the Department of Environmental Quality, Commonwealth of Virginia, in order to transport solid or regulated medical waste upon the navigable waters of the Commonwealth, and

Whereas, said Principal is required to provide financial assurance for the cleanup and containment of a waste deposit from a vessel transporting solid and/or regulated medical waste upon the navigable waters of the Commonwealth and for the costs of restoring any beneficial uses impaired as a result of such a waste deposit as a condition of operation pursuant to 9 VAC 20-170-10 et seq.,

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

Now, therefore the conditions of this obligation are such that if the Principal shall faithfully pay or cause to be paid any sum or sums for which the Principal is obligated to pay to clean up or contain a waste deposit from a covered vessel pursuant to 9 VAC 20-170-10 et seq. or restore any beneficial uses impaired from such a deposit, then this obligation, to the extent of such payment, shall be void, otherwise to remain in full force and effect.

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 60 days of the date notice of cancellation is received by the 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 vessel 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 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 forfeit the

penal sum of the bond and deposit the entire amount of the bond into the standby trust established for this purpose.

The Surety hereby waives notification of amendments to any plans, orders, applicable laws, statutes, rules, and regulations and agrees that such amendments shall in no way alleviate its obligation on this bond.

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 Director of the Department of Environmental Quality, Commonwealth of Virginia, provided, however, that cancellation cannot occur 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.

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 Director of the Department of Environmental Quality, Commonwealth of Virginia.

In witness whereof, the Principal and Surety have executed this Surety 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:

SCHEDULE A

IDENTIFICATION OF COVERED VESSELS

Surety Bond [insert bond number] is applicable to the following vessels:

Vessel Name	Gross tons	Owner	Operator
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APPENDIX III

(NOTE: Instructions in [parentheses brackets] are to be replaced with the relevant information and the [parentheses brackets] deleted.)

IRREVOCABLE STANDBY LETTER OF CREDIT

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 at the request and for the account of [vessel 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 vessels are included in the amount of this letter of credit: (See attached Schedule of Covered Vessels).

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.

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," or "the Uniform Commercial Code"].

SCHEDULE A

IDENTIFICATION OF COVERED VESSELS

Letter of credit [insert letter of credit number] is applicable to the following vessels:

Table with 4 columns: Vessel Name, Gross tons, Owner, Operator

APPENDIX IV

(NOTE: Instructions in [parentheses brackets] are to be replaced with the relevant information and the [parentheses brackets] deleted.)

ENDORSEMENT FOR LIABILITY COVERAGE

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the insured's obligation to demonstrate financial responsibility under 9 VAC 20-170-330 of the Transportation of Solid and Medical Waste on State Waters Regulations.

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

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy to which this endorsement is attached.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in 9 VAC 20-170-330.

(c) Whenever requested by the Director of the Department of Environmental Quality, Commonwealth of Virginia or the Regional Administrator of the U.S. Environmental Protection Agency (EPA), the Insurer agrees to furnish to the director or the Regional Administrator a signed duplicate original of the policy and all endorsements.

(d) Cancellation of this endorsement, whether by the Insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of a covered vessel, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the Director of the Department of Environmental Quality, Commonwealth of Virginia.

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(e) Any other termination of this endorsement will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the Director of the Department of Environmental Quality, Commonwealth of Virginia.

Attached to and forming part of policy No. _____ issued by [name of Insurer], herein called the Insurer, of [address of Insurer] to [name of insured] of [address] this ____ day of _____, [49 20] _____. The effective date of said policy is ____ day of _____, [49 20] _____.

I hereby certify that the wording of this endorsement is identical to the wording specified in the relevant regulations of the Department of Environmental Quality, Commonwealth of Virginia, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

[Signature of Authorized Representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer]

[Address of Representative]

SCHEDULE A

IDENTIFICATION OF COVERED VESSELS

Insurance Policy [insert policy number] is applicable to the following vessels:

Vessel Name	Gross tons	Owner	Operator
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APPENDIX V

(NOTE: Instructions in [parentheses brackets] are to be replaced with the relevant information and the [parentheses brackets] deleted.)

CERTIFICATE OF INSURANCE FOR LIABILITY COVERAGE

1. [Name of Insurer], (the "Insurer"), of [address of Insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [name of insured], (the "insured"), of [address of insured] in connection with the insured's obligation to demonstrate financial responsibility under 9 VAC 20-170-330 of the Transportation of Solid and Medical Waste on State Waters Regulations. The coverage applies to the vessels listed on the attached Schedule A for sudden accidental occurrences and/or nonsudden accidental occurrences. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs. The coverage is provided under policy number _____, issued on [date]. The effective date of said policy is [date].

2. The Insurer further certifies the following with respect to the insurance described in Paragraph 1:

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right

of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in 9 VAC 20-170-330.

(c) Whenever requested by the Director of the Department of Environmental Quality, Commonwealth of Virginia or a Regional Administrator of the U.S. Environmental Protection Agency (EPA), the Insurer agrees to furnish to the director or Regional Administrator a signed duplicate original of the policy and all endorsements.

(d) Cancellation of the insurance, whether by the insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of a covered vessel, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the Director of the Department of Environmental Quality, Commonwealth of Virginia.

(e) Any other termination of the insurance will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the Director of the Department of Environmental Quality, Commonwealth of Virginia.

I hereby certify that the wording of this instrument is identical to the wording specified in the relevant regulations of the Department of Environmental Quality, Commonwealth of Virginia, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

[Signature of authorized representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer]

[Address of Representative]

SCHEDULE A

IDENTIFICATION OF COVERED VESSELS

Insurance Policy [insert policy number] is applicable to the following vessels:

Vessel Name	Gross tons	Owner	Operator
-------------	------------	-------	----------

APPENDIX VI

(NOTE: Instructions in [parentheses brackets] are to be replaced with the relevant information and the [parentheses brackets] deleted.)

TRUST AGREEMENT FOR THIRD PARTY LIABILITY COVERAGE

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the vessel owner or operator], a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of

corporate trustee], [insert "incorporated in the State of _____" or "a national bank"], the "trustee."

Whereas, the Virginia Waste Management Board has established certain regulations applicable to the Grantor, requiring that an owner and operator of a vessel transporting solid and/or regulated medical waste on the navigable waters of the Commonwealth must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from the transport by water of solid and/or regulated medical waste,

[Insert the following paragraph if this Trust is established as the financial responsibility mechanism pursuant to 9 VAC 20-170-330 C 2:

Whereas, the Grantor has elected to establish a trust to assure all or part of such financial responsibility for the vessels identified herein,]

[Insert the following paragraph if this Trust is established as a standby trust agreement:

Whereas, the Grantor has elected to establish [insert either "a surety bond," or "letter of credit"] to provide all or part of such financial responsibility for its covered vessels and is required to establish a standby trust fund able to accept payments from the instrument,]

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Vessels. This Agreement pertains to vessels and amounts identified on attached Schedule A. (NOTE: On Schedule A, for each vessel list, as applicable, the vessel name, gross tonnage, owner and operator and the amount of financial responsibility demonstrated by this Agreement.)

[Insert the following paragraph if this Trust is established as a standby trust agreement:

This Agreement pertains to the [identify the financial responsibility mechanism, either a letter of credit or a surety bond from which the standby trust fund is established to receive payments.]

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund," for the benefit of any and all third parties injured or damaged by sudden and/or nonsudden accidental occurrences arising from a deposit of solid and/or regulated medical waste into the navigable waters of the Commonwealth from a vessel

covered by this Agreement, in the amounts of [insert "\$1 million per occurrence and \$2 million annual aggregate for accidental occurrences arising from a deposit of solid waste into navigable waters" and/or "\$3 million per occurrence and \$6 million annual aggregate for occurrences arising from a deposit of regulated medical waste into navigable waters"], except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert Grantor] arising from, and in the course of, employment by [insert Grantor]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor].

This exclusion applies:

(A) Whether [insert Grantor] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft or motor vehicle.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Grantor];

(2) Premises that are sold, given away or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert Grantor];

(4) Personal property in the care, custody or control of [insert Grantor];

(5) That particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the fund shall be considered [insert "primary" or "excess"] coverage.

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[Insert the following sentence if this Trust is established as the financial responsibility mechanism pursuant to 9 VAC 20-170-330 C 2: The Fund is established initially as property consisting of cash or securities, which are acceptable to the Trustee, described in Schedule B attached hereto.] [Insert the following sentence if the fund is established as a standby trust fund: The Fund is established initially as a standby to receive payments and shall not consist of any property.] 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 shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Department of Environmental Quality, Commonwealth of Virginia.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by making payments from the Fund only upon receipt of one of the following documents:

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by an accidental occurrence arising from a deposit of solid and/or regulated medical waste into navigable waters from a covered vessel should be paid in the amount of \$[].

[Signatures]

Grantor

[Signatures]

Claimant(s)

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by an accidental occurrence arising from a deposit of solid and/or regulated medical waste into navigable waters from one or more of the Grantor's vessels covered by this Agreement.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the

Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstance then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 USC § 80a-2(a), shall not be acquired or held unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common commingled, or collective trust fund created by the Trustee in which the fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 USC § 81a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even

though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuations. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Director of the Department of Environmental Quality, Commonwealth of Virginia a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. 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 Director of the Department of Environmental Quality, Commonwealth of Virginia shall 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 shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the

appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Director of the Department of Environmental Quality, Commonwealth of Virginia, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the director to the Trustee shall be in writing, signed by the Director of the Department of Environmental Quality, Commonwealth of Virginia, or his designees, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Department of Environmental Quality, Commonwealth of Virginia hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Director of the Department of Environmental Quality, Commonwealth of Virginia, except as provided for herein.

Section 15. Notice of Nonpayment. If a payment for bodily injury or property damage is made under Section 4 of this trust, the Trustee shall notify the Grantor of such payment and the amount(s) thereof within five (5) working days. The Grantor shall, on or before the anniversary date of the establishment of the Fund following such notice, either make payments to the Trustee in amounts sufficient to cause the trust to return to its value immediately prior to the payment of claims under Section 4, or shall provide written proof to the Trustee that other financial assurance for liability coverage has been obtained equaling the amount necessary to return the trust to its value prior to the payment of claims. If the Grantor does not either make payments to the Trustee or provide the Trustee with such proof, the Trustee shall within 10 working days after the anniversary date of the establishment of the Fund provide a written notice of nonpayment to the Director of the Department of Environmental Quality, Commonwealth of Virginia.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Director of the Department of Environmental Quality, Commonwealth of Virginia, or by the Trustee and the Director of the Department of Environmental

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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 shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Director of the Department of Environmental Quality, Commonwealth of Virginia, or by the Trustee and the director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor. The director will agree to termination of the Trust when the owner or operator substitutes alternate financial assurance as specified in this section.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Director of the Department of Environmental Quality, Commonwealth of Virginia issued in accordance with this Agreement. The Trustee shall 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 shall be administered, construed, and enforced according to the laws of the Commonwealth of Virginia.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals 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]
[Title]

Attest:

[Title]
[Seal]

[Signature of Trustee]
Attest:

[Title]
[Seal]

(2) The following is an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in 9 VAC 20-170-240 or 9 VAC 20-170-260 of this chapter.

State of _____

County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address]; that [she/he] is [title] of [corporation], the corporation described in and which executed the above instrument; that [she/he] knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that [she/he] signed [her/his] name thereto by like order.

[Signature of Notary Public]

SCHEDULE A

IDENTIFICATION OF COVERED VESSELS

The Trust Agreement, by and between [insert Grantor Name and Trustee Name] dated [insert date of Agreement] is applicable to the following vessels:

Total Financial Responsibility Amount:

Vessel Name	Gross tons	Owner	Operator
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APPENDIX VII

(NOTE: Instructions in [parentheses brackets] are to be replaced with the relevant information and the [parentheses brackets] deleted.)

PAYMENT BOND FOR THIRD PARTY LIABILITY COVERAGE

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]

Vessels covered by this bond (see attached Schedule A):.....

Penal sum of bond: \$.....

Surety's bond number:.....

Purpose: This is an agreement between the Surety and the Principal under which the Surety, its successors and assignees, agree to be responsible for the payment of claims against the Principal for bodily injury and/or property damage to third parties caused by accidental occurrences arising from the transport of [insert "solid waste" or "regulated medical waste"] by a covered vessel on the navigable waters of the Commonwealth in the sums prescribed herein; subject to the governing provisions and the following conditions.

Governing Provisions:

(1) Virginia Waste Management Act, Title 10.1, Code of Virginia (1950), as amended.

(2) Transportation of Solid and Medical Wastes on State Waters Regulations, 9 VAC 20-170-10 et seq.

Conditions:

(1) The Principal is subject to the applicable governing provisions that require the Principal to have and maintain liability coverage for bodily injury and property damage to third parties caused by accidental occurrences arising from the transport of [insert "solid waste" or "regulated medical waste"] by a covered vessel on the navigable waters of the Commonwealth. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or similar law.

(c) Bodily injury to:

(1) An employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal].

This exclusion applies:

(A) Whether [insert principal] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft or motor vehicle.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert principal];

(2) Premises that are sold, given away or abandoned by [insert principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert principal];

(4) Personal property in the care, custody or control of [insert principal];

(5) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are

performing operations, if the property damage arises out of these operations.

(2) This bond assures that the Principal will satisfy valid third party liability claims, as described in condition 1.

(3) If the Principal fails to satisfy a valid third party liability claim, as described above, the Surety becomes liable on this bond obligation.

(4) The Surety shall satisfy a third party liability claim only upon the receipt of one of the following documents:

(a) Certification from the Principal and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert name of Principal] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by an accidental occurrences arising from the transport of [insert "solid waste" or "regulated medical waste"] by a covered vessel on the navigable waters of the Commonwealth should be paid in the amount of \$[].

[Signature]

Principal

[Notary] [Date]

[Signature(s)]

Claimant(s)

[Notary] [Date]

or (b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by accidental occurrences arising from the transport of [insert "solid waste" or "regulated medical waste"] by a covered vessel on the navigable waters of the Commonwealth.

(5) In the event of combination of this bond with another mechanism for liability coverage, this bond will be considered [insert "primary" or "excess"] coverage.

(6) 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. In no event shall the obligation of the Surety hereunder exceed the amount of said annual aggregate penal sum, provided that the Surety furnishes notice to the Director of the Department of Environmental Quality, Commonwealth of Virginia forthwith of all claims filed and payments made by the Surety under this bond.

(7) The Surety may cancel the bond by sending notice of cancellation by certified mail to the Principal and the Director of the Department of Environmental Quality, Commonwealth of Virginia, provided, however, that cancellation shall not

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occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal and the director, as evidenced by the return receipt.

(8) 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 Director of the Department of Environmental Quality, Commonwealth of Virginia.

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

(10) This bond is effective from [insert date] (12:01 a.m., standard time, at the address of the Principal as stated herein) and shall continue in force until terminated as described above.

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

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety 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)]

[Title(s)]

[Corporate Seal]

CORPORATE SURETY[IES]

[Name and address]

State of incorporation: _____

Liability Limit: \$ _____

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

Bond premium: \$ _____

SCHEDULE A

IDENTIFICATION OF COVERED VESSELS

Surety Bond [insert bond number] is applicable to the following vessels:

Vessel Name	Gross tons	Owner	Operator
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APPENDIX VIII

(NOTE: Instructions in brackets are to be replaced with the relevant information and the brackets deleted.)

IRREVOCABLE STANDBY LETTER OF CREDIT FOR THIRD PARTY LIABILITY COVERAGE

[Name and Address of Issuing Institution]

Director

Department of Department of Environmental Quality
629 East Main Street
P.O. Box 10009
Richmond, Virginia 23240-0009

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. _____ in favor of any and all third-party liability claimants, at the request and for the account of [insert owner's or operator's name and address] for third-party liability awards or settlements up to U.S. dollars [\$ _____] per occurrence and the annual aggregate amount of U.S. dollars [\$ _____], for accidental occurrences available upon presentation of a signed draft, bearing reference to this letter of credit No. _____, and

1. A signed certificate reading as follows:

Certification of Valid Claim

The undersigned, as parties [insert principal and insert name and address of third-party claimants], hereby certify that the claim of bodily injury and/or property damage arising from a waste deposit into navigable waters by a covered vessel transporting solid and/or regulated medical waste should be paid in the amount of \$ _____. We hereby certify that the claim does not apply to any of the following:

(a) Bodily injury or property damage for which insert principal is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that insert principal would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of insert principal under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of insert principal arising from, and in the course of, employment by insert principal; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by insert principal. This exclusion applies:

(A) Whether insert principal may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in paragraphs (1) and (2).

Signatures

Principal
Signatures
Claimant(s)
or

and/or nonsudden accidental occurrence arising from a waste deposit from [owner or operator] vessel into state waters should be paid in the amount of \$[].

[Signatures]
Vessel Owner or Operator
Attorney for Owner or Operator

2. A valid final court order establishing a judgement against the principal for bodily injury or property damage arising from a waste deposit into navigable waters from a covered vessel transporting solid and/or regulated medical waste.

[Notary] [Date]

The provisions of this letter of credit are applicable to the vessels indicated on the attached Schedule of Covered Vessels.

[Signature(s)]
Claimant(s)
Attorney(s) for Claimant(s)

This letter of credit is effective as of date and shall expire on date at least one year later, but such expiration date shall 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, the director and owner's or operator's name by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

[Notary] [Date]

[PART VII.

COMPLIANCE OF VESSELS TRANSPORTING SOLID WASTES OR REGULATED MEDICAL WASTES WITH FEDERAL STATUTES AND REGULATIONS.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

9 VAC 20-170-410. General provisions.

In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered insert "primary" or "excess" coverage.

A. All vessels used to transport solid waste or regulated medical waste on state waters shall be in full compliance with all applicable requirements of the U.S. Coast Guard, the U.S. Department of Transportation and any other federal or state agency having jurisdiction regarding the design and operation of such vessels.

We certify 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.

B. 33 CFR Part 151 (effective July 1, 2000) and 46 CFR Part 42 (effective October 1, 2000) are incorporated by reference.]

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

DOCUMENTS INCORPORATED BY REFERENCE

[Date]

Rules for Certification of Cargo Containers, 1987, American Bureau of Shipping.

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

Recommended Practices for Installation of Underground Liquid Storage Systems, 2000, Petroleum Equipment Institute.

VA.R. Doc. No. R98-255; Filed Dec. 27, 2000, 11:34 a.m.

STATE WATER CONTROL BOARD

SCHEDULE A
IDENTIFICATION OF COVERED VESSELS

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exclusion from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The State Water Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Letter of credit [insert letter of credit number] is applicable to the following vessels:

Vessel Name Gross tons Owner Operator

APPENDIX IX

(NOTE: Instructions in [parentheses brackets] are to be replaced with the relevant information and the [parentheses brackets] deleted.)

CERTIFICATION OF VALID CLAIM

Title of Regulation: 9 VAC 25-730-10 et seq. Smith Mountain Lake No-Discharge Zone.

The undersigned, as principals and as legal representatives of [insert vessel owner or operator] and [insert name and address of third party claimant] hereby certify that the claim of bodily injury [and/or] property damage caused by a sudden

Statutory Authority: § 62.1-44.33 of the Code of Virginia.

Effective Date: February 16, 2001.

Summary:

The 1998 General Assembly directed "That the State Water Control Board shall petition the Administrator of

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the United States Environmental Protection Agency (EPA) to approve the designation of Smith Mountain Lake as a no-discharge zone for boat sewage. If such approval is granted, the board shall prohibit the discharge from all vessels of any sewage into Smith Mountain Lake." (Chapter 247 of the 1998 Virginia Acts of Assembly.) This regulation responds to that enactment and it prohibits all boating sewage discharges into Smith Mountain Lake.

Agency Contact: Copies of the regulation may be obtained from Michael B. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4065.

CHAPTER 730.

SMITH MOUNTAIN LAKE NO-DISCHARGE ZONE.

9 VAC 25-730-10. Definitions.

This regulation is established in accordance with § 62.1-44.33 of the Code of Virginia. For the purposes of this chapter, the following definitions will apply:

"Clean Water Act" means Chapter 26 of Title 33 of the United States Code (26 USC § 1251 et seq.) and standards and regulations promulgated thereunder.

"Discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

"Sewage" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes.

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

"Vessel" includes every description of watercraft or other artificial contrivance used or capable of being used on the waters of the state, including boats and houseboats, regardless of size, means of propulsion or place of registration.

9 VAC 25-730-20. Establishment of Smith Mountain Lake no-discharge zone.

In accordance with § 312(f)(3) of the Clean Water Act and subsequent Environmental Protection Agency (EPA) regulations at 40 CFR Part 140, Smith Mountain Lake, in the counties of Bedford, Franklin and Pittsylvania, Virginia, has received an affirmative determination from the EPA that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available. Final notice of this determination was published in the Federal Register on October 16, 2000 (65 FR 61166, Oct. 16, 2000). A no-discharge zone is hereby established for Smith Mountain Lake from Smith Mountain Dam (Gap of Smith Mountain) upstream to the 795.0 foot contour (normal pool elevation) in all tributaries, including waters to above the confluence with Back Creek in the Roanoke River arm, and to the Brooks Mill Bridge (Route 834) on the Blackwater River arm.

9 VAC 25-730-30. Prohibition of boating sewage discharges.

Pursuant to 9 VAC 25-730-20 and the requirements of federal regulations at 40 CFR 140.4(a), in accordance with § 62.1-44.33 of the State Water Control Law, and in response to General Assembly enactment appearing in Chapter 247 of the 1998 Virginia Acts of Assembly, all discharge of sewage, whether treated or not, from all vessels into the Smith Mountain Lake no-discharge zone is prohibited.

9 VAC 25-730-40. Enforcement.

Section 62.1-44.33 of the State Water Control Law provides that violation of this chapter shall, upon conviction, be a Class 1 misdemeanor. Every law-enforcement officer of this state and its subdivisions shall have the authority to enforce this chapter.

VA.R. Doc. No. R01-72; Filed December 27, 2000, 11:33 a.m.



TITLE 12. HEALTH

STATE BOARD OF HEALTH

Title of Regulation: **12 VAC 5-185-10 et seq. Policies and Procedures for Administering the Commonwealth Neurotrauma Initiative Trust Fund.**

Statutory Authority: § 32.1-73.1 of the Code of Virginia.

Effective Date: February 14, 2001.

Summary:

These regulations provide for a program to fund research into the mechanisms and treatment of neurotrauma, i.e., traumatic brain and spinal cord injury, and services for Virginians who have sustained neurotrauma. Specifically, these regulations establish (i) policies and procedures for handling applications for funding received by the Commonwealth Neurotrauma Initiative (CNI) Advisory Board, (ii) criteria for reviewing applications, and (iii) procedures for distributing moneys from the CNI Trust Fund.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from Douglas R. Harris, Department of Health, Main Street Station, 1500 East Main Street, Room 308, Richmond, VA 23219, telephone (804) 786-3554.

CHAPTER 185.
POLICIES AND PROCEDURES FOR ADMINISTERING THE
COMMONWEALTH NEUROTRAUMA INITIATIVE TRUST
FUND.

[~~Article 1.~~ PART I.]
DEFINITIONS AND GENERAL INFORMATION.

12 VAC 5-185-10. Definitions.

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

"Advisory board" means the Commonwealth Neurotrauma Initiative Advisory Board.

"Board" means the State Board of Health.

"Code" means the Code of Virginia.

"Fund" means the Commonwealth Neurotrauma Initiative Trust Fund.

"Neurotrauma" means an injury to the central nervous system, i.e., a traumatic spinal cord or brain injury, which results in loss of physical functions, cognitive functions or both.

"RFP" or "request" means a request for proposals published by the advisory board seeking applications for moneys in the fund.

12 VAC 5-185-20. Statement of general policy.

The Commonwealth of Virginia has recognized the need to prevent traumatic spinal cord and brain injuries and to improve the treatment and care of Virginians with traumatic spinal cord and brain injuries. By creating the fund and authorizing the advisory board to administer the fund, the Commonwealth makes available to Virginia-based organizations, institutions and researchers funds to address these needs. The advisory board seeks to administer the fund in order to carry out the intent of the law in accordance with its authority.

12 VAC 5-185-30. Purpose of chapter.

This chapter serves to (i) establish policies and procedures for soliciting and receiving applications for grants from the fund, (ii) establish criteria for reviewing and ranking such applications, and (iii) establish procedures for distributing moneys in the fund, which shall be used solely to provide grants to Virginia-based organizations, institutions, and researchers, and of which 50% of the moneys shall be allocated for research on the mechanisms and treatment of neurotrauma and 50% shall be allocated for rehabilitative services, i.e., community-based rehabilitative programs for injured individuals. Those applications for grants to conduct research on the mechanisms and treatment of neurotrauma shall be identified as Option A applications. Those applications for grants to provide rehabilitative services shall be identified as Option B applications.

12 VAC 5-185-40. Compliance with the Administrative Process Act.

Chapter 1.4:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia (the Administrative Process Act) governs the promulgation and administration of this chapter and applies to any appeal of a case decision made pursuant to or based upon this chapter.

12 VAC 5-185-50. Application of an exemption to the Virginia Freedom of Information Act.

Pursuant to a provision of the Virginia Freedom of Information Act, Chapter 21 (§ 2.1-340) of Title 2.1 (§ 2.1-340 et seq.) of the Code of Virginia, records submitted as a grant application, or accompanying a grant application, to the advisory board pursuant to the law and this chapter are excluded from the requirement of open inspection to the extent that they contain medical or mental records or other data identifying individual patients or proprietary business or research-related information produced or collected by an applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical or scholarly issues, when such information has not been publicly released, published, copyrighted or patented, if the disclosure of such information would be harmful to the competitive position of the applicant. The advisory board intends to rely upon this exemption in order to encourage the submission of applications.

[~~Article 2.~~ PART II.]
SOLICITING AND REVIEWING APPLICATIONS.

12 VAC 5-185-60. Requests for proposals.

The advisory board will solicit applications for grants of moneys from the fund by publishing requests for proposals from time to time. Each application for a grant must be received in response to an actual request for proposals and by a deadline specified in the request, which will be no fewer than 60 days following publication of the request.

12 VAC 5-185-70. Appointment of grant reviewers and technical advisors.

The advisory board may choose to appoint grant reviewers or other technical advisors, or both, at any time to assist in reviewing and ranking applications. Such reviewers and advisors may represent medical researchers, medical practitioners, community-based service providers, consumers, or advocates for consumers. Reviewers and advisors shall be appointed so as to provide equal representation from Virginia's three medical schools. Reviewers and advisors shall be selected so as to avoid any conflict of interests or the appearance thereof, and may be chosen because of their residing or working outside Virginia in order to ensure impartiality. Whenever reviewers or advisors sit as a committee, the chairman of the advisory board or his designee shall serve as chairman of the committee but shall not vote on individual applications.

12 VAC 5-185-80. Specification of Option A or B.

Each application shall clearly state a purpose to seek funds to carry out a program consistent with Option A or Option B. Option A applications shall state and demonstrate a clear

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intention of researching the mechanisms of neurotrauma or the treatment of neurotrauma, or both. Option B applications shall demonstrate a clear intention to provide rehabilitative services by developing, expanding or improving community-based programs and facilities serving and treating individuals who have experienced traumatic brain injury or traumatic spinal cord injury, or both, and expanding opportunities for such individuals to become as independent and physically and functionally capable as possible.

12 VAC 5-185-90. Review of applications; stated priorities.

In reviewing applications for grant awards, whether Option A or Option B, the advisory board will give priority to applications that:

1. Present a convincing and persuasive discussion of how the proposed project will carry out its intention as specified in accordance with 12 VAC 5-185-80, and describe in as much detail as possible its anticipated effectiveness in carrying out its intention.
2. Include a system for measuring outcomes and documenting project impact and effectiveness, including any anticipated long-term effect of the proposed project.
3. Provide the means for consumer involvement in the design, implementation and evaluation of the project as relevant to the intention of the proposed project;
4. Identify sources of funds, if known, and fundraising strategies to be used in sustaining the proposed project following termination of a grant award as relevant to the intention of the proposed project;
5. Comply fully with additional informational and administrative requirements stated in the specific RFP to which applications are responding;
6. In the case of an Option A application:
 - a. Discuss the relevance of the proposed project to an identified field of medical inquiry,
 - b. Demonstrate the anticipated benefit of the proposed project in terms of expanding knowledge and understanding of neurotrauma,
 - c. Discuss any innovation or breakthrough the project seeks to promote, specifying outcome measures where possible for each of the preceding enumerated items in this subdivision, and
 - d. Describe efforts to ensure that the proposed project will not duplicate completed or ongoing research; and
7. In the case of an Option B application:
 - a. Describe and demonstrate the need for the proposed project in terms of the absence of alternative services, resources and facilities available to the intended individuals and community,
 - b. Demonstrate the avoidance of duplication of services already available; and

c. State and emphasize a commitment to collaborative community planning involving consumer groups, service providers, employers, other funding sources, as available or anticipated to become available, and relevant state and local agencies.

[~~Article 3.~~ PART III.]

SPECIFIC PROJECT CONSIDERATIONS AND APPLICATION CRITERIA, SELECTION OF SUCCESSFUL APPLICATIONS AND AMOUNT AND ANNOUNCEMENT OF AWARDS.

12 VAC 5-185-100. Ranking and reviewing applications.

The advisory board will distinguish the class of Option A applications from the class of Option B applications when soliciting, ranking and reviewing applications. Applications will be considered and ranked among only applications with the stated intention to address the same option. Applications initially deemed effective in serving the purpose of either option and to have substantially addressed the general considerations stated in Article 2 of this chapter, as applicable, will be subsequently ranked and reviewed according to their satisfaction of the following criteria, which will be weighted as indicated:

- | | |
|---|-----------|
| 1. The purpose and significance of the project | 20 points |
| 2. The objectives and expected benefits of the project | 20 points |
| 3. The design of the project, means of assessing outcomes, methods to be employed, and the level of detail and feasibility of an included action plan | 25 points |
| 4. Detailed nature, completeness and feasibility of an included budget | 15 points |
| 5. Demonstrated or anticipated capability of the existing or planned organizational structure | 15 points |
| 6. A commitment to include the participation of small, women-owned and minority businesses, as such are available and capable of participation | 5 points |

When initially reviewing applications or subsequently ranking and reviewing applications, the advisory board may ask applicants to provide required information that is missing from the application or additional clarifying information relating to their applications and proposed projects. Failure to provide missing information or failure to provide additional information that is material and relevant may result in the rejection or lowered ranking of an application.

12 VAC 5-185-110. Amount of grant awards; duration and availability of funding.

A. After reviewing all applications, duly received, for either Option A or Option B, the advisory board will determine which proposed projects will be offered funding. The selection of successful applications will be made based on availability of moneys in the fund and the criteria listed in this chapter. Subsequent discussions and negotiations may be conducted between the advisory board and successful applicants in

order to clarify any remaining issues relating to the proposed project.

B. In considering and determining the amount of a grant award and the duration of funding for a particular project, the advisory board will consider the requested amount, need, and the project design and justification. Actual grant awards will be made in amounts ranging from \$5,000 to \$150,000 per year, for an anticipated duration, i.e., a total anticipated funding period, of one to three years. The award and duration of funding for a project of an anticipated duration exceeding one year will be contingent upon (i) the availability of moneys in the fund, whether so stated at the time of the award or not; and (ii) the grantee's successful completion of timelines and of interim objectives and milestones as proposed and approved in the grant award documents.

C. The award of grants to successful applicants will be made public within 60 days of the advisory board's decision regarding all applications submitted in response to a request for proposals.

D. In the event any timelines and interim objectives and milestones pertaining to a project are not completed to the satisfaction of the advisory board, the advisory board may act to withhold moneys not yet disbursed for such a project. In the event of a substantial decline in moneys in the fund, the advisory board will attempt to distribute moneys to projects of an anticipated duration greater than one year in a manner as fair and equitable as possible.

VA.R. Doc. No. R99-182; Filed December 20, 2000, 12:38 p.m.

TITLE 16. LABOR AND EMPLOYMENT

VIRGINIA WORKERS' COMPENSATION COMMISSION

Title of Regulation: 16 VAC 30-100-10 et seq. Regulations for Professional Employer Organizations.

Statutory Authority: §§ 65.2-201 and 65.2-803.1 of the Code of Virginia.

Effective Date: February 14, 2001.

Summary:

This regulatory action involves promulgation of regulations designed to aid implementation of certain additions and amendments made to Title 65.2 of the Code of Virginia, the Virginia Workers' Compensation Act (Act), by the General Assembly at the 2000 session. These changes to the Act relate solely to Professional Employer Organizations (PEOs) and their operation in Virginia in the specific context of workers' compensation and related insurance issues.

The new regulations address issues pertaining to the manner in which PEOs are to make statutorily mandated filings with the commission and the manner in which the commission calculates the assessment for each PEO as

provided by statute. The new regulations also address action by the commission with respect to the registration of PEOs as required by new § 65.2-803.1 of the Code of Virginia. Concomitantly, the regulations also address issues pertaining to the sanctions of revocation and suspension that may be imposed by the commission against a PEO where the PEO fails to comply with relevant statutory or regulatory provisions.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from Sam Lupica, VWC Ombudsman, Virginia Workers' Compensation Commission, 1000 DMV Drive, Richmond, VA 23220, telephone (804) 367-8629.

**CHAPTER 100.
REGULATIONS FOR PROFESSIONAL EMPLOYER ORGANIZATIONS.**

16 VAC 30-100-10. Definitions.

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

"Act" means the Virginia Workers' Compensation Act, Title 65.2 (§ 65.2-100 et seq.) of the Code of Virginia.

"Aggregate annual payroll" means the sum of all payroll reported to the commission by PEOs.

"Agreement" means an agreement for professional employer services as "professional employer services" is defined in § 65.2-101 of the Code of Virginia.

"Calendar year" means a 12-month period beginning January 1 and ending December 31.

"Client company" means "client company" as defined in § 65.2-101 of the Code of Virginia.

"Coemployee" means "coemployee" as defined in § 65.2-101 of the Code of Virginia.

"Commission" means the Virginia Workers' Compensation Commission.

"Electronic" or "electronically" means using a computer-based information input and handling system designated by the commission.

"File" or "filed" means received by the commission. Where a document is filed electronically, it shall be deemed received by the commission at the date and time it is first written to disk on the commission's computer or that of the commission's agent, unless the commission rejects the document.

"Identifying information" means information describing the PEO's place or places of business including street address, mailing address, and telephone numbers; the street address, mailing address, and telephone numbers of its representative designated pursuant to 16 VAC 30-100-20 C; and information describing the PEO's business form.

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“Payroll” means gross amounts paid by a PEO to its coemployees in the Commonwealth of Virginia as compensation during the calendar year immediately preceding the year in which the assessment is calculated. Such gross amounts shall be equal to the sum of all items included in the NCCI definition of remuneration.

“PEO” means a professional employer organization as defined in § 65.2-101 of the Code of Virginia.

16 VAC 30-100-20. Initial registration.

A. Each PEO shall register as required by § 65.2-803.1 A of the Code of Virginia by filing with the commission an application on a form and in a manner prescribed and furnished by the commission. The application shall include the list of all client companies of the PEO and related insurance information required by § 65.2-803.1 B of the Code of Virginia.

B. Subject to subsection C of this section, a PEO’s registration shall be effective when the completed application is filed in the proper format, unless it is rejected by the commission.

C. Each PEO shall comply with the following when it files its application for registration:

1. The PEO shall designate a representative maintaining a street address, mailing address, and telephone number in the Commonwealth of Virginia. This designated representative shall be authorized to receive service of process and communications from the commission. Notice to this designated representative shall be deemed sufficient notice to the PEO for all purposes for which notice is required or permitted under the Act or these regulations.

2. At the time of registration, the PEO and each of its client companies shall be in compliance with the insuring requirement of § 65.2-801 of the Code of Virginia. Each PEO shall certify this compliance in its registration.

D. This registration shall not be transferable.

E. Failure of a PEO to file the application for the registration required by § 65.2-803.1 A of the Code of Virginia and subsection A of this section shall subject the PEO to the penalties provided in § 65.2-902 of the Code of Virginia.

16 VAC 30-100-30. Annual reporting.

A. Each PEO shall file annually with the commission its report of all client companies and related insurance information required by § 65.2-803.1 B of the Code of Virginia on a form and in a manner prescribed and furnished by the commission. This report shall include the PEO’s payroll used in calculating the assessment in 16 VAC 30-100-70.

B. This report shall be filed by 5 p.m., Eastern Standard Time, on January 31.

C. Failure by a PEO to file the report referenced in subsection A of this section by the deadline in subsection B shall subject the PEO to the penalties provided in §§ 65.2-803.1 H and 65.2-902 of the Code of Virginia.

16 VAC 30-100-40. Notification of changes in client company status and insurance coverage.

A. Each PEO shall provide notice to the commission when it enters into an agreement with a client company as required by § 65.2-803.1 B of the Code of Virginia. Such notification shall include the related insurance information required by § 65.2-803.1 B of the Code of Virginia.

[B. When a PEO enters into an agreement with a client company, the PEO shall notify the client company, in writing, of the client company’s obligation to comply with the insuring requirement of § 65.2-801 of the Code of Virginia with respect to its employees who are not coemployees covered under any master policy.

~~B. C.] The notice to a client company of a PEO’s intent to terminate an agreement, [as] required by [the first sentence of] § 65.2-803.1 E of the Code of Virginia, shall include the following:~~

~~[1. A statement of the reason the PEO intends to terminate the agreement;~~

~~2. 1.] The date on which the agreement shall terminate;~~

~~[3. 2.] The date on which the client companies’ coverage under a master workers’ compensation insurance policy [, if any,] issued in the name of the PEO will terminate; and~~

~~[4. 3.] The following statement placed conspicuously:~~

The Virginia Workers’ Compensation Act requires that all employers subject to the Act maintain workers’ compensation liability insurance. On _____ [date], coverage of your employees under the workers’ compensation insurance policy issued to _____ [name of PEO] will terminate. Therefore, if you are subject to the Act, you must obtain the required coverage. Your failure to obtain coverage may result in you incurring civil penalties of up to \$5,000 and additional criminal penalties.

Each PEO shall file with the commission copies of all notices.

[~~C. D.] Each PEO shall also send to the client company notice complying with subdivisions B 2 through B 4 of this section upon its receipt from a client company of notice of the client company’s intent to terminate the agreement for professional employer services. The PEO shall file copies of these notices with the commission.~~

[~~D. E.] The notice and filing obligations imposed by this section and § 65.2-803.1 E of the Code of Virginia shall apply regardless of whether the termination of the agreement for professional employer services is consistent with the terms of the agreement.~~

[~~E. F.] The notice and filing obligations imposed by this section and § 65.2-803.1 E of the Code of Virginia shall apply where the agreement is terminated by either the PEO or the client company without prior notice of intent to terminate.~~

[~~F. G.] Failure by a PEO to provide the notices and filings required in this section shall subject the PEO to the penalties~~

provided in §§ 65.2-803.1 H and 65.2-902 of the Code of Virginia.

16 VAC 30-100-50. Notification of change in identifying information.

A. Each PEO shall have a continuing duty to timely notify the commission of changes in its identifying information in a format and manner prescribed by the commission.

B. Failure by a PEO to timely notify the commission of a change in its identifying information shall subject the PEO to the penalties provided in §§ 65.2-803.1 H and 65.2-902 of the Code of Virginia.

16 VAC 30-100-60. Requirements for filing with the commission.

A. Unless the commission directs or permits otherwise, each PEO shall make the filings with the commission required by the Act or these regulations electronically in a manner and format prescribed by the commission.

B. Where, under the circumstances, the electronic filing requirement in subsection A would be an undue hardship on a PEO, the PEO may request in writing to the commission a waiver of the requirement. The commission may grant or deny the request in its discretion. Where the commission grants the request, the PEO shall make its report in an alternate format as prescribed by the commission.

C. Each document filed by a PEO with the commission shall be signed by an officer [or principal] of the PEO. Such signature shall be deemed a certification by that officer [or principal] on behalf of the PEO that the information contained in the document is true and correct. Electronic submission of any document by a PEO to the commission with the appropriate account number and PIN shall be deemed a signature for all purposes under the Act and these regulations.

16 VAC 30-100-70. Annual assessment.

A. The commission shall calculate the annual assessment for a PEO required by § 65.2-803.1 I of the Code of Virginia using the following formula:

(a/b) x c where,

a = payroll of the PEO for which assessment is being calculated;

b = aggregate annual payroll; and

c = sums necessary for registration and supervision of all PEOs.

B. Each PEO shall report payroll on the form prescribed by the commission as provided in 16 VAC 30-100-30.

C. The commission shall calculate the assessment for each PEO and send an appropriate invoice. The PEO shall pay the assessment to the commission no later than 60 days from the date of the invoice. Payment shall be made in the manner prescribed by the commission in the invoice.

D. The assessment shall be nonrefundable, in whole or in part.

E. Failure of a PEO to pay the assessment shall subject the PEO to the penalties provided in §§ 65.2-803.1 H and 65.2-902 of the Code of Virginia.

16 VAC 30-100-80. Revocation, suspension, and voluntary termination of registration.

A. The commission may suspend or revoke a PEO's registration where it fails to comply with the requirements of the Act or these regulations as provided in § 65.2-803.1 H of the Code of Virginia. A suspension may be for a period of up to 12 months.

B. The following procedure shall apply to a revocation or suspension:

1. The commission shall send written notice to the PEO describing the noncompliance.

2. The PEO shall have 30 days to correct the noncompliance and to provide the commission with written verification of the correction. Where the noncompliance is specifically addressed in the Act or in the commission's regulations, those specific statutory or regulatory provisions shall apply as well.

3. If the PEO fails to comply with subdivision 2 of this subsection, the commission shall initiate a hearing pursuant to § 65.2-704 of the Code of Virginia and provide appropriate notice to the PEO and other proper parties. A decision issued in connection with a hearing shall specify the effective date of the revocation or suspension. Where a suspension is imposed, the decision shall specify the duration of the period of suspension. During a period of suspension or revocation, the PEO shall be deemed to have not registered with the commission as required by § 65.2-803.1 of the Code of Virginia.

4. Review of a decision issued in connection with the proceedings provided in § 65.2-704 of the Code of Virginia shall be as provided in §§ 65.2-705 and 65.2-706 of the Code of Virginia.

C. A PEO whose registration has been revoked may apply to reregister as provided in § 65.2-803.1 H of the Code of Virginia. The PEO shall comply with the relevant provisions of § 65.2-803.1 of the Code of Virginia and these regulations in connection with such application. In addition, the PEO shall submit written documentation verifying that the noncompliance resulting in the revocation has been corrected. The PEO may apply for a hearing as provided in § 65.2-704 of the Code of Virginia to determine if it has satisfied the prerequisites for reregistration.

D. A PEO may voluntarily terminate its registration under § 65.2-803.1 A of the Code of Virginia by filing a written request with the commission. In its request, the PEO may specify a date on which the termination of registration is to be effective. The commission shall issue a response assigning the date on which the PEO's registration will terminate.

E. Suspension, revocation, or voluntary termination of a PEO's registration shall not alter its obligation, or that of its client companies, to maintain the insurance required by

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Chapter 8 of the Act or any other insurance coverage required by statute or regulation.

VA.R. Doc. No. R00-206; Filed December 18, 2000, 2:23 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR OPTICIANS

Title of Regulation: **18 VAC 100-20-5 et seq. Board for Opticians Regulations (amending 18 VAC 100-20-10, 18 VAC 100-20-50, 18 VAC 100-20-60, 18 VAC 100-20-70, 18 VAC 100-20-90, 18 VAC 100-20-100, and 18 VAC 100-20-110; adding 18 VAC 100-20-5, 18 VAC 100-20-54, 18 VAC 100-20-55, 18 VAC 100-20-56, 18 VAC 100-20-65, 18 VAC 100-20-81, 18 VAC 100-20-85, 18 VAC 100-20-87, 18 VAC 100-20-120, and 18 VAC 100-20-130; repealing 18 VAC 100-20-20, 18 VAC 100-20-30, 18 VAC 100-20-40, and 18 VAC 100-20-80).**

Statutory Authority: §§ 54.1-201 and 54.1-1700 of the Code of Virginia.

Effective Date: March 1, 2001.

Summary:

The amendments establish a definitions section; clarify entry requirements for licensure; specify examination procedures and examination content for licensure and contact lens examinations; and modify the procedures and provisions regarding renewal, reinstatement, and the standards of practice and conduct.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from Nancy Taylor Feldman, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230-4917, telephone (804) 367-2785.

PART I. GENERAL DEFINITIONS.

18 VAC 100-20-5. Definitions.

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

"Apprentice" means a person at least 16 years of age who is covered by a written agreement with an employer and approved by the Virginia Apprenticeship Council.

"Board" means the Board for Opticians.

"Contact lens [~~certified~~ endorsed] optician" means any person not exempted by § 54.1-1701 of the Code of Virginia who is a Virginia licensed optician and who has received a contact lens [~~certification~~ endorsement] from the board, who

[~~prepares,~~] fits [~~or dispenses~~] contact lenses on prescription from licensed physicians or licensed optometrists for the intended wearers [~~; or refills contact lens prescriptions from a valid previously prepared prescription from a licensed physician or licensed optometrist~~].

"Department" means the Virginia Department of Professional and Occupational Regulation.

"Fit and dispense" means to measure, adapt, fit or adjust eyeglasses, spectacles, lenses, or appurtenances to the human face, or to verify the prescription to be correct in the prescription eyeglasses or prescription optical devices.

"Licensed optician" means any person who is the holder of a license issued by the Board for Opticians.

"Optician" means any person not exempted by § 54.1-1701 of the Code of Virginia who prepares or dispenses eyeglasses, spectacles, lenses, or related appurtenances for the intended wearers or users on prescriptions from licensed physicians or licensed optometrists, or as duplications or reproductions of previously prepared eyeglasses, spectacles, lenses, or related appurtenances; or who, in accordance with such prescriptions, duplications or reproductions, measures, adapts, fits, and adjusts eyeglasses, spectacles, lenses, or appurtenances to the human face.

"Opticianry" means the personal health service that is concerned with the art and science of ophthalmic optics as applied to the compounding, filling and adaptations of ophthalmic prescriptions, products, and accessories.

PART II. ENTRY REQUIREMENTS.

18 VAC 100-20-10. Qualifications of applicant.

~~A. Any person desiring to sit for the examination shall submit an application on a form provided by the board with the required examination fee of \$55. All fees are nonrefundable and shall not be prorated.~~

~~B. Each applicant shall provide information on his application establishing that he:~~

A. An applicant for [a] license shall furnish satisfactory evidence on an application provided by the board establishing that:

- 1. The applicant is at least 18 years of age unless emancipated under the provisions of § 16.1-333 of the Code of Virginia;*
- 2. The applicant is a graduate of an accredited high school, or has completed the equivalent of grammar school and a four-year high school course, or is a holder of a certificate of general educational development;*
- 3. The applicant is in good standing as a licensed optician in every jurisdiction where licensed;*
- 4. ~~Has not been convicted in any jurisdiction of a misdemeanor involving moral turpitude, sexual offense, drug distribution or physical injury, or any felony. Any plea of nolo contendere shall be considered a conviction for the purposes of this subdivision. The record of a~~*

~~conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction; and~~

[~~4.~~ *The applicant has not been convicted in any jurisdiction of a misdemeanor or felony involving sexual offense, drug distribution or physical injury, or any felony that directly relates to the profession of opticianry. The board shall have the authority to determine, based upon all the information available, including the applicant's record of prior convictions, if the applicant is unfit or unsuited to engage in the profession of opticianry. Any plea of nolo contendere shall be considered a conviction for the purposes of this subdivision. The licensee shall provide a certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order, decree or case decision, and such copy shall be admissible as prima facie evidence of such conviction. This record shall be forwarded by the licensee to the board within 10 days after all appeal rights have expired;*]

[~~5. 4.~~] *The applicant has successfully completed one of the following education requirements:*

- a. ~~An approved [A board-approved] two-year course in a school of opticianry, including the study of topics essential to qualify for practicing as an optician; or~~
- b. ~~A three-year apprenticeship with a minimum of one school year of related instruction or home study while registered in the apprenticeship program in accordance with the standards established by the state Department of Labor and Industry, Division of Apprenticeship Training and approved by the Board for Opticians;~~

[~~5. 6.~~] *The applicant has disclosed his current mailing address;*

[~~6. 7.~~] *The nonresident applicant for a license has filed and maintained with the department an irrevocable consent for the director of the department to serve as service agent for all actions filed in any court in the Commonwealth; and*

[~~7. 8.~~] *The applicant shall certify, as part of the application, that the applicant has read and understands Chapter 17 (§ 54.1-1700 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the board.*

18 VAC 100-20-20. Examination schedule. (Repealed.)

~~The board shall schedule an examination to be held at least twice each calendar year at a time and place to be designated by the board. The examination application and fee must be received 60 calendar days prior to the written examination.~~

18 VAC 100-20-30. Content of optician examination. (Repealed.)

~~The optician examination given by the board will include the following topics:~~

- 1. ~~Ophthalmic materials;~~

- 2. ~~Ophthalmic optics and equipment;~~
- 3. ~~Ophthalmic spectacle lens grinding;~~
- 4. ~~Prescription interpretation;~~
- 5. ~~Theory of light;~~
- 6. ~~Finishing, fitting and adjusting of eyeglasses and frames;~~
- 7. ~~Ethics of relationship in respect to patient and physician or optometrist;~~
- 8. ~~Anatomy and physiology; and~~
- 9. ~~Administrative duties.~~

18 VAC 100-20-40. Passing grade and reexamination. (Repealed.)

~~The passing grade shall be 70% on the written section and 70% on the practical section of the examination.~~

- 1. ~~An applicant who fails any section shall be required to be reexamined on that section and shall pay the required reexamination fee of \$70.~~
- 2. ~~Any applicant who fails to pass the previously failed section within the next two successively scheduled examinations will be required to take and pass the entire examination and pay the full initial examination fee.~~

18 VAC 100-20-50. Licensing of out-of-state Opticians licensed in another state.

~~A. An out-of-state licensed optician licensed in another state seeking to be licensed as an optician in Virginia shall submit an application on a form provided by the board with the required fee [of \$55]. All fees are nonrefundable and shall not be prorated.~~

~~B. The board, using the following standards, shall issue a license to any person licensed in another state who:~~

- 1. ~~Has met requirements equivalent to those listed in 18 VAC 100-20-10; and~~
- 2. ~~Has passed a substantially equivalent examination.~~

18 VAC 100-20-54. Fees.

~~A. The fee for examination or examinations shall consist of the combination of an administrative charge of \$10 (spectacle), \$25 (contact lens), and the appropriate contract charges. Examination service contracts shall be established in compliance with the Virginia Public Procurement Act (§ 11-35 et seq. of the Code of Virginia). The total examination fee shall not exceed a cost of \$300 to the applicant.~~

~~B. 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.~~

~~C. Application and examination fees must be submitted with the application for licensure.~~

~~The following fees shall apply:~~

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FEE TYPE	AMOUNT DUE	WHEN DUE
Application for licensure by examination or out-of-state applicants	\$55	With application
Application for contact lens certification by examination or for out-of-state applicants	\$70	With application
Renewal	\$60	Up to the expiration date on the license with a 30-day grace period
Late renewal (in addition to renewal fee)	\$25	Up to 12 months after the expiration date on the license
Reinstatement	\$100	After 12 calendar months following the expiration date on the license
Duplicate wall certificate	\$25	With written request

18 VAC 100-20-55. Examinations.

All examinations required for licensure shall be approved by the board and administered by the board, or its agents or employees acting on behalf of the board.

The board shall schedule an examination to be held at least twice each calendar year at a time and place to be designated by the board.

The applicant shall follow all rules established by the board with regard to conduct at an examination. Such rules shall include any written instructions communicated prior to the examination date and any instructions communicated at the site, either written or oral, on the date of the examination. Failure to comply with all rules established by the board with regard to conduct at an examination shall be grounds for denial of application.

18 VAC 100-20-56. Content of optician examination and reexamination.

A. Applicants for licensure shall pass a written examination and a practical examination approved by the board.

B. The optician examination given by the board may include, but is not limited to, the following topics:

1. Ophthalmic materials;
2. Ophthalmic optics and equipment;
3. Ophthalmic spectacle lens grinding;
4. Prescription interpretation;
5. Theory of light;
6. Finishing, fitting and adjusting of eyeglasses and frames;

7. Ethics of relationship in respect to patient and physician or optometrist;

8. Anatomy and physiology; and

9. Applicable laws and regulations.

C. Any applicant who fails the written or practical examination, or both examinations, shall be required to be reexamined on the failed examination(s) and shall pay the reexamination fee(s).

D. An applicant shall pass the written and practical examination within two years of the initial test date. After two years, the applicant shall file a new application and pay the required fee.

18 VAC 100-20-60. Endorsement to fit contact lenses; examination.

The board shall administer a contact lens examination to ~~Virginia licensed opticians desiring to obtain an endorsement of "Contact Lens Competency" to fit contact lenses.~~ The "Contact Lens Competency" endorsement shall be mandatory for licensed opticians to fit contact lenses as set out in §§ 54.1-1705 and 54.1-1706 of the Code of Virginia, and the contact lens endorsement shall not be issued unless the individual's license is in good standing. [A contact lens endorsed optician is any Virginia licensed optician who has been endorsed by the board to fit contact lens.]

~~1. The applicant must achieve a passing score of 70% on the contact lens examination.~~

~~2. The fee for the contact lens examination or reexamination shall be \$70. All fees are nonrefundable and shall not be prorated.~~

18 VAC 100-20-65. Content of contact lens endorsement examination and reexamination.

A. The contact lens endorsement examination administered by the board may include, but is not limited to, the following topics:

1. Rigid lens verification;
2. Lens identification;
3. Keratomy;
4. Slit lamp;
5. Slides (fitting patterns, edge patterns, quality stains); and
6. Insertion/removal.

B. Any applicant who fails the written or practical contact lens examination, or both examinations, who desires to retake the examination(s), shall be required to be reexamined on the failed examination(s) and shall pay the reexamination fee(s).

C. An applicant shall pass the written and practical examination within two years of the initial test date. After two years, the applicant shall file a new application and pay the required fee.

PART # III.
RENEWAL/REINSTATEMENT.

18 VAC 100-20-70. License renewal required.

~~A. Licenses issued under this chapter shall expire on December 31 of each even-numbered year. The Department of Professional and Occupational Regulation shall mail a renewal notice to the licensee outlining the procedures for renewal. Failure to receive this notice shall not relieve the licensee of the obligation to renew.~~

~~B. Each licensee applying for renewal shall return the renewal notice with a fee of \$60 to the Department of Professional and Occupational Regulation no later than 5 p.m. on the expiration date shown on the license. If the licensee fails to receive the renewal notice, a copy of the license may be submitted with the required fee.~~

~~C. Applicants for renewal of a license shall continue to meet the standards for entry set forth in subdivisions B 3 and 4 of 18 VAC 100-20-10.~~

~~D. The board may deny renewal of a license for the same reasons as it may refuse licensure.~~

~~A. Licenses issued under this chapter shall expire 24 months from the last day of the month in which the license was issued.~~

~~B. The board shall mail a renewal application form to the licensee at the last known mailing address. Failure to receive this notice does not relieve the licensee of the obligation to renew. Prior to the expiration date shown on the license, each licensee desiring to renew his license must return all of the required forms and the appropriate fee to the board as outlined in 18 VAC 100-20-54. If the licensee fails to receive the renewal notice, a copy of the existing license shall be submitted to the board with the required fee.~~

~~C. Licensees shall be required to renew their license by submitting the appropriate fee made payable to the Treasurer of Virginia. Any licensee who fails to renew within 30 days after the license expires shall pay a late renewal fee, in addition to the renewal fee, as set out in 18 VAC 100-20-54.~~

~~D. The board, in its discretion and for just cause, may deny renewal of a license. Upon such denial, the applicant for renewal may request that a proceeding be held in accordance with the provision of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).~~

18 VAC 100-20-80. License reinstatement required. (Repealed.)

~~A. If the licensee fails to renew his license within 30 days following the expiration date, he must apply for reinstatement of his license on a form provided by the board.~~

~~B. If the renewal application is received by the department more than 30 days after the expiration date of the license, a late fee of \$25 is required.~~

~~C. Applicants for reinstatement of a license shall continue to meet the standards for entry as set forth in subdivisions B 3 and 4 of 18 VAC 100-20-10.~~

~~D. The board may deny reinstatement of a license for the same reasons as it may refuse initial licensure.~~

~~E. When an individual fails to renew his license after a period of one year after the expiration date, he must apply as follows:~~

~~1. Submit an application on a form provided by the board establishing that he has met all of the requirements of 18 VAC 100-20-10 B 5 a or b and a fee of \$400;~~

~~2. Take and receive a passing score of 70% on the practical examination and 70% on the written examination on his first attempt; and~~

~~3. Meet the requirements of 18 VAC 100-20-10 B 5 a or b before sitting for the written examination and the practical examination again if the applicant fails to pass both the written and the practical examination on his first attempt.~~

PART IV.
REINSTATEMENT.

18 VAC 100-20-81. Reinstatement required.

~~A. If a licensee fails to renew his license within 12 months after the expiration date on the license, the licensee must apply for reinstatement on a form provided by the board.~~

~~1. Individuals for reinstatement shall continue to meet the standards of entry as set out in subdivisions [3 1] through [7 8] of [18 VAC 100-20-20 18 VAC 100-20-10] .~~

~~2. Individuals for reinstatement shall submit the required fee as set out in 18 VAC 100-20-54.~~

~~B. Twenty-four months after expiration of the license, the individual may be reinstated if he can show proof of continuous, active, ethical and legal practice outside of Virginia. If not, the individual must show proof of completion of a board-approved review course which measures current competence. Credit will not be allowed for any review course which has not been approved by the board prior to administration of the course.~~

~~C. Sixty months after expiration of the license, the individual, who cannot show proof of continuous, active, ethical and legal practice outside of Virginia, shall be required to apply as a new applicant for licensure. He shall be required to meet all current education requirements and retake the board's written and practical examination.~~

~~D. The board, in its discretion and for just cause, may deny reinstatement of a license. Upon such denial, the applicant for reinstatement may request that a proceeding be held in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).~~

~~E. A licensee who reinstates his license shall be regarded as having been continually licensed without interruption. Therefore, the licensee shall remain under the disciplinary authority of the board during the entire period and may be held accountable for his activities during this period. Nothing in these regulations shall divest the board of its authority to discipline a licensee for a violation of the law or regulations during the period of licensure as set out in this provision.~~

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PART III V.
STANDARDS OF PRACTICE AND CONDUCT.

18 VAC 100-20-85. Lenses and frames standards are as follows:

A. Power Tolerance (diopters).

Sphere: Plano to ± 6.50	$\pm .13$ diopter
Above ± 6.50	$\pm 2\%$
Cylinder: Plano - 2.00	$\pm .13$ diopter
-2.12 to -4.50	$\pm .15$ diopter
above -4.50	$\pm 4\%$

B. Cylinder Axis.

Cyl. Power Diopters	Degrees \pm
0.12 - 0.37	7°
0.50 - 0.75	5°
0.87 - 1.50	3°
1.62 and above	2°

C. Distance [~~P-D~~; Optical Center.] Contribution to net horizontal prism from processing should not exceed 2/3 prism diopter. A maximum of ± 2.5 mm variation from the specified distance [~~PD~~ optical center] is permissible in higher power lens combinations.

D. Prism Tolerances (Vertical). Contribution to imbalance from processing should not exceed 1/3 prism diopters. A maximum of 1.0mm difference in vertical level is permissible in higher power lens combinations.

E. Segment Location.

Vertical	± 1.0 mm
Horizontal	± 2.5 mm
Tilt or twist in the case of a flat-top segment, the tilt of its horizontal axis should be less than 1/2 mm in differential elevation between the segment edges.	

F. Multifocal Additions.

Plano + 8.00	$\pm .13$ diopter
Above + 8.00	$\pm .18$ diopter

[~~G. Thickness. Standard dress thickness for minus power lenses should be 2.0 mm at optical center. Plus power lenses should have an edge thickness of 1.5 mm—2.00 mm or 2.4 mm for Nylon type frames. When specified thickness is prescribed, the tolerance should be ± 0.3 mm. Lenses to be used for occupational or safety purposes must be 3.00 mm at its thinnest point.~~

H. G.] Base Curve. When specified, the base curve should be supplied within ± 0.75 diopter.

[~~H.] Warpage. The cylindrical surface power induced in the base curve of a lens should not exceed 1 diopter. This recommendation need not apply within 6mm of the mounting eyewire.~~

[~~I.] Localized errors (aberration). Areas outside a 20mm radius from the specified major reference point or optical center need not be tested for aberration. Progressive lenses are exempt from this requirement.~~

18 VAC 100-20-87. Contact lens standards are as follows:

To fit contact lenses, the following shall be done:

1. The prescription (RX) must show evidence that contact lenses may be worn by the patient before the prescription can be filled by the licensed optician. Verbal approval from the optometrist or ophthalmologist or its agents or employees is acceptable. The licensed optician must make a notation in the patient's record of the name of the authorizing optometrist or ophthalmologist and the date of the authorization.

2. The optician must use all the following to fit contact lenses:

- Slit Lamp;
- Keratometer; and
- Standardized Snellen type acuity chart.

18 VAC 100-20-90. Display of license.

Every person to whom a current license has been granted under ~~these regulations~~ this chapter shall visibly display it in public view his unaltered license in a conspicuous place in plain view of the public in the principal office in which [~~they~~ work he works]. A duplicate license which has been notarized shall be posted in any branch offices.

18 VAC 100-20-100. Notification of change of address or name.

~~A licensee shall notify the board in writing no later than 60 days after the occurrence of a change of address or name.~~

Notice in writing shall be given to the board in the event of any change of name or address. Such notice shall be mailed to the board within 30 days of the change of name or address. The board shall not be responsible for the licensee's failure to receive notices, communications and correspondence caused by the licensee's failure to promptly notify the board in writing of any change of name or address.

18 VAC 100-20-110. Discipline Grounds for disciplinary action.

A. The board ~~may~~ is empowered to revoke, suspend, or refuse to [grant or] renew a license and ~~may~~ is empowered to impose a fine up to \$1,000 the statutory limit, as authorized under § 54.1-202 of the Code of Virginia, per offense violation on a licensee for any of the following reasons:

- Using alcohol or nonprescribed controlled substances as defined in Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 54.1-3401 of the Code of Virginia or alcohol at the work place during working hours;
- Displaying professional incompetence or negligence, including but not limited to failure to comply with this part in the performance of opticianry;
- Fraudulently certifying that an applicant possesses Presenting false or fraudulent information on an application certifying possession of the qualifications required under 18 VAC 100-20-10;

4. Violating or inducing others to violate any provisions of Chapters 1, 2, 3 or 17 of Title 54.1 of the Code of Virginia, or of any other statute applicable to the practice of the profession herein regulated, or of any provisions of ~~these regulations this chapter,~~

5. Publishing or causing to be published any advertisement *related to opticianry* that is false, deceptive, or misleading;

6. Having been convicted in any jurisdiction of a misdemeanor [*or felony involving*] ~~moral turpitude,~~ [sexual offense, drug distribution or physical injury,] or of any felony *that directly relates to the profession of opticianry.* ~~The board shall have the authority to determine, based upon all the information available, including the applicant's record of prior convictions, if the applicant is unfit or unsuited to engage in the profession of opticianry. Any plea of nolo contendere shall be considered a conviction for the purposes of this section. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where the conviction occurred shall be forwarded to the board within 10 days of entry and shall be admissible as prima facie evidence of such conviction;~~ *or The licensee shall provide a certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order, decree or case decision, and such copy shall be admissible as prima facie evidence of such conviction. This record shall be forwarded by the licensee to the board within 10 days after all appeal rights have expired;*

7. Having been disciplined by another jurisdiction in the practice of opticianry. Documentary evidence of such discipline shall be submitted *by the licensee* to the board within 10 days ~~of entry.~~ *after all appeal rights have expired; or*

8. *Allowing any person to engage in the practice of opticianry, except an optician apprentice or student enrolled in a course in a school of opticianry under the direct supervision of a licensed optician.*

B. A finding of improper or dishonest conduct in the practice of the profession by a court of competent jurisdiction shall be cause for disciplinary action.

18 VAC 100-20-120. Accountability of licensee.

A licensee shall be responsible for his acts or omissions and for the acts of his agents or employees or his staff in the performance of opticianry services.

18 VAC 100-20-130. Approval of review courses.

A. Review courses set out in this chapter shall be approved by the board, except those provided by institutions, schools and universities approved by the State Council of Higher Education for Virginia, for which continuing education units are awarded. Training courses requiring board approval shall be approved by the board prior to commencing in accordance with subsection B of this section.

B. Training activities for which experience credit may be granted must be conducted in general conformance with the

International Association for Continuing Education and Training's "Criteria and Guidelines for Quality Continuing Education and Training Programs: the CEU and Other Measurement Units," 1998. The board reserves the right to waive any of the requirements of the association's guidelines on a case-by-case basis. Only classroom, laboratory and field trip contact time will be used to compute training credits. No credit will be given for breaks, meals, or receptions.

1. *Organization. The board will only approve training offered by a sponsor who is an identifiable organization with a mission statement outlining its functions, structure, process and philosophy, and that has a staff of one or more persons with the authority to administer training.*

2. *Training records. The board will only approve training offered by a sponsor who maintains training records for all participants for a minimum of five years, and who has a written policy on retention and release of training records.*

3. *Instructors. The board will only approve training conducted by personnel who have demonstrated competence in the subject being taught, an understanding of the learning objective, a knowledge of the learning process to be used, and a proven ability to communicate.*

4. *Objectives. The board will only approve courses that have a series of stated objectives that are consistent with the job requirements of an optician. The training content must be consistent with those objectives.*

5. *Course completion requirements. For successful completion of a training program, participants must attend 90% or more of the class contact time and must demonstrate their learning through written examinations, completion of a project, self-assessment, oral examination, or other assessment technique.*

C. The board shall consider the following information, to be submitted by the instructor, institution, school or university on forms provided by the board, at least 45 days prior to the scheduled training activity:

1. *Course information.*

- a. *Course title,*
- b. *Planned audience,*
- c. *Name of sponsor,*
- d. *Name, address, phone number of contact person,*
- e. *Schedule presentation dates,*
- f. *Detailed course schedule, hour-by-hour,*
- g. *List of planned breaks,*
- h. *Scheduled presentation location(s), and*
- i. *Relevancy of course to opticianry licensing.*

2. *Instructor qualifications.*

- a. *Name of instructor,*

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- b. *Title of instructor, and*
- c. *Summary of qualifications to teach this course.*
- 3. *Training materials.*
 - a. *Course objectives - A listing of the course objectives stated in terms of the skills, knowledge, or attitude the participant will be able to demonstrate as a result of the training,*
 - b. *Course outline - A detailed outline showing the planned activities that will occur during the training program, including major topics, planned presentation sequence, laboratory and field activities, audio-visual presentations, and other major activities,*
 - c. *Course reference materials - A list of the name, publisher and publication date for commercially available publications; for reference materials developed by the course sponsor or available exclusively through the course, a copy of the reference materials,*
 - d. *Audio-visual support materials - A listing of any commercially available audio-visual support material that will be used in the program; a brief description of any sponsor or instructor generated audio-visual material that will be used, and*
 - e. *Handouts - Identification of all commercially available handout material that will be used; copies of all other planned handouts.*
- 4. *Determination of successful completion. A description of the means that will be used to determine the successful completion of the training program by individual attendees, such as examinations, projects, personal evaluations by the instructor, or other recognized evaluation techniques.*
- C. *Recurring training programs. If there are plans to present the same course of instruction routinely at multiple locations with only minor modifications and changes, the board may approve the overall program rather than individual presentations if so requested by the sponsor.*
 - 1. *The board shall consider all of the information listed above except those items related to specific offerings of the course.*
 - 2. *Board approval may be granted for a specific period of time or for an indefinite period.*
 - 3. *Board approval will apply only to those specific offerings certified by the sponsoring organization as having been conducted by instructors meeting the established criteria and in accordance with the board-approved courses, outlines and objectives.*
 - 4. *To maintain approval of the program, changes made to the program since initial approval must be submitted to the board for review and approval. Changes must be approved by the board prior to any training subsequent to the changes.*

DOCUMENT INCORPORATED BY REFERENCE

Criteria and Guidelines for Quality Continuing Education and Training Programs: the CEU and Other Measurement Units, International Association for Continuing Education and Training, 1998.

NOTICE: The forms used in administering 18 VAC 100-20-10 et seq., Board for Opticians Regulations, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

FORMS

License Application, 11LIC (rev. 11/99).

Contact Lens Endorsement Application, 11CLEND (eff. 11/99).

[~~Application for~~ Reinstatement [~~of Virginia Opticians License, OPT2 (eff. 12/97)~~ Application, REINSTATE APP (eff. 9/99)] .

Commonwealth of Virginia
 Department of Professional and Occupational Regulation
 3600 West Broad Street
 Post Office Box 11086
 Richmond, Virginia 23230-1086
 (804) 367-9505



REINSTATEMENT APPLICATION
 Fee \$100.00

A check or money order payable to the **TREASURER OF VIRGINIA**, or a completed credit card insert must be mailed with your application package. **APPLICATION FEES ARE NOT REFUNDABLE.**

1. Name _____ First _____ Middle _____ Last _____ Generation (B, R, K, II) _____

2. Social Security Number * - -

3. Date of Birth _____

4. Street Address (PO Box [xx] accepted) _____
 City, State, Zip Code _____

5. E-mail Address _____

6. Telephone & Facsimile Numbers Telephone _____ Facsimile _____
 Business/Cellular _____

7. Virginia Optician License Number _____ Expiration Date _____

8. Did your optician license expire more than one year ago?
 No If no, skip to #10.
 Yes If yes, answer question #9.

9. Which education requirement have you completed in order to qualify for reinstatement of your Virginia Optician License? Select only one.
 Completion of a board-approved two-year course in a school of opticianry.
 School Name & Location _____ Date Enrolled _____ Date Completed _____
 Completion of a board-approved three-year apprenticeship program registered with the Virginia Department of Labor and Industry.
 Shop Name(s) & Location(s) _____ Date Enrolled _____ Date Completed _____

DATE	DATE OF FEE	CLERK OF FEE	CLERK NUMBER	RECEIPTS
			1101	

10. Have you ever been subject to a disciplinary action imposed by any (including Virginia) local, state or national regulatory body?
 No Yes If yes, list the jurisdiction in which the disciplinary action took place and the license number. Provide an explanation of events, including a description of the disciplinary proceeding and the type of sanctions that were imposed (i.e., suspension, revocation, voluntary surrender of license, monetary penalty, fine, reprimand, etc.). Attach copies of any correspondence or documentation (including a copy of the final order, decree or case decision) related to this matter. If necessary, you may attach a separate sheet of paper.

11. A. Have you ever been convicted in any jurisdiction of any felony? Any guilty plea or plea of nolo contendere must be disclosed on this application. Do not disclose violations that were adjudicated as a minor in the juvenile court system.
 No Yes If yes, please provide the information requested in #11.C.
 B. Have you ever been convicted in any jurisdiction of any misdemeanor? Any guilty plea or plea of nolo contendere must be disclosed on this application. Do not disclose violations that were adjudicated as a minor in the juvenile court system.
 No Yes If yes, please provide the information requested in #11.C.
 C. If you answered "yes" to either question #11.A. or #11.B., list the felony and/or misdemeanor conviction(s). Attach a copy of all applicable criminal conviction, state police and court records; information on the current status of incarceration, parole, probation, etc.; and any other information you wish to have considered with this application (i.e., reference letters, documentation of rehabilitation, etc.). If necessary, you may attach a separate sheet of paper.

12. I, the undersigned, certify that the foregoing statements and answers are true, and I have not suppressed any information that might affect the Board's decision to approve this application. I will notify the Department if I am subject to any disciplinary action or convicted of any felony or misdemeanor charges (in any jurisdiction) prior to receiving the requested license. I certify that I understand, and have complied with, all the laws of Virginia related to optician licensure under the provisions of Title 54.1, Chapter 17 of the Code of Virginia and the Virginia Board for Opticians Rules and Regulations.
 Signature _____ Date _____

* State fee required every applicant for a license, certificate, registration or other authorization to engage in a business, trade, profession or occupation issued by the Commonwealth to provide a social security number or a control number issued by the Virginia Department of Labor Services.

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BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

Title of Regulation: 18 VAC 160-20-10 et seq. Board for Waterworks and Wastewater Works Operators Regulations (amending 18 VAC 160-20-10, 18 VAC 160-20-80, 18 VAC 160-20-90, and 18 VAC 160-20-160; adding 18 VAC 160-20-74, 18 VAC 160-20-76, 18 VAC 160-20-85, 18 VAC 160-20-102, 18 VAC 160-20-104, 18 VAC 160-20-106, 18 VAC 160-20-109, 18 VAC 160-20-120, 18 VAC 160-20-130, and 18 VAC 160-20-140; repealing 18 VAC 160-20-20 through 18 VAC 160-20-70, 18 VAC 160-20-100, and 18 VAC 160-20-110).

Statutory Authority: §§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Effective Date: February 15, 2001.

Summary:

The regulations implement the "Environment Protection Agency Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems; Notice" (1999). Specifically, the regulations implement the new EPA guidelines that establish a new class for restricted waterworks licenses and require continuing professional education for waterworks licenses. In addition, the regulations include substantial reorganization and revision of text for clarity and ease of use.

Summary of Public Comment 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: Carmen M. Garrison, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-2648.

18 VAC 160-20-10. Definitions.

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

"Board" means the Board for Waterworks and Wastewater Works Operators.

"Category" means the two divisions of waterworks and wastewater works and operators' licenses, one being waterworks and the second being wastewater works.

"Classification" means the divisions of each category of waterworks and wastewater works and operators' licenses into classes where Class "I" represents the highest classification.

"Contact hour" means 50 minutes of participation in a structured training activity.

"Continuing Professional Education (CPE)" means participation in a structured training activity that enables a licensed waterworks operator to maintain and increase the competence required to assure the public's protection.

"Department" means the Virginia Department of Professional and Occupational Regulation.

"Experience" means time spent learning how to physically and theoretically operate the waterworks or wastewater works as an operator-in-training or time spent operating a waterworks or wastewater works for which the operator is currently licensed.

"Licensed operator" means an operator with a license in the category and with a classification equal to or higher than the classification of the waterworks or wastewater works being operated.

"Licensee" means an individual holding a valid license issued by the board.

"Licensure" means a method of regulation whereby the Commonwealth, through the issuance of a license, authorizes a person possessing the character and minimum skills to engage in the practice of a profession or occupation which that is unlawful to practice without a license.

"Operate" means any act of an individual, which may impact on the finished water quality at a waterworks or the plant effluent at a wastewater works.

"Operating staff" means individuals employed or appointed by an owner to work at a waterworks or wastewater works.

"Operator" means any individual employed or appointed by any owner, and who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include testing or evaluation to control waterworks or wastewater works operations. Not included in this definition are superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of waterworks or wastewater works.

"Operator-in-training" means an individual employed by an owner to work under the direct supervision and direction of an operator holding a valid license in the proper category and classification for the purpose of gaining experience and knowledge in the duties and responsibilities of an operator of a waterworks or wastewater works. An operator-in-training is not an operator.

"Owner" means the Commonwealth of Virginia, or any political subdivision thereof, any public or private institution, corporation, association, ~~firm or company~~ or any other entity organized or existing under the laws of this Commonwealth or of any other state or nation, or any person or group of persons acting individually or as a group, who own, manage, or maintain waterworks or wastewater works.

~~*"Person"* means any individual, group of individuals, a corporation, a partnership, a business trust, an association or other similar legal entity engaged in operating waterworks or wastewater works.~~

"Renewal" means continuing the effectiveness of a license for another period of time.

"Responsible charge" means the designation by the owner of any individual to have the duty and the authority to operate or modify the operation of a waterworks or wastewater works.

"Structured training activity" means a formal educational process designed to permit a participant to learn a given subject or subjects through interaction with an instructor in a course, seminar, conference or other performance-oriented format.

"Wastewater works" means each a system of (i) sewerage systems or sewage treatment works serving more than 400 persons, as set forth in § 62.1-44.18 of the Code of Virginia; (ii) sewerage systems or sewage treatment works serving fewer than 400 persons, as set forth in § 62.1-44.18 of the Code of Virginia, if so certified by the State Water Control Board; and (iii) facilities for discharge to into state waters of industrial wastes or other wastes, if certified by the State Water Control Board.

"Waterworks" means each a system of structures and appliances used in connection with the collection, storage, purification, and treatment of that serves piped water for drinking or domestic use and the distribution thereof to the public, except distribution piping. Systems serving fewer than 400 persons shall not be considered to be a waterworks unless certified by the Department of Health to be such to (i) at least 15 connections, or (ii) at least 25 of the same individuals for more than six months out of the year. The term waterworks shall include all structures, equipment, and appurtenances used in the storage, collection, purification, treatment and distribution of pure water, except the piping and fixtures inside the building where such water is delivered.

18 VAC 160-20-20. License required. (Repealed.)

To serve as an operator of a waterworks or wastewater works, it shall be necessary to hold a valid license issued by the board of a classification equal to or greater than the classification of the waterworks or wastewater works and in the appropriate category.

18 VAC 160-20-30. License renewal required. (Repealed.)

A. Licenses for waterworks operators shall expire on the last day of February of each odd-numbered year. Licenses for wastewater works operators shall expire on the last day of February of each even-numbered year. The Department of Professional and Occupational Regulation shall mail a renewal notice to the licensee outlining the procedures for renewal. Failure to receive this notice shall not relieve the licensee of the obligation to renew.

B. Each licensee applying for renewal shall return the renewal notice and fee established in 18 VAC 160-20-40 of this chapter to the Department of Professional and Occupational Regulation prior to the expiration date shown on the license. If the licensee fails to receive the renewal notice, a copy of the expired license may be submitted with the required fee.

C. If the operator fails to renew the license within 30 days after the expiration date on the license, a penalty fee as established in 18 VAC 160-20-40 of this chapter shall be required, in addition to the renewal fee.

D. Any operator failing to renew within one year of the expiration date on the license must apply for a new license by examination in accordance with Part II of this chapter. Such an individual shall be deemed to be eligible to sit for the same category and class of license as the expired license.

E. Limited waterworks operator licenses, issued under the authority of § 4.02.2 of the Rules and Regulations of the State Board for Certification of Operators of Water and Wastewater Works (effective March 1, 1977), expiring on February 28, 1993, will not be renewed. Limited wastewater works operator licenses, issued under the authority of § 4.02.2 of the Rules and Regulations of the State Board for Certification of Operators of Water and Wastewater Works (effective March 1, 1977), expiring on February 28, 1994, will not be renewed. A holder of a limited license shall be deemed to have met the experience and education requirements of this chapter and shall be eligible to sit for an examination upon application in the same category and in the same or lower classification as the limited license currently held.

18 VAC 160-20-40. Fees. (Repealed.)

Fees are nonrefundable and shall not be prorated.

The following fees shall apply:

- 1. Application for licensure by examination or by reciprocity _____ \$85
- 2. Application for reexamination _____ \$75
- 3. Renewal of license _____ \$45
- 4. Penalty for failure to renew license within 30 days of expiration _____ \$25

18 VAC 160-20-50. Waterworks. (Repealed.)

A. Class V shall mean any waterworks as follows:

- 1. Waterworks employing no treatment other than chlorine disinfection, including consecutive water systems or groundwater systems with no treatment or consecutive systems employing repumping or rechlorination or both, and classified by the Department of Health as public water supplies; or
- 2. Waterworks classified by the Department of Health as Class V waterworks.

B. Class IV shall mean any waterworks as follows:

- 1. Waterworks employing disinfection, corrosion control, iron and manganese removal, softening, slow sand filtration, rechlorination, and other approved methods of treatment, or any combination thereof, except fluoridation, serving less than 5,000 persons and classified by the Department of Health as public water supplies; or
- 2. Waterworks classified by the Department of Health as Class IV waterworks.

C. Class III shall mean any waterworks as follows:

- 1. Waterworks employing processes including, but not limited to, chemical coagulation, sedimentation, filtration

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~~other than slow sand filtration, disinfection, fluoridation, aeration, corrosion control, or any combination thereof, serving a population of less than 5,000, or having a rated capacity of less than 0.5 mgd; or~~

~~2. Waterworks employing processes including disinfection, corrosion control, iron and manganese removal, softening, rechlorination, and other approved methods of treatment serving 5,000 persons or more; or~~

~~3. Waterworks employing fluoridation which are not under a higher classification and which are classified by the Department of Health as public water supplies; or~~

~~4. Waterworks classified by the Department of Health as Class III waterworks.~~

~~D. Class II shall mean any waterworks as follows:~~

~~1. Waterworks employing processes including, but not limited to, chemical coagulation, sedimentation, filtration, disinfection, fluoridation, aeration, corrosion control, or any combination thereof, serving a population of at least 5,000 persons, but less than 50,000 persons, or having a rated capacity of at least 0.5 mgd, but less than 5.0 mgd; or~~

~~2. Waterworks employing processes including, but not limited to, chemical coagulation, sedimentation, filtration, and disinfection, employing the high rate filtration process, and having a filter rate greater than 2.0 gpm/sq. ft., serving a population less than 50,000 persons, or having a rated capacity less than 5.0 mgd; or~~

~~3. Waterworks classified by the Department of Health as Class II waterworks.~~

~~E. Class I shall mean any waterworks employing processes including, but not limited to, chemical coagulation, sedimentation, filtration, disinfection, fluoridation, aeration, corrosion control, or any combination thereof, serving a population of 50,000 persons or more or having a rated capacity of 5.0 mgd or more.~~

18 VAC 160-20-60. Wastewater works. (Repealed.)

~~A. Class IV shall mean any wastewater works as follows:~~

~~1. Raw sewage stabilization ponds with a design hydraulic capacity greater than 0.04 mgd but equal to or less than 1.0 mgd; or~~

~~2. Wastewater works classified by the State Water Control Board as Class IV wastewater works.~~

~~B. Class III shall mean any wastewater works as follows:~~

~~1. Wastewater works using biological treatment methods having a design hydraulic capacity greater than 0.04 mgd, but equal to or less than 0.5 mgd; or~~

~~2. Wastewater works using physical/chemical treatment methods having a design hydraulic capacity greater than 0.04 mgd, but equal to or less than 0.5 mgd; or~~

~~3. Wastewater works using combinations of biological and physical/chemical treatment methods having a~~

~~design hydraulic capacity greater than 0.04 mgd, but equal to or less than 0.1 mgd; or~~

~~4. Raw sewage stabilization ponds, with a design hydraulic capacity greater than 1.0 mgd; or~~

~~5. Wastewater works that do not use biological or physical/chemical treatment methods but are classified by the State Water Control Board as Class III wastewater works.~~

~~C. Class II shall mean any wastewater works as follows:~~

~~1. Wastewater works using biological treatment methods having a design hydraulic capacity greater than 0.5 mgd, but equal to or less than 5.0 mgd; or~~

~~2. Wastewater works using physical/chemical treatment methods having a design hydraulic capacity greater than 0.5 mgd, but equal to or less than 5.0 mgd; or~~

~~3. Wastewater works using combinations of biological and physical/chemical treatment methods, having a design hydraulic capacity greater than 0.1 mgd, but equal to or less than 2.5 mgd.~~

~~D. Class I shall mean any wastewater works as follows:~~

~~1. Wastewater works using biological treatment methods having a design hydraulic capacity greater than 5.0 mgd; or~~

~~2. Wastewater works using physical/chemical treatment methods having a design hydraulic capacity greater than 5.0 mgd; or~~

~~3. Wastewater works using combinations of biological and physical/chemical treatment methods, having a design hydraulic capacity greater than 2.5 mgd.~~

~~E. Biological treatment methods as used in this section shall mean a fixed film or suspended growth biological treatment process, such as:~~

~~1. Activated sludge.~~

~~2. Trickling filter.~~

~~3. Aerated lagoon.~~

~~4. Rotating biological contactor.~~

~~5. Land application.~~

~~6. Biological nutrient removal process.~~

~~F. Physical/chemical treatment methods as used in this section shall mean a treatment process such as:~~

~~1. Chemical coagulation, flocculation and precipitation.~~

~~2. Filtration.~~

~~3. Carbon adsorption.~~

~~4. Breakpoint chlorination.~~

~~5. Demineralization (including but not limited to ion exchange, reverse osmosis, electro dialysis).~~

PART II.
ENTRY LICENSE REQUIREMENTS.

18 VAC 160-20-70. Licensure. (Repealed.)

~~The board shall issue a Class V, IV, III, II, or I license only after an individual has met all experience and examination requirements as set forth in this chapter. Each license shall be in the appropriate category and classification and shall indicate the highest classification of works the holder is qualified to operate.~~

18 VAC 160-20-74. License required.

To serve as an operator of a waterworks or wastewater works, it shall be necessary to hold a valid license issued by the board for a classification equal to or greater than the classification of the waterworks or wastewater works to be operated and in the appropriate category. Issuance of a new classification of license shall void all previously issued licenses in the same category. No licensee shall hold two licenses of different classifications in the same category. The board shall issue a license only after an individual has met all experience and examination requirements as set forth in this chapter.

18 VAC 160-20-76. Application.

A. Individuals desiring to be issued a license shall apply on forms supplied by the board. The application shall be completed according to the instructions provided with the application. Incomplete applications will be returned to the applicant. Fees shall remain valid for 90 days and shall not be refunded.

B. Individual applicants shall be at least 18 years of age.

C. The applicant shall disclose the following information about himself:

1. Any conviction by a court in any jurisdiction of any felony or of any misdemeanor involving lying, cheating or stealing, or of any [~~material~~] misrepresentation while engaged in waterworks or wastewater works activities. Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. A certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order, decree or case decision shall be prima facie evidence of such conviction or discipline.

2. Any disciplinary action taken by the board or another jurisdiction in connection with the applicant's activities as a waterworks or wastewater works operator, including but not limited to, monetary penalties, fines, suspension, revocation, or surrender of a license in connection with a disciplinary action.

3. His physical address. A post office box shall not be accepted in lieu of a physical address.

D. The fee established by 18 VAC 160-20-102 shall accompany the application and shall not be refunded.

E. The receipt of an application and the deposit of fees in no way indicates approval of the application by the board.

18 VAC 160-20-80. Licensure by reciprocity Individuals certified or licensed in other jurisdictions.

~~The board may issue a license to Any person applicant holding a currently valid license or certificate in any state, territory, or possession of the United States, or in any foreign country, or a certificate issued by the Association of Boards of Certification, provided the requirements and standards under which the license or certificate was issued are equivalent to those established by this chapter another jurisdiction who meets the requirements of this chapter, including experience and education, may take the examination in the Virginia category and classification comparable to the license or certificate held in the other jurisdiction.~~

18 VAC 160-20-85. Restricted License of Class VI Waterworks.

A. The board shall issue a restricted license to operate a Class VI waterworks to the Class VI waterworks owner or the Class VI waterworks owner's designee upon application for such restricted license by the waterworks owner or his designee and provided said application is received within two years after the effective date of this chapter. Waterworks owners or their designees who fail to apply within the two-year period must apply for a license pursuant to 18 VAC 160-20-90. A restricted license shall be limited to one license per Class VI waterworks facility. The restricted license is site specific and nontransferable. The restricted license expires three years from the date of issuance and is not subject to renewal.

B. Each applicant for a restricted license to operate a Class VI waterworks shall apply on the application form provided by the board which establishes that the applicant:

1. Is at least 18 years of age.
2. Has a high school diploma or G.E.D. and six months experience, or has no high school diploma or G.E.D. and has 12 months experience.
3. Is the current operator of a specific Class VI system and does not hold a waterworks license issued by the board; and
4. Understands that the restricted Class VI license that may be issued becomes invalid if he leaves the facility for which the license is sought or is issued a waterworks operator license in any other class.

18 VAC 160-20-90. Licensure by experience and examination.

Licensure is based upon having applicable experience and demonstrating minimum required knowledge, skills and abilities ~~by~~ through an examination. Education, specialized training, and experience in the other category may be substituted for the required experience as specified in this section. ~~These requirements are summarized in Table 1.~~

A. Experience. For purposes of this chapter, experience requirements are expressed in terms of calendar periods of full-time employment ~~with actual hands-on experience~~ as an operator or as an operator-in-training at a waterworks or wastewater works in the same category as the license being

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applied for. All experience claimed on the application for licensure must be certified by the individual's immediate supervisor.

1. A year of full-time employment is defined as a *minimum of 1,760 hours per year during a 12-month period or a minimum of 220 workdays per year in a 12-month period*. A workday is defined as attendance at a waterworks or wastewater works to the extent required for proper operation. *More than 1,760 hours or 220 work days during a 12-month period will not be considered as more than one year of full-time employment.*

2. Experience gained as an operator-in-training must be obtained under the supervision of an operator holding a valid license of the same category and of a classification equal to or higher than the classification of the waterworks or wastewater works at which the experience is gained. The supervising operator shall certify the

experience on the application form as *accurate and relevant to the classification and category of license for which the application is being submitted.*

3. Partial credit may be given for actual hours of work or workdays experience if the applicant works as an operator or as an operator-in-training less than full time.

4. Experience *solely limited to the operation and maintenance of wastewater collection system operation and maintenance systems and water distribution systems*, laboratory work, plant maintenance, and other nonoperating duties shall not be counted as experience as an operator or as an operator-in-training.

5. Experience limited to water distribution system operation and maintenance shall be considered only when applying for a Class V or Class VI waterworks operator license.

Table 1. Summary of requirements for operator's license by class.

License Class	Education [†]	Current License	Total Experience Required (Years)	Experience must be at this class facility or higher (Years)				Maximum Substitution Permitted (Years)
				C1,IV	C1,IV	C1,III	C1,II	
V	BS degree	None	0.5	0.5				0.0
	High School	None	0.5	0.5				0.0
	None	None	1.0	1.0				0.0
IV	BS degree	None	0.5		0.5			0.0
	High School	None	0.5		0.5			0.0
	None	None	1.0		1.0			0.0
III	BS degree	None	1.0	1.0	1.0			0.0
		IV	1.0		1.0			0.0
	High School	None	2.0		2.0			1.0
		IV	2.0		2.0			1.0
None	IV	4.0		4.0			2.0	
II	BS degree	None	1.5			0.5		0.0
		IV	1.5			0.5		0.0
		III	1.5			0.5		0.0
	High School	III	4.0			2.0		2.0
	None	III	7.0			3.0		3.5
I	BS degree	II	2.5				1.0	0.0
	High School	II	6.0				2.0	3.0
	None	II	10.0		4.0	3.0	3.0	5.0

[†]BS degree = bachelor's degree in engineering or engineering technology; or in physical, biological, or chemical science or engineering. All other bachelor's degrees will be considered the equivalent of high school education for the purpose of meeting the education requirement, although individual courses in science, engineering, or public health may be substitutes for experience in accordance with 18 VAC 160-20-90.

High School = high school diploma or GED or college degree other than BS degree defined above.

All experience must be at a waterworks or wastewater works of the appropriate category and of a class equal to or higher than the class equal to or higher than the class indicated in the table. Experience gained at a waterworks

or wastewater works of higher class than currently hold license must be direct supervision and direction of a properly licensed operator.

B. Specific requirements for licenses.

1. Specific requirements for a Class VI license. Applicants for licensure as a Class VI waterworks operator shall meet one of the following requirements and pass a board-approved examination:

- a. Have (i) a high school diploma or GED and (ii) at least six months of experience as an operator-in-training in a Class VI, Class V, Class IV, Class III, Class II, or Class I waterworks; or

b. Have (i) no high school diploma and (ii) at least one year of experience as an operator-in-training in a Class VI, Class V, Class IV, Class III, Class II, or Class I waterworks.

2. Specific requirements for a Class V license. Applicants for licensure as a Class V waterworks operator shall meet one of the following requirements and pass a board-approved examination:

a. Have (i) a high school diploma or GED and (ii) at least six months of experience as an operator-in-training of waterworks of in a Class V, Class IV, Class III, Class II, or Class I waterworks; or

b. Have (i) no high school diploma and (ii) at least one year of experience as an operator-in-training of waterworks of in a Class V, Class IV, Class III, Class II, or Class I waterworks.

3. Specific requirements for a Class IV license. Applicants for licensure as either a Class IV waterworks or wastewater works operator shall meet one of the following requirements and pass a board-approved examination:

a. Have (i) a high school diploma or GED and (ii) at least six months of experience as an operator-in-training of waterworks or wastewater works of in a Class IV, Class III, Class II, or Class I waterworks or wastewater works (as appropriate); or

b. Have (i) no high school diploma and (ii) at least one year of experience as an operator-in-training of waterworks or wastewater works of in a Class IV, Class III, Class II, or Class I waterworks or wastewater works (as appropriate).

4. Specific requirements for a Class III license. Applicants for licensure as either a Class III waterworks or wastewater works operator shall meet one of the following requirements and pass a board-approved examination:

a. Have (i) a bachelor's degree in engineering or engineering technology, or in physical, biological or chemical science; and (ii) at least one year of experience as an operator-in-training of waterworks or wastewater works of in a Class IV, Class III, Class II, or Class I waterworks or wastewater works (as appropriate); or

b. Have (i) a bachelor's degree in engineering or engineering technology, or in physical, biological or chemical science; (ii) a Class IV license; and (iii) a total of at least one year of experience as an operator or operator-in-training of waterworks or wastewater works of in a Class IV waterworks or wastewater works (as appropriate) or as an operator-in-training of waterworks or wastewater works of in a Class III, Class II, or Class I waterworks or wastewater works (as appropriate); or

c. Have (i) a high school diploma or GED and (ii) at least two years of experience as an operator-in-training of waterworks or wastewater works of in a Class IV,

Class III, Class II, or Class I waterworks or wastewater works (as appropriate); or

d. Have (i) a high school diploma or GED, (ii) a Class IV license, and (iii) a total of at least two years of experience as an operator or operator-in-training of waterworks or wastewater works of in a Class IV waterworks or wastewater works (as appropriate) or as an operator-in-training of waterworks or wastewater works of in a Class III, Class II, or Class I waterworks or wastewater works (as appropriate); or

e. Have (i) no high school diploma, (ii) a Class IV license, and (iii) a total of at least four years of experience as an operator or operator-in-training of waterworks or wastewater works of in a Class IV waterworks or wastewater works (as appropriate) or as an operator-in-training of waterworks or wastewater works of in a Class III, Class II, or Class I waterworks or wastewater works (as appropriate).

5. Specific requirements for a Class II license. Applicants for licensure as either a Class II waterworks or wastewater works operator shall meet one of the following requirements and pass a board-approved examination:

a. Have (i) a bachelor's degree in engineering or engineering technology, or in physical, biological or chemical science; and (ii) a total of at least 1- 1/2 years of experience, of which at least six months without substitutions shall be as an operator-in-training of waterworks or wastewater works of in a Class III, Class II or Class I waterworks or wastewater works (as appropriate); or

b. Have (i) a bachelor's degree in engineering or engineering technology, or in physical, biological or chemical science; (ii) a Class IV license; and (iii) a total of at least 1-1/2 years of experience, of which at least six months without substitutions shall be as an operator-in-training of waterworks or wastewater works of in a Class III, Class II or Class I waterworks or wastewater works (as appropriate); or

c. Have (i) a bachelor's degree in engineering or engineering technology, or in physical, biological or chemical science; (ii) a Class III license; and (iii) a total of at least 1-1/2 years of experience, of which at least six months, without substitutions shall be as an operator or operator-in-training of waterworks or wastewater works of in a Class III waterworks or wastewater works (as appropriate) or as an operator-in-training of waterworks or wastewater works of in a Class II or Class I waterworks or wastewater works (as appropriate); or

d. Have (i) a high school diploma or GED, (ii) a Class III license, and (iii) a total of at least four years of experience of which at least two years without substitutions shall be as an operator or operator-in-training of waterworks or wastewater works of in a Class III waterworks or wastewater works (as appropriate) or as an operator-in-training of

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~~waterworks or wastewater works of in a Class II or Class I waterworks or wastewater works (as appropriate); or~~

e. Have (i) no high school diploma, (ii) a Class III license, and (iii) a total of at least seven years of experience of which at least three years without substitutions shall be as an operator or operator-in-training ~~of waterworks or wastewater works of in a Class III waterworks or wastewater works (as appropriate) or as an operator-in-training of waterworks or wastewater works of in a Class II or Class I waterworks or wastewater works (as appropriate).~~

5- 6. Specific requirements for a Class I license. Applicants for licensure as *either* a Class I waterworks or wastewater works operator shall meet one of the following requirements and pass a board-approved examination:

a. Have (i) a bachelor's degree in engineering or engineering technology, or in physical, biological or chemical science; (ii) a Class II license; and (iii) a total of at least 2-1/2 years of experience, of which at least one year without substitutions shall be as an operator or operator-in-training ~~of waterworks or wastewater works of in a Class II waterworks or wastewater works (as appropriate) or as an operator-in-training of waterworks or wastewater works of in a Class I~~ waterworks or wastewater works (as appropriate); or

b. Have (i) a high school diploma or GED, (ii) a Class II license and (iii) a total of at least six years of experience of which at least two years without substitutions shall be as an operator or operator-in-training ~~of waterworks or wastewater works of in a Class II waterworks or wastewater works (as appropriate) or as an operator-in-training of waterworks or wastewater works of in a Class I~~ waterworks or wastewater works (as appropriate); or

c. Have (i) no high school diploma, (ii) a Class II license, and (iii) a total of at least 10 years of experience of which at least three years without substitutions shall be as an operator or operator-in-training ~~of waterworks or wastewater works of in a Class II waterworks or wastewater works (as appropriate) or as an operator-in-training of waterworks or wastewater works of in a Class I~~ waterworks or wastewater works (as appropriate).

C. Substitutions for required experience. For the purpose of meeting the experience requirements for licenses of Class III, Class II, and Class I licenses, experience in the other category, relevant training in waterworks and wastewater works operation, and formal education may be substituted for actual hands-on experience in the category being applied for.

1. Limitations on substitution.

a. ~~Substitutions may not reduce the actual operator experience required to less than 2- 1/2 years for a Class I license, to less than 1- 1/2 years for a Class II~~

~~license, to less than one year for a Class III license, or to less than 1/2 year for a Class IV or Class V license.~~

b. ~~Under no circumstances shall experience, training, and education substitutions exceed 50% of the total experience required in the appropriate subdivision of 18 VAC 160-20-90.~~

c. ~~No experience, training, or education substitutions are permitted for the experience required to obtain a Class V or a Class IV license as specified in 18 VAC 160-20-90 B.~~

2. ~~Experience substitution. One half of the actual experience gained in the other category may be substituted for required experience in the category of the license being applied for.~~

3. ~~Education substitution. Education may be substituted for part of the required experience, subject to the limitations in 18 VAC 160-20-100 A as follows:~~

a. ~~Education used to meet the educational requirements for any class of license may not be substituted for experience.~~

b. ~~Formal education. Formal education courses at a post-secondary level in physical, biological or chemical science; engineering or engineering technology; waterworks or wastewater works operation; or public health may be substituted for part of the required experience.~~

(1) ~~All education substituted for experience must be relevant to the category and classification of the license being applied for.~~

(2) ~~Education may be substituted for experience at a rate of one month experience for each semester hour of college credit approved by the board. One quarter hour of college credit will be considered equal to 2/3 of a semester hour.~~

c. ~~Specialized training. Waterworks or wastewater works operator training courses, seminars, workshops, or similar specialized training, specifically approved by the board, may be substituted for part of the required experience.~~

(1) ~~All training substituted for experience must be relevant to the category and classification of the license being applied for.~~

(2) ~~Training may be substituted for experience at a rate of one month experience for each training credit (TC) approved by the board. One TC is awarded for each 10 hours of classroom contact time or for each 20 hours of laboratory exercise and field trip time. No credit towards TCs is granted for breaks, meals, receptions, and time other than classroom, laboratory and field trip contact time.~~

(3) ~~All courses used for substitution must be approved by the board utilizing the criteria set forth in Appendix A.~~

1. *Category experience substitution.* One half of the actual experience gained in the other category may be substituted for required experience in the category of the license being applied for.

2. *Education substitution.* Education may be substituted for part of the required experience in the category of the license being applied for, subject to the following limitations:

a. *Education used to meet the educational requirements for any class of license may not be substituted for experience.*

b. *Formal education courses at a post-secondary level in physical, biological or chemical science; engineering or engineering technology; waterworks or wastewater works operation; or public health may be substituted for part of the required experience.*

(1) *All education substituted for experience must be relevant to the category and classification of the license being applied for.*

(2) *Education may be substituted for experience at a rate of up to one month experience for each semester hour of college credit approved by the board. One quarter hour of college credit will be considered equal to two thirds of a semester hour.*

(3) *Substitution of formal education experience will be approved by the board only for applicants who submit a transcript from the institution where the course was taken.*

c. *Training substitution.* Waterworks or wastewater works operator training courses, seminars, workshops, or similar training, specifically approved by the board, may be substituted for part of the required experience.

(1) *All training substituted for experience must be relevant to the category and classification of the license being applied for.*

(2) *Training may be substituted for experience at a rate of one month experience for each training credit approved by the board. Up to one training credit is awarded for each 10 hours of classroom contact time or for each 20 hours of laboratory exercise and field trip contact time. No credit towards training credits is granted for breaks, meals, receptions, and time other than classroom, laboratory and field trip contact time.*

(3) *All courses used for substitution must be approved by utilizing the criteria set forth in Part VI (18 VAC 160-20-160) of this chapter.*

(4) *Substitution of training for experience will be approved by the board only for applicants who submit a copy of an appropriate certificate identifying the subject matter of the course and the training credit value, and signed by a representative of the organization sponsoring the training.*

3. *Limitations on substitution.*

a. *Under no circumstances shall category experience, education, and training substitutions exceed 50% of the total experience required under this subsection.*

b. *No category experience, education, or training substitutions are permitted for the experience required to obtain a Class VI, Class V or a Class IV license as specified in subsection B of this section.*

D. *Examination.* A board-approved examination shall be administered at least twice a year.

1. An individual may take the examination prior to fulfilling the education and experience requirements, provided all requirements will be met within three months after the date the applicant will take the examination. The results of the examination and the license shall not be issued until all applicable requirements have been met and satisfactorily verified.

2. An individual who is unable to take an examination at the time scheduled shall notify the board prior to the date of the examination; such an individual shall be rescheduled for the next examination. Failure to notify the board may require the submittal of a new application and payment of fees, in accordance with 18 VAC 160-20-40 and 18 VAC 160-20-100 A.

3. Upon submission of an application for reexamination form provided by the board and payment of the reexamination fee, an applicant who is unsuccessful in passing an examination will be allowed to retake any examination(s) given the examination up to two times within two years of the date of notification of initial unsuccessful examination results. After If the two-year period has elapsed elapses, or if an applicant fails to pass both reexaminations, an then the applicant will be required to submit a new application with fee in accordance with these regulations this chapter in order to take an examination. Applications for reexamination must be received in the Department of Professional and Occupational Regulation at least 60 days prior to a scheduled examination in order to be eligible to sit for that examination.

4. *Applications for examination and reexamination must be received by the Department of Professional and Occupational Regulation at least 60 days prior to a scheduled examination in order to be eligible to sit for that examination.*

18 VAC 160-20-100. Application. (Repealed.)

A. ~~Any person seeking licensure by reciprocity or by education, experience, and examination shall submit a fully completed application with the appropriate fee(s) attached. Incomplete applications will be returned to the applicant. Application for licensure by examination must be received in the Department of Professional and Occupational Regulation 60 days prior to a scheduled examination in order to be eligible to sit for that examination.~~

B. ~~All applications of candidates will be reviewed by the Department of Professional and Occupational Regulation staff to determine eligibility for licensure and examination within 50~~

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~~days of receipt at the offices of the Department of Professional and Occupational Regulation. Any applicant may appeal the initial review, in writing, to the board within 60 days of the staff's determination. No applicant will be approved for licensure unless he meets all of the requirements of Part II of this chapter.~~

~~C. Applicants who have been found ineligible to sit for an examination may request further consideration by submitting a letter to the board with the necessary evidence of additional qualifications, training, or experience. No additional fee will be required, provided all requirements for licensing are met within two years from the date of original application.~~

18 VAC 160-20-102. Fees.

- A. All fees are nonrefundable.
- B. The date of receipt of the fee by the board is the date that shall be used to determine whether the fee is timely received.
- C. The following fees shall apply:

Application fee	\$85
Renewal fee	\$45
Late renewal fee, [additional]	\$25
Reexamination fee	\$75
Bad check or other instrument penalty	\$25

D. A fee of \$25 will be charged, in addition to the fees established in this section, for submitting a check to the board which is dishonored by the institution upon which it is drawn.

18 VAC 160-20-104. Maintenance of license.

- A. ~~[Notice in writing shall be given to the board in the event of any change of the licensee's name or address. Such notice shall be received by the board within 30 days of the change of the name or address. The licensee shall notify the board in writing within 30 days of any change of name or address.]~~
- B. All licensees shall operate under the name in which the license is issued.

PART III. STANDARDS OF PRACTICE RENEWAL.

18 VAC 160-20-106. Renewal.

- A. Licenses for waterworks operators shall expire on the last day of February of each odd-numbered year. Licenses for wastewater works operators shall expire on the last day of February of each even-numbered year.
- B. The Department of Professional and Occupational Regulation shall mail a renewal notice to the licensee outlining the procedures for renewal. Renewal notices shall be mailed to the licensee at the last known address of record. Failure to receive written notice shall not relieve the licensee of the obligation to renew and pay the required fee outlined in 18 VAC 160-20-102.

C. Each licensee applying for renewal shall return the renewal notice, fee, and, in the case of waterworks licensees only, a statement that the applicant for license renewal has met the CPE requirement established in 18 VAC 160-20-109 prior to the expiration date shown on the license. If the licensee fails to receive the renewal notice, a copy of the expired license may be submitted in place of the renewal notice along with the required fee and, in the case of waterworks licensees only, a statement that the [licensee has met the] CPE requirement in 18 VAC 160-20-109 [~~has been met~~].

D. The date on which the renewal fee and any required forms are actually received by the board or its agent shall determine whether an additional fee is due.

E. If the requirements of subsection C of this section are met more than 30 days but less than 12 months after the expiration date on the license, a late penalty fee shall be required as established in 18 VAC 160-20-102. The date on which the renewal application, any required documentation and the required fees are actually received by the board or its agent shall determine whether the licensee is eligible for renewal and whether an additional fee is due.

F. Any individual who fails to renew his license within 12 months after the expiration date printed on the license shall apply for a new license by examination in accordance with Part II (18 VAC 160-20-74 et seq.) of this chapter. Such individual shall be deemed to be eligible to sit for the examination for the same category and class of license as the expired license.

G. The board may deny renewal of a license for the same reasons as it may refuse initial licensure or discipline a licensee.

18 VAC 160-20-109. Waterworks operator continuing profession education (CPE).

- A. Effective with the February 2003 license renewal cycle, each licensed waterworks operator shall have completed the following number of CPE contact hours required for his class of license:
 1. Class I, II, and III operators shall obtain a minimum of 20 contact hours during each license renewal cycle.
 2. Class IV operators shall obtain a minimum of 16 contact hours during each license renewal cycle.
 3. Class V operators shall obtain a minimum of eight contact hours during each license renewal cycle.
 4. Class VI operators shall obtain a minimum of four contact hours during each license renewal cycle.

CPE provisions do not apply for the renewal of licenses that were held for less than two years on the date of expiration.

B. The subject matter addressed during CPE contact hours shall be limited to the content areas covered by the board's examination.

C. Any course approved by the board for substitution as training credits or formal education semester hours, as provided for in 18 VAC 160-20-160, shall also be acceptable

on an hour-for-hour basis for CPE contact hours. One semester hour of college credit shall equal 15 CPE contact hours, and one quarter hour of college credit shall equal 10 CPE credit hours.

D. The following evidence shall be maintained to document completion of the hours of CPE specified in subsection A of this section:

1. Evidence of completion of a structured training activity which shall consist of the name, address and telephone number of the sponsor;
2. The dates the applicant participated in the training;
3. Descriptive material of the subject matter presented; and
4. A statement from the sponsor verifying the number of hours completed.

E. Each licensee shall maintain evidence of the satisfactory completion of CPE for a period of at least one year following the end of the license renewal cycle for which the CPE was taken. Such documentation shall be in the form required by subsection D of this section and shall be provided to the board or its duly authorized agents upon request.

F. The licensee shall not [~~take~~ receive CPE credit for] the same training course or structured training activity more than once during a single license renewal cycle to meet the CPE requirement unless the same training course or structured training activity is an annual requirement established by Virginia or federal regulations.

G. The licensee may [~~take~~ receive CPE credit for] a training course or structured training activity which has been mandated by Virginia or federal regulation towards fulfilling the CPE requirement.

H. The licensee may petition the board for additional time to meet the CPE requirement. However, CPE hours earned during a license renewal cycle to satisfy the CPE requirement of the preceding license renewal cycle shall be valid only for that preceding license renewal cycle.

18 VAC 160-20-110. Discipline. (Repealed.)

~~A. The Board, in its discretion, may fine any licensee, or may suspend or revoke a license, either or both, if it finds that:~~

- ~~1. The license was obtained or renewed through fraud or misrepresentation; or~~
- ~~2. The licensed operator has been found guilty by the board, or by a court of any material misrepresentation in the course of performing his operating duties; or~~
- ~~3. The licensed operator has not demonstrated reasonable care, judgment or application of his knowledge and ability in the performance of his operating duties; or~~
- ~~4. The licensed operator violates or induces another person to violate any provisions of Chapters 1, 2, 3, and 23 of Title 54.1 of the Code of Virginia, or any provisions of this chapter.~~

~~B. The board, in its discretion, may refuse to grant or renew a license of any person for any of the reasons specified in subsection A of this section.~~

PART IV. CLASSIFICATION REQUIREMENTS.

18 VAC 160-20-120. Waterworks.

A. A Class VI waterworks licensee may operate any waterworks as follows:

1. A waterworks providing no treatment and serving fewer than 400 persons; or
2. A waterworks classified by the Virginia Department of Health as a Class VI waterworks.

B. A Class V waterworks licensee may operate any waterworks as follows:

1. A waterworks serving 400 or more persons which (i) provides no treatment; or (ii) employs hypochlorination for disinfection; or
2. A waterworks classified by the Virginia Department of Health as either a Class V or Class VI waterworks.

C. A Class IV waterworks licensee may operate any waterworks as follows:

1. A waterworks serving fewer than 5,000 persons or having a design hydraulic capacity of less than 0.5 MGD, employing one or more of the following (i) disinfection other than with hypochlorination, (ii) corrosion control, (iii) iron and manganese removal, (iv) ion exchange, (v) membrane technology without pretreatment, (vi) slow sand filtration, (vii) aeration, (viii) rechlorination other than with hypochlorination, or [~~(ix)~~] activated carbon contactors; or
2. A waterworks classified by the Virginia Department of Health as either a Class IV, V, or VI waterworks.

D. A Class III waterworks licensee may operate any waterworks as follows:

1. A waterworks serving fewer than 5,000 persons or having a design capacity less than 0.5 MGD, employing chemical coagulation or lime softening in combination with one or more of the following (i) sedimentation, (ii) rapid sand filtration with a filtration rate of 2 gpm/square foot or less, (iii) fluoridation, (iv) disinfection, (v) aeration, (vi) corrosion control, or (vii) membrane technologies;
2. A waterworks serving 5,000 or more persons or having a design hydraulic capacity of 0.5 MGD, employing one or more of the following; (i) disinfection other than with hypochlorination, (ii) corrosion control, (iii) iron and manganese removal, (iv) ion exchange, (v) membrane technology without pretreatment, (vi) slow sand filtration, (vii) aeration, (viii) rechlorination other than with hypochlorination, or (ix) activated carbon contactors;
3. A waterworks employing (i) membrane technology requiring pretreatment consisting of pH adjustment; or (ii) diatomaceous earth filtration, coupled with aeration, corrosion control, disinfection, or fluoridation;

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4. A waterworks employing fluoridation which is not under a higher classification; or

5. A waterworks classified by the Virginia Department of Health as either a Class III, IV, V or VI waterworks.

E. A Class II waterworks licensee may operate any waterworks as follows:

1. A waterworks serving 5,000 or more persons but fewer than 50,000 persons or having a design hydraulic capacity of 0.5 MGD or more but less than 5.0 MGD [~~which ever falls within the range,~~] employing chemical coagulation or lime softening in combination with one or more of the following; (i) sedimentation, (ii) rapid sand filtration, (iii) fluoridation, (iv) disinfection, (v) aeration, (vi) corrosion control, or (vii) membrane technologies;

2. A waterworks serving fewer than 50,000 persons or having a design hydraulic capacity of less than 5.0 MGD which employs chemical coagulation or lime softening coupled with multimedia granular filtration or granular filtration at rates above 2.0 gpm/square foot (high rate filtration) in combination with one or more of the following: (i) sedimentation, (ii) fluoridation, (iii) disinfection, (iv) aeration, or (v) corrosion control;

3. A waterworks employing biological activated carbon contactors or membrane technology requiring pretreatment other than pH adjustment; or

4. A waterworks classified by the Virginia Department of Health as either a Class II, III, IV, V or VI waterworks.

F. A Class I waterworks licensee may operate any waterworks [~~listed in subsections A through E of this section~~].

G. The term membrane technologies includes (i) electrical dialysis reversal, (ii) reverse osmosis, (iii) ultra filtration, (iv) micro filtration, and (v) nano filtration.

18 VAC 160-20-130. Wastewater works.

A. A Class IV wastewater works licensee may operate any wastewater works as follows:

1. A wastewater works employing natural treatment methods (i.e., those not utilizing aerated or mixed flows and not using electrical or outside energy sources to accomplish treatment) with a design hydraulic capacity greater than 0.4 MGD but equal to or less than 1.0 MGD; or

2. A wastewater works classified by the Virginia Department of Health or the Virginia Department of Environmental Quality as a Class IV wastewater works.

B. A Class III wastewater works licensee may operate any wastewater works as follows:

1. A wastewater works using biological treatment methods consisting of but not limited to (i) suspended growth reactors, (ii) aerated lagoons, (iii) constructed wetlands, (iv) biological filters or other attached growth contactors, (v) processes utilizing biological nutrient control, or (vi) processes utilizing land application having

a design hydraulic capacity greater than 0.04 MGD, but equal to or less than 0.5 MGD;

2. A wastewater works using advanced waste treatment methods consisting of but not limited to (i) ammonia stripping, (ii) breakpoint chlorination, (iii) carbon adsorption, (iv) chemical coagulation, (v) flocculation, (vi) precipitation, (vii) filtration, or (viii) demineralization (ion exchange, reverse osmosis or electrodialysis) having a design hydraulic capacity greater than 0.04 MGD, but equal to or less than 0.5 MGD;

3. A wastewater works using combinations of biological and advanced waste treatment methods having a design hydraulic capacity greater than 0.04 MGD, but equal to or less than 0.1 MGD;

4. A wastewater works using natural treatment methods (i.e., those not using aerated or mixed flows and not using electrical or outside energy sources to accomplish treatment) with a design hydraulic capacity greater than 1.0 MGD; or

5. A wastewater works classified by the Virginia Department of Health or the Virginia Department of Environmental Quality as either a Class III or IV wastewater works.

C. A Class II wastewater works licensee may operate any wastewater works as follows:

1. A wastewater works using biological treatment methods consisting of but not limited to (i) suspended growth reactors, (ii) aerated lagoons, (iii) constructed wetlands, (iv) biological filters or other attached growth contactors, (v) processes utilizing biological nutrient control, or (vi) processes utilizing land application having a design hydraulic capacity greater than 0.5 MGD, but equal to or less than 5.0 MGD;

2. A wastewater works using advanced waste treatment methods consisting of but not limited to (i) ammonia stripping, (ii) breakpoint chlorination, (iii) carbon adsorption, (iv) chemical coagulation, (v) flocculation, (vi) precipitation, (vii) filtration, or (viii) demineralization (ion exchange, reverse osmosis or electrodialysis) having a design hydraulic capacity greater than 0.5 MGD, but equal to or less than 5.0 MGD;

3. A wastewater works using combinations of biological and advanced waste treatment methods, having a design hydraulic capacity greater than 0.1 MGD, but equal to or less than 2.5 MGD; or

4. A wastewater works classified by the Virginia Department of Health or the Virginia Department of Environmental Quality as either a Class II, III or IV wastewater works.

D. A Class I wastewater works licensee may operate any wastewater works [~~listed in subsections A through C of this section~~].

PART V.
STANDARDS OF PRACTICE.

18 VAC 160-20-140. Discipline.

[~~A.~~] The board [~~may fine any licensee and/or revoke or suspend any license, in accordance with the provisions of the Administrative Process Act, when a licensee has been found to have violated or cooperated with others in violating any of the provisions of Chapter 23 of Title 54.1 of the Code of Virginia or any regulations of the board including the following grounds of discipline has the power to discipline and fine any licensee and to suspend or revoke or refuse to renew or reinstate any license as well as the power to deny any application for a license under the provisions of Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia and this chapter for any of the following~~]:

1. [~~The license was obtained~~ Obtaining] or [~~renewed~~ renewing a license] through [~~fraud~~ fraudulent means] or misrepresentation;
2. [~~Any conviction~~ Having been convicted or found guilty] by a court in any jurisdiction of any felony or of any misdemeanor involving lying, cheating or stealing, or [~~of any material misrepresentation~~ for activities carried out] while engaged in waterworks or wastewater works activities [, there being no appeal pending therefrom or the time for appeal having lapsed]. Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. A certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order, decree or case decision shall be prima facie evidence of such conviction or discipline [. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt] ;
3. [~~The licensee did not demonstrate~~ Not demonstrating] reasonable care, judgment, or application of the required knowledge, skill and ability in the performance of the operating duties;
4. [~~The licensee violated or induced~~ Violating or inducing] another person to violate any provisions of Chapters 1, 2, 3 or 23 of Title 54.1 of the Code of Virginia, or [of] any provision of this chapter;
5. Having been found guilty by the board, an administrative body or by a court of any [~~material misrepresentation~~ activity] in the course of performing his operating duties [that resulted in the harm or the threat of harm to human health or the environment];
6. Failing to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty [, regardless of adjudication,] of any felony which resulted in the [~~significant~~] harm or the [~~imminent and substantial~~] threat of harm to human health or the environment [. Failing to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted of or found guilty, regardless of adjudication, of any felony or of any misdemeanor for

activities carried out while engaged in waterworks or wastewater works activities or involving lying, cheating or stealing.] ; [or]

7. [~~Gross~~] Negligence, or a continued pattern of incompetence, in the practice as a waterworks or wastewater works operator.

[~~B. The board may refuse to grant a license to or renew the license of any person for the same reasons as it may discipline a licensee.~~]

APPENDIX A PART VI.
APPROVAL OF SPECIALIZED TRAINING.

18 VAC 160-20-160. Approval of training.

Specialized Waterworks and wastewater works operator training for all licenses may be substituted for some of the experience required for Class III, Class II and Class I licenses, subject to the limitations in this ~~appendix~~ section. Training courses that may be substituted for required experience must be approved by the board ~~prior to the training activity~~ except those provided by federal or state agencies [,] institutions, schools and universities approved by the State Council of Higher Education for Virginia, for which continuing education units are awarded. Training courses requiring board approval shall be approved by the board prior to commencing in accordance with the following procedure:

A. Training ~~activities~~ courses for which experience credit may be granted must be conducted in general conformance with the guidelines of the ~~Council on the Continuing Education Unit~~ International Association for Continuing Education and Training [(Association)]. The board reserves the right to waive any of the requirements of the ~~council's~~ association's guidelines on a case-by-case basis. Only classroom, laboratory and field trip contact time will be used to compute training credits. No credit will be given for breaks, meals, or receptions.

1. Organization. The board will only approve training offered by a sponsor who is an identifiable organization with a mission statement outlining its functions, structure, process and philosophy, and that has a staff of one or more persons with the authority to administer and coordinate a training credit (TC) program.
2. TC records. The board will only approve training offered by a sponsor who maintains TC records for all participants for a minimum of ~~20~~ seven years, and who has a written policy on retention and release of TC records.
3. Instructors. The board will only approve training conducted by personnel who have demonstrated competence in the subject being taught, an understanding of the learning objective, a knowledge of the learning process to be used, and a proven ability to communicate.
4. Objectives. The board will only approve courses that have a series of stated objectives that are consistent with the job requirements of waterworks and wastewater

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works operators. The training course content must be consistent with those objectives.

5. Course completion requirements. For successful completion of a training ~~program~~ *course*, participants must attend 90% or more of the class contact time and must demonstrate their learning through written examinations, completion of a project, self-assessment, oral examination, or other assessment technique.

B. The board shall consider the following information, to be submitted *by the course sponsor or instructor* on forms provided by the board, at least 45 days prior to the scheduled training ~~activity~~ *course*:

1. Course information.

- a. Course title
- b. Planned audience
- c. Name of sponsor
- d. Name, address, phone number of contact person
- e. Scheduled presentation dates
- f. Detailed course schedule, hour-by-hour
- g. List of planned breaks
- h. Scheduled presentation location
- i. Relevancy of course to waterworks or wastewater works operator licensing

2. Instructor qualifications.

- a. Name of instructor
- b. Title, employer
- c. Summary of qualifications to teach this course

3. Training materials.

- a. Course objectives. A listing of the course objectives stated in ~~the~~ terms of the skills, knowledge, or attitude the participant will be able to demonstrate as a result of the training.
- b. Course outline. A detailed outline showing the planned activities that will occur during the training ~~program~~ *course*, including major topics, planned presentation sequence, laboratory and field activities, audio-visual presentation, and other major activities.
- c. Course reference materials. A list of the name, publisher and publication date for commercially available publications. For reference materials developed by the course sponsor or available exclusively through the course, a copy of the reference.
- d. Audio-visual support materials. A listing of any commercially available audio-visual support material that will be used in the program. A brief description of any sponsor or instructor generated audio-visual material that will be used.

e. Handouts. Identification of all commercially available handout materials that will be used; *as well as* copies of all other planned handouts.

4. Determination of successful completion. A description of the means that will be used to *assess the learning of each participant* to determine the successful completion of the training program ~~by individual attendees~~, such as examinations, projects, personal evaluations by the instructor, or other recognized evaluation techniques.

~~G. Substitution of training for experience will be approved by the board only for applicants whose names appear on a roster of those participants who successfully completed the course, including their names and social security numbers, submitted to the board by the sponsor, and who submit a copy of an appropriate certificate identifying the subject matter of the course and the TC value, provided to the participant by the sponsor.~~

~~D. C. Recurring training programs. If there are plans to present the same course of instruction routinely at multiple locations with only minor modifications and changes, the board may approve the overall program rather than individual presentations if so requested by the sponsor.~~

1. The board shall consider all of the information listed above except those items related to specific offerings of the course.

2. Board approval may be granted for a specific period of time or for an indefinite period.

3. Board approval will apply only to those specific offerings ~~appearing on listings provided to the board prior to conducting the training. The listing shall contain for each offering the dates, locations, and instructors certified by the sponsoring organization as having been conducted by instructors meeting the established criteria and in accordance with the board approved course outlines and objectives.~~

4. To maintain approval of the program, changes made to the program since its approval must be submitted.

~~5. Substitution of training for experience will be approved by the board only for applicants whose names appear on a roster of those who have successfully completed the course, including their names and social security numbers, submitted to the board by the sponsor following the course offering, and who submit a copy of an appropriate certificate identifying the subject matter of the course and the TC value, provided to the participant by the sponsor.~~

NOTICE: The forms used in administering 18 VAC 160-20-10 et seq., Board for Waterworks and Wastewater Works Operators Regulations, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

FORMS

License Application, 19LIC (eff. 11/99).

Re-Examination Application, 19REEX ([~~eff. 4/99~~ rev. 9/99]).

Application for Training Course Approval, 19CRS (~~eff. 11/98~~
rev. 9/99).

[*Experience Verification Form, 19EXP (eff. 9/99).*

Exam Location Request Form, 19EXPLOC (eff. 11/00).]

Commonwealth of Virginia
 Department of Professional and Occupational Regulation
 3600 West Broad Street
 Post Office Box 11066
 Richmond, Virginia 23230-1066
 (804) 367-8583



**Board for Waterworks and Wastewater Works Operators
 RE-EXAMINATION APPLICATION**
 Fee \$75.00

A check or money order payable to the TREASURER OF VIRGINIA, or a completed credit card insert must be mailed with your application package. APPLICATION FEES ARE NOT REFUNDABLE.

Select the one exam you are applying to take.

Waterworks Operator	X	Wastewater Works Operator	X
Class I 1901	<input type="checkbox"/>	Class I 1909	<input checked="" type="checkbox"/>
Class II 1902	<input type="checkbox"/>	Class II 1910	<input type="checkbox"/>
Class III 1903	<input type="checkbox"/>	Class III 1911	<input type="checkbox"/>
Class IV 1904	<input type="checkbox"/>	Class IV 1912	<input type="checkbox"/>
Class V 1917	<input type="checkbox"/>		

- Name: First _____ Middle _____ Last _____ Generation (GR, JR, III) _____
- Social Security Number * _____
- Date of Birth _____
- Home Address _____
 City, State, Zip Code _____
- Business Name _____
- Business Address _____
 City, State, Zip Code _____
- Which address should be used for mailing information?
 Examination results will be mailed approximately 4 to 6 weeks following the examination.
 Home Address
 Business Address
 E-mail Address
- Telephone & Facsimile Numbers
 Telephone () - () - () - () - () - ()
 Facsimile () - () - () - () - () - ()
 Beeper/Cellular _____
- Date of your last examination _____
 Requested examination location
 Northern Virginia - Reston
 Central Virginia - Richmond
 Tidewater Virginia - Suffolk
 Western Virginia - Roanoke
 Southwest Virginia - Abingdon
- Signature _____ Date _____

* State law requires every applicant for a license, certificate, registration or other authorization to engage in a business, trade, profession or occupation issued by the Commonwealth to provide a social security number or a contractor number issued by the Virginia Department of Motor Vehicles.

STATE ID NO.	DATE	FEES	CLASS OF FEE	LICENSE NUMBER	EXPIRES DATE
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SPR005 (9/01/98)

Board for Waterworks & Wastewater Works Operators-RE-EXAM APP

Commonwealth of Virginia
 Department of Professional and Occupational Regulation
 3600 West Broad Street
 Post Office Box 11066
 Richmond, Virginia 23230-1066
 (804) 367-8505



**Board for Waterworks and Wastewater Works Operators
 APPLICATION FOR TRAINING COURSE APPROVAL**

To obtain board approval of your waterworks and wastewater works operator specialized training course, your application package must include the following documentation:

- * Audio-visual support materials
- * Course and instructor evaluation form
- * Course objectives
- * Course outline (hour by hour detail including breaks)
- * Course reference materials
- * Handouts
- * Instructor resume(s)
- * Sample of Certificate of Course Completion

- Name of Training Provider/Sponsor _____
- Federal Employer Identification Number _____
- Street Address (PO Box not accepted) _____
 City, State, Zip Code _____
- E-mail Address _____
- Telephone & Facsimile Numbers
 Telephone () - () - () - () - () - ()
 Facsimile () - () - () - () - () - ()
 Beeper/Cellular _____
- Name & Title of Contact Person _____
- Course Title _____
- Will this course be offered more than one time?
 No Scheduled course date _____
 Yes Scheduled course dates _____
- Location(s) where course will be taught. _____
- Instructor(s) Information

Instructor's Name	Title	Employer	Phone Number
			() - () - () - ()
			() - () - () - ()
			() - () - () - ()

11. How will satisfactory completion of this course be determined? Please check all that apply.

- Attendance
 Examination
 Site visits
 Skill demonstrations
 Other

12. Contact Person's Signature _____ Date _____

SPR005 (9/01/98)

Board for Waterworks & Wastewater Works Operators-CRS APP

COMMONWEALTH OF VIRGINIA

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
 500 West Broad Street, Richmond, Virginia 23203-6017
 Telephone: (804) 367-6500 TDD: (804) 367-9753
 http://www.dpor.virginia.gov

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS
 DEPUTY DIRECTORS
 DOUGLAS W. MCCARTNEY
 JAMES L. GREFF
 STEPHEN L. ARTHUR
 Administrators & Trainers

Exam Location Request Form

The Board will assign each applicant a permanent examination location. Listed below are the five locations at which the Board normally administers the examination.

By filing this form with the Board, you have an opportunity to choose your location. If you do not return this form, you will be assigned a location based on your residence and business address 30 days prior to each examination.

Applicant's Name: _____ Last: _____ Middle: _____ Generation (SR, JR, III, etc.): _____

Social Security Number: _____ - _____ - _____

Requested Location: _____

Northern Virginia - Leesburg
 Central Virginia - Richmond
 Tidewater Virginia - Suffolk
 Western Virginia - Roanoke
 Southwest Virginia - Abingdon

Do you require any special assistance or consideration due to a special physical, mental or emotional condition?
 No Yes If yes, provide information on your condition and the assistance you require.

* State law requires every applicant for a license, certificate, registration or other authorization to engage in a business, trade, profession or occupation issued by the Commonwealth to provide a social security number or a control number issued by the Virginia Department of Motor Vehicles.

REG-004 (11/15/00) Board for Waterworks & Wastewater Works Operations/EQOM/LOC

Virginia DPOR
 DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

Board for Waterworks and Wastewater Works Operators
EXPERIENCE VERIFICATION FORM

Commonwealth of Virginia
 Department of Professional and Occupational Regulation
 3620 West Broad Street
 Post Office Box 110566
 Richmond, Virginia 23230-1066
 (804) 367-6505

Instructions:
 Section A: To be completed by the applicant.
 Section B: To be completed by the supervisor or other individual in responsible charge at the employer listed in Section A #5. Additional forms should be completed for each employer verifying your experience.

Section A

1. Name: First _____ Middle _____ Last _____ Generation (SR, JR, III, etc.): _____

2. Social Security Number: _____ - _____ - _____

3. Job Title: _____

4. Category/Classification Number: _____

5. Employer-Facility Name: _____

6. Employer's Facility Address: _____

7. Facility Category: I II III IV V Other

8. Facility Class: Full-time Part-time

9. Employment Status: _____ Total Hours _____ Total Days _____

10. Dates of Employment: From _____ To _____

11. Describe your daily job activities in detail. Include how much time you spend at the site, your duties, and how many individuals you supervise. Inadequate job descriptions will be returned for additional information.

12. Supervisor's Name: _____

13. Supervisor's Title: _____

Section B

Is the applicant employed during the time period indicated in Section A #10?
 Yes No If no, when was the applicant employed? _____

Is the job description in Section A #11 accurate and complete?
 Yes No If no, what changes should be made?

Certifying Supervisor's Name & Title: _____ Date: _____

Certifying Supervisor's License Number: _____

Certifying Supervisor's Signature: _____

* State law requires every applicant for a license, certificate, registration or other authorization to engage in a business, trade, profession or occupation issued by the Commonwealth to provide a social security number or a control number issued by the Virginia Department of Motor Vehicles.

REG-004 (01/99) Board for Waterworks & Wastewater Works Operations/EQ FORM

VA.R. Doc. No. R00-74; Filed September 15, 2000, 11:57 p.m.

Final Regulations

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly granted any of the powers of a court of record.

The distribution lists that are referenced as Appendices A through E in the following order 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 23219, from 8:15 a.m. to 5 p.m., Monday through Friday; or may be viewed at the Virginia Code Commission, General Assembly Building, 2nd Floor, 910 Capitol Street, Richmond, Virginia 23219, during regular office hours.

Title of Regulation: 20 VAC 5-309-10 et seq. Rules for Enforcement of the Underground Utility Damage Prevention Act (amending 20 VAC 5-309-10, 20 VAC 5-309-20, [20 VAC 5-309-30] 20 VAC 5-309-40, 20 VAC 5-309-50, and 20 VAC 5-309-70; adding 20 VAC 5-309-15 and 20 VAC 5-309-90 through [~~20 VAC 5-309-230~~ 20 VAC 5-309-220]).

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

Effective Date: July 1, 2001.

Summary:

The regulations prescribe, among other things (i) the procedures by which the commission will enforce the Underground Utility Damage Prevention Act, Chapter 10.3 (§ 56-265.14 et seq.) of Title 56 of the Code of Virginia; (ii) when mandatory reports of damages to underground utility lines must be made by nongas operators; (iii) procedures to be followed during emergency excavations; (iv) marking requirements for underground utility lines; (v) data required to be provided by operators to the notification centers; (vi) excavators' responsibilities to avoid damage, dislocating, or disturbances of underground utility lines; (vii) requirements for trenchless excavation; (viii) excavator responsibilities to protect and preserve markings; (ix) the obligation of excavators to verify that they are at the correct excavation location and to check for unmarked utility lines; and (x) the operator's responsibilities to maintain accurate installation records.

The rules have been revised from those published as part of the commission's June 4, 2000, order in this docket to eliminate the rule governing data requests to the Division of Energy Regulation and to clarify the rule governing an operator's responsibilities to maintain accurate installation records.

Agency Contact: Massoud Tahamtani, Assistant Director, Division of Energy Regulation, State Corporation Commission, P.O. Box 1197, 1300 E. Main Street, Richmond, Virginia 23218, telephone (804) 371-9264. Copying charges are \$1.00 for the first two pages, and \$.50 for each page thereafter.

AT RICHMOND, DECEMBER 19, 2000

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. PUE990786

Ex Parte: In the matter concerning Rules implementing the State Corporation Commission's authority to enforce the Underground Utility Damage Prevention Act

ORDER ADOPTING RULES

This Order promulgates revised rules for the enforcement of the Underground Utility Damage Prevention Act. Section 56-265.30 of the Code of Virginia permits the Commission to promulgate any rules "necessary to implement the Commission's authority to enforce" the Underground Utility Damage Prevention Act ("Act"), Chapter 10.3 (§ 56-265.14 *et seq.*) of Title 56 of the Code of Virginia. Pursuant to the statutory authority granted to it by the Act in 1994, the Commission adopted Rules for the Enforcement of the Underground Utility Damage Prevention Act.¹ Since the initial Rules were promulgated in 1994, the Commission, the Commission Staff ("Staff") and the Advisory Committee² have gained considerable experience in the enforcement of the Act, and, through interaction with operators, excavators, the notification centers, contract locators, and the public recognize that the Commission's current Rules should be revised, expanded, and clarified. In light of the time that has elapsed since the adoption of the Rules to Enforce the Underground Utility Damage Prevention Act in 1994, a full review of these rules is timely.

To facilitate the review of currently effective Rules, we entered an Order Establishing Investigation and Inviting Comments on December 13, 1999. This Order solicited public comment on a number of issues (Appendix A to the Order) relating to the enforcement of the Act. It directed the Division of Energy Regulation ("Division") to publish notice of the rulemaking in newspapers of general circulation throughout the Commonwealth and to forward the Order and

¹ See *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter of adopting rules necessary to implement the State Corporation Commission's authority to enforce the Underground Utility Damage Prevention Act*, Case No. PUE940071, 1994 S.C.C. Ann. Rept. 422 (Order Adopting Procedural Rules for Enforcement of the Underground Utility Damage Prevention Act, Dec. 20, 1994).

² The Advisory Committee ("Committee") includes representatives from the following stakeholder groups: utility operators, notification centers, localities, the Virginia Department of Transportation, Board of Contractors, underground line locators, and the Commission Staff. It is established pursuant to § 56-265.31 of the Code of Virginia, and charged with, among other things, reviewing reports of probable violations of the Act and making recommendations on enforcement actions to the Commission.

accompanying list of issues to the Virginia Register of Regulations for publication. The Order instructed Staff to file a report summarizing and responding to the comments filed in this proceeding and to propose appropriate revisions, as necessary, to the Rules that were adopted in 1994.

Fifty-nine comments were filed in response to the December 13, 1999, Order Establishing Investigation and Inviting Comments.

The Staff filed its report on May 26, 2000. This report summarized the filed comments, discussed the development of the underground utility damage prevention program in Virginia, reviewed national "best practices" relative to damage prevention, and proposed specific revisions and additions to the Rules for Enforcement of the Underground Utility Damage Prevention Act adopted in Case No. PUE940071.

On June 14, 2000, the Commission entered an Order inviting interested persons to file comments or request a hearing on the Staff's proposed rules for enforcement of the Act that were attached to that Order. Comments and requests for hearing were to be filed on or before August 1, 2000.

The following parties filed comments concerning the proposed rules: the Associated General Contractors of Virginia, Inc. ("AGC"); Campbell County Utilities and Service Authority ("Campbell County"); Roanoke Gas Company ("Roanoke"); Washington Gas Light Company ("WGL"); Kentucky Utilities Company d/b/a Old Dominion Company ("KU"); Columbia Gas Transmission ("Columbia Transmission"); Virginia Electric and Power Company ("Virginia Power"); Old Dominion Electric Cooperative and its member distribution cooperatives,³ together with the Virginia, Maryland & Delaware Association of Electric Cooperatives (collectively, "the Cooperatives"); Columbia Gas of Virginia, Inc. ("Columbia") and Virginia Natural Gas, Inc. ("VNG"); Virginia Telecommunications Industry Association ("VTIA"); Appalachian Power Company, d/b/a American Electric Power ("AEP-VA"); Cox Virginia Telecom, Inc. ("Cox"); Virginia Cable Telecommunications Association ("Cable Association"); Fairfax County Public Works ("Fairfax County"); Capco Construction Corporation ("Capco"); and RCN Telecom Services of Virginia, Inc. ("RCN").

Virginia Power requested a hearing on the proposed Rules as part of its comments. Accordingly, by Order of September 5, 2000, we scheduled a public hearing for October 23, 2000, and directed the Staff to prefile its direct testimony on September 22, 2000, and parties to file either testimony or statements adopting their comments on October 2, 2000. Parties planning to adopt their comments and not planning to add any additional comments or testimony were directed to notify the Commission in writing of such intent on or before September 29, 2000. The Staff was

further ordered to prefile its rebuttal testimony, if any, by October 13, 2000.

A public hearing on the proposed Rules was convened before the Commission on October 23, 2000. The following counsel noted an appearance at the proceeding: Kenneth Tawney, Esquire, counsel for Columbia Transmission; Senator Malfourd Trumbo, counsel for Roanoke; Kodwo Gharthey-Tagoe, Esquire, counsel for Virginia Power; Robert L. Omberg, Esquire, counsel for the Cooperatives; Robert M. Gillespie, Esquire, counsel for Cox; Richard D. Gary, Esquire, counsel for the VTIA; Michael J. Quinan, Esquire, counsel for AEP-VA; James S. Copenhaver, Esquire, counsel for Columbia; Robert B. Evans, Esquire, counsel for WGL; and Sherry H. Bridewell, Esquire, counsel for the Commission Staff. Proof of notice of the rulemaking was received into the record as Exhibit A.

By agreement of counsel, all testimony was admitted into the record without cross-examination. Thomas A. Dick, appearing on behalf of the Municipal Electric Power Association of Virginia ("MEPAV"); Gray Pruitt, an excavator; and Jim Stepahin, Executive Director of the Heavy Construction Contractors Association in Northern Virginia, testified as public witnesses. At the conclusion of the proceeding, counsel offered closing statements based on the evidence received in this matter.

NOW THE COMMISSION, upon consideration of the evidentiary record, closing statements, and the applicable law, is of the opinion and finds that the Rules set out in Attachment A attached hereto should be adopted, effective July 1, 2001. Our revisions to the Rules have been made after consideration of the proposals from the Staff and parties to this proceeding, including the views expressed in closing statements. We commend the parties for their cooperation in narrowing the issues that remain for deliberation. While we will not comment on all of the revisions we have made to the Rules originally proposed by the Staff, we will address the following provisions of the amended Rules that, in our opinion, merit additional discussion: Rules 20 VAC 5-309-40 B;⁴ 90; 100; 110; 120; 140 1; 160 K; 160 L; 160 M, N, and O; 170; 200 6; and 210. Minor revisions have been made to certain of the other rules in Attachment A to prepare the rules for publication in the Virginia Register of Regulations.

Rule 40 B - Role of the Advisory Committee

In his rebuttal testimony (Exhibit MT-2), Staff witness Tahamtani proposes revisions to Rule 40 B to address concerns expressed by a number of parties, including Columbia and AEP-VA, about the role of the Advisory Committee in instances where Staff, but not the Advisory Committee, recommends enforcement action against a probable violator. In closing statements presented at the October 23, 2000, hearing, Columbia and Cox agree that the

³ A & N Electric Cooperative, BARC Electric Cooperative, Central Virginia Electric Cooperative, Community Electric Cooperative, Craig-Botetourt Electric Cooperative, Mecklenburg Electric Cooperative, Northern Neck Electric Cooperative, Inc., Northern Virginia Electric Cooperative, Powell Valley Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative, and Southside Electric Cooperative.

⁴ For ease of reference, the designation "20 VAC 5-309" will be dropped. The reader should assume this is the title and chapter for all the rules discussed in this Order unless specifically stated otherwise. For example, when the Order refers to "Rule 40 B", it should be understood that this refers to 20 VAC 5-309-40 B.

Final Regulations

Rule set out on page 2 of Exhibit MT-2 properly balances the role of the Staff and the Advisory Committee in making recommendations to the Commission concerning enforcement actions for alleged violations of the Act. Cox cautions that "there is still a hazard that something will be lost in the translation when the Staff places the Committee's recommendations and reasons" before the Commission. Oct. 23, 2000 Transcript at 114-15.⁵

We agree that Rule 40 B, as revised in witness Tahamtani's rebuttal testimony, properly balances the role of the Staff and the Committee when disagreement exists between the two on whether enforcement action should be undertaken. The Advisory Committee serves as a valuable resource to the Commission, and we commend the Committee for its careful and conscientious review of alleged violations of the Act. Consequently, we will adopt Rule 40 B as it appears in Staff witness Tahamtani's rebuttal testimony. It is our expectation that the Division will fully and fairly relate to us the reasons for the Committee's recommendations in circumstances where the Staff and the Advisory Committee disagree over whether enforcement action should be taken against a probable violator.

Rule 90 - Data Requests to the Division of Energy Regulation

Proposed Staff Rule 90 provides that:

Upon request, the Division shall provide to any person information or documents gathered by the Division in the course of the Division's investigation of probable violations under the Underground Utility Damage Prevention Act. Such documents or information may include a list of violations and probable violations of the Act, provided that such information or documents has (sic) not been determined by the Commission or a court of competent jurisdiction to be confidential or privileged.

The Staff supports its proposed Rule, relying on § 12.1-19 2 of the Code of Virginia⁶ and the public manner in which Advisory Committee meetings are conducted.

AGC's comments urge the Commission to consider carefully the confidentiality of information gathered as part of investigations of probable violations of the Act. Virginia Power asserts that Rule 90 is unnecessary and would discourage the open exchange of information necessary to the Staff's investigative and administrative role under the Act. Virginia Power further contends that liberal dissemination of

information gathered in investigations of alleged violations, as proposed in the Rule, could result in abuse by insurance carriers, plaintiff's attorneys, and other persons. KU maintains that the information disseminated pursuant to the Rule should be limited to information or documents addressing actual violations of the Act.

After considering the comments of the parties, we recognize that the candid exchange of information is a valuable tool in the investigation of probable violations and enforcement of the Act. Advisory Committee meetings are and have been open to the public. Information is, and has been, openly and freely exchanged at these meetings. The current informal practices governing access to information gathered in the enforcement of the Act do not appear to impose any undue burdens on stakeholders in the enforcement process. Consequently, we will permit these informal practices to continue, unfettered by the adoption of a rule.

Rule 100 - Mandatory Reporting Requirements for Electric Operators

Proposed Rule 100 (new Rule 90)⁷ requires electric operators to report to the Division all probable violations of the Act, involving damages affecting 1,000 or more customer meters or resulting in injury requiring in-patient hospitalization or resulting in a fatality. AEP-VA, Virginia Power, and the Cooperatives support this Rule.

MEPAV asserts, however, that there is no clear authority for the Commission to mandate reporting by municipalities as proposed in the Rule. It argues that cities and towns are governmental bodies with a strong public safety obligation to its citizens and sufficient statutory authority to deal with those who violate the Act in a way that is greater than that provided to the Commission under the Act. Tr. at 7-8. It recommends that Rule 100 be amended to exclude cities and towns from the reporting requirement. Tr. at 7.

"Operator" is defined in § 56-265.15 of the Code of Virginia to mean "any person who owns, furnishes or transports materials or services by means of a utility line." Section 56-265.15 defines "person" to include municipalities or other political subdivisions, governmental units, departments, or agencies. Thus, municipalities and towns are clearly "operators" for purposes of the Act. Rule 100 properly applies to "operators" inasmuch as the Act itself does not distinguish between municipal and non-municipal operators in terms of an operator's responsibilities under the Act. Section 56-265.32 A expressly prohibits the Commission from imposing civil penalties on any county, city, or town but requires it to inform counties, cities and towns of reports of alleged violations of the Act, involving the locality. Therefore, in the spirit of § 56-265.32 A, should the Commission become aware that a locality has not complied with any of the attached applicable rules, including Rule 100 (new Rule 90),

⁵ Hereafter all references to the transcript will be to "Tr. at ____".

⁶ Section 12.1-19 2 of the Code of Virginia provides in pertinent part:
The clerk of the Commission shall:

2. Subject to the supervision and control of the Commission, have custody of and preserve all of the records, documents, papers, and files of the Commission, or which may be filed before it in any complaint, proceeding, contest, or controversy, and such records, documents, papers, and files shall be open to public examination in the office of the clerk to the same extent as the records and files of the courts of this Commonwealth; . . .

⁷ Because the preceding Rule governing data requests (old Rule 90) has been eliminated, the remaining rules have been renumbered sequentially. The renumbered rules are referenced in the Order as "new Rule ____".

we will direct our Staff to inform the locality of its noncompliance with that Rule.

We encourage operators of electric systems that are cities, towns, and counties to report damages to their underground utility lines affecting 1,000 or more customer meters, resulting in an injury requiring in-patient hospitalization, or resulting in a fatality. In this way, the Commission's authority to enforce the provisions of the Act may complement the actions taken by localities as they seek to protect the citizens of the Commonwealth and minimize damage to their underground utility lines.

Rule 110 - Mandatory Reporting Requirements for Telecommunications Operators

Rule 110 (new Rule 100) would require all telecommunications operators to report all probable violations of the Act to the Division, involving damages to outside facilities affecting 1,000 or more access lines. As noted in Witness Tahamtani's direct testimony, the "1,000 or more access line" threshold was selected since significant outages of this magnitude are now reported to the Commission's Division of Communications. Exhibit MT-1 at 14-15. Roanoke and WGL support mandatory reporting requirements for all nongas operators, including telecommunications operators.

The VTIA, however, opposes new Rule 100 and asserts that the telecommunications industry has spent millions of dollars installing "self-healing rings" which, when damaged, divert telecommunications traffic in another direction. Tr. at 117-18. It is concerned that telecommunications companies may be in technical violation of the Rule proposed by the Division because these companies may not know that an outage affecting service has occurred. *Id.*

In order to enforce the requirements of the Act, the Commission must be made aware that a probable violation has occurred. The Rule, as proposed, assumes that a telecommunications operator knows that damage to underground lines affecting 1,000 or more access lines has occurred. We find the mandatory reporting threshold of damage to outside plant facilities affecting 1,000 access lines reasonable and consistent with the existing service criteria applied to local exchange telephone companies. We will therefore adopt Rule 110 (new Rule 100), with the minor modification set out below:

All operators of telecommunication utility lines shall report all probable violations of the Act to the division involving damages to [underground] outside facilities affecting 1,000 or more access lines.⁸

⁸ Brackets indicate language added to a rule. Language that has been deleted from a rule is struck through. ⁸ See *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter of adopting rules necessary to implement the State Corporation Commission's authority to enforce the Underground Utility Damage Prevention Act*, Case No. PUE940071, 1994 S.C.C. Ann. Rept. 422 (Order Adopting Procedural Rules for Enforcement of the Underground Utility Damage Prevention Act, Dec. 20, 1994).

Rule 120 - Mandatory Reporting for Cable TV and Cable TV/telecommunications Operators

AGC comments that Rule 120 (new Rule 110) should be eliminated because damages to cable television lines do not constitute safety hazards. July 31, 2000, Comments of AGC at 1. As noted by the Staff and other case participants, cable operators participate in the Emergency Alert System used to notify the public of national emergencies. Indeed, the cable industry has often asserted that cable service is an "essential public service." See Exhibit MT-1 at 16; Exhibit ALP-14 at 2-3. Tr. at 96-97.

Cable television operator Cox filed comments supporting reporting requirements applicable to damages affecting 1,000 or more customers rather than access lines. Exhibit CVT-9 at 4. Rule 120, as noted in Exhibit MT-1 at 16-17, refers to customers and not access lines as the necessary threshold for reporting damages to the Division. We will adopt Rule 120 (new Rule 110) as proposed by the Staff in Exhibit MT-1 and supported by Cox, with the minor modification set out below:

All operators of cable TV and cable TV ~~and~~ telecommunication utility lines shall report all probable violations of the Act to the division involving damages to [underground] outside plant facilities [~~impacting~~ affecting] 1,000 or more customers.

Reporting Requirements for Jurisdictional Gas Utilities

Presently, jurisdictional gas utilities report all probable violations involving their underground lines to the Division. Columbia has requested that the Division enter into a dialogue with it and other jurisdictional natural gas utilities regarding possible exemptions to the policy requiring that jurisdictional gas utilities report all probable violations. It urges the Commission not to adopt a rule on this issue at this time. Tr. at 132-133.

In its rebuttal testimony (Exhibit MT-2 at 7), the Staff has noted that it is prepared to begin a dialogue with the gas industry to determine if the current reporting requirement may be altered without compromising public safety. It has also asked that we refrain from adopting a rule relative to reporting requirements for gas operators in this proceeding to allow this dialogue to take place. Although it is not a gas utility that is subject to the Commission's pipeline safety regulation, Columbia Transmission has also requested that it be permitted to participate in this dialogue. Tr. at 92.

We note that excavation damage to pipelines remains one of the primary causes of pipeline accidents. Preventing or significantly decreasing these damages reduces the risk of loss of life, injuries, property damage, environmental damage, economic loss, and service outages. Exhibit MT-1 at 18. Damages per 1,000 tickets to gas pipelines have declined by 47 percent since 1996. Exhibit MT-1 at 19. The primary reason for the reduction of incidents involving gas pipelines is the reporting of all damages and the enforcement of the Act relative to these incidents. Exhibit MT-1 at 19 and Exhibit RCI-12 at 3.

Final Regulations

The informal Staff policy requiring reporting of all damages by jurisdictional gas utilities has obviously been successful because of the cooperation of all involved. We are comfortable with permitting Staff and jurisdictional gas pipelines to discuss potential modifications to this policy. Therefore, consistent with the Staff's and Columbia's requests, we will not adopt a formal rule governing the reporting requirements by the gas utilities. Instead, we will direct the Staff to initiate a dialogue with jurisdictional gas utilities concerning the merits of creating exemptions to the reporting requirements now applied to these utilities. It is our expectation that the Staff will report to us the outcome of this dialogue. Columbia Transmission may also participate in these discussions.

Rule 140 1 - Dispatched Personnel Responding to an Emergency

Proposed Rule 140 1 (new Rule 130 1) would require dispatched crews responding to an emergency to notify the notification center and request an emergency locate of underground utility lines at the earliest reasonable opportunity. AEP-VA comments that the Rule should be clarified to permit the excavator or operator to notify the notification center since personnel actually responding to the emergency are likely to be focused upon the exigencies of emergency circumstances. Exhibit TLM-11 at 8. Staff responds that those who dispatch personnel or crews to an emergency may not be familiar with the field procedures used to respond properly to the emergency situation at hand, e.g., the extent of excavation. They may not be able to describe the circumstances existing in the field fully to the notification center. Exhibit MT-2 at 4-5. We agree with the Staff and will adopt Rule 140 1 (new Rule 130 1) as set out in Exhibit MT-1.

Rule 160 K - Validity of Markings

Rule 160 K (new Rule 150 K) defines how long markings shall be valid at an excavation site. Pursuant to this Rule, markings indicating the horizontal location of an underground utility line shall be valid for 15 days from the time of notification by the excavator or until one of the following events occurs: (1) the markings become faded, illegible, or destroyed; or (2) if the markings were placed in response to an emergency, and the emergency condition has ceased to exist.

Cox comments that this Rule should not be read contrary to § 56-265.17 C. Cox maintains that, consistent with that statute, the excavator should be responsible for calling the notification center for remarking. Tr. at 115.

This Rule will not be applied contrary to § 56-265.17 C, and is consistent with the requirements of that statute. Section 56-265.17 C provides that an excavator's notification is valid for fifteen working days from the time of notification to the notification center, and provides for the remarking of lines if they become illegible. Rule 160 K (new Rule 150 K) accomplishes the same result. The Rule is also consistent with § 56-265.24 B of the Code of Virginia, which requires an excavator to request remarking if markings become illegible

due to time, weather, construction, or other causes. Most importantly, the Rule supplies an administrative detail clarifying when markings made during an emergency condition become invalid. To clarify this portion of new Rule 150 K, we will revise it as follows:

2. [~~An~~ If the markings were placed in response to an] emergency [~~, condition~~ and the emergency condition ~~no longer exists~~ has ceased to exist].

Rule 160 L - Requiring Indication of the Number of Utility Lines of the Same Type Within the Same Trench

As originally proposed, Rule 160 L (new Rule 150 L) requires that if a single mark is used to mark utility lines of the same type within a trench, the number of utility lines within the trench must be indicated at every other mark. AEP-VA and other commentators observe that operator records are not always sufficiently detailed to permit the operator to know how many lines are in a trench. See, e.g., Exhibit TLM-11 at 10-11. MEPAV comments that locating techniques are not accurate enough to identify the number of utility lines within a trench. Tr. at 9.

In its rebuttal testimony, Staff addresses these commentators' concerns by revising Rule 160 L to provide

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

Exhibit MT-2 at 5 (emphasis added). This revision will require operators whose records identify the number of utility lines in a trench to provide that information to excavators. It also accommodates the concerns of those operators that currently do not maintain such information.

We agree that this Rule is an appropriate means of permitting operators to fulfill their duty under § 56-265.19 A of the Code of Virginia to mark the approximate horizontal location of their underground utility lines. We will adopt the Staff's proposed Rule as set forth in Exhibit MT-2. We recognize the limitations of locating equipment, but believe that this additional information, if available in an operators' records, should be communicated to the excavator through the markings made during locates as a further means of avoiding damage to multiple underground utility lines of the same type installed in the same trench.

Additionally, as part of the requirements of Rule 210 (new Rule 200), the operators must maintain information relative to the number of utility lines of the same type in the same trench. This information shall be used to comply with Rule 160 L (new Rule 150 L) for underground utility lines installed after July 1, 2001.

Rule 160 M - The Requirement that Operators or Contract Locators Use All Information Necessary to Mark Their Facilities Accurately

As set out in Exhibit MT-1, Rule 160 M (new Rule 150 M) requires operators or their contract locators to use all information necessary to mark their underground facilities accurately. Exhibit MT-1 at 33-34. Columbia and VNG support this Rule. *Id.* Virginia Power contends that this Rule is unnecessary and too vague. Tr. at 105-106.

We disagree with Virginia Power. As Exhibit CGV/VNG-13 recognizes, a prudent locator should be expected to utilize all information necessary under the circumstances to assure accurate markings. The appropriate records to be relied upon will vary with the locator's experience, type of underground material to be located, extent and availability of various records, and vintage of maps. In conjunction with the locator's expertise, use of records, documents, and other information should enable the locator to locate accurately underground utility lines under the circumstances that may be unique to each locate. We will adopt Rule 160 M (new Rule 150 M) as set out on page 34 of Exhibit MT-1.

Rule 160 N - Requirements to Mark Underground Pipelines Greater than 12 Inches in Diameter

Proposed Rule 160 N (new Rule 150 N) provides that markings of an underground pipeline greater than 12 inches in nominal outside dimension shall include the size of the pipeline in inches at every other mark. This Rule would provide additional information to an excavator about an underground pipeline so that the excavator may properly protect and support the pipeline during excavation. Gray Pruitt, an excavator, testified that this rule should be revised to require identification of pipeline circumferences greater than two to four inches in diameter. Tr. at 27-28. It is unnecessary to refine the rule in the way Mr. Pruitt proposes at this time.

Section 56-265.24 A requires excavators to take all reasonable steps necessary to properly protect, support, and backfill underground utility lines. This protection, set out in § 56-265.24 A, includes, among other things, hand digging "starting two feet of either side of the extremities of the underground utility line".

The proposed rule requires locators to provide the excavator with the size in inches of large pipelines, *i.e.*, those 12 inches and greater in diameter, so that the excavator clearly understands how far to hand dig on either side of the marked utility line. We find that the Rule's marking requirement for a pipeline twelve inches or greater in dimension properly recognizes the need for protection of a large pipeline and avoids the imposition of unnecessary burdens on operators or contract locators marking underground pipelines. We will therefore adopt Rule 160 N (new Rule 150 N) as the Staff has proposed.

Rule 160 O - Horizontal Marking Symbols for Duct Structures and Conduit Systems

Proposed Rule 160 O (new Rule 150 O) requires that duct structures and conduit systems be marked in accordance with the horizontal marking standards for such structures and systems set out in the National Utility Locating Contractors Association's ("NULCA") Standards. Mr. Pruitt, an excavator, testified that national standards such as these are not as "detailed" as they need to be. Tr. at 30-31.

The recognition of NULCA as an appropriate national standard merits further discussion. In 1998, Congress directed the Federal Department of Transportation to identify "best practices" for the prevention of damage to underground facilities and to assure their safe operation. For nearly a year, experts, representing multiple industries, community interests, government, and professional representatives worked in teams to identify, define, and agree on the best practices governing all aspects of damage prevention. The integrated report on this effort, "Common Ground, Study of One-Call Systems and Damage Prevention Best Practices" ("Common Ground Report") was issued on June 30, 1999, and contains 130 damage prevention "best practices". May 26, 2000, Staff Report at 13-14, attached as Appendix 1 to Exhibit MT-1 (hereafter "Staff Report"). The Common Ground Report recognizes NULCA standards as an appropriate model to reduce confusion for excavators working in multiple regions across the country. Staff Report at 25. Indeed, the Staff and others submitting comments note that additional marking standards should help to reduce damage to underground utility lines by reducing errors associated with misinterpreting locate marks. *Id.* at 25. While there is room to argue about any set of standards, as Mr. Pruitt does, the additional detail provided by the NULCA standards will be useful. We believe these standards represent the industry's best efforts to date in this area. We will, therefore, adopt proposed Rule 160 O (new Rule 150 O).

Rule 170 - Clear Evidence of a Utility Line

Proposed Rule 170 (new Rule 160) provides that "clear evidence" as used in § 56-265.24 C of the Act includes, but is not limited to, visual evidence of an unmarked utility line, knowledge of the presence of a utility line, or faded marks from previous marking of a utility line. Public witness Pruitt asserts that the Rule requires clarification to ensure that a private irrigation line does not constitute clear evidence. He maintains that the Rule needs to be more specific on what constitutes "clear evidence". Tr. at 36-37.

Section 56-265.24 C of the Act provides that

If, upon arrival at the site of a proposed excavation, the excavator observes clear evidence of the presence of an unmarked utility line in the area of the proposed excavation, the excavator shall not begin excavating until an additional call is made to the notification center for the area pursuant to subsection B of § 56-265.17.

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The Rule proposed by Staff provides guidance as to what may constitute "clear evidence" of an unmarked utility line, i.e., visual evidence, knowledge of the presence of a utility line, or faded marks from the previous marking of a utility line. The language "shall include, but is not limited to" indicates that there may be other means of "clear evidence". The exact nature of what should be considered "clear evidence" will be fact dependent. Visual evidence of an unmarked utility line may include for a telephone utility, a telephone pedestal; and for a gas utility, a meter or permanent gas marker. The evidence must be observable. In addition, knowledge by an excavator that there is a utility line present or the presence of faded locating marks are sufficient, in our judgment, to require an excavator to make the additional call to the notification center required by § 56-265.24 C of the Code of Virginia. We will therefore adopt Rule 170 (new Rule 160) as set out in Exhibit MT-1.

Rule 200 6 - Hand Digging During Trenchless Excavation

Rule 200 6 (new Rule 190 6) requires an excavator conducting trenchless excavation to expose all utility lines that will be in the bore path by hand digging to establish the utility lines' location prior to commencing a bore. For parallel type bores, the Rule requires excavators to expose the utility line by hand digging at reasonable distances along the bore path.

The Cooperatives have expressed concern in their testimony that they may not be permitted to hand dig in environmentally sensitive areas. See Exhibit AW-7 at 5-6. Tr. at 110-111. The Staff has agreed to work with the Cooperatives to address their concerns about hand digging in wetlands and other protected areas when trenchless excavation techniques are employed. Tr. at 71.

We recognize that other regulatory authorities may issue permits prescribing how an excavation may be conducted by an excavator. Section 56-265.29 provides that compliance with the Underground Utility Damage Prevention Act will not exempt any operator or person from the operation of any other applicable laws, ordinances, regulations or rules of governmental and regulatory authorities having jurisdiction, "unless exempted by such other laws, ordinances, regulations, or rules as a result of" compliance with the Act. Some regulatory bodies with jurisdiction over excavation may not permit the use of hand digging during trenchless excavation. Consequently, we will revise Rule 200 6, now renumbered as 190 6, as follows:

[Unless prohibited by other laws, ordinances, regulations, or rules of governmental and regulatory authorities having jurisdiction,] the excavator shall expose all utility lines which will be in the bore path by hand digging to establish [the underground utility line's] location prior to commencing bore. For a parallel type bore, [unless prohibited by other laws, ordinances, regulations, or rules of governmental and regulatory authorities having jurisdiction,] the excavator shall expose the

utility line by hand digging at reasonable distances along the bore path;

Rule 210 - Maintenance of Reasonably Accurate Installation Records by Operators

Proposed Rule 210 (new Rule 200) would require all operators to maintain reasonably accurate installation records for all lines other than service lines installed after July 1, 2001. The wording of this Rule created confusion as to which utilities must maintain records. See e.g., Exhibit VP-6 at 12; Exhibit CGV/VNG-13 at 15-16. We believe the Rule should require operators to maintain reasonably accurate installation records for all underground utility lines installed after July 1, 2001, other than underground electric, telecommunications, cable TV, water, and sewer service lines to single family dwelling units.

Reasonably accurate installation records should assist operators and their contract locators as they mark the approximate horizontal locations of their underground lines, thus fulfilling the duties imposed upon them by § 56-265.19 A of the Code of Virginia. We agree that the Rule proposed by the Staff could be misconstrued. Therefore, we will revise Rule 210 (new Rule 200) as follows to require operators to maintain reasonably accurate installation records for all underground utility lines installed after July 1, 2001, with the exception of electric, telecommunications, cable TV, water, and sewer service lines to single family dwelling units:

[~~For all new underground utility lines, excluding electric, phone, cable TV, water and sewer service lines, installed after July 1, 2001,~~ the] operator shall prepare and maintain reasonably accurate installation records of the [underground] utility [~~line~~ lines installed after July 1, 2001., other than electric, telecommunications, cable TV, water, and sewer underground service lines connected to a single family dwelling unit. ~~These records shall indicate if all or a portion of the utility line has been abandoned.~~]

Accordingly, IT IS ORDERED THAT:

(1) The Rules for Enforcement of the Underground Utility Damage Prevention Act, appended hereto as Attachment A, are hereby adopted, effective July 1, 2001.

(2) A copy of this Order and the Rules adopted herein shall be forwarded to the Virginia Register of Regulations for publication.

(3) There being nothing further to be done in this matter, this case shall be dismissed from the Commission's docket of active proceedings, and the papers filed herein shall be placed in the Commission's file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: all the certificated water and sewer utilities subject to the Commission's regulation as set out in Appendix A hereto; all of the telephone companies regulated by the Commission as set out in Appendix B hereto; all of Virginia's certificated interexchange carriers as set out in

Appendix C hereto; all the certificated gas companies as set out in Appendix D hereto; all the certificated electric cooperatives and electric companies as set out in Appendix E hereto; John F. Dudley, Senior Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, Second Floor, Richmond, Virginia 23219; Cynthia Oakey, Esquire, and Karen L. Bell, Esquire, Virginia Electric and Power Company, One James River Plaza, P.O. Box 26666, Richmond, Virginia 23261; Kodwo Ghartey-Tagoe, Esquire, McGuire, Woods, Battle & Bothe, L.L.P., One James Center, 901 East Cary Street, Richmond, Virginia 23219-4030; Gray Pruitt, 2415 Grenoble Road, Richmond, Virginia 23294; Thomas A. Dick, 1108 East Main Street, Suite 904, Richmond, Virginia 23219; Honorable Malfourd W. Trumbo, P.O. Box 448, Fincastle, Virginia 24090; Richard L. Hall, Vice President, W. R. Hall, Inc., 1214 Bill Street, Norfolk, Virginia 23518; Kevin Robertson, Miss Utility Supervisor, Capco Construction Corp., 15433 Farm Creek Drive, Woodbridge, Virginia 22191; Larry Friedman, Sr. Vice President, Long Fence Company, Inc., P.O. Box 220429, Chantilly, Virginia 20153-0429; Robert L. Kent, President, J. L. Kent & Sons, Inc., P.O. Box 69, Spotsylvania, Virginia 22553; John F. Gionfriddo, Town of Vienna, 127 Center Street South, Vienna, Virginia 22180; R. Lance Terpenney, Town Manager, and Wayne O. Nelson, P.E., Director of Engineering and Public Works, Town of Christiansburg, 100 East Main Street, Christiansburg, Virginia 24073-3029; Mike Bowersox, Ben Lewis Plumbing, Inc. U.S.A., 20220 Frederick Road, P.O. Box 93, Germantown, Maryland 20875-0093; John G. Whitacre, Engineer, Frederick County Sanitation Authority, P.O. Box 1877, Winchester, Virginia 22604-8377; Jim Stepahin, Executive Director, Virginia Utility & Heavy Contractors Council, 9303 Center Street, Suite 109, Manassas, Virginia 20110-5547; Peter S. Fortin, P.E., Engineering Manager, City of Norfolk, Department of Utilities, P.O. Box 1080, Norfolk, Virginia 23501; Russell L. Quesenberry, Safety Officer, S. W. Rodgers Co., Inc., P.O. Box 398, Gainesville, Virginia 20156; William M. Hackworth, City Attorney, and Gary E. Tegenkamp, Assistant City Attorney, City of Roanoke, Dept. of Utility Line Services, 464 Municipal Building, 215 Church Avenue, S.W., Roanoke, Virginia 24011; Bettie L. Cahoon, Construction Inspector Supervisor, City of Chesapeake, Department of Public Utilities, P.O. Box 15225, Chesapeake, Virginia 23328; Steven C. Vermillion, Executive Director, Associated General Contractors of Virginia, Inc., P.O. Box 5700, Glen Allen, Virginia 23058-5700; Christopher J. Dolena, Engineer II, City of Virginia Beach, Department of Public Utilities, 3500 Dam Neck Road, Virginia Beach, Virginia 23456; Rodney W. McClain, General Manager, Stoney Creek Sanitary District, Toms Brook-Maurertown Sanitary District, P.O. Box 42, Basye, Virginia 22810; Richard P. Chaffin, Secretary-Treasurer, May Bros., Inc., General Contractors, P.O. Box 165, Forest, Virginia 24551; Stanley C. Feuerberg, General Manager, Northern Virginia Electric Cooperative, P.O. Box 2710, Manassas, Virginia 20108-2710; John E. Moore, Director of Public Works, Town of Herndon, P.O. Box 427, Herndon, Virginia 20172-0427; Louis S. Kiger, F. L. Showalter, Inc., 2900 Fulks Street, P.O. Box 11525, Lynchburg, Virginia 24506-1525; Margaret L. Palmer, Vice President, Guy C. Eavers Excavating Corp., P.O. Box 124,

Staunton, Virginia 24402-0124; John Garrett, Engineering Field Supervisor/Utilities Locator, Planning & Engineering Dept., Town of Blacksburg, 300 South Main Street, Blacksburg, Virginia 24060; Frank Boxley, Jr., President, Central & Southwest Virginia Utility Contractors Association, P.O. Box 5772, Roanoke, Virginia 24012; J. David Austin, State Utility Engineer, Department of Transportation, Commonwealth of Virginia, 1401 East Broad Street, Richmond, Virginia 23219-2000; Philip J. Bray, Esquire, The Potomac Edison Company, d/b/a Allegheny Power, 10435 Downsview Pike, Hagerstown, Maryland 21740-1766; Robert B. Evans, Esquire, Washington Gas Light Company, 1100 H Street, N.W., Washington, D.C. 20080; Stephen T. Theis, Corporate Director of Safety, Health & Environment, Henkels & McCoy, Inc., P.O. Box 950, Blue Bell, Pennsylvania 19422-0900; Michael J. Quinan, Esquire, Woods, Rogers & Hazlegrove, P.L.L.C., 823 East Main Street, Suite 1200, Richmond, Virginia 23219; Terry St. Clair, Jack St. Clair, Inc., P.O. Box 12961, Roanoke, Virginia 24030; Robert A. Omberg, Esquire, LeClair Ryan, P.C., Innsbrook Corporate Center, 4201 Dominion Boulevard, Suite 200, Glen Allen, Virginia 23060; Richard D. Gary, Esquire, Hunton & Williams, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074; Dennis Showalter, Utiliquest, L.L.C., 4390 Forbes Boulevard, Suite 100, Lanham, Maryland 20726; James B. Wright, Senior Attorney, Sprint, 14111 Capital Boulevard, Wake Forest, North Carolina 27587-5900; Larry G. Conner, Sr., P.E., President, Aaron J. Conner General Contractor, Inc., P.O. Box 6068, Roanoke, Virginia 24017; Charlie C. Crowder, Jr., General Manager, Fairfax County Water Authority, 8570 Executive Park Avenue, P.O. Box 1500, Merrifield, Virginia 22116-0815; M. Daniel Kuhns, Jr., Distribution Superintendent, Newport News Waterworks, 2600 Washington Avenue, Newport News, Virginia 23607; Tim Rioux, Area Manager, UTILX Corporation, 8391 Euclid Avenue, Unit D, Manassas, Virginia 20111; James S. Copenhaver, Senior Attorney, Columbia Gas of Virginia, Inc., P.O. Box 35674, Richmond, Virginia 23235-0674; Marvin McClain, Jr., Director of Quality Management, Utiliquest, L.L.C., 11781 Lee Jackson Highway, Fairfax, Virginia 22033; Diane L. Freeman, Administrative Assistant, Atlas Plumbing & Mechanical, L.L.C., 9095 Owens Court, Manassas Park, Virginia 20111; David R. Conner, President, E. C. Pace Company, Inc., P.O. Box 12685, Roanoke, Virginia 24027; Gary L. Robertson, Utility Director, County of Roanoke Utility Department, 1206 Kessler Mill Road, Salem, Virginia 24153; Diana L. McColgan, Utility Coordinator, Arlington County, Department of Public Works, Engineering Division, #1 Courthouse Plaza, Suite 813, 2100 Clarendon Boulevard, Arlington, Virginia 22201; Ronald L. Willhite, Director, Regulatory Affairs, LG&E Energy Corp., 220 West Main Street, P.O. Box 32030, Louisville, Kentucky 40232; Moe M. Wadda, P.E., Civil Engineer, City of Falls Church, Department of Environmental Services, Harry E. Wells Building, 300 Park Avenue, Falls Church, Virginia 22046-3332; Philip Monger, Director of Public Works, City of Harrisonburg, Water & Sewer Operations Center, 2155 Beery Road, Harrisonburg, Virginia 22801; Ifty Khan, Director, Fairfax County Wastewater Collection Division, 6000 Fred's Oak Road, Burke, Virginia 22015; Roy E. Covington, P.E., Assistant Director of Utilities, Chesterfield County, P.O. Box 40, Chesterfield, Virginia

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23832-0040; Dustin L. Harbaugh, Risk Manager, Flippo Construction Company, Inc., General Contractors, 3820 Penn-Belt Place, Forestville, Maryland 20747; Kenneth E. Tawney, Esquire, Columbia Gas Transmission Corp., P.O. Box 1273, Charleston, West Virginia 25325-1273; Jeffrey M. Karp, Esquire, and Heather A. Thomas, Esquire, Swidler Berlin Shereff Friedman, L.L.P., 3000 K Street, N.W., Suite 300, Washington, D.C. 20007; Robert M. Gillespie, Esquire, Christian & Barton, L.L.P., 909 East Main Street, Suite 1200, Richmond, Virginia 23219-3095; Theodore F. Adams, III, Esquire, and Matthew B. Kirsner, Esquire, Mays & Valentine, L.L.P., P.O. Box 1122, Richmond, Virginia 23218; Dale P. Moore, Director of Rates, Regulatory Affairs, and Financial Planning, Roanoke Gas Company, P.O. Box 13007, Roanoke, Virginia 24030; John Berrettini, Accurate Locating, Inc., 1327 Ashton Road, Suite 101, Hanover, Maryland 21076; Danny Hylton, Operations Supervisor, Campbell County Utilities and Service Authority, 20644 Timberlake Road, Lynchburg, Virginia 24502; John R. Kern, Vice President of Operations, General Excavation Inc., 9745 James Madison Highway, Warrenton, Virginia 20187; Jack Watts, Loss Control, Contracting Enterprises Incorporated, P.O. Box 13725, Roanoke, Virginia 24036; and the Commission's Office of General Counsel and Division of Energy Regulation.

PART I. GENERAL PROVISIONS.

20 VAC 5-309-10. Purpose.

These rules delineate procedures used by the State Corporation Commission (commission) to enforce the provisions of Chapter 10.3 (§ 56-265.15 et seq.) of Title 56 of the Code of Virginia, also known as the Underground Utility Damage Prevention Act (Act). *The rules further detail certain standards and requirements for the protection of underground utility lines to facilitate the commission's enforcement of the Act.*

20 VAC 5-309-15. Definitions.

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

~~["Abandoned utility line" means an underground utility line that is no longer used in connection with storage or conveyance of products listed under the definition of "utility line" in § 56-265.15 of the Code of Virginia and is physically disconnected from the operating system.]~~

"Division" means the State Corporation Commission's Division of Energy Regulation.

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

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

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

PART II. ENFORCEMENT.

20 VAC 5-309-20. Report of probable violations.

Any person, as defined in § 56-265.15 of the Code of Virginia, may report probable violations of Chapter 10.3 of Title 56 to the State Corporation Commission, Division of Energy Regulation (division). The reports of probable violations may be submitted to the division in writing, by phone, *fax*, *e-mail*, or in person. All written reports of probable violations shall include the information requested on SCC Form DPA-1, if available. All probable violations shall be reported to the division within 30 days of a person becoming aware of the circumstances constituting the probable violations.

[20 VAC 5-309-30. Commission staff investigation of probable violations.

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

20 VAC 5-309-40. Advisory Committee review of probable violations.

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

1. Issue a warning letter to the person alleged to have committed the violation (respondent);
2. Issue an information letter to a county, city, or town alleged to have committed the violation;
- ~~2-~~ 3. Enter settlement negotiations with the respondent. Upon reaching agreement on settlement terms, the division shall present the proposed settlement to the commission for final acceptance or rejection; or
- ~~3-~~ 4. Request the issuance of a "Rule to Show Cause" order pursuant to Rule 4:11 (5 VAC 5-10-230) of the commission's Rules of Practice and Procedure.

B. In the event that the staff but not the committee recommends enforcement action [*against a probable violator*], [*notwithstanding 20 VAC 5-309-40 A 3,*] the staff may [~~request the commission to issue not pursue a settlement with the probable violator absent the initiation of~~] a rule to show cause [~~to make a final determination regarding any alleged violations of the Act, and shall, as part of its~~]

~~request for enforcement action~~, . As part of its request for a rule to show cause, staff shall] report to the commission the committee's [~~recommendation~~ recommendations] and reason or reasons [~~therefor for the committee's recommendations~~].

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

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

20 VAC 5-309-50. Commission action.

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

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

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

20 VAC 5-309-70. Petition for reconsideration.

Any person subject to an order from the Virginia State Corporation Commission may petition the commission for reconsideration of its order under Rule 8:9 (5 VAC 5-10-610) of the commission's Rules of Practice and Procedure.

~~[PART III.
ADMINISTRATIVE RULES.~~

~~**20 VAC 5-309-90. Data request to the division.**~~

~~Upon request, the division shall provide to any person information or documents gathered by the division in the course of the division's investigation of probable violations under the Underground Utility Damage Prevention Act. Such documents or information may include a list of violations and probable violations of the Act, provided that such information or documents have not been determined by the commission or a court of competent jurisdiction to be confidential or privileged.]~~

PART [~~IV~~. III.]
REPORTING PROBABLE VIOLATIONS OF THE ACT BY
NONGAS OPERATORS.

20 VAC 5-309- [400 90]. Reporting requirements for electric operators.

All operators of electric utility lines shall report all probable violations of the Act to the division involving damages [~~impacting~~ affecting] 1,000 or more customer meters and/or resulting in injury [requiring in-patient hospitalization] or fatality.

20 VAC 5-309- [440 100]. Reporting requirements for telecommunication operators.

All operators of telecommunication utility lines shall report all probable violations of the Act to the division involving damages to [underground] outside facilities affecting 1,000 or more access lines.

20 VAC 5-309- [420 110]. Reporting requirements for cable TV and cable TV [~~and~~] telecommunication operators.

All operators of cable TV and cable TV [~~and~~] telecommunication utility lines shall report all probable violations of the Act to the division involving damages to [underground] outside plant facilities [~~impacting~~ affecting] 1,000 or more customers.

20 VAC 5-309- [430 120]. Reporting requirements for water [~~and or~~] sewer operators.

All operators of water [~~and or~~] sewer utility lines shall report all probable violations of the Act to the division involving damages resulting in an injury [requiring in-patient hospitalization], fatality, or having a serious impact on public health.

PART [~~IV~~. IV.]
EMERGENCY EXCAVATION OR DEMOLITION.

20 VAC 5-309- [440 130]. Emergency excavation or demolition.

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

1. Dispatched personnel or crews responding to the emergency shall notify the notification center and request an emergency locate of the underground utility lines at the earliest reasonable opportunity;
2. After arriving at the site, the person responding to the emergency shall determine the need for immediate action;
3. If immediate action is required, all reasonable precautions shall be taken to protect the underground utility lines. These actions shall include, but are not limited to, the following:

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- a. Conduct a thorough site assessment to determine the location of underground utility lines;
- b. Locate the underground utility lines with acceptable equipment, if possible;
- c. Hand dig around the underground utility lines;
- d. Directly notify the utility line operators, if necessary; and
- e. If prudent, the excavator shall wait for marking of the excavation area by operators having utility lines in the excavation area.

PART [~~V.~~ V.]
MARKING OF UNDERGROUND UTILITY LINES.

[~~20 VAC 5-309-150. Temporary~~ 20 VAC 5-309-140.]
Marking of underground utility lines.

All [~~temporary~~] markings shall, at a minimum, conform with the requirements of this [~~article~~ part].

20 VAC 5-309- [~~150~~ 150]. General marking requirements.

A. All markings shall be suitable for their intended purpose for a period of 15 working days from the time of notification by the excavator to the notification center.

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

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

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

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

F. [~~All~~] Valve box covers [that are at grade and visible] shall be marked with the appropriate color in accordance with the Act.

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

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

I. All markings shall extend [~~at least 10 feet~~, if practical, a reasonable distance] beyond the boundaries of the specific location of the proposed work as detailed on the ticket.

[~~J. In an area designated as a historic location, stakes or flags with appropriate color coding shall be used instead of paint, to the extent practical.~~

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

[~~L. K.~~] Markings shall be valid for an excavation site for 15 days from the time of notification by the excavator or until one of the following events occurs:

1. The markings become faded, illegible or destroyed; or
2. [If the markings were placed in response to] an emergency [and the emergency] condition [~~no longer exists~~ has ceased to exist].

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

[~~N. M.~~] Operators or their contract locators shall use all [available] information [~~, including but not limited to the installation records of utility lines,~~ necessary] to mark their facilities accurately.

[~~O. N.~~] Markings of an underground pipeline greater than 12 inches in nominal outside dimension shall include the size in inches at every other mark.

[~~P. O.~~] Duct structures and conduit systems shall be marked in accordance with the horizontal marking symbols for such structures and conduit systems set out in the National Utility Locating Contractor's Association's ("NULCA's") standards.

[~~Q. P.~~] In areas where marks would be destroyed, offset markings shall be made using horizontal marking symbols by NULCA's marking standards.

PART [~~VI.~~ VI.]
SUPPLEMENTAL RULES, ETC.

20 VAC 5-309- [~~160~~ 160]. Clear evidence.

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

20 VAC 5-309- [~~170~~ 170]. Notification center data update.

Every operator required by § 56-265.16:1 A of the Code of Virginia to join the notification center shall provide [~~an update of the data relative to the operators' utility lines~~] to the notification center [data that will allow proper notification to the operator of excavation near the operator's utility lines. This data shall be provided] as soon as possible, but no later than 15 days after [~~a utility line is installed~~ an operator installs or acquires underground facilities it had not previously identified to the notification center. In the case of sanitary sewers, the data shall be provided no later than 15 days after the utility line is accepted by the operator].

20 VAC 5-309- [490 180]. Excavator's responsibilities to avoid damage, dislocating or disturbances of utility lines.

Any person excavating around underground utility lines shall take all reasonable steps to protect such utility lines. These steps shall include, but are not limited to, the following:

1. The excavator shall plan the excavation in such a manner to avoid damage to, and minimize interference with, underground utility lines in and near the construction area;
2. The excavator shall maintain a reasonable clearance, to include the width of the utility line, if known, plus 24 inches, between the marked or staked location of an underground utility line and the cutting edge or point of any mechanized equipment, considering the known limit of control of the cutting edge or point to avoid damage to the utility line; and
3. The excavator shall provide proper support for underground utility lines during excavation activities. During backfill operations, the excavator shall use [~~proper~~ the same or similar] backfill material [that was originally around the utility line], ensure there is proper compaction around the utility line, [~~and~~] protect all [~~utility warning tapes and~~] tracer wires [, and protect or replace warning tapes].

20 VAC 5-309- [200 190]. Requirement for trenchless excavation.

Any person conducting trenchless excavation shall take all reasonable steps necessary to protect and support underground utility lines. These steps shall include, but are not limited to the following:

1. The excavator should verify that all utility lines in the area are marked;
2. The excavator shall ensure that bore equipment stakes are installed at a safe distance from marked utility lines;
3. When grounding rods are used, the excavator shall ensure that they are installed at a safe distance (at least 24 inches plus the width of the utility line, if known) away from the marked or staked location of utility lines;
4. The excavator shall ensure sufficient clearance is maintained between the bore path and any underground utility lines during pullback;
5. The excavator shall give special consideration to water and sewer systems within the area that cannot be located accurately;
6. [Unless prohibited by other laws, ordinances, regulations, or rules of governmental and regulatory authorities having jurisdiction,] the excavator shall expose all utility lines which will be in the bore path by hand digging to establish [the underground utility line's] location prior to commencing bore. For a parallel type bore, [unless prohibited by other laws, ordinances, regulations, or rules of governmental and regulatory authorities having jurisdiction,] the excavator shall

expose the utility line by hand digging at reasonable distances along the bore path;

7. The excavator shall ensure the drill head locating device is functioning properly and within its specification;

8. The excavator shall visually check the drill head as it passes through potholes, entrances, and exit pits; and

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

20 VAC 5-309- [240 200]. Operator's responsibilities to maintain accurate records.

[~~For all new underground utility lines, excluding electric, phone, cable TV, water and sewer service lines, installed after July 1, 2001,] The operator shall prepare and maintain reasonably accurate installation records of the [underground] utility [line. These records shall indicate if all or a portion of the utility line has been abandoned lines installed after July 1, 2001, other than electric, telecommunications, cable TV, water, and sewer underground service lines connected to a single family dwelling unit].~~

20 VAC 5-309- [220 210]. Responsibility to protect and preserve marking.

Every excavator [~~should~~ shall] be responsible to reasonably protect and preserve markings from the time the excavator begins work until markings are no longer required for the proper and safe excavation near the utility line.

20 VAC 5-309- [230 220]. Excavator site inspection.

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

VA.R. Doc. No. R00-211; Filed December 20, 2000, 11:35 a.m.



EMERGENCY REGULATIONS

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Title of Regulation: 9 VAC 25-650-10 et seq. Closure Plans and Demonstration of Financial Capability.

Statutory Authority: §§ 62.1-44.15 and 62.1-44.18:3 of the Code of Virginia.

Effective Dates: December 14, 2000 through December 13, 2001.

Preamble:

This emergency regulation is necessary because § 62.1-44.18:3 requires that the State Water Control Board promulgate regulations necessary to carry out the provisions of Chapter 69 of the 2000 Acts of Assembly to be effective within 280 days of its enactment. The regulation is not otherwise exempt under the provisions of § 9-6.14:4.1 C (4) of the Code of Virginia.

The emergency regulation will require that persons operating a privately owned sewerage system or sewerage treatment works that discharges more than 1,000 gallons per day and less than 40,000 gallons per day obtain a Virginia Pollution Discharge Elimination System Permit. The regulation will require any owner of such a facility to file with the State Water Control Board a plan to abate, control, prevent, remove, or contain any substantial or imminent threat to public health or the environment that is reasonably likely to occur if such facility ceases operations. The regulation will also require the plan to include a demonstration of financial capability to implement the plan.

The Department of Environmental Quality intends to promulgate a permanent regulation to replace the proposed emergency regulation.

Substance:

Ceasing operation of a sewage treatment facility that discharges to state waters creates the concern that substantial and imminent threat to public health or the environment is caused. When a sewage treatment facility is privately owned, there exists the threat of cessation of operations at the facility resulting from abandonment such that it would be reasonable to expect that operation at the facility will not be resumed by the owner. When such a facility treats domestic waste generated by private residences, abatement of flow is often impractical or impossible, as this may require the condemnation of property and eviction of homeowners or residents. Therefore, untreated sewage may be directly discharged to state waters, resulting in a substantial threat to public health or the environment. To protect public health and the environment, it has become necessary to continue operation of such facilities and/or connect to a publicly owned sewage treatment works using public funds.

To ensure there is a plan in place for continued operation in the event the owner of a privately owned sewage treatment plant ceases operation of the facility and to reduce the potential for continued operation of such system using public funds, the State Water Control Board has determined that closure plans and demonstration of financial capability to implement the plans are appropriate.

The Department of Environmental Quality intends to promulgate a permanent regulation to replace the proposed emergency regulation. Potential issues that may need to be addressed as a permanent final regulation is developed include the following:

1. Section 62.1-44.15:1.1 of the Code of Virginia has identical requirements as § 62.1-44.18:3 regarding closure plans and demonstration of financial capability. Therefore, the final regulation is anticipated to incorporate the requirements of this section. However, § 62.1-44.18:3, under which this emergency regulation is being promulgated, is very specific as to the population of facilities to which the law applies. Section 62.1-44.15:1.1 is not specific at all in this regard. The issue is therefore to what facilities other than as specified in § 62.1-44.18:3 the regulation will apply.

2. The instruments by which the State Water Control Board can require closure plans and demonstration of financial assurance differ under § 62.1-44.15:1.1 and § 62.1-44.18:3 of the Code of Virginia. Section 62.1-44.15:1.1 limits the board to the issuance of special orders in compliance with the Administrative Process Act, whereas § 62.1-44.18:3 does not. This issue is that if the population of facilities to which the regulation applies is expanded beyond those specified in § 62.1-44.18:3, this disparity will need to be addressed in the regulation.

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CHAPTER 650.

CLOSURE PLANS AND DEMONSTRATION OF FINANCIAL CAPABILITY.

PART I.
DEFINITIONS.

9 VAC 25-650-10. Definitions.

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

“Active Life” means the length of time a facility discharges to state waters or is subject to regulation under the Virginia Pollution Discharge Elimination System (VPDES) Regulation (9 VAC 25-31-10 et seq.).

“Anniversary date” means the date of issuance of a financial mechanism.

“Assets” means all existing and all probable future economic benefits obtained or controlled by a particular entity.

“Board” means the State Water Control Board.

“Ceases operations” means to cease conducting the normal operation of a facility under circumstances in which it is reasonable to expect that such operation will not be resumed by the owner at the facility. The term shall not include the sale or transfer of a facility in the ordinary course of business or a permit transfer in accordance with board regulations. Ceases operations shall include, but not be limited to, the following:

1. Bankruptcy or insolvency of the owner or operator or suspension or revocation of a charter or license to operate the facility or to furnish sewer services;
2. Failure to operate and maintain a facility in accordance with the Operations and Maintenance Manual for the facility, such that a substantial or imminent threat to public health or the environment is created;
3. Failure to comply with the requirements of the VPDES permit for the facility, such that a substantial or imminent threat to public health or the environment is created;
4. Notification of termination of service by a utility providing electricity or other resource essential to the normal operation of the facility.

“Closure plan” means a plan to abate, control, remove, or contain any substantial or imminent threat to public health or the environment that is reasonably likely to occur if a facility ceases operations.

“Current closure cost estimate” means the most recent of the estimates prepared in accordance with the requirements of this regulation.

“Current dollars” means the figure represented by the total of the cost estimate multiplied by the current annual inflation factor.

“CWA” means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, 33 U.S.C. 1251 et seq.

“Department” means the Virginia Department of Environmental Quality.

“Director” means the Director of the Department of Environmental Quality, or an authorized representative.

“Discharge” when used without qualification means the discharge of a pollutant.

“Facility” means any VPDES point source or treatment works treating domestic sewage or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the VPDES program.

“Facility closure plan” means a facility closure plan prepared in accordance with 9 VAC 5-585-140.

“Local government” means a municipality, county, city, town, authority, commission, school board, political

subdivision of a state, or other special purpose local government which provides essential services.

“Owner or operator” means the owner or operator of any facility or activity subject to regulation under the VPDES program.

“Parent corporation” means a corporation that directly owns at least 50 percent 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 an authorization, certificate, license, or equivalent control document issued by the board to implement the requirements of this regulation. For the purposes of this chapter, permit includes coverage issued under a VPDES general permit. Permit does not include any permit which has not yet been the subject of final board action, such as a draft permit or proposed permit.

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

“Point source” means any discernable, defined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft, from which pollutants may be discharged. This term does not include return flows from irrigated agricultural or agricultural storm water run off.

“Pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

1. Sewage from vessels; or
2. Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well if the well used either to facilitate production or for disposal purposes is approved by the board, and if the board determines that the injection or disposal will not result in the degradation of ground or surface water resources.

“Pollution” means such alteration of the physical, chemical or biological properties of any state waters as will, or is likely to, create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or for other reasonable uses; provided that: i) an alteration of the physical, chemical, or biological property of state waters, or a discharge or a deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with

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such alteration of, or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the board, are "pollution" for the terms and purposes of this chapter.

"Private residence" means any building, buildings, or part of a building owned by a private entity which serves as a permanent residence where sewage is generated. "Private residences" include, but are not limited to, single family homes, town houses, duplexes, condominiums, mobile homes, and apartments. Private residences do not include hotels, motels, seasonal camps, and industrial facilities that do not also serve as residences.

"Privately owned sewerage system" means any device or system which is:

1. Used in the treatment (including recycling and reclamation) of sewage. This definition includes sewers, pipes, pump stations or other conveyances only if they convey wastewater to a privately-owned sewerage system; and
2. Not owned by the United States, a state, or a local government.

"Publicly owned treatment works (POTW)" means any device or system used in the treatment (including recycling and reclamation) of sewage which is owned by a state or municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

"Sewage" means the water-carried human wastes from residences, buildings, industrial establishments or other places together with such industrial wastes, underground, surface, storm, or other water, as may be present.

"Special order" means an order of the board issued under the provisions of § 62.1-44.15:1.1 of the Code of Virginia, which requires that an owner file with the board a plan to abate, control, prevent, remove, or contain a substantial and imminent threat to public health or the environment that is likely to occur if the facility ceases operations.

"State waters" means all water, on the surface and under the ground, wholly, or partially within, or bordering the Commonwealth, or within its jurisdiction, including wetlands.

"Treatment works" means any devices and systems used in the storage, treatment, or reclamation of sewage or combinations of sewage and industrial wastes, including pumping, power, and other equipment, and their appurtenances, and any works, including land that will be an integral part of the treatment process, or is used for an integral part of the treatment process, or is used for ultimate disposal of residues resulting from such treatment.

"Virginia Pollution Discharge Elimination System (VPDES) Permit" means a document issued by the board pursuant to 9 VAC 25-31-10 et seq., authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters and the use or disposal of

sewage sludge. Under the approved state program, a VPDES permit is equivalent to an NPDES permit.

PART II.

GENERAL INFORMATION AND LEGISLATIVE AUTHORITY.

9 VAC 25-650-20. Purpose.

The purpose of this regulation is to require owners or operators of certain privately owned sewerage systems that treat sewage from private residences to file with the board a plan to abate, control, remove, or contain any substantial or imminent threat to public health or the environment that is reasonably likely to occur if the facility ceases operations. For the purposes of this regulation, such a plan shall be termed a closure plan. Such plan shall also include the demonstration of financial assurance required in 9 VAC 25-650-30 to implement the plan.

9 VAC 25-650-30. Applicability.

A. This regulation applies to all persons who own or operate permitted or unpermitted privately owned sewerage systems subject to the Virginia Pollution Discharge Elimination System (VPDES) Regulation (9 VAC 25-31-10 et seq.) that treat sewage generated by private residences and discharge more than 1,000 gallons per day and less than 40,000 gallons per day to state waters.

B. Owners or operators of privately owned sewerage systems must demonstrate annually financial assurance in accordance with the requirements of this chapter.

9 VAC 25-650-40. Suspensions and revocations.

Failure to submit a closure plan or to provide or maintain adequate financial assurance in accordance with this regulation shall be a basis for termination of a VPDES permit. Termination of a VPDES permit shall be in accordance with 9 VAC 25-31-410.

PART III.

CLOSURE PLANS AND FINANCIAL ASSURANCE CRITERIA.

9 VAC 25-650-50. General purpose and scope.

A. Any owner or operator of a privately owned sewerage system subject to this regulation shall file with the board a plan to abate, control, prevent, remove, or contain any substantial threat to public health or the environment that is reasonably likely to occur if such facility ceases operations. Such plan shall be referred to as a closure plan. The closure plan shall include a detailed written estimate of the cost to implement the plan. The owner or operator shall file a closure plan and associated cost estimate for the facility with the board concurrently with the owner's or operator's first VPDES permit application for issuance or reissuance of the facility submitted subsequent to the effective date of this regulation. Closure plans and cost estimates filed with the board shall be reviewed by the owner or operator and updated as necessary at the end of each VPDES permit term. Revised and updated closure plans shall be filed with the board concurrently with each subsequent VPDES permit application.

B. Closure plans and cost estimates shall be subject to review by the board. The owner or operator shall be notified

in writing within 60 days of receipt of the closure plan and cost estimate of the board's decision to approve or disapprove the proposed closure plan and cost estimate. If the board disapproves the closure plan or cost estimate, the board shall notify the owner or operator as to what measures, if any, the owner or operator may take to secure approval. If the owner or operator submits a closure plan that is not approvable by the board, the board may, at its sole discretion, promulgate a closure plan and cost estimate for the facility, subject to appeal by the owner or operator only as to content under the Virginia Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

C. Closure plans shall be implemented when the board has determined, at its sole discretion, that the facility has ceased operations. The owner or operator of a privately owned facility shall notify the board within 24 hours of the facility ceasing operations as defined in this chapter.

D. In order to assure that the costs associated with protecting public health and the environment are to be recovered from the owner or operator in the event that a facility subject to this regulation ceases operation, the owner or operator of such facility shall submit to the board one or a combination of the financial assurance mechanisms described in this chapter. Financial assurance mechanisms shall be in amounts calculated as the inflation-adjusted cost estimate using the procedures set forth in this chapter.

E. In the case of new facilities or increased discharges from existing facilities, the selected financial assurance mechanism or mechanisms shall be filed with the board no less than 90 days prior to the discharge or increased discharge to state waters. In the case of existing facilities with a valid VPDES permit on the effective date of this regulation, the financial assurance mechanism or mechanisms shall be filed with the board within 10 days of the date of board approval of the closure plan and cost estimate.

F. The board may disapprove the proposed evidence of financial assurance if the mechanism or mechanisms submitted do not adequately assure that funds will be available for implementation of the closure plan. The owner or operator shall be notified in writing of the board's decision to approve or disapprove the proposed mechanism. If the board disapproves the financial assurance mechanism, the board shall notify the owner or operator as to what measures, if any, the owner or operator may take to secure approval.

G. Closure plans, cost estimates, and financial assurance mechanisms shall remain in place for the active life of the facility and for the time required to complete the activities specified in the closure plan.

9 VAC 25-650-60. Closure plans.

A. The owner or operator of a privately owned sewerage system subject to this regulation shall provide a closure plan which abates, controls, prevents, removes, or contains any substantial threat to public health or the environment that is reasonably likely to occur if the facility ceases operations.

B. Closure plans shall be submitted to the board by the owner or operator concurrently with its application for a VPDES permit for the facility or as otherwise required by

special order. Existing closure plans filed with the board shall be reviewed by the owner or operator, modified as necessary, and resubmitted to the board concurrently with an owner's or operator's application for a reissued VPDES permit. The submittal shall include a written summary of the results of the review and any modifications to the closure plan.

C. Closure plans shall consist of one or more of the following:

1. The cessation of the discharge of pollutants to state waters, followed by closure of the facility in accordance with the facility closure plan prepared in accordance with 9 VAC 5-585-140 and approved by the Virginia Department of Health. Where no Virginia Department of Health approved facility closure plan exists, one shall be prepared in accordance with the requirements of 9 VAC 5-585-140 and submitted as part of the closure plan.

2. Connection to an alternative treatment works, such as a POTW, including rerouting of all influent flow, followed by closure of the VPDES permitted facility in accordance with the facility closure plan prepared in accordance with 9 VAC 5-585-140 and approved by the Virginia Department of Health. Where no Virginia Department of Health approved facility closure plan exists, one shall be prepared in accordance with the requirements of 9 VAC 5-585-140 and submitted as part of the closure plan.

3. Transfer of the facility to a local government, provided that written agreement of the receiving local government to obtain a VPDES permit and operate and maintain the facility in accordance with the VPDES permit and all other applicable laws and regulations, is obtained and included as part of the closure plan.

4. Contract operation of the facility for a period of five (5) years after initial implementation of the closure plan, regardless of the date of initial implementation. Contract operation shall be by a named private company or other entity licensed to operate wastewater treatment facilities in the Commonwealth of Virginia and licensed to operate the specific facility to which the closure plan applies. A closure plan consisting of or including contract operation shall include a written, signed contract executed by the contract operator, contingent only upon approval of the closure plan by the board. The contract shall specify that the contract operator shall operate the facility for the term of the contract in accordance with the terms and conditions of the owner's or operator's VPDES permit for the facility. The contract shall also specify that the contract operator shall assume, without exception, all responsibilities and liabilities associated with the facility's discharge to state waters and with the owner's or operator's VPDES permit in the event the closure plan is implemented. The owner or operator of the facility and the owner of the private company or entity contracted to operate the facility under the closure plan shall not be the same person.

5. An alternative plan which will abate, control, prevent, remove, or contain any substantial or imminent threat to public health or the environment that is reasonably likely to occur if the facility ceases operations.

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D. Closure plans shall designate and authorize a named third party who, upon notification by the board, will implement the closure plan. The closure plan shall include written agreement by the named third party, bearing that person's signature, to implement the closure plan in accordance with the requirements of the closure plan for the duration of the VPDES permit term. Where the closure plan includes contract operation of the facility, the named third party may be the contract operator.

E. Closure plans may not consist of the transfer or sale of the facility to another private entity which also would be subject to this regulation.

9 VAC 25-650-70. Transfer of ownership or permit.

A. If a privately owned sewerage system subject to this regulation is to be sold or if ownership is to be transferred in the normal course of business, the owner or operator shall notify the board, in written form through certified mail, of such intended sale or transfer at least 120 days prior to such sale or transfer. The notification shall provide the full name, address, and telephone number of the person to whom the facility is to be sold or transferred.

B. Changes in the ownership or operational control of a facility may be made as a minor modification with prior written approval of the board in accordance with 9 VAC 25-31-380, except as otherwise provided in this section. The new owner or operator shall submit a revised permit application no later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees shall also be submitted to the board. When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of this chapter until the new owner or operator has demonstrated that he is complying with the requirements of this chapter. The new owner or operator shall demonstrate compliance with this chapter within six months of the date of the change of ownership or operational control of the facility. Upon demonstration to the board by the new owner or operator of compliance with this chapter, the board shall notify the old owner or operator that he or she no longer needs to comply with this chapter as of the date of demonstration.

9 VAC 25-650-80. Cost estimate for facility closure.

A. The owner or operator shall prepare for approval by the board, a detailed written estimate of the cost of implementing the closure plan. The written cost estimate shall be submitted concurrently with the closure plan.

1. The closure plan cost estimate shall equal the full cost of implementation of the closure plan in current dollars.
2. The closure cost estimate shall be based on and include the costs to the owner or operator of hiring a third party to implement the closure plan. The third party may not be either a parent corporation or 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 wastes, facility structures or equipment, land or other facility assets at the time of implementation of the closure plan.

B. During the term of the VPDES permit, the owner or operator shall adjust the implementation cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial assurance mechanism used to comply with this chapter. The adjustment may be made by recalculating the implementation cost 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 implementation cost estimate by the latest inflation factor. The result is the adjusted implementation cost estimate.
2. Subsequent adjustments are made by multiplying the latest adjusted cost estimate by the latest inflation factor.

C. During the term of the VPDES permit, the owner or operator shall revise the implementation cost estimate concurrently with any revision made to the closure plan which increases the implementation cost. The revised implementation cost estimate shall be adjusted for inflation as specified in subdivisions B 1 and B 2 of this section.

D. The owner or operator may reduce the implementation cost estimate and the amount of financial assurance provided under this section if it can be demonstrated that the cost estimate exceeds the cost of implementation of the closure plan. The owner or operator shall obtain the approval of the board prior to reducing the amount of financial assurance.

E. The owner or operator shall provide continuous coverage to implement the closure plan until released from financial assurance requirements by the board.

9 VAC 25-650-90. Trust agreement.

A. An owner or operator of a privately owned sewerage system may satisfy the requirements of this chapter by establishing an irrevocable trust fund that conforms to the requirements of this section and by submitting an originally signed duplicate of the trust agreement to the board. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or the State Corporation Commission (Commonwealth of Virginia).

B. The trust agreement shall be irrevocable and shall continue until terminated at the written direction of the grantor, the trustee, and the board, or by the trustee and the board if the grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final administration expenses, shall be delivered to the grantor. The wording of the trust agreement shall be identical to the wording as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. The trust agreement shall be accompanied by a formal letter of certification of acknowledgement as specified in this chapter.

TRUST AGREEMENT

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of

state] [insert "corporation," "partnership," "association," "proprietorship," or appropriate identification of type of entity], the "Grantor," and [name of corporate trustee], [insert "Incorporated in the state of _____" or "a national bank"], the "Trustee."

Whereas, the State Water Control Board of the Commonwealth of Virginia has established certain regulations applicable to the Grantor, requiring that an owner or operator of a private sewage treatment facility shall provide assurance that funds will be available when needed for implementation of a closure plan. The attached Schedule A contains the name and address of the facility covered by this [trust agreement or standby trust agreement];

Whereas, the Grantor has elected to establish a [insert either "surety bond," or "letter of credit"] to provide all or part of such financial assurance for implementation of the closure plan for the privately owned sewage treatment facility identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.);

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the Trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of the Financial Assurance Mechanism.

This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

Section 3. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Department of Environmental Quality of the Commonwealth of Virginia. The Grantor and the Trustee intend that no third party have access to the Fund. [The Fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to the Director of the Department of Environmental Quality's instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance,

any payments necessary to discharge any liability of the Grantor established by the State Water Control Board.

Section 4. Payment for Implementation of the Closure Plan.

The Trustee shall make payments from the Fund as the Director, Department of Environmental Quality shall direct, in writing, to provide for the payment of the costs of implementation of the closure plan for the facility covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

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

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

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

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by owner or operator that is not the direct result of a privately owned sewage treatment facility ceasing operations;

(e) Bodily injury or property damage for which owner or operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of Section 62.1-44.18:3 of the Code of Virginia.

The Trustee shall reimburse the Grantor, or other persons as specified by the State Water Control Board, from the Fund for implementation of the closure plan in such amounts as the Director of the Department of Environmental Quality shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Director of the Department of Environmental Quality specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section 6. Trustee Management.

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence

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under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other operator of the facility, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. § 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(iii) Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee.

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be

merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel.

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of

the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee.

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests and instructions by the State Water Control Board to the Trustee shall be in writing, signed by the Director of the Department of Environmental Quality, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the State Water Control Board hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the State Water Control Board, except as provided for herein.

Section 14. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement as provided in Section 17, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the Director of the Department of Environmental Quality, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 15. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the State Water Control Board issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 16. Choice of Law.

This Agreement shall be administered, construed, and enforced according to the laws of the Commonwealth of Virginia.

Section 17. Amendment of Agreement.

This Agreement may be amended by an instrument executed in writing executed by the Grantor, the Trustee, and the Director of the Department of Environmental Quality, Commonwealth of Virginia, or by the Trustee and the Director of the Department of Environmental Quality, Commonwealth of Virginia, if the Grantor ceases to exist.

Section 18. 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 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 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 19. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 9 VAC 25-650-90 B as such regulations were constituted on the date written above.

[Signature of Grantor]

[Name of the Grantor]

[Title]

Attest:

[Signature of Trustee]

[Name of the Trustee]

[Title]

[Seal]

[Signature of Witness]

[Name of Witness]

[Title]

[Seal]

SCHEDULE A

Name of Facility

Address of facility

Closure Cost Estimate

VPDES Permit Number

C. The irrevocable trust fund, when established, shall be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining required coverage. Schedule A of the trust agreement shall be updated within 60 days after a change in

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the amount of the approved cost estimate covered by the agreement.

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

E. If other financial assurance as specified in this chapter is substituted for all or part of the trust fund, the owner or operator may submit a written request to the Director for release of the excess.

F. Within 60 days after receiving a request from the owner or operator for release of funds as specified in subsection D or E of this section, the board will instruct the trustee to release to the owner or operator such funds, if any, that the board determines to be eligible for release and specifies in writing.

G. Whenever the cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust agreement. If the value of the agreement is less than the amount of the new cost estimate, the owner or operator shall, within 10 days of the change in the approved cost estimate, deposit a sufficient amount into the trust 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 board for release of the amount that is in excess of the cost estimate.

H. After beginning implementation of the closure plan, an owner or operator or any other person authorized to implement the closure plan, may request reimbursement for implementation expenditures by submitting itemized bills to the board. Within 60 days after receiving bills for plan implementation activities, the board shall instruct the trustee to make reimbursements in those amounts as the board determines are in accordance with the closure plan or are otherwise justified.

I. The board shall agree to terminate the trust when:

1. The owner or operator substitutes alternate financial assurance as specified in this article; or
2. The board notifies the owner or operator that he is no longer required to maintain financial assurance for the implementation of the closure plan.

9 VAC 25-650-100. Surety bond.

A. An owner or operator may satisfy the requirements of this chapter by obtaining a surety bond that conforms to the requirements of this section and by submitting an originally signed duplicate of the bond to the board. The surety company issuing the bond shall be licensed to operate as a surety in the Commonwealth of Virginia and be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

B. The surety bond shall be worded as follows, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

PERFORMANCE BOND

Date bond executed: _____

Period of coverage: _____

Effective date: _____

Principal: [legal name and address of owner or operator] _____

Type of organization: [insert "individual" "joint venture," "partnership," "corporation," or appropriate identification of type of organization] _____

State of incorporation (if applicable): _____

Surety: [name(s) and business address] _____

Scope of Coverage:

[List the name of and the address where the private sewage treatment facility assured by this mechanism is located. List the coverage guaranteed by the bond: operation, maintenance, and closure of the privately owned sewage treatment facility]

Penal sum of bond: \$ _____

Surety's bond number: _____

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the Department of Environmental Quality, Commonwealth of Virginia, ("DEQ") 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 sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required under § 62.1-44.18:3 of the State Water Control Law of the Code of Virginia to provide financial assurance to implement a plan to abate, control, prevent, remove, or contain any substantial or imminent threat to public health or the environment that is reasonably likely to occur if such facility ceases operations (closure plan), and Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully implement the closure plan in accordance with the Director of the DEQ's instructions to implement the plan for the facility described above, or if the Principal shall provide alternate financial assurance, acceptable to DEQ and obtain the Director's written approval

of such assurance, within 60 days after the date the notice of cancellation is received by the Director of the DEQ from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

- (a) Any obligation of owner or operator under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of owner or operator arising from, and in the course of, employment by owner or operator;
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by owner or operator that is not the direct result of a privately owned sewage treatment facility ceasing operations;
- (e) Bodily injury of property damage for which owner or operator of facility is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of Section 62.1-44.18:3 of the Code of Virginia.

The Surety(ies) shall become liable on this bond when the Principal has failed to fulfill the conditions described above. Upon notification by the Director of the DEQ that the owner or operator has failed to fulfill the conditions above, the Surety(ies) shall either implement the closure plan or place funds in an amount up to the penal sum into the standby trust fund as directed by the Director of the DEQ under 9 VAC 25-650-140.

Upon notification by the Director of the DEQ that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) or that the DEQ has determined or suspects that the facility has ceased operations, the Surety(ies) shall place funds in an amount not exceeding the aggregate penal sum into the standby trust fund as directed by the Director of DEQ.

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

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the Director of the DEQ, Commonwealth of Virginia, 629 East Main Street, Richmond, Virginia 23219 provided, however, that cancellation shall not occur (1) during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal and Director of the DEQ as shown on the signed return receipt; or (2) while a compliance procedure is pending.

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

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 9 VAC 25-650-100 B as such regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

CORPORATE SURETY(IES)

[Name and address]

State of Incorporation:

Liability limit: \$ _____

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

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

Bond premium: \$ _____

C. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

D. The owner or operator who uses a surety bond to satisfy the requirements of this chapter shall establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the board under 9 VAC 25-650-140. This standby trust fund shall meet the requirements specified in 9 VAC 25-650-120.

E. The bond shall guarantee that the owner or operator or any other authorized person will:

1. Implement the closure plan in accordance with the approved closure plan and other requirements in any permit for the facility;
2. Implement the closure plan following an order to do so issued by the board or by a court.

F. The surety bond shall guarantee that the owner or operator shall provide alternate financial assurance as specified in this article within 60 days after receipt by the board of a notice of cancellation of the bond from the surety.

G. If the approved 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,

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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 board. Notice of an increase or decrease in the penal sum shall be sent to the board by certified mail within 60 days after the change.

H. 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 board. Cancellation cannot occur, however:

1. During the 120 days beginning on the date of receipt of the notice of cancellation by the board as shown on the signed return receipt; or
2. While an enforcement procedure is pending.

I. The surety shall provide written notification to the board by certified mail no less than 120 days prior to the expiration date of the bond, that the bond will expire and the date the bond will expire.

J. In regard to implementation of a closure plan either by the owner or operator, by an authorized third party, or by the surety, proper implementation of a closure plan shall be deemed to have occurred when the board determines that the closure plan has been completed. Such implementation shall be deemed to have been completed when the provisions of the facility's approved closure plan have been executed and the provisions of any other permit requirements or enforcement orders relative to the closure plan have been complied with.

9 VAC 25-650-110. Letter of credit.

A. An owner or operator may satisfy the requirements of this chapter by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section and by submitting an originally signed duplicate of the letter of credit to the board. The issuing institution shall be an entity that has the authority to issue letters of credit in the Commonwealth of Virginia and whose letter-of-credit operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The letter of credit shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

IRREVOCABLE STANDBY LETTER OF CREDIT

[Name and address of issuing institution]

Beneficiary:

Director

Department of Environmental Quality (DEQ)

P. O. Box 10009

629 E. Main Street

Richmond, Virginia 23240-0009

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] U.S. dollars, (\$[insert dollar amount]), available upon presentation of

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

(2) your signed statement reading as follows:

"I certify that the amount of the draft is payable pursuant to regulations issued under authority of § 62.1-44.18:3 of the Code of Virginia."

This letter of credit may be drawn on to implement the closure plan for the facility identified below in the amount of [in words] \$ [insert dollar amount]. [Name of facility and address of the facility assured by this mechanism, and number of hookups served by the system.]

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

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

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

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

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by owner or operator that is not the direct result of a privately owned sewage treatment facility ceasing operations;

(e) Bodily injury or property damage for which owner or operator of facility is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of § 62.1-44.18:3 of the Code of Virginia.

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

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the

amount of the draft directly into the standby trust fund of owner or operator in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording required in 9 VAC 25-650-110 B as such regulations were constituted on the date shown immediately below.

Attest:

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

[Date]

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

C. An owner or operator who uses a letter of credit to satisfy the requirements of this chapter also shall establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the board will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the board under 9 VAC 25-650-140. This standby trust fund shall meet the requirements specified in 9 VAC 25-650-120.

D. 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 implementation of the closure plan. 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 institution decides not to extend the letter of credit beyond the current expiration date it shall, at least 120 days before the expiration date, notify both the owner or operator and the board by certified mail of that decision. The 120-day period will begin on the date of receipt by the board 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 to be in effect prior to the expiration date of the letter of credit.

E. Whenever the approved 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 board. The issuing institution shall send the notice of an increase or decrease in the amount of the credit to the board by certified mail within 60 days of the change.

F. Following a determination by the board that the owner or operator has ceased operations at the facility or has failed to implement the closure plan in accordance with the approved plan or other permit or special order requirements, the board will draw on the letter of credit.

G. The owner or operator may cancel the letter of credit only if alternate financial assurance acceptable to the board is substituted as specified in this article or if the owner or

operator is released by the board from the requirements of this regulation.

H. The board 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 implementation of the closure plan as specified in this article; or
2. The board notifies the owner or operator that he is no longer required by this article to maintain financial assurance for implementation of the closure plan for the facility.

9 VAC 25-650-120. Standby trust agreement.

A. An owner or operator using any one of the mechanisms authorized by 9 VAC 25-650-100 or 9 VAC 25-650-110 shall establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The standby trust agreement shall be worded identically as specified in 9 VAC 25-650-90 B, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted, and accompanied by a formal certification of acknowledgment as follows.

CERTIFICATE OF ACKNOWLEDGMENT

State of _____

County of _____

On this [date], before me personally came [owner's or operator's representative] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

[Name of Notary Public]

My Commission expires: _____

C. The board will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the board determines that no additional closure plan implementation costs will occur.

D. An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this chapter.

9 VAC 25-650-130. Multiple financial mechanisms.

An owner or operator may satisfy the requirements of this chapter by establishing more than one financial mechanism

Emergency Regulations

per facility, except that mechanisms guaranteeing performance, rather than payment, may not be combined with other mechanisms.

9 VAC 25-650-140. Drawing on financial assurance mechanism.

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

1. The owner or operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the surety bond or letter of credit; or
2. The conditions of subsection B of this section are satisfied.

B. The board may draw on a standby trust fund when the board makes a final determination that a privately owned sewerage system has ceased operation.

9 VAC 25-650-150. Release of the owner or operator from the financial assurance requirements.

A. Where the closure plan results in the termination of discharge to state waters and a VPDES permit for the discharge is no longer required, the board shall verify, within 60 days after receiving certification from the owner or operator that the closure plan has been completed in accordance with the requirements of the approved closure plan, permit or other order, whether the closure plan has been completed. Unless the board has reason to believe that the closure plan has not been implemented 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 facility. Such notice shall release the owner or operator only from the requirements for financial assurance for the facility; it does not release him from legal responsibility for meeting the facility closure standards. If no written notice of termination of financial assurance requirements or of failure to properly implement the closure plan is received by the owner or operator within 60 days after certifying proper implementation of the closure plan, the owner or operator may request the board for an immediate decision in which case the board shall respond within 10 days after receipt of such request.

B. Where a VDPES permit for the facility is no longer required under State Water Control Law, the board shall notify the owner or operator in writing that he is no longer required to maintain financial assurance for the facility. Such notice shall release the owner or operator only from the requirements for financial assurance for the facility.

9 VAC 25-650-160. Cancellation or renewal by a provider of financial assurance.

A. Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator. Termination of a surety bond or a letter of credit may not occur until 120 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

B. If a provider or financial assurance cancels or fails to renew for reasons other than incapacity of the provider as specified in 9 VAC 25-650-180, the owner or operator shall obtain alternate coverage as specified in this section and shall submit to the board the appropriate original forms listed in 9 VAC 25-650-90, 9 VAC 25-650-100, or 9 VAC 25-650-110 documenting the alternate coverage within sixty (60) days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator shall immediately notify the board of such failure and submit:

1. The name and address of the provider of financial assurance;
2. The effective date of termination; and
3. A copy of the financial assurance mechanism subject to the termination maintained in accordance with this chapter.

9 VAC 25-650-170. Replenishment of letters of credit or surety bonds.

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

1. Replenish the value of financial assurance to equal the full amount of coverage required, or
2. Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

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

9 VAC 25-650-180. Incapacity of owners or operators, or financial institution.

A. An owner or operator shall notify the board 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.

B. An owner or operator who fulfills the requirements of Article 4 of this part by obtaining a trust fund, a letter of credit, or a surety bond, 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, or letter of credit to issue such mechanisms. The owner or operator shall establish other financial assurance within 60 days of such event.

9 VAC 25-650-190. Incremental funding.

A. Incremental funding of the amount of financial assurance required may be allowed at the sole discretion of the board for existing facilities discharging in compliance with a current VPDES permit on the effective date of this regulation. Incremental funding of the amount of financial assurance required shall not be allowed for new or expanded discharges. Incremental funding of the amount of financial assurance shall not be allowed where a mechanism is already in place. Incremental funding of the amount of financial assurance required shall be considered only upon written request by the owner or operator. The board may allow incremental funding of closure cost estimates under the following conditions:

1. The board determines that closure plan implementation cost estimates are complete and accurate and the owner or operator has submitted a statement from a registered professional engineer so stating; and
2. The facility has been in operation, discharging to state waters, for a period of at least five (5) years prior to the effective date of this regulation, in accordance with a VPDES permit issued by the board; and
3. The board finds the facility is substantially in compliance with its VPDES permit conditions, and has been substantially in compliance with its VPDES permit conditions for a period of at least one permit term (5 years) prior to the effective date of the owner's or operator's current VPDES permit; and
4. The board determines that the facility is not within 5 years of the expected facility life and there are no foreseeable factors that will shorten the estimate of facility life (to include facility upgrade or expansion); and
5. A schedule for funding the total amount of the approved cost estimate through the financial assurance mechanism within five (5) years of the initial date required under this regulation is provided by the owner or operator and approved by the board. This period is hereafter referred to as the "pay-in period."

B. Incremental funding shall be, at a minimum, in accordance with the approved schedule as follows:

1. Payments into the financial assurance mechanism shall be made annually during the pay-in period by the owner or operator until the amount of financial assurance equals the total amount of the approved cost estimate, adjusted for inflation.
2. Annual payments into the financial assurance mechanism shall not be less than 20 percent of the approved inflation-adjusted cost estimate, and shall continue until the amount of financial assurance equals the amount of the total approved cost estimate.
3. In no case shall the pay-in period exceed five (5) years.

4. Incremental funding cost estimates must be adjusted annually to reflect inflation and any change in the cost estimate.

C. The owner or operator shall submit a request for incremental funding of the amount of financial assurance, including documentation justifying the request in accordance with the requirements of this section, to the board in conjunction with the cost estimate submitted in accordance with the requirements of this chapter. The board shall review such requests by the owner or operator and inform the owner or operator of approval or disapproval of the request for incremental funding in conjunction with approval or disapproval of the cost estimate.

9 VAC 25-650-200. Notices to the State Water Control Board.

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

Director	Director
Department of	Department of
Environmental Quality	Environmental Quality
P.O. Box 10009	629 East Main Street
Richmond, Virginia	Richmond, Virginia 23249
23240-0009	

9 VAC 25-650-210. Delegation of authority.

The Director of the Department of Environmental Quality or a designee acting for him may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

/s/ Dennis H. Treacy, Director
Department of Environmental Quality
Date: December 14, 2000

/s/ James S. Gilmore, III
Governor
Date: October 31, 2000

VA.R. Doc. No. R01-65; Filed December 14, 2000, 3:14 p.m.

◆ ◆

GOVERNOR

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

TITLE 22. SOCIAL SERVICES

DEPARTMENT OF SOCIAL SERVICES

Title of Regulation: **22 VAC 40-230-10 et seq. Agency Placement Adoptions — Preplacement Services (REPEALING).**

I have reviewed the proposed regulation on a preliminary basis. While I reserve the right to take action under the Administrative Process Act during the final adoption period, I have no objection to the repeal of this regulation based on the information and public comment currently available.

/s/ James S. Gilmore, III
Governor

Date: December 6, 2000

VA.R. Doc. No. R99-234; Filed December 13, 2000, 10:41 a.m.

* * * * *

Title of Regulation: **22 VAC 40-480-10 et seq. Relocation Assistance General Relief Program (REPEALING).**

I have reviewed the regulation on a preliminary basis. While I reserve the right to take action under the Administrative Process Act during the final adoption period, I have no objection to the repeal of this regulation based on the information and public comment currently available.

/s/ James S. Gilmore, III
Governor

Date: December 6, 2000

VA.R. Doc. No. R99-237; Filed December 13, 2000, 10:41 a.m.



THE LEGISLATIVE RECORD

The Legislative Record is available on the Internet at <http://dls.state.va.us/pubs/legisrec/>

GENERAL NOTICES/ERRATA

STATE CORPORATION COMMISSION

Proposal Plan for Transition to Retail Access

The State Corporation Commission staff has proposed a plan of implementation for the transition to full retail access in accordance with § 56-577 of the Virginia Electric Utility Restructuring Act. The staff's proposal meets the objectives of the Act by starting the transition January 1, 2002, and providing choice to all consumers by January 1, 2003. In addition, residential and small commercial customers will be phased in at a rate at least equal to the industrial customers.

Agency Contact: Richard Williams, Director, Division of Economics and Finance, State Corporation Commission, P.O. Box 1197, Richmond, Virginia 23218, telephone (804) 371-9295.

REGISTRAR'S NOTICE: The distribution lists that are referenced in the following order 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 23219, from 8:15 a.m. to 5 p.m., Monday through Friday; or they may be viewed at the Virginia Code Commission, General Assembly Building, 2nd Floor, 910 Capitol Street, Richmond, Virginia 23219, during regular office hours.

AT RICHMOND, DECEMBER 21, 2000

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE000740

Ex Parte: In the matter concerning a draft plan for phase-in of retail electric competition

ORDER PRESCRIBING NOTICE AND INVITING COMMENTS

The General Assembly enacted § 56-577 of the Virginia Electric Utility Restructuring Act (the "Act"), Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia (the "Code"), effective July 1, 1999. The statute directs the State Corporation Commission ("Commission") to establish a phase-in schedule for the transition to a competitive market in the provision of retail electric generation services for electricity customers within the Commonwealth. According to the Act, the phase-in is to begin on January 1, 2002, and must be completed by January 1, 2004.¹ The statute further directs the Commission to "ensure that residential and small business retail customers are permitted to select suppliers in proportions at least equal to that of other customer classes permitted to select" their suppliers during the transition period.

At the Commission's request, Staff has prepared a report that includes a recommended draft plan for the transition to full retail choice. In developing its report Staff solicited thoughts from a number of stakeholders through meetings, conference calls, and correspondence. Those stakeholders included all investor-owned and cooperative electric companies, competitive service providers that have received or applied for a license to compete, the Attorney General's Office, and representatives of consumer groups and other interests.

Pursuant to the statutory directive in the Act, the Commission establishes this proceeding to consider the Staff's report and recommended plan, which are attached to this Order. Interested parties are requested to evaluate and respond to the proposed plan and to suggest alternatives to any provision of the proposed plan, as they deem advisable.

Any interested party also may request that the Commission hold a hearing to address the draft plan. At the conclusion of this matter, the Commission will issue a phase-in plan scheduling the transition to competitive provision of electric retail generation services.

Accordingly, we are of the opinion and find that: this matter should be docketed; interested persons should be afforded an opportunity to file written comments or request a hearing or oral argument on the draft plan; notice of this Order should be published on one occasion in newspapers of general circulation throughout the Commonwealth and a copy of this Order and the draft plan should be forwarded to the Registrar of Regulations for publication in the Virginia Register of Regulations.²

Accordingly, IT IS ORDERED THAT:

(1) This matter shall be docketed and assigned Case No. PUE000740.

(2) On or before January 5, 2001, the Commission's Division of Information Resources shall cause the following notice to be published as classified advertising on one occasion in newspapers of general circulation throughout the Commonwealth:

NOTICE OF PROCEEDING IN WHICH THE STATE CORPORATION COMMISSION SEEKS PUBLIC COMMENT AND REQUESTS FOR HEARING OR ORAL ARGUMENT ON THE PHASE-IN TO COMPETITIVE PROVISION OF RETAIL ELECTRIC GENERATION SERVICE

The General Assembly enacted § 56-577 of the Virginia Electric Utility Restructuring Act (the "Act"), Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia (the "Code"), effective July 1, 1999. The statute directs the State Corporation Commission ("Commission") to establish a phase-in schedule for the transition to a competitive market in the provision of retail electric generation services for electricity customers within the Commonwealth. According to the

¹ The Commission may accelerate the scheduled phase-in or may delay it by one year only. § 56-577 B of the Code of Virginia.

² An unofficial version of the text of this Order also is available on the Commission's web site at <http://www.state.us.va/scc/orders.htm>.

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Act, the phase-in is to begin on January 1, 2002, and must be completed by January 1, 2004. The statute further directs the Commission to develop a plan that ensures that residential and small commercial customers "are permitted to select suppliers in proportions at least equal to that of other customer classes" during the phase-in period. The Commission therefore is initiating this proceeding to assist it in these matters. The Commission Staff has developed, following consultations with the utilities, the Office of Attorney General, competitive service providers, and consumer groups, a draft phase-in plan to serve as a basis for initiating our consideration of this matter.

A copy of the Order Prescribing Notice and Inviting Comments ("Order"), together with the Staff Report and draft plan for phase-in to competitive provision of electric retail generation service may be reviewed from 8:15 a.m. to 5:00 p.m., Monday through Friday, in the State Corporation Commission's Document Control Center, First Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia. Interested persons also may obtain a copy of the Order, the Staff Report, and the draft plan from the Commission's website, <http://www.state.va.us/scc/orders.htm>, or by directing a written request for a copy of same to Joel H. Peck, Clerk of the Commission, at the address set forth below, and referring to Case No. PUE000740.

Any person who wishes to submit comments or request a hearing in this matter shall file an original and fifteen (15) copies of such comments or request with the Clerk of the Commission, on or before February 15, 2001, and shall refer in the comments to Case No. PUE000740. The comments shall state the person's interest in this proceeding. A request for hearing shall set out in detail why a hearing is necessary or advisable. A request for hearing shall identify the issues upon which the party seeks a hearing, the evidence expected to be offered therein, and should explain why the issues raised cannot be adequately addressed in written comments. A request for oral argument should indicate the matters upon which counsel wishes to be heard.

All communications to the Commission regarding this proceeding shall refer to Case No. PUE000740, and shall be directed to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218.

THE STATE CORPORATION COMMISSION

(3) The Commission's Division of Information Resources shall forthwith cause a copy of this Order and the draft plan to be forwarded to the Registrar of Regulations for publication in the Virginia Register of Regulations.

(4) The Commission's Division of Information Resources shall file promptly with the Clerk of the Commission proof of the publication of the notices required herein as they become available.

(5) Interested persons may obtain a copy of this Order, together with the Staff Report and the draft plan, by directing

a request in writing for the same to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Such requests shall refer to Case No. PUE000740. Interested persons also may obtain a copy of the Order, Staff Report, and draft plan from the Commission's website, which may be accessed at <http://www.state.va.us/scc/orders.htm>.

(6) A copy of this Order, together with the Staff Report and draft plan, shall also be made available for public review at the Commission's Document Control Center, located on the first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, during its regular hours of operation, Monday through Friday, from 8:15 a.m. to 5:00 p.m.

(7) On or before February 15, 2001, any interested person who wishes to submit comments or request a hearing or oral argument on the draft plan attached hereto shall file an original and fifteen (15) copies of such comments or request in writing with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Such comments and requests shall refer to Case No. PUE000740. Such comments shall set forth the person's interest in this proceeding. A request for hearing or oral argument shall set out in detail why such proceeding is necessary or advisable. A request for hearing should identify with specificity the issues proposed to be addressed at such hearing, the evidence expected to be offered therein, and should explain why the issues raised cannot be adequately addressed in written comments. A request for oral argument should indicate the matters upon which counsel wishes to be heard.

(8) This matter shall be continued, pending further order of the Commission.

AN ATTESTED COPY HEREOF shall be sent by the Clerk of the Commission to: John F. Dudley, Senior Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, Second Floor, Richmond, Virginia 23219; each electric cooperative and electric company licensed to do business in Virginia as shown on Appendix A attached hereto; the competitive service providers who are participating in the retail access pilot program as shown on Appendix B attached hereto; Oliver A. Pollard, III, Esquire, Southern Environmental Law Center, 201 West Main Street, Suite 14, Charlottesville, Virginia 22902; Donald R. Hayes, Senior Attorney, Washington Gas Light Company, 1100 H Street, N.W., Washington, D.C. 20080; Jean Ann Fox, Vice President, Virginia Citizens Consumer Council, 114 Coachman Drive, Yorktown, Virginia 23693; Virginia Committee for Fair Utility Rates, Louis R. Monacell, Esquire, Christian & Barton, L.L.P., 909 East Main Street, Suite 1200, Richmond, Virginia 23219-3095; Old Dominion Committee for Fair Utility Rates, Robert M. Gillespie, Esquire, Christian & Barton, L.L.P., 909 East Main Street, Suite 1200, Richmond, Virginia 23219; Virginia Independent Power Producers, August Wallmeyer, 700 East Franklin Street, Suite 701, Richmond, Virginia 23219; David Rubinstein, Esquire, Virginia Poverty Law Center, 201 West Broad Street, Suite 302, Richmond, Virginia 23220; Jack R. Hundley, AARP, 601 E Street, N.W., Washington, D.C.

20049; ALERT, Thomas B. Nicholson, Esquire, Williams, Mullen, Clark & Dobbins, P.C., Two James Center, 1021 East Cary Street, P.O. Box 1320, Richmond, Virginia 23218-1320; Tom Highland, Apartment & Office Building Association, 1050 17th Street, N.W., Suite 300, Washington, D.C. 20036; Municipal Electric Power Association of Virginia, Thomas Dick, Esquire, Mays & Valentine, L.L.P., P.O. Box 1122, Richmond, Virginia 23218-1122; Virginia Municipal League, 13 East Franklin Street, Richmond, Virginia 23219; Virginia Association of Counties, 1001 East Broad Street, Richmond, Virginia 23219; and the Commission's Divisions of Energy Regulation and Economics and Finance.

Staff Report on the Schedule for Transition to Retail Access

Introduction

The Virginia Electric Utility Restructuring Act (the "Act") defines in §56-577 a structure for the transition to retail access and the State Corporation Commission's ("Commission") authority in the implementation of that transition. The pertinent parts of §56-577 provide that:

- the Commission shall establish a phase-in schedule for customers by class and percentage of class that will begin no later than January 1, 2002;
- by January 1, 2004, all retail customers are to be allowed to purchase retail electric energy from a licensed competitive supplier;
- the Commission may delay or accelerate the transition implementation, but any such delay may not extend beyond January 1, 2005;
- the Commission shall ensure that residential and small business customers are allowed retail electricity choice in proportions at least equal to the large commercial and industrial classes; and
- the Commission shall promulgate such rules and regulations as may be necessary to implement the transition to competition.

The purpose of this report is to identify the issues related to the implementation of a transition to retail choice and to recommend to the Commission a process by which such implementation may be achieved and rules that may be necessary to ensure the process is orderly.

As a first step in the production of this report the Staff solicited input from a variety of stakeholders to the transition implementation, including investor-owned and cooperative electric utilities, competitive service providers, and consumer representatives. The feedback we received proved valuable in identifying the issues to resolve and in understanding the expectations of the various parties, and had significant influence on Staff's recommended plan for transition (Attachment A).

Utility Response

Of particular interest was the response of the electric utilities to the question of how quickly they could implement 100% retail choice. Staff asked each utility to consider whether it

would be feasible to immediately make retail choice available to all customers on January 1, 2002, or at a later date, rather than a phase-in of choice. Such a "flash-cut" could prove beneficial to the customer education effort and to attracting competitive suppliers to Virginia.

Both Allegheny Power, a subsidiary of Allegheny Energy, and Delmarva Power and Light, a subsidiary of Conectiv, have experience with the transition to retail choice in other states. Both of these companies strongly advocate a flash-cut to full retail choice and indicate that they can be ready by January 1, 2002.

Allegheny Power stated that its experience in Maryland, with immediate implementation, was less costly and less frustrating than Pennsylvania's phase-in process. Allegheny experienced implementation costs that were duplicative with each stage of Pennsylvania's phase-in. In addition, schemes to divide up customers and/or load led to programming constraints, deadlines, pressures and additional costs that were not necessary with immediate implementation.

Delmarva indicated that since choice is already available to its Delaware and Maryland customers, it would not be difficult to make choice available to the relatively small number of customers in its Virginia service territory.

American Electric Power-Virginia ("AEP-VA") suggests an accelerated transition since the pilot retail access programs have facilitated the development of the information technology systems and infrastructure necessary to accommodate full retail choice. AEP-VA advocates a flash-cut to full choice on January 1, 2002, pointing out that such an implementation plan would eliminate many of the issues and concerns related to various types of phase-in plans, such as lotteries or other processes for electing participants. AEP-VA believes that all electric utilities should have the same implementation plan, that a utility with a slower transition plan could be considered to have been provided a form of market protection.

Dominion Virginia Power ("DVP") is concerned that if retail choice is made available to all of its two million customers at once, there could be a deterioration in the quality of its customer service. The Company cites the number of calls and the length of the calls received related to its limited Project Current Choice program and indicates that if the same proportion of calls were received from its total number of customers, problems could arise. DVP also attests that when its affiliated natural gas distribution company, Dominion East Ohio, initiated retail access for all of its 1.2 million natural gas customers in October 2000, an overwhelming number of calls flooded its customer service center causing the ability to handle traditional customer calls, such as billing inquiries or new service requests, to be compromised for an extended period. The Public Utility Commission of Ohio, the Ohio Consumers' Counsel and competitive suppliers also had difficulty handling the increased call volume according to DVP.

DVP, therefore, suggests that retail choice in its service territory be phased-in. The Company has proposed a two year phase-in plan that is attached as Appendix I. The essence of DVP's plan is that for residential, small commercial and church customers, its service territory be

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divided into three areas, each having approximately 600,000 customers. The three segments would be allowed retail choice in successive steps. When choice is made available to an area, all of the customers in that area would have retail choice, therefore an allocation process to select participants would not be necessary.

For the heavy-usage customers (GS-3 and GS-4 classes), choice would be made available across the entire state, but in three proportional phase-in stages. One-third of the load would be open to retail choice on January 1, 2002, with another third available at the beginning of each of the next two years. For these customers, an allocation method would be necessary.

The Virginia, Maryland and Delaware Association of Electric Cooperatives, its Virginia members, and Old Dominion Electric Power (the "Coops") referred to the diversity inherent among the distribution cooperatives, particular variables being size, geography and population density. Only one of the members, Rappahannock Electric Cooperative, will have any pilot program experience. Because of these facts, the Coops recommend that a flexible implementation schedule be afforded each member. Some members may be able to flash-cut to retail competition as early as January 2002, while others believe they will need until at least January 2003, and preferably January 2004, to prepare.

Kentucky Utilities Company ("KU") did not advocate a specific transition plan. KU asks that its unique characteristics in Virginia be considered by the Commission before any restructuring related decisions are made. In particular, KU points out that it serves only 29,000 customers in Virginia and owns no electric generation facilities in Virginia. In addition, KU is not interconnected with any other utility in Virginia and, therefore, a Virginia-based competitive service provider would be required to access KU's customers via multiple transmission systems.

Discussion of Transition Issues

The following discussion of various issues related to the transition to retail access reflects the information Staff has gathered through research for this phase-in report and our experience with restructuring to date, including pilot programs. Where appropriate, we will attempt to describe the pros and cons of possible actions. We do not, however, intend to present all of the views expressed to us by stakeholders in our preliminary communications.

Flash-Cut Versus Phase-In

The main advantages of a flash-cut to retail access are the simplification of customer education and the attraction of competitive suppliers.

If all customers have the option to choose a competitive supplier on January 1, 2002, or some other date, the customer education effort can focus on that date. There will be no need to make a distinction about competitive service being an option for customers of a particular utility or in a certain area. The selection of the appropriate date for a flash-cut is important because we do not want customers to enter a competitive market that is not ready for them. Such a situation could cause customers to be harmed and market

development to be hindered. Therefore, it is essential that permanent rules be in place, business practices be developed, information technology systems be compatible, and an education effort be in process. All of these components will be discussed later.

An immediate transition to retail choice affords us a better chance to attract competitive service providers ("CSPs") to Virginia. We heard from several CSPs that a critical mass of customers is needed to offset the necessary infrastructure and set-up costs and to allow a more efficient use of marketing resources. Some CSPs stated that they were not interested in pilot programs or phase-in schedules and likely would wait for a phase-in to be complete before entering a market.

Another advantage of a flash-cut transition is the avoidance of the argument of unfair competitive options for businesses. For instance, if a steel mill is precluded from competitive choice because of its location or because a phase-in quota is full, it may be placed at a competitive disadvantage to a competing steel mill that has choice.

On the other hand, a phase-in transition to retail access may provide an orderly and structured plan. Each phase of the transition might provide lessons that may be used to make adjustments and improvements that may lead to a stronger competitive market. A phased transition period should temper concerns that consumers may be rushed into a competitive market that is not ready.

The Staff believes that each utility's circumstances should be considered in deciding its transition plan. For that reason, we recommend different plans for our utilities.

Since AEP-VA, Allegheny Power, Delmarva and Kentucky Utilities seem willing and able to make their service territories immediately open to retail choice on January 1, 2002, we see no reason why they should be delayed. If the decision is made that all utilities must make the transition at the same time and at the same speed, to prevent possible service problems the utility least ready to start the transition must be the template for setting the pace.

Although we believe that Dominion Virginia Power's concerns about customer service disruptions would probably not occur, we understand the cause of their worry. If all two million customers are offered choice at one time, the Company has to be prepared to handle a flood of inquiries. However, in most jurisdictions where customer choice has been opened, the customers have phased themselves in, and done so at a relatively slow pace.

The incident that the Company cites with Dominion East Ohio ("DEO") appears to be a special circumstance that should not be repeated in Virginia. When the Ohio natural gas retail choice program began, First Energy Services offered for a short, limited time a 20% savings on natural gas to DEO's customers plus a 10% savings on electricity rates beginning January 1, 2001, when the Ohio electric market is opened to retail access. This offering resulted in about 90,000 DEO customers signing up. Call centers were flooded such that a local 911 system was temporarily interrupted. The experience of Dominion East Ohio has not caused the Public Utility Commission of Ohio or the Ohio Legislature to delay

the January 1, 2001 date of immediate retail access for all electric customers.

However, Staff agrees with DVP that the quality of customer service must be maintained. We seek to accommodate DVP's assurance of an orderly transition, but hope to expedite the process.

DVP's plan to segregate its service territory into three segments should allow the Company to focus its call center resources so that calls can be handled properly. Although a geographic phase-in presents some challenges from a customer education standpoint, that may be the most effective method of controlling the number of customers exposed to retail choice at one time.

DVP's plan of treating the industrial and large commercial customers (collectively referred to as industrial customers) differently makes sense. The statewide proportional phase-in of industrial load eliminates the problem of a company with multiple plants throughout DVP's service territory not being able to seek a competitive supplier to meet its entire load because some plants are in a region that does not yet have choice.

There is one change to Dominion Virginia Power's proposed plan that Staff recommends. We believe that an orderly phase-in can be maintained using a shorter transition period. Rather than taking two years for the transition, we recommend one year. On January 1, 2002, one-third of the industrial load plus the Northern Region would be opened to choice, as in DVP's plan. On September 1, 2002, the second-third of industrial load plus the Central/Western Region would have choice. On January 1, 2003, the remaining industrial load and the Eastern Region would have choice, completing the transition.

This expedited schedule allows eight months to lapse between the first and second phase. There would then be a four month period to prepare for the final segment of the phase-in. If the Company encounters difficulties in handling a segment of the phase-in, it will have the opportunity to request, with cause shown, an extension for the following segment.

The Staff hopes that competitive suppliers will acknowledge the opportunities available to them with a one year phase-in of Virginia's largest utility and will not hesitate to enter our market. Structuring DVP's phase-in from the north to the south offers CSPs a natural flow from the Northeastern and Mid-Atlantic regions, in which many states are already open to retail access.

Although it may appear unfair for Dominion Virginia Power to be gradually opening to full access while the other investor-owned utilities open immediately on January 1, 2002, two things should be considered. First, one-third of DVP's total number of customers, over 600,000, is as large as the total number of Virginia customers of the other investor-owned companies combined. Also, by expediting the schedule as suggested by Staff, DVP's phase-in will be complete within one year.

As for Virginia's electric cooperatives, they have unique characteristics, as recognized by the Virginia Code in general

and the Restructuring Act in particular. The Staff recommends that the cooperatives be allowed a significant degree of flexibility. We recognize that some of the smaller cooperatives have not yet begun to obtain the appropriate information technology systems. It is time for them to begin that process, however. We believe that two years is enough time for each cooperative to be prepared for retail choice. We, therefore, recommend that each of Virginia's electric cooperatives open their entire service territories to retail choice by January 1, 2003. We encourage those cooperatives that are able to make a transition before that time to do so. Staff recommends that the cooperatives file quarterly status reports beginning July 2001, detailing their transition efforts and the estimated dates of the offering of full retail choice.

The transition plans proposed by Staff meet the objectives of the Act. Residential consumers are allowed choice in a proportion at least equal to the industrials and the transition is complete by January 1, 2003. Although we would prefer to avoid the problems inherent in a phase-in, this approach appears to be the best to avoid the potential for customer service disruptions in DVP's territory.

Implementation Details

Although a flash-cut or phase-in appear to be the only options available for a transition to competition, there are a variety of methods available to the Commission using those two options. If the Commission decides not to adopt the Staff's recommendation, the flash-cut method could be adopted, but at a different date, such as January 1, 2003. If a phase-in approach is adopted by the Commission, schedules could be shortened or lengthened and can be in two stages, three stages or more. Residential customers could be phased-in faster than industrial customers.

In the administration of whatever plan is adopted, there are certain details that must be considered. The Staff recommendations on the following details are offered from the experience gained from the pilot programs. Most of the details discussed below apply only when a proportional phase-in approach is used.

We do not recommend that a volunteering process be used. In that process, customers interested in considering a switch to a competitive supplier notifies their utility. They are then placed on a list made available to licensed suppliers. If a customer allows it, the utility releases to the CSPs a record of the customer's monthly usage.

The volunteering process is unnecessary. We recommend that utilities provide CSPs a mass list of its customers after providing customers an opportunity to "opt out."

We also recommend that for proportional phase-in plans customers be allowed to switch on a first-in basis rather than be selected by lottery. By first-in, we mean that those customers that apply to switch to a competitive supplier be considered by the utility on a first-come, first-serve basis when considering its phase-in quota for that class. The first-in approach more accurately reflects the competitive nature of the market and provides those customers that are the most enthusiastic about competition an opportunity to enter the marketplace.

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A lottery system, whereby customers enter their names to be selected by lottery to have an opportunity to fill a slot in the phase-in, presents several problems. Sometimes customers selected by lottery never actually shop and, therefore, limit the participation in the competitive market. Lotteries can cause customer confusion and add marketing complexities for the CSPs. In addition, lotteries are an unnecessary expense for the incumbent utilities.

Another Staff recommendation for the transition is that customers not be required or allowed to split their load; in other words, any customer, but particularly large-users, must have each service location supplied by a single supplier, whether the incumbent utility or a CSP. Splitting load can cause problems with tracking, switching, scheduling and reconciliation.

Under a first-in phase-in plan, industrial customers that wish to switch suppliers will sign up with a CSP, which in turn will enroll that customer with the incumbent utility. If the quota for that segment of the phase-in has not been filled, that customer's entire load will be allowed to switch. We recommend that phase-in quotas have the flexibility to go over the stated goal to accommodate the last qualified customer's entire load to be switched. We also recommend that incumbent utilities using a proportional phase-in plan provide an internet site offering information on the amount of the phase-in quota that has been taken and the amount left. Also, if a customer tries to enroll and a phase-in quota has already been reached, that customer should be allowed to remain on a list saving its spot either for the next segment of the proportional phase-in or if a shopping customer returns to the incumbent creating an opening under the quota.

Obviously, many of the details just discussed are irrelevant under a flash-cut transition. If Staff's recommended transition plans are accepted by the Commission, the only proportional phase-in will be for Dominion Virginia Power's GS-3 and GS-4 customers. All of DVP's residential and small commercial customers would be phased-in by geographic region at 100%. Also, the industrial proportional phase-in will be statewide rather than geographic, which eliminates some problems related to competitive disadvantage.

During the transition to full retail choice, Staff recommends that the customers that are currently participating in a retail pilot program be allowed to have the choice of remaining with their current supplier, switching to another CSP, or returning to the incumbent utility, even if retail access is not yet available to all customers in that region.

Restructuring Act Clarification

The Staff questions whether § 56-577 of the Act provides the Commission the flexibility to define different transition plans for Virginia's electric utilities or whether a single, state-wide plan is required. In discussions with various stakeholders, some indicated that they believe the Commission does have the flexibility to establish transition schedules on a utility-by-utility basis, others suggested that a clarifying amendment to the Act would be appropriate, and AEP-VA believes the Act intended a uniform transition to retail choice.

The Coops make an argument that the Commission already has the needed flexibility. They state that § 56-577 limits the

Commission's flexibility in only two ways: 1) by January 1, 2004, the transition must be complete unless delayed no more than one year for reliability, safety, communications or market power issues; and 2) residential and small business customers must be phased-in in a proportion at least equal to the industrials. The Coops then point to § 56-577 A 2 a which states that the "Commission shall establish a phase-in schedule for customers by class." Since the Commission has jurisdiction to define each regulated utility's customer classes, and the Commission bases such classes on usage characteristics of customers using an incumbent utility's service, the Act's reliance on established customer classes suggests that transition plans will be on a utility-by-utility basis.

To avoid any potential confusion or complications, Staff has proposed a clarifying amendment to the Legislative Transition Task Force (LTTF).

Preparation for Transition Implementation

There is still a great deal of work to do to prepare Virginia for a smooth transition to retail access. There are responsibilities that variously fall to the Commission, incumbent utilities, competitive service providers, and electricity consumers. The following section of this report discusses those matters.

Regulatory Readiness

On May 26, 2000, the Commission issued its Order in Case No. PUE980812, which established interim rules for retail access programs ("Interim Rules"). The Interim Rules govern issues in both natural gas and electricity retail access programs including licensing, codes of conduct, and standards of conduct governing relationships among participating parties. The Commission in its Order recognized that the Interim Rules may require modifications to accommodate full scale retail choice.

Although electricity retail access pilot program experience in Virginia has been limited, it is time to begin a process to revisit the Interim Rules to modify them for the transition to full choice. In our stakeholder discussions, the importance of finalizing the rules well in advance of January 1, 2002, was repeatedly stressed. Both utilities and competitive service providers state that they need those rules in place approximately six months in advance of the opening of competition. Once rules are established, time is required to design, program and service systems to implement the new rules and then to test those systems.

If the Interim Rules are not changed substantially, six months advance preparation probably is not necessary. However, until the process of reviewing and modifying the Interim Rules has begun, we do not know how significant the changes will be. This process is beginning and should be completed by next summer.

Another recent Commission proceeding was started to assist in the development of recommendations to the LTTF on issues related to metering and billing services. That proceeding (Case No. PUE000346) is still in progress and we do not know what recommendations will result, nor what action the LTTF will implement. To prepare for the time when competition for these services is mandated, however, rules

should be developed. Metering and billing rules will be closely related, and in some instances intertwined, with the rules that will result from the Interim Rules modification. The process for reviewing the Interim Rules and developing the metering and billing rules will be coordinated.

The Act requires in § 56-590 that the Commission direct the functional separation of generation, retail transmission and distribution for each incumbent electric utility by January 1, 2002. Those incumbent utilities are directed to submit their plans to the Commission by January 1, 2001. The accomplishment of the functional unbundling will be necessary before the transition to full retail access. To be prepared for a January 1, 2002, start date for the transition, the functional unbundling cases should be completed a reasonable period before that date.

Another important duty for the Commission, one that is dependent upon the results of functional unbundling decisions, is the setting for each incumbent utility of a price-to-compare. This information must be presented in a clear manner since it will be used by consumers in making their decision whether to accept a competitor's offer. The price-to-compare should be set as early as possible so CSPs can begin to design their offers.

In § 56-585 of the Act, the Commission is directed to determine the components of default service and establish programs making default service available "commencing with the date of customer choice for all retail customers...." Therefore, the date for the setting of default service provisions is dependent upon the decision the Commission makes about the transition to retail choice. If the Staff's recommendations are accepted, all retail customers will have choice on January 1, 2003. That should provide time to explore the issue of default service including, perhaps, allowing competitive providers to bid for the right to provide default service for all or a portion of an incumbent utility's retail customers.

Market Readiness

The most critical aspect in preparing Virginia's electricity market for competition is customer education. The Commission has already developed the basic structure of a program at the direction of the LTTF. The structure of the transition plan is an important component in determining the design of the education plan. Staff's recommendation of utility-by-utility transition plans may present challenges in conveying a message throughout the Commonwealth. Using a flash-cut method of transition for the entire state would allow an education campaign to focus upon a single date for all customers.

Staff feels confident, however, that an effective education campaign will still be possible. We recommend that the Commission direct the incumbent utilities to update their customers periodically through bill inserts about the date when that customer will have choice. It should assist the education effort to have the transition plan defined at an early date, which is one of the reasons this report is being prepared now.

We asked stakeholders to comment on whether there were transmission issues we should consider in developing the transition plan. Virginia has regional transmission constraints

that cause limited import capability, especially for Dominion Virginia Power's service territory. As a part of its retail access pilot, DVP made 400 MW of transmission capability available for competitors.

Generally, the comments we received indicate that transmission issues are extremely important, but are independent of the type of transition plan that the Commission may approve. Federal Energy Regulatory Commission proceedings, the development of regional transmission entities, and the separation of transmission from generation and distribution through functional unbundling, are the venues for examining transmission issues.

Utility/CSP Readiness

The most critical preparation necessary for the utilities and CSPs to assure an orderly transition involve information technology systems and business practices. Fortunately all of Virginia's investor-owned utilities, except Kentucky Utilities, are participating in retail access programs either here, through pilots, or in other states. Those experiences should help expedite the implementation of retail choice.

Staff can verify that the processes of developing Interim Rules and electronic data interface (EDI) standards have been valuable learning experiences. If we had not already gone through those processes there would probably be no effective way to begin retail choice on January 1, 2002.

Many of the CSPs that have already received licenses to provide electricity service in Virginia have operated in other jurisdictions. Seven of those CSPs have already completed the EDI certification process with DVP, which is necessary before a CSP can enroll a customer of that utility. The EDI certification process with AEP-VA is nearly completed with one CSP. Both Allegheny Power and Delmarva are experienced with EDI from other states they serve. Kentucky Utilities has not had experience with retail choice, but the fact that they have only 29,000 Virginia customers limits the amount of data transactions that will be required.

Two electric cooperatives that have made progress with EDI standards are Rappahannock Electric Cooperative, which is beginning a pilot program in January 2001, and Mecklenburg Electric Cooperative. The other Coops can learn from Rappahannock's experiences. Widely accepted EDI standards have created a market for software vendors, who can develop complete business system processors and EDI translators for utilities or CSPs.

It is important that Virginia EDI standards and business practices continue to conform in large part with the standards of other states in our region. There are both regional and national EDI and business practices groups in which the Staff actively participates. Having uniform business rules and EDI standards allows CSPs to operate seamlessly from state to state. Competitive providers have emphasized to us the importance of such uniformity when a CSP is deciding whether to enter a market.

Summary

The easiest implementation plan for the transition to full retail choice would be an immediate flash-cut for all customers of all incumbent utilities at the same time. However, Virginia's

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utilities have unique and distinctive characteristics that should be considered. That has led Staff to recommend transition plans that differ for utilities. The intention of the implementation design we recommend is to transition customers to retail choice as rapidly as possible while assuring that the utility and CSP systems are not disrupted and that the market is ready for such a significant change. Staff's recommended plan is detailed in Attachment A.

Finally, there is a great deal of preparation work left for the January 1, 2002, beginning of the transition to retail access. One duty particularly significant is the review of the Interim Rules used in pilot programs to modify them if necessary for full competition. That process has begun with the goal of issuing new rules by the summer of 2001. The rules for metering and billing will be considered in conjunction since many issues will be common.

Attachment A

STAFF'S RECOMMENDED PLAN FOR THE TRANSITION TO RETAIL ACCESS

- AEP-VA, Allegheny Power, Delmarva and Kentucky Utilities will immediately transition to full retail choice on January 1, 2002.
- Dominion Virginia power will adhere to its proposed transition plan as detailed in Appendix I with the following modifications:
 - January 1, 2002 – full retail choice available to residential and small commercial customers in the Northern Region and one-third of the system industrial load opened to retail choice.
 - September 1, 2002 – full retail choice available to residential and small commercial customers in the Central/Western Region and two-thirds of the system industrial load opened to retail choice.
 - January 1, 2003 – full retail choice for the Eastern Region and all industrial load opened to retail choice.
- Electric Cooperatives may move to full retail choice at their own pace to be completed by January 1, 2003. Quarterly reports will be filed beginning July 2001, detailing the transition efforts.
- Customers shall not be made to volunteer before participating. Incumbent utilities are to provide competitive service providers a mass list of customer information after allowing customers an opportunity to opt-out.
- For proportional phase-in schedules, the following rules shall be followed:
 - No use of lottery systems for the selection of participants.
 - Participation be made available on a first-in basis.
 - A customer's load at a specific service location should not be split among more than one supplier.

- A phase-in segment's quota be flexible so that the last customer allowed to participate be able to switch its entire load.

Appendix I

DOMINION VIRGINIA POWER

Proposed Schedule for the Phase-in of Retail Access

Residential and Small / Mid-sized Customers

- Residential, GS-1 (up to 30 kW), GS-2 (30 kW – 500 kW), and Church and Synagogue customers would be phased-in by geographic regions principally aligned with the Commonwealth's mass media markets. By using this approach to define the regions, the availability of choice can be closely coordinated with the Commission's Consumer Education Plan so that mass media advertising can be targeted to those areas in a cost-effective manner.
- The attached map and the table below offer a proposed geographic split of our service area that produces three roughly equal increments.

Date	Region	Residential	GS-1	GS-2	Churches	Total	% Eligible
1-1-02	Northern	618,987	49,536	11,164	435	680,122	34.8%
1-1-08	Central/ Western	562,776	54,382	10,669	1311	629,138	66.9%
1-1-04	Eastern	587,665	49,069	9,391	962	647,087	100.0%
Totals		1,769,428	152,987	31,224	2708	1,956,347	

- The Northern choice region would be within reach of the Washington, DC-based media. The Central/Western region would combine the Richmond, Charlottesville, Harrisonburg and Roanoke media markets. The Eastern region would be those areas in the Norfolk-Virginia Beach media market.
- When choice is available in a given geographic region, every customer within that area's defined boundaries would be able to switch to a competitive supplier, i.e., there would be no participation limits, and thus no need for lotteries or keeping track of which customers were "first-in."
- The make-up of the three geographic regions would be defined as including individual localities or political subdivisions - counties, towns and cities. Dominion Virginia Power would be responsible for notifying its customers in those localities when they have choice and are eligible to shop and switch to a competitive supplier.
- There would be no volunteering process, but a mass list of eligible customers should be created and made accessible to suppliers. Customers in the geographic area(s) that have choice would be notified that their information (e.g., name, account number, usage, etc.) would be made available to licensed suppliers through a secure website unless they respond and indicate their preference to "opt out" by a certain date. Such a list would serve a dual purpose – to provide customer information that would help "jump start" the market and provide suppliers with data needed to validate enrollments.

- Effective December 31, 2001, Project Current Choice would end. Pilot customers being served by a competitive service provider, but not in the initial phase-in geographic area(s), would continue to have choice available as if they were in an open region.

Large Commercial and Industrial Customers

- For non-residential customers that meet the applicability requirements of Dominion Virginia Power's GS-3 and GS-4 customer classes, choice would be made available across the entire service area in three equal increments.
- The thresholds for each of the three phase-in stages would be based on making equal proportions of the total annual sales to these customers – approximately 18 million MWh – available to be served by a competitive supplier, as follows:
 - January 1, 2002 -- 6 million MWh eligible to be served competitively (33.3%)
 - January 1, 2003 -- 12 million MWh (66.7%)
 - January 1, 2004 -- 18 million MWh (100%)
- The preferred approach would be to take accounts on a "first-in" basis rather than conducting a volunteering process or a lottery. However, if these larger customers are concerned about an entity gaining a competitive advantage in their respective industry as a result of one company having choice while another does not during the two year phase-in period, the Company would be willing to conduct a lottery to give all customers an equal opportunity to participate in choice in years 1 and 2.
- There would be no limits on the number of MWhs that a specific customer could use toward the annual threshold limits, and enrollments would be accepted on a "first-in" basis until the annual limits are reached.
- There would be no split loads, i.e., every customer participating in choice would have its entire load served by a single competitive service provider
- Customers that won the lottery for Plan B of Project Current Choice and which are being served by a competitive service provider on December 31, 2001, would automatically be included in the first phase, and their annual usage would count towards the January 1, 2002 threshold. If any of the pilot customers were taking less than their full requirements from a supplier (i.e., a portion was still being billed on regulated bundled rates), those customers would have to arrange to have all of their load served by their chosen competitive service provider.

BOARD OF CORRECTIONS

Periodic Review of Regulation

Pursuant to Executive Order Number 25 (98), the Board of Corrections will review the Standards for Planning, Design, Construction and Reimbursement of Local Correctional

Facilities (6 VAC 15-80) to determine whether the regulation should be terminated, amended, or retained as written. If any changes are deemed necessary, the Department of Corrections will file the appropriate documentation as required by statute or procedures established by the Register of Regulations.

The board and the department seek public comment on the review of this regulation regarding any pertinent issues relating to the standards, including whether:

- (i) The regulation is effective in achieving its goals
- (ii) The regulation is essential to protect the health, safety or welfare of the citizens
- (iii) There are less burdensome and less intrusive alternatives for achieving the purpose of the regulation
- (iv) The regulation is clearly written and easily understandable by affected persons

Subject: This regulation governs the planning, design and construction of local correctional facilities for which state reimbursement of costs is requested pursuant to §§ 53.1-80 through 53.1-82 of the Code of Virginia. The standards include, but are not limited to: submission schedules for reimbursement requests; requirements for submission of a Community-Based Corrections Plan; methods or reimbursement; project documentation; design requirements for secure local correctional facilities, community custody facilities and lockups. A copy of the regulation can be found at www.townhall.state.va.us or by contacting the board.

Written or electronically submitted comments may be submitted from January 15, 2001, until 5 p.m. on February 16, 2001. All comments should be addressed to J. Michael Howerton, Community Corrections/Local Facilities, 6900 Atmore Drive, Richmond, VA 23225, (804) 674-3251, FAX (804) 674-3525, e-mail address: howertonjm@vadoc.state.va.us.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice of Availability of Data Concerning Toxic Contaminants in Fish

Pursuant to § 62.1-44.19:6 A 3 the Department of Environmental Quality (DEQ) is giving notice that data concerning the presence of toxic contaminants in fish tissue and sediments is available for the fish and sediment monitoring performed by DEQ in 1999. The monitoring in 1999 was performed in the river basins of the Roanoke (Staunton) and Dan Rivers, as well as portions of the South River, the South Fork of the Shenandoah River, Bull Run and Mountain Run. These data are available on the DEQ web site at <http://www.deq.state.va.us/rivers/homepage.html>. For additional information contact Alex Barron at (804) 698-4119, or e-mail ambarron@deq.state.va.us or call toll free 1-800-592-5482.

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Public Meeting Notice Regarding Nitrogen Oxide Emission Reductions

The Department of Environmental Quality (DEQ) will hold a public meeting to discuss the proposed model rules developed by the Ozone Transport Commission (OTC) pertaining to Nitrogen Oxide (NO_x) emission reductions and obtain input on the impact of the OTC rules if implemented in Virginia. The meeting will be held at the Department of Environmental Quality, 629 E. Main Street, First Floor Conference Room, Richmond, Virginia at 1 p.m. on January 24, 2001. DEQ will accept written comments through February 15, 2001.

The model rules were developed to help achieve attainment with the national 1-hour ozone standard in areas throughout the Ozone Transport Region (OTR) that are currently in nonattainment. The model rules cover the following source categories: (i) boilers used to heat institutions, commercial, and residential buildings, and for heat and power in industrial applications; (ii) small to large internal combustion engines used as stand-alone power generation units and at pipeline compressor stations; (iii) turbines typically used as on-site backup electric power generators; and (iv) cement kilns. The department is seeking input on the possible adoption of these rules by the Commonwealth of Virginia in the future, the potential impact, environmentally and economically, on the Commonwealth, and any implementation concerns.

Persons desiring to obtain a copy of the model rules should contact Tamera Thompson at the DEQ by phone at (804) 698-4502 between the hours of 8 a.m. and 4 p.m. or by fax at (804) 698-4510, or by e-mail at the address below. The model rules are also available online from the OTC at <http://www.sso.org/otc/>. Written comments should be submitted to Tamera Thompson, Office of Air Permitting Programs, P.O. Box 10009, Richmond, Virginia 23240, tmthompson@deq.state.va.us. All written comments should be received by 4:30 p.m. on February 15, 2001.

Public Meeting Notice Regarding Volatile Organic Compound Emission Reductions

The Department of Environmental Quality (DEQ) will hold a public meeting to discuss proposed model rules developed by the Ozone Transport Commission (OTC) pertaining to Volatile Organic Compound (VOC) emission reductions and obtain input on the impact of the OTC rules if implemented in Virginia. The meeting will be held at the Department of Environmental Quality, 629 E. Main Street, First Floor Conference Room, Richmond, Virginia at 9 a.m. on January 24, 2001. DEQ will accept written comments through February 15, 2001.

The model rules were developed to help achieve attainment with the national 1-hour ozone standard in areas throughout the Ozone Transport Region (OTR) that are currently in nonattainment. The model rules cover the following source categories (i) mobile equipment refinishing and repair, (ii) solvent cleaning, (iii) consumer products, (iv) portable fuel containers, and (v) architectural and industrial maintenance coatings. The department is seeking input on the possible adoption of these rules by the Commonwealth of Virginia in

the future, the potential impact, environmentally and economically, on the Commonwealth, and any implementation concerns.

Persons desiring to obtain copies of the model rules should contact Tamera Thompson at the DEQ by phone at (804) 698-4502 between the hours of 8 a.m. and 4 p.m. or by fax at (804) 698-4510, or by e-mail at the address below. The model rules are also available online from the OTC at <http://www.sso.org/otc/>. Written comments should be submitted to Tamera Thompson, Office of Air Permitting Programs, P.O. Box 10009, Richmond, Virginia 23240, tmthompson@deq.state.va.us. All written comments should be received by 4:30 p.m. on February 15, 2001.

STATE WATER CONTROL BOARD

Proposed Consent Special Order City of Radford

The State Water Control Board (SWCB) proposes to issue a consent special order (CSO) to the City of Radford regarding settlement of a civil enforcement action related to compliance with § 61.2-44.15 A of the Code of Virginia. On behalf of the SWCB, the department will consider written comments relating to this settlement for 30 days after the date of publication of this notice in the Virginia Register of Regulations. Comments should be addressed to Jerry R. Ford, Jr., DEQ, West Central Regional, Office, 3019 Peters Creek Road, NW, Roanoke, VA 24019.

The final CSO may be examined at the department during regular business hours. Copies are available from Mr. Ford at the address above or may be requested by telephone at (540) 562-6700.

VIRGINIA CODE COMMISSION

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 for Publication in *The Virginia Register of Regulations*

All agencies are required to use the appropriate forms when furnishing material 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/register/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


CALENDAR OF EVENTS

Symbol Key

-  Location accessible to persons with disabilities
 Teletype (TTY)/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. If you are unable to find a meeting notice for an organization in which you are interested, please check the Commonwealth Calendar at www.vipnet.org or contact the organization directly.

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/TTY , 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


† **February 1, 2001 - 10 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Conference Room 5W, Richmond,
Virginia. 

A meeting to consider public comment on proposed regulations and to adopt final regulations.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2648, FAX (804) 367-6128, (804) 367-9753/TTY , e-mail accountancy@dpor.state.va.us.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES


Virginia Cattle Industry Board

February 21, 2001 - 10:30 a.m. -- Open Meeting
The Homestead, Hot Springs, Virginia. 

A regular business meeting to approve the minutes from the November 2000 meeting, in addition to reviewing the financial statement for the fiscal year 99-00 and finances from October 1, 2000 through February 1, 2001. Staff will give program updates for the state and national level checkoff activities. Election of chairperson(s) will take place as well as appointments to committees for the newly appointed board members. 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 accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

Contact: Reginald B. Reynolds, Executive Director, Virginia Cattle Industry Board, P.O. Box 9, Daleville, VA 24083, telephone (540) 992-1992, FAX (540) 992-4632.


Virginia Charity Food Assistance Advisory Board

February 8, 2001 - 10:30 a.m. -- Open Meeting
Washington Building, 1100 Bank Street, 2nd Floor, Board Room, Richmond, Virginia 

A routine meeting to discuss issues related to food insecurity. 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 accommodation in order to participate at the meeting should contact Steven W. Thomas at least five days before the meeting date so that suitable arrangements can be made.

Contact: Steven W. Thomas, Executive Director, Virginia Charity Food Assistance Advisory Board, 1100 Bank St., Room 809, Richmond, VA, telephone (804) 786-3936, FAX (804) 371-7788.


Virginia Cotton Board

† **March 8, 2001 - 9 a.m.** -- Open Meeting
Airfield Conference Center, 15189 Airfield Road, Wakefield, Virginia. 

A meeting to include discussions and possible approval of contractual arrangements with national and regional organizations, reports of programs and projects funded over the past year, hearing of project proposal grant requests on cotton by VPI and SU, VSU, and other groups for the year 2001. During the meeting, financial reports will be heard and approved if appropriate. 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 accommodation in order to participate at the meeting should contact Gail Moody-Milteer at least five days before the meeting date so that suitable arrangements can be made.

Contact: Gail Moody-Milteer, Program Director, Virginia Cotton Board, 1100 Armory Dr., Suite 120, Franklin, VA, telephone (757) 569-1100, FAX (757) 562-6104.


Virginia Horse Industry Board

February 7, 2001 - 9 a.m. -- Open Meeting
Middleburg Agricultural Experiment Station, 5527 Sullivans Mill Road, 1st Floor, Conference Room, Middleburg, Virginia. 

The board will review the minutes of the last meeting, review planned projects for 2001, and discuss the upcoming grant review period and process. 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 accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

Contact: Andrea S. Heid, Program Director, Virginia Horse Industry Board, 1100 Bank St., Suite 1004, Richmond, VA 23219, telephone (804) 786-5842, FAX (804) 371-7786.

Virginia Irish Potato Board

January 15, 2001 - 7 p.m. -- Open Meeting
Eastern Shore Agricultural Research and Extension Center, Painter, Virginia. 

A meeting to hear and, if appropriate, approve minutes of the last meeting and for the presentation of the board's financial statement. The board will discuss and consider programs (promotion, research, and education), the annual budget and other business that may be presented. 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 accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

Contact: J. W. Nottingham, Program Director, Virginia Irish Potato Board, P.O. Box 26, Onley, VA 23418, telephone (757) 787-5867, FAX (757) 787-5973.

Virginia Pesticide Control Board


January 18, 2001 - 9 a.m. -- Open Meeting
Washington Building, 1100 Bank Street, 2nd Floor, Board Room, Richmond, Virginia. 

A general business meeting. Portions of the meeting may be held in closed session pursuant to § 2.1-344 of the Code of Virginia. The public will have an opportunity to comment on any matter not on the board's agenda beginning at 9 a.m. 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 accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

Contact: Dr. Marvin A. Lawson, Program Manager, Pesticide Control Board, Washington Bldg., 1100 Bank St., 4th Floor, Richmond, VA 23219, telephone (804) 371-6558, FAX (804) 371-8598, e-mail jknight@vdacs.state.va.us.


Virginia Plant Pollination Advisory Board

† **February 2, 2001 - 10 a.m.** -- Open Meeting
Washington Building, 1100 Bank Street, First Floor Conference Room, Richmond, Virginia. 

An annual 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 accommodation in order to participate at the meeting should contact the board at least five days before the meeting date so that suitable arrangements can be made.

Contact: Robert G. Wellemeier, Board Secretary, Virginia Plant Pollination Advisory Board, 234 West Shirley Ave., Warrenton, VA 20186, telephone (540) 347-6380, FAX (540) 347-6384, (804) 828-1120/TTY 


Virginia Sweet Potato Board

† **February 6, 2001 - 7 p.m.** -- Open Meeting
Little Italy Restaurant, 10227 Rogers Drive, Nassawadox, Virginia. 

A meeting to hear and approve, if appropriate, minutes of the last meeting and the presentation of the board's financial statement. The board will discuss and consider programs (promotion, research, and education), the annual budget, and other business that may be presented. 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 accommodation in order to participate in the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

Contact: J. W. Nottingham, Program Director, Virginia Sweet Potato Board, P.O. Box 26, Onley, VA 23418, telephone (757) 787-5867, FAX (757) 787-5973, e-mail jknight@vdacs.state.va.us.

STATE AIR POLLUTION CONTROL BOARD

† **February 16, 2001 - 9 a.m.** -- Open Meeting
Main Street Centre, 600 East Main Street, Lower Level Conference Room, Richmond, Virginia. 

A public meeting to receive comments on and to discuss the State Air Pollution Control Board's notice of intent to adopt a new regulation for mobile sources that meets current air quality needs and to repeal the existing regulation for mobile sources.

Calendar of Events

Contact: Kathleen Sands, Policy Analyst, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413, FAX (804) 698-4510, (804) 698-4021/TTY ☎, e-mail krsands@deq.state.va.us.

ALZHEIMER'S DISEASE AND RELATED DISORDERS COMMISSION

January 25, 2001 - 10 a.m. -- Open Meeting
Virginia Department for the Aging, 1600 Forest Avenue, Suite 102, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular business meeting. Public comments are welcome.

Contact: Janet Honeycutt, Virginia Department for the Aging, 1600 Forest Ave., Suite 102, Richmond, VA 23229, telephone (804) 662-9341.

BOARD OF ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

† January 31, 2001 - 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 meeting of the Architects section. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department 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: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail apelsla@dpor.state.va.us.

† February 7, 2001 - 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 meeting of the Professional Engineers section. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department 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: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail apelsla@dpor.state.va.us.

† February 14, 2001 - 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 meeting of the Land Surveyors section. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department 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: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail apelsla@dpor.state.va.us.

† February 21, 2001 - 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 meeting of the Landscape Architects section. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department 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: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail apelsla@dpor.state.va.us.

† February 28, 2001 - 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 meeting of the Certified Interior Designers section. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department 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: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail apelsla@dpor.state.va.us.

† March 7, 2001 - 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 meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department 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: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail apelsla@dpor.state.va.us.

ART AND ARCHITECTURAL REVIEW BOARD

February 2, 2001 - 10 a.m. -- Public Hearing

March 2, 2001 - 10 a.m. - Open Meeting

Science Museum of Virginia, 2500 West Broad Street, Forum Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A monthly meeting to review projects submitted by state agencies.

Contact: Richard L. Ford, AIA, Chairman, Art and Architectural Review Board, 1011 E. Main St., Room 221, Richmond, VA 23219, telephone (804) 643-1977, FAX (804) 643-1981, (804) 786-6152/TTY ☎

BOARD FOR ASBESTOS AND LEAD

February 15, 2001 - 10 a.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 5W, Richmond, Virginia. ♿

A meeting to discuss routine business. A public comment period will be held at the beginning of the meeting.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, Virginia 23230, telephone (804) 367-2648, FAX (804) 367-6128, (804) 367-9753/TTY ☎, e-mail asbestos@dpor.state.va.us.

ASSISTIVE TECHNOLOGY LOAN FUND AUTHORITY

† **January 18, 2001 - 10 a.m.** -- Open Meeting

† **February 15, 2001 - 10 a.m.** -- Open Meeting

Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The Board of Directors will hold its monthly meeting to review loan applications for assistive technology. Following the business meeting, the board will meet in closed session to maintain confidentiality of customer information.

Contact: Shilpa Joshi, Assistive Technology Loan Fund Authority, Box K091, Richmond, VA 23288, telephone (804) 662-9000, FAX (804) 662-9533, toll-free (800) 552-5019, (804) 662-9000/TTY ☎, e-mail loanfund@erols.com.

COMPREHENSIVE SERVICES FOR AT-RISK YOUTH AND FAMILIES

State Executive Council

February 28, 2001 - 9 a.m. -- Open Meeting

March 28, 2001 - 9 a.m. -- Open Meeting

Department of Social Services, 730 East Broad Street, Lower Level, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to provide for interagency programmatic and fiscal policies and oversee the administration of funds appropriated under the Act. Advise the SHHR and the Governor. Agenda is posted on the web a week prior to the meeting.

Contact: Alan G. Saunders, Director, Comprehensive Services for At-Risk Youth and Families, 1604 Santa Rosa Rd., Suite 137, Richmond, VA 23229, telephone (804) 662-9815, FAX (804) 62-9831, e-mail AGS992@central.dss.state.va.us.

BOARD FOR BARBERS AND COSMETOLOGY

January 22, 2001 - 8:30 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)

Three board members will be present to conduct a review of case files on an individual basis. There will be no public comment period at the beginning of the meeting. All meetings are subject to cancellation. The time of the meeting is subject to change. Any person desiring to attend the meeting and requiring special accommodations or interpretative services should contact the department 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: Robert Tortolani, Board Administrator, Board for Barbers and Cosmetology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY ☎, e-mail barbercosmo@dpor.state.va.us.

BOARD FOR THE BLIND AND VISION IMPAIRED

January 16, 2001 - 10 a.m. -- Open Meeting

Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The Board for the Blind and Vision Impaired is an advisory board 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, budget and request for appropriations for the department.

Calendar of Events

At this regular meeting, the board will review information regarding department activities and operations, review expenditures from the board's endowment fund, and discuss other issues raised for board members.

Contact: Katherine C. Proffitt, Administrative Staff Assistant, Department for the Blind and Vision Impaired, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3145, FAX (804) 371-3157, toll-free (800) 622-2155, (804) 371-3140/TTY ☎, e-mail proffikc@dvh.state.va.us.

BOARD FOR BRANCH PILOTS

† **January 31, 2001 - 9:30 a.m.** -- Open Meeting
Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia. ♿ (Interpreter for the deaf provided upon request)

The board will meet to conduct examinations.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail branchpilots@dpor.state.va.us.

† **February 1, 2001 - 9:30 a.m.** -- Open Meeting
Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department 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: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail branchpilots@dpor.state.va.us.

CEMETERY BOARD

January 24, 2001 - 9:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general business meeting.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2039, FAX (804) 367-2475, e-mail cemetery@dpor.state.va.us.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

February 14, 2001 - Noon -- Open Meeting
James Monroe Building, 101 North 14th Street, 17th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting of the board's Grants Committee to consider the FY02 Competitive Grants Program applications for funding. No comments from the public will be entertained at the Grants Committee meeting; however, written comments are welcome.

Contact: Margaret H. Reynolds, Grants Program Manager, Chesapeake Bay Local Assistance Department, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 225-3440, FAX (804) 225-3447, toll-free (800) 243-7229, (804) 243-7229/TTY ☎, e-mail mreynolds@cblad.state.va.us.

STATE CHILD FATALITY REVIEW TEAM

January 19, 2001 - 10 a.m. -- Open Meeting
Department of Health, 400 East Jackson Street, Richmond, Virginia. ♿

A business meeting. The meeting will be open to the public from 10 a.m. to 10:45 a.m. The remainder of the meeting will be closed to discuss confidential case information.

Contact: Suzanne J. Keller, Coordinator, Department of Health, 400 E. Jackson St., Richmond, VA 23219, telephone (804) 786-1047, FAX (804) 371-8595, e-mail skeller@vdh.state.va.us.

STATE BOARD FOR COMMUNITY COLLEGES

January 24, 2001 - 3 p.m. -- Open Meeting
Virginia Community College System, James Monroe Building, 101 North 14th Street, 15th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

Meetings of the Academic and Student Affairs; Audit, Budget and Finance; Facilities; and Personnel Committees. Public comment will be taken at the beginning of each committee meeting.


Contact: D. Susan Hayden, Public Relations Manager, State Board for Community Colleges, James Monroe Bldg., 101 N. 14th St., 15th Floor, Richmond, VA 23219, telephone (804) 225-2126, FAX (804) 371-0085, (804) 371-8504/TTY ☎

January 25, 2001 - 9 a.m. -- Open Meeting
Virginia Community College System, James Monroe Building, 101 North 14th Street, 15th Floor, Godwin-Hamel Board Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regularly scheduled meeting. Public comment will be heard at the beginning of the meeting.

Contact: D. Susan Hayden, Public Relations Manager, State Board for Community Colleges, James Monroe Bldg., 101 N. 14th St., 15th Floor, Richmond, VA 23219, telephone (804) 225-2126, FAX (804) 371-0085, (804) 371-8504/TTY ☎

COMPENSATION BOARD

January 23, 2001 - 11 a.m. -- Open Meeting
Compensation Board, Ninth Street Office Building, 202 North 9th Street, 10th Floor, Richmond, Virginia. 

A monthly board meeting.

Contact: Cindy Waddell, Administrative Staff Assistant, Compensation Board, P.O. Box 710, Richmond, VA 23218, telephone (804) 786-0786, FAX (804) 371-0235, e-mail cwaddell@scb.state.va.us.

DEPARTMENT OF CONSERVATION AND RECREATION


Cave Board

January 27, 2001 - 1 p.m. -- Open Meeting
Endless Caverns, New Market, Virginia.  (Interpreter for the deaf provided upon request)

Committee meetings at 11 a.m. followed by a full board meeting at 1 p.m.

Contact: Lawrence Smith, Natural Area Protection Manager, Department of Conservation and Recreation, 203 Governor St., Richmond, VA 23219, telephone (804) 371-6205, e-mail lsmith@dcr.state.va.us.

BOARD FOR CONTRACTORS

February 7, 2001 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 4W, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting of the Tradesman Committee to consider matters of interest relating to tradesmen and backflow workers and other appropriate matters pertaining to the tradesman section of the Board for Contractors.

Contact: Robert F. Tortolani, Regulatory Boards Administrator, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2607, FAX (804) 367-2474, (804) 367-9753/TTY , e-mail tortolani@dpor.state.va.us.


February 21, 2001 - 2 p.m. -- Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

March 5, 2001 - 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 Board for Contractors intends to amend regulations entitled: **18 VAC 50-22-10 et seq. Board for Contractors Regulations.** The purpose of the proposed action is to amend existing

regulations governing the licensure of Class A, B, and C contractors to clarify the definitions section; clarify entry requirements; and modify the procedures and provisions regarding renewal, reinstatement, and the standards of practice and conduct.

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.


Contact: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-2785, FAX (804) 367-2474 or (804) 367-9753/TTY , e-mail contractors@dpor.state.va.us.

BOARD OF CORRECTIONS

January 16, 2001 - 10 a.m. -- Open Meeting
Board of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. 


A meeting of the Correctional Services/Policy and Regulations Committee to discuss correctional services/policy and regulations matters for possible presentation to the full board.

Contact: Barbara Reyes, Executive Secretary, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3288, FAX (804) 674-3509, e-mail reyesbb@vadoc.state.va.us.

January 17, 2001 - 8:30 a.m. -- Open Meeting
Board of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. 

A meeting to discuss administrative matters for possible presentation to the full board.

Contact: Barbara Reyes, Executive Secretary, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3288, FAX (804) 674-3509, e-mail reyesbb@vadoc.state.va.us.

January 17, 2001 - 10 a.m. -- Open Meeting
Board of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. 

A meeting to discuss matters that may be presented to the full board. Public comment will be received.

Contact: Barbara Reyes, Executive Secretary, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3288, FAX (804) 674-3509, e-mail reyesbb@vadoc.state.va.us.

DEPARTMENT FOR THE DEAF AND HARD-OF-HEARING

February 6, 2001 - 6 p.m. -- Public Hearing
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Lee Building, 1st Floor Conference Room, Richmond, Virginia.

March 2, 2001 - Public comments may be submitted until this date.


Calendar of Events

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 amend 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 amendments is to add a clear statement of fees, add provisions for a grievance procedure, provide for separate interpreting and transliterating assessments, and clarify confidentiality.

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


Contact: Laurie Malheiros, Interpreter Programs Manager, Department for the Deaf and Hard-of-Hearing, 1602 Rolling Hills Dr., Suite 203, Richmond, VA 23229, telephone (804) 662-9502 (V/TTY), FAX (804) 662-9718 and toll-free 1-800-552-7197 (V/TTY).

BOARD OF DENTISTRY

January 19, 2001 - 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)


An informal conference committee will hear possible violations of the regulations governing the practice of dentistry. No public comment will be heard.

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, 6606 West Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906, FAX (804) 662-7246, e-mail mjmiller@dhp.state.va.us.


January 25, 2001 - 10 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


An examination calibration for the full board. No public comment will be heard.

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, 6606 West Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906, FAX (804) 662-7246, e-mail mjmiller@dhp.state.va.us.


† January 26, 2001 - 8:30 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. 
(Interpreter for the deaf provided upon request)


A meeting of the Regulatory Review Committee to review regulations pursuant to Executive Order 25 (98) and consider possible amendments to recommend to the full board.

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, Southern States Bldg., 6606 W. Broad St., 4th Floor Richmond, VA 23230-1717, telephone (804) 662-9906, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail mjm1@dhp.state.va.us.


† January 26, 2001 - 10:30 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. 
(Interpreter for the deaf provided upon request)

The Regulatory Review Committee will discuss any applicable legislation introduced in the 2001 Session and consider possible legislative proposals from the board for the 2002 Session.


Contact: Marcia J. Miller, Executive Director, Board of Dentistry, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail mjm1@dhp.state.va.us.

† January 26, 2001 - 1 p.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. 
(Interpreter for the deaf provided upon request)

A general business meeting to include committee reports, examination issues, and any other business as may come before the board. Public comment will be received at the beginning of the meeting.

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail mjm1@dhp.state.va.us.


DESIGN-BUILD/CONSTRUCTION MANAGEMENT REVIEW BOARD


January 22, 2001 - 11 a.m. -- Open Meeting
February 26, 2001 - 11 a.m. -- Open Meeting
March 19, 2001 - 11 a.m. -- Open Meeting
Virginia War Memorial, 621 Belvidere Street, Auditorium, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A monthly meeting to review requests submitted by localities to use Design-Build or Construction Management type contracts. Please contact the Division of Engineering and Buildings to confirm meeting.

Contact: Freddie M. Adcock, Administrative Assistant, Department of General Services, 805 E. Broad St., Rm. 101, Richmond, VA 23219, telephone (804) 786-3263, FAX (804) 371-7934, (804) 786-6152/TTY , e-mail fadcock@dgs.state.va.us.

BOARD OF EDUCATION


February 15, 2001 - 9 a.m. -- Open Meeting
Richmond City School Board, 301 North 9th Street, Meeting Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

March 22, 2001 - 9 a.m. -- Open Meeting
Location to be announced.  (Interpreter for the deaf provided upon request)


A regular monthly meeting. Persons may register to speak at the meeting by calling Margaret Roberts. Persons requesting services of an interpreter for the deaf should do so in advance.


Contact: Dr. Margaret N. Roberts, Office of Policy, Department of Education, P.O. Box 2120, 101 N. 14th St., 25th Floor, Richmond, VA 23218, telephone (804) 225-2540, FAX (804) 225-2524, e-mail mroberts@mail.vak12ed.edu.

DEPARTMENT OF ENVIRONMENTAL QUALITY

January 25, 2001 - 7:30 p.m. -- Open Meeting
Fairfax City Hall, 10455 Armstrong Street, Room 306, Fairfax, Virginia. 

The third public meeting to receive comments on the development of a total maximum daily load for fecal coliform bacteria on a 4.5 mile segment of Accotink Creek located in Fairfax County.

Contact: Bryant H. Thomas, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3828, FAX (703) 583-3841, (804) 698-4021/TTY , e-mail bthomas@deq.state.va.us.

† January 30, 2001 - 4 p.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. 

The Coastal Program is updating its coastal needs assessment and strategy under § 309 of the Coastal Zone Management Act. Section 309 is a voluntary coastal zone enhancement grants program that encourages states to develop program changes in one or more of nine coastal enhancement areas, including wetlands, public access, coastal hazards, cumulative and secondary impacts, energy and government facility siting, marine debris, ocean resources, special area management plans and aquaculture. The coastal needs assessment and strategy will evaluate the Commonwealth of Virginia's priority needs for improvement in the above areas, and develop a strategy for addressing these top priority needs. The public is invited to attend an open house, review documents, and provide comments or suggestions. A draft assessment and strategy outline will be available for review after January 16, 2001, at <http://www.state.va.us/coastal>. For copies of this draft, or to submit written comments, please write Laura McKay. Comments must be received by February 15, 2001.

Contact: Laura McKay, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4323, FAX (804) 698-4319, e-mail lbmckay@deq.state.va.us.


Virginia Environmental Education Advisory Committee

January 25, 2001 - 10 a.m. -- Open Meeting
Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia. 

A meeting of the Structure of Environmental Education Workgroup.


Contact: Ann Regn, Environmental Education Coordinator, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4442 or e-mail amregn@deq.state.va.us.

VIRGINIA FIRE SERVICES BOARD

† February 8, 2001 - 11 a.m. -- Open Meeting
Airfield 4-H Educational Center, Wakefield, Virginia. 
(Interpreter for the deaf provided upon request)

11 a.m. - Committee on Administration and Policy
1 p.m. - Committee on Fire Education and Training
3 p.m. - Committee on Fire Prevention and Control
At conclusion - Committee on Finance


Contact: Christy L. King, Secretary to the Board, Virginia Fire Services Board, 101 N. 14th St., 18th Floor, Richmond, Virginia 23219, telephone (804) 371-0220, FAX (804) 371-0219, e-mail cking@dfp.state.va.us.

† February 9, 2001 - 9 a.m. -- Open Meeting
Airfield 4-H Educational Center, Wakefield, Virginia. 
(Interpreter for the deaf provided upon request)

A regular meeting. Contact the board for details.


Contact: Christy L. King, Secretary to the Board, Virginia Fire Services Board, 101 N. 14th St., 18th Floor, Richmond, Virginia 23219, telephone (804) 371-0220, FAX (804) 371-0219, e-mail cking@dfp.state.va.us.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

January 17, 2001 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. 

A meeting to discuss general board business. There will be a public comment period during the first 15 minutes of the meeting.


Contact: Cheri Emma-Leigh, Administrative Staff Assistant, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA, telephone (804) 662-9907, FAX (804) 662-9523, e-mail CEmma-Leigh@dhp.state.va.us.

January 31, 2001 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. 


A meeting to hold informal hearings. There will not be a public comment period.

Contact: Cheri Emma-Leigh, Administrative Staff Assistant, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA, telephone (804) 662-9907, FAX (804) 662-9523, e-mail CEmma-Leigh@dhp.state.va.us.


Calendar of Events

February 28, 2001 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 1, Richmond, Virginia. 

A meeting of the Legislative Committee to review legislation from the 2001 Session of the General Assembly and possible proposals for the 2002 Session of the General Assembly. Public comment will be received at the beginning of the meeting.


Contact: Elizabeth Young Tisdale, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9907, FAX (804) 662-9523, (804) 662-7197/TTY , e-mail etisdale@dhp.state.va.us.

DEPARTMENT OF HEALTH

January 25, 2001 - 10 a.m. -- Open Meeting
Natural Resources Building, 900 Natural Resources Drive,
Fontaine Research Park, Charlottesville, Virginia. 

A meeting of the Biosolids Use Regulations Advisory Committee to discuss implementation issues concerning the Biosolids Use Regulations involving land application, distribution and marketing of biosolids.

Contact: C. M. Sawyer, Ph.D., Director of Wastewater Engineering, Department of Health, Main Street Station, 1500 E. Main St., Room 308, Richmond, VA 23219, telephone (804) 786-1755, FAX (804) 786-5567, e-mail csawyer@vdh.state.va.us.

January 25, 2001 - 1 p.m. -- Open Meeting
Natural Resources Building, 900 Natural Resources Drive,
Fontaine Research Park, Charlottesville, Virginia. 

A meeting of the Biosolids Use Information Committee to discuss issues involving land application of biosolids and the agricultural use of biosolids as governed by the Biosolids Use Regulations.

Contact: C. M. Sawyer, Ph.D., Director of Wastewater Engineering, Department of Health, Main Street Station, 1500 E. Main St., Room 109, Richmond, VA 23219, telephone (804) 786-1755, FAX (804) 786-5567, e-mail csawyer@vdh.state.va.us.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

January 16, 2001 - 9 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, Richmond,
Virginia.


A regular meeting. Agenda materials will be available on the website at www.schev.edu approximately one week prior to the meeting.

Contact: Lee Ann Rung, Assistant to the Executive Director, State Council of Higher Education for Virginia, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2602.


VIRGINIA HOUSING DEVELOPMENT AUTHORITY

† **January 24, 2001 - 9 a.m.** -- Open Meeting
Virginia Housing Development Authority, 601 South Belvidere
Street, Richmond, Virginia. 

A regular meeting of the Board of Commissioners to review and, if appropriate, (i) 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 they may deem appropriate. Various committees of the Board of Commissioners may also meet during the day preceding the regular meeting and before and after the regular meeting and may consider matters within its 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 South Belvidere Street, Richmond, VA 23220, telephone (804) 343-5540, FAX (804) 783-6701, toll-free 1-800-968-7837, (804) 783-6705/TTY 

STATEWIDE INDEPENDENT LIVING COUNCIL

January 17, 2001 - 1 p.m. -- Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms
Drive, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A quarterly meeting.


Contact: Jim Rothrock, Statewide Independent Living Council, 1802 Marroit Rd., Richmond, VA 23229, telephone (804) 673-0119, FAX (804) 282-7118.

DEPARTMENT OF LABOR AND INDUSTRY

Virginia Migrant and Seasonal Farmworkers Board

† **January 24, 2001 - 10 a.m.** -- Open Meeting
State Corporation Commission, Tyler Building, 1300 East
Main Street, 2nd Floor, Court Room B, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular quarterly meeting.

Contact: Patti C. Bell, Board Staff Director, Department of Labor and Industry, 13 S. 13th St., Richmond, VA 23219, telephone (804) 225-3083, FAX (804) 371-6524, (804) 786-2376/TTY , e-mail pcb@doli.state.va.us.

LIBRARY BOARD

January 19, 2001 - 8:15 a.m. -- Open Meeting
March 19, 2001 - 8:15 a.m. -- Open Meeting
The Library of Virginia, 800 East Broad Street, Richmond,
Virginia. 

A meeting to discuss matters pertaining to The Library of Virginia and the Library Board. Committees of the board will meet as follows:

8:15 a.m. -- Public Library Development Committee, Orientation Room
Publications and Educational Services Committee, Conference Room B
Records Management Committee, Conference Room C

9:30 a.m. -- Archival and Information Services Committee, Orientation Room
Collection Management Services Committee, Conference Room B
Legislative and Finance Committee, Conference Room C

10:30 a.m. The full board will meet in the Conference Room on 2M.

Public comments will be received at approximately 11 a.m.

Contact: Jean H. Taylor, Executive Secretary to the Librarian of Virginia, The Library of Virginia, Richmond, VA 23219, telephone (804) 692-3535, FAX (804) 692-3594, (804) 692-3976/TTY ☎, e-mail jtaylor@lva.lib.va.us.

LONGWOOD COLLEGE

† **January 25, 2001 - Noon** -- Open Meeting
Commonwealth Club, 401 West Franklin Street, Richmond, Virginia.

A meeting to conduct routine business of the Executive Committee.

Contact: Jeanne Hayden, Longwood College, 201 High St., Farmville, VA 23909, telephone (804) 395-2004, e-mail jhayden@longwood.lwc.edu.

VIRGINIA MANUFACTURED HOUSING BOARD

January 18, 2001 - 10 a.m. -- Open Meeting
The Jackson Center, 501 North 2nd Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting to address licensing issues, handle complaints and claims against licensees in the program, conduct fact-findings regarding complaints and claims, and carry out administration of the Manufactured Housing Licensing and Transaction Recovery Fund Regulations.

Contact: Curtis L. McIver, Associate Director, Department of Housing and Community Development, State Building Code Administrative Office, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7160, FAX (804) 371-7092, (804) 371-7089/TTY ☎, e-mail cmciver@dhcd.state.va.us.

MARINE RESOURCES COMMISSION

† **January 23, 2001 - 9:30 a.m.** -- Open Meeting
† **February 27, 2001 - 9:30 a.m.** -- Open Meeting
† **March 27, 2001 - 9:30 a.m.** -- Open Meeting
Marine Resources Commission, 2600 Washington Avenue, 4th Floor, Newport News, Virginia. ♿

A monthly meeting.

Contact: LaVerne Lewis, Commission Secretary, Marine Resources Commission, 2600 Washington Ave., Newport News, VA 23607, telephone (757) 247-2261, FAX (757) 247-2020, toll-free (800) 541-4646, (757) 247-2292/TTY ☎, e-mail llewis@mrc.state.va.us.

BOARD OF MEDICINE

February 16, 2001 - 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 Board of Medicine intends to amend regulations entitled: **18 VAC 85-80-10 et seq. Regulations Governing the Licensure of Occupational Therapists.** Amendments are proposed to establish requirements for evidence of continued competency in renewal or reinstatement of licensure and for inactive license.

Statutory Authority: §§ 54.1-103, 54.1-2400 and 54.1-2912.1 of the Code of Virginia.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908.

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February 16, 2001 - 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 Board of Medicine intends to amend regulations entitled: **18 VAC 85-101-10 et seq. Regulations Governing the Licensure of Radiologic Technologists and Radiologic Technologists-Limited.** The purpose of the proposed amendments is to establish requirements for evidence of continued competency to renew or reinstate a license and for an inactive license.

Statutory Authority: §§ 54.1-2400 and 54.1-2912.1 of the Code of Virginia.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908.

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February 16, 2001 - Public comments may be submitted until this date.

Calendar of Events

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **18 VAC 85-110-10 et seq. Regulations Governing the Practice of Licensed Acupuncturists.** Amendments are proposed to establish an inactive licensure and requirements for reactivation of status.

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

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908.

January 26, 2001 - 1 p.m. -- Public Hearing
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia.

March 3, 2001 - 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 Board of Medicine intends to adopt regulations entitled: **18 VAC 85-120-10 et seq. Regulations Governing the Certification of Athletic Trainers.** The purpose of the proposed regulation is to establish criteria for certification of athletic trainers, fees for applicants and certificate holders, and requirements for renewal or reinstatement of certification.

Statutory Authority: §§ 54.1-2400 and 54.1-2957.4 of the Code of Virginia.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943 or (804) 662-7197/TTY ☎

Informal Conference Committee

January 26, 2001 - 8:45 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia. ♿

February 1, 2001 - 9:30 a.m. -- Open Meeting
Holiday Inn Select, 2801 Plank Road, Fredericksburg, Virginia.

† **February 14, 2001 - 10 a.m.** -- Open Meeting
Wyndham Hotel, 2801 Hershberger Road, Roanoke, Virginia.

A meeting to inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 of the Code of Virginia. Public comment will not be received.

Contact: Peggy Sadler or Renee Dixon, Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-7332, FAX (804) 662-9517, (804) 662-7197/TTY ☎

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

January 25, 2001 - 10 a.m. -- Open Meeting

January 26, 2001 - 10 a.m. -- Open Meeting

Department of Mental Health, Mental Retardation and Substance Abuse Services, 1220 Bank Street, Richmond, Virginia ♿ (Interpreter for the deaf provided upon request)

Orientation and a regular meeting. A public comment period will be scheduled.

Contact: Marlene Butler, Executive Secretary, Department of Mental Health, Mental Retardation and Substance Abuse Services, Jefferson Bldg., 1220 Bank St., 13th Floor, Richmond, VA 23219, telephone (804) 786-7945, FAX (804) 371-2308, e-mail mbutler@dmhmrsas.state.va.us.

February 4, 2001 - 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 State Mental Health, Mental Retardation and Substance Abuse Services Board intends to repeal regulations entitled: **12 VAC 35-110-10 et seq. Rules and Regulations to Assure the Rights of Residents of Facilities Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.** This regulation was designed to protect the legal and human rights of all residents of facilities operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services. The provisions of this regulation are being incorporated into 12 VAC 35-115-10 et seq.

Statutory Authority: §§ 37.1-10 and 37.1-84.1 of the Code of Virginia.

Contact: Margaret S. Walsh, Director, Office of Human Rights, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-3988 or FAX (804) 371-2308.

February 4, 2001 - 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 State Mental Health, Mental Retardation and Substance Abuse Services Board intends to adopt regulations entitled: **12 VAC 35-115-10 et seq. Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services.** The proposed regulation will protect the legal and human rights of individuals who receive treatment in programs and facilities operated, funded and licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

Statutory Authority: §§ 37.1-10 and 37.1-84.1 of the Code of Virginia.

Contact: Margaret S. Walsh, Director, Office of Human Rights, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-3988 or FAX (804) 371-2308.

February 4, 2001 - 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 State Mental Health, Mental Retardation and Substance Abuse Services Board intends to repeal regulations entitled: **12 VAC 35-120-10 et seq. Rules and Regulations to Assure the Rights of Patients of Psychiatric Hospitals and Other Psychiatric Facilities Licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.** This regulation was designed to protect the legal and human rights of all persons admitted to inpatient psychiatric programs licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services. The provisions of this regulation are being incorporated into 12 VAC 35-115-10 et seq.

Statutory Authority: §§ 37.1-10 and 37.1-84.1 of the Code of Virginia.

Contact: Margaret S. Walsh, Director, Office of Human Rights, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-3988 or FAX (804) 371-2308.

February 4, 2001 - 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 State Mental Health, Mental Retardation and Substance Abuse Services Board intends to repeal regulations entitled: **12 VAC 35-130-10 et seq. Rules and Regulations to Assure the Rights of Clients in Community Programs Licensed or Funded by the Department of Mental Health, Mental Retardation and Substance Abuse Services.** This regulation was designed to protect the legal and human rights of consumers of community programs funded or licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services. The provisions of this regulation are being incorporated into 12 VAC 35-115-10 et seq.

Statutory Authority: §§ 37.1-10 and 37.1-84.1 of the Code of Virginia.

Contact: Margaret S. Walsh, Director, Office of Human Rights, Department of Mental Health, Mental Retardation and

Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-3988 or FAX (804) 371-2308.

DEPARTMENT OF MINES, MINERALS AND ENERGY

January 25, 2001 - 10 a.m. -- Public Hearing
Department of Mines, Minerals and Energy, Buchanan-Smith Building, Route 23 South, Rooms 218 and 219, Big Stone Gap, Virginia.

February 16, 2001 - 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 Department of Mines, Minerals and Energy intends to amend regulations entitled: **4 VAC 25-90-10 et seq. Regulations Governing the Use of Diesel-Powered Equipment in Underground Coal Mines.** The regulation sets forth the requirements for operation and maintenance, ventilation, air quality, fire protection, and fuel for diesel engines being used in underground coal mining.

Statutory Authority: §§ 45.1-161.3, 45.1-161.106, 45.1-107 and 45.1-161.206 of the Code of Virginia.

Contact: Frank Linkous, Mine Chief, Department of Mines, Minerals and Energy, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (540) 523-8100 or (540) 828-1120/TTY ☎

January 25, 2001 - 10 a.m. -- Public Hearing
Department of Mines, Minerals and Energy, Buchanan-Smith Building, Route 23 South, Rooms 218 and 219, Big Stone Gap, Virginia.

February 16, 2001 - 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 Department of Mines, Minerals and Energy intends to **repeal** regulations entitled: **4 VAC 25-100-10 et seq. Regulation Governing Vertical Ventilation Holes and Mining near Gas and Oil Wells** and **adopt** regulations entitled: **4 VAC 25-101-10 et seq. Regulation Governing Vertical Ventilation Holes and Mining near Gas and Oil Wells.** The purpose of the proposed action is to establish guidelines that govern drilling, equipping and operating of vertical ventilation holes that are used to remove methane gas from underground coal mines. This regulation is being developed to replace the existing regulation that is being repealed.

Statutory Authority: §§ 45.1-161.3, 45.1-161.106, 45.1-161.121, 45.1-161.254 and 45.1-161.292 of the Code of Virginia.


Contact: Frank Linkous, Mine Chief, Department of Mines, Minerals and Energy, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (540) 523-8100 or (540) 828-1120/TTY ☎

Calendar of Events


Virginia Gas and Oil Board

† **January 16, 2001 - 9 a.m.** -- Open Meeting
Southwest Virginia Higher Education Center, Virginia Highlands Community College, Abingdon, Virginia. 
(Interpreter for the deaf provided upon request)


A regularly scheduled meeting to consider petitions filed by applicants for location exceptions for conventional gas units, to consider prior orders for disbursement from the escrow account and to consider pooling applications. The public may address the board on individual items as they are called for hearing by the board.

Contact: Bob Wilson, Director, Division of Gas and Oil, Department of Mines, Minerals and Energy, P.O. Box 1416, Abingdon, VA 24212, telephone (540) 676-5423, FAX (540) 676-5459, (800) 828-1120/TTY , e-mail bxw@mme.state.va.us.


VIRGINIA MUSEUM OF FINE ARTS

† **February 15, 2001 - 12:30 p.m.** -- Open Meeting
Virginia Museum of Fine Arts, Auditorium, 2800 Grove Avenue, Richmond, Virginia. 


A quarterly meeting of the full Board of Trustees. Public comment will not be received.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY , e-mail sbroyles@vmfa.state.va.us.


Architect Search Committee

† **February 14, 2001 - 10 a.m.** -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, CEO Building, 2nd Floor Meeting Room, Richmond, Virginia. 


A quarterly meeting to review architects proposals.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Avenue, Richmond, VA, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY , e-mail sbroyles@vmfa.state.va.us.


Buildings and Grounds Committee

† **February 15, 2001 - 8:30 a.m.** -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, CEO Bldg., 2nd Floor Meeting Room, Richmond, Virginia. 


A quarterly meeting to review activities and plans of the committee. Public comment will not be received.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Avenue, Richmond, VA 23221, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY , e-mail sbroyles@vmfa.state.va.us.


Collections Committee

† **February 15, 2001 - 9:30 a.m.** -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Ave., Auditorium, Richmond, Virginia. 


A quarterly meeting to review acquisitions, gifts and loans in closed session. Public comment will not be received.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY , e-mail sbroyles@vmfa.state.va.us.


Communications and Marketing Committee

† **February 14, 2001 - 3:15 p.m.** -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Ave., CEO Building, 2nd Floor Meeting Room, Richmond, Virginia. 


A quarterly meeting to update the committee on marketing/public relations activities and plans.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Avenue, Richmond, VA 23221, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY , e-mail sbroyles@vmfa.state.va.us.


Education and Programs Committee

† **February 14, 2001 - 2 p.m.** -- Open Meeting
Virginia Museum of Fine Arts, CEO Building, 2800 Grove Avenue, 1st Floor Meeting Room, Richmond, Virginia. 


A quarterly meeting to update the committee on the activities of the Education and Outreach department.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY , e-mail sbroyles@vmfa.state.va.us.


Exhibitions Committee

† **February 14, 2001 - 4:30 p.m.** -- Open Meeting
Virginia Museum of Fine Arts, CEO Building, 1st Floor Meeting Room, 2800 Grove Ave., Richmond, Virginia. 

A quarterly meeting to discuss future exhibitions to include a closed session. Public comment will not be received.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY , e-mail sbroyles@vmfa.state.va.us.

Finance Committee

† **February 15, 2001 - 11 a.m.** -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Main Lobby Conference Room, Richmond, Virginia. 

A quarterly meeting reporting on museum finances.
Public comment will not be received.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY ☎, e-mail sbroyles@vmfa.state.va.us.

Legislative Committee

† **February 14, 2001 - 11:30 a.m.** -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Main Lobby Conference Room, Richmond, Virginia. ♿

A quarterly meeting to review legislative activities.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY ☎, e-mail sbroyles@vmfa.state.va.us.

Planning Committee

† **February 14, 2001 - 12:30 p.m.** -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Auditorium, Richmond, Virginia. ♿

A quarterly meeting to review strategic plan.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY ☎, e-mail sbroyles@vmfa.state.va.us.

BOARD OF NURSING

January 22, 2001 - 8:30 a.m. -- Open Meeting
January 24, 2001 - 8:30 a.m. -- Open Meeting
January 25, 2001 - 8:30 a.m. -- Open Meeting
March 19, 2001 - 8:30 a.m. -- Open Meeting
March 21, 2001 - 8:30 a.m. -- Open Meeting
March 22, 2001 - 8:30 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room, Richmond, Virginia. ♿

A panel of the board will conduct formal hearings with licensees and/or certificate holders. Public comment will not be received.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, e-mail nursebd@dhp.state.va.us.

Special Conference Committee

February 12, 2001 - 8:30 a.m. -- Open Meeting
February 13, 2001 - 8:30 a.m. -- Open Meeting
February 15, 2001 - 8:30 a.m. -- Open Meeting
February 22, 2001 - 8:30 a.m. -- Open Meeting
February 23, 2001 - 8:30 a.m. -- Open Meeting
† **April 5, 2001 - 8:30 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room, Richmond, Virginia. ♿

A Special Conference Committee, comprised of two or three members of the Virginia Board of Nursing, will conduct informal conferences with licensees or certificate holders. Public comment will not be received.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, e-mail nursebd@dhp.state.va.us.

OLD DOMINION UNIVERSITY

January 22, 2001 - 3 p.m. -- Open Meeting
February 19, 2001 - 3 p.m. -- Open Meeting
March 19, 2001 - 3 p.m. -- Open Meeting
Old Dominion University, Webb University Center, Norfolk, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting of the executive committee of the governing board of the institution to discuss business of the board and the institution as determined by the Rector and the President.

Contact: Donna Meeks, Assistant to the Vice President for Administration and Finance, Old Dominion University, 225 Koch Hall, Norfolk, VA 23529, telephone (757) 683-3072, FAX (757) 683-5679, e-mail dmeeks@odu.edu.

† **April 12, 2001 - 2:30 p.m.** -- Open Meeting
Old Dominion University, Webb University Center, Norfolk, Virginia. ♿ (Interpreter for the deaf provided upon request)

A quarterly meeting of the governing board of the institution to discuss business of the board and the institution as determined by the Rector and the President.

Contact: Donna Meeks, Assistant to the Vice President for Administration and Finance, Old Dominion University, 225 Koch Hall, Norfolk, VA 23529, telephone (757) 683-3072, FAX (757) 683-5679, e-mail dmeeks@odu.edu.

BOARD FOR OPTICIANS

February 2, 2001 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. ♿
(Interpreter for the deaf provided upon request)

A meeting to discuss regulatory review and other matters requiring board action, including disciplinary cases. A public comment period will be held at the beginning of the meeting. All meetings are subject to cancellation. The time of the meeting is subject to change. Any persons

Calendar of Events

desiring to attend the meeting and requiring special accommodations or interpretative services should contact the department 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., 4th Floor, Richmond, VA 23230-4917, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY ☎, e-mail opticians@dpor.state.va.us.

VIRGINIA BOARD FOR PEOPLE WITH DISABILITIES

February 21, 2001 - 9 a.m. -- Open Meeting
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting of the board.

Contact: Nan Pemberton, Assistant Director of Board Operations, Virginia Board for People with Disabilities, 202 N. 9th St., 9th Floor, Richmond, VA 23219, telephone (804) 786-0016, FAX (804) 786-1118, toll-free (800) 846-4464, (804) 786-0016/TTY ☎, e-mail pembernj@vbpd.state.va.us.

BOARD OF PHARMACY

† **February 1, 2001 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ♿

A general business meeting to consider disciplinary matters or conduct disciplinary proceedings. Public comment will be received at the beginning of the meeting.

Contact: Elizabeth Scott Russell, RPh, Executive Director, Board of Pharmacy, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9911, FAX (804) 662-9313, (804) 662-7197/TTY ☎, e-mail erussell@dhp.state.va.us.

BOARD OF PSYCHOLOGY

January 19, 2001 - 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 Board of Psychology intends to amend regulations entitled: **18 VAC 125-20-10 et seq. Regulations Governing the Practice of Psychology.** The purpose of the proposed amendment is to establish a temporary license with an 18-month term limit for residents in clinical psychology and residents in school psychology who have achieved a passing score on the Examination for Professional Practice in Psychology. Upon passing the state examinations and successful completion of the residency requirements, the temporary license will be replaced with a permanent license.

Statutory Authority: §§ 54.1-2400 and 54.1-3605 of the Code of Virginia.

Contact: Janet Delorme, Deputy Executive Director, Board of Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9575 or FAX (804) 662-9943.

† **January 25, 2001 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. ♿

A meeting to discuss issues pertaining to the state practice examination, adopt final regulations for the licensure of school psychologists-limited, and to discuss proposed changes to the public participation guidelines.

Contact: Evelyn B. Brown, Executive Director, Board of Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9913, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail dbrown@dhp.state.va.us.

REAL ESTATE APPRAISER BOARD

January 16, 2001 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general business meeting.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA, telephone (804) 367-2039, FAX (804) 367-2475, e-mail reappraiser@dpor.state.va.us.

DEPARTMENT OF REHABILITATIVE SERVICES

† **February 5, 2001 - 10 a.m.** -- Open Meeting
The Mill House, 570 Staples Mill Road, Richmond, Virginia. ♿
(Interpreter for the deaf provided upon request)

A meeting to discuss issues pertaining to the Commonwealth Neurotrauma Initiative. A public comment period will be held at the beginning of the meeting. Anyone needing special accommodations should contact Ana Hernandez at least five days before the meeting so that suitable arrangements can be made.

Contact: Ana Hernandez, Program Specialist, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23288-0300, telephone (804) 662-7162, FAX (804) 662-7663, toll-free (800) 552-5019, (804) 464-9950/TTY ☎.

VIRGINIA RESOURCES AUTHORITY


February 13, 2001 - 9 a.m. -- Open Meeting
March 13, 2001 - 9 a.m. -- Open Meeting
Virginia Resources Authority, Eighth and Main Building, 707 East Main Street, Second Floor Conference Room, Richmond, Virginia.

A regular meeting of the Board of Directors to (i) review and, if appropriate, approve the minutes from the most recent monthly meeting; (ii) review the authority's


operations for the prior month; (iii) review applications for loans submitted to the authority for approval; (iv) consider loan commitments for approval and ratification under its various programs; (v) approve the issuance of any bonds; (vi) review the results of any bond sales; and (vii) consider such other matters and take such other actions as it may deem appropriate. Various committees of the Board of Directors may also meet immediately before or after the regular meeting and consider matters within their purview. The planned agenda of the meeting and any committee meetings will be available at the offices of the authority one week prior to the date of the meeting. Any person who needs any accommodation in order to participate in the meeting should contact the authority at least 10 days before the meeting so that suitable arrangements can be made.

Contact: Benjamin M. Hoyle, Executive Assistant, Virginia Resources Authority, 707 E. Main St., Suite 1350, Richmond, VA 23219, telephone (804) 644-3100, FAX (804) 644-3109, e-mail bhoyle@vra.state.va.us.


DEPARTMENT FOR RIGHTS OF VIRGINIANS WITH DISABILITIES

† **January 30, 2001 - 10 a.m.** -- Open Meeting
Ninth Street Office Building, 202 North 9th Street, 9th Floor, Conference Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A quarterly meeting.

Contact: Claunita Jackson, Administrative Staff Assistant, Department for Rights of Virginians with Disabilities, Ninth Street Office Bldg., 202 N. 9th St., Richmond, VA 23219, telephone (804) 225-3220, FAX (804) 225-3221, toll-free 1-800-552-3962, (804) 225-2042/TTY , e-mail jacksoca@drvd.state.va.us.


SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD

January 24, 2001 - 10 a.m. -- Open Meeting
February 28, 2001 - 10 a.m. -- Open Meeting
Henrico County Human Services, 8600 Dixon Powers Road, Board Room, 2nd Floor, Richmond, Virginia. 

A meeting to hear appeals of denials of applications for permits to construct a septic system.

Contact: Susan Sherertz, Board Secretary, Department of Health, P.O. Box 2448, Room 115, Richmond, VA 23185, telephone (804) 371-4236, FAX (804) 225-4003, e-mail ssherertz@vdh.state.va.us.

VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

† **January 23, 2001 - 10 a.m.** -- Open Meeting
Department of Business Assistance, 707 East Main Street, 3rd Floor, Board Room, Richmond, Virginia. 

A meeting to review applications for loans submitted to the authority for approval and for general business of the board. Time is subject to change depending upon the agenda of the board.

Contact: Cathleen M. Surface, Executive Director, Department of Business Assistance, P.O. Box 446, Richmond, VA 23218-0446, telephone (804) 371-8254, FAX (804) 225-3384, e-mail csurface@dba.state.va.us.

STATE BOARD OF SOCIAL SERVICES

February 16, 2001 - 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 State Board of Social Services intends to amend regulations entitled: **22 VAC 40-690-10 et seq. Virginia Child Care Provider Scholarship Program (formerly Child Day Care Scholarship Programs)**. This regulation is being amended to reflect the administration of the current child care scholarship program. The current regulation was written to administer two different scholarship programs. The two scholarship programs are the CDA credentialing program and the college tuition program. The CDA credentialing scholarship program ended in 1995. The college tuition scholarship program still exists. All references to the CDA credentialing scholarship program have been removed.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Contact: Rhonda Harrell, Program Development Consultant, Division of Licensing Programs, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1775.

February 16, 2001 - 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 State Board of Social Services intends to repeal regulations entitled: **22 VAC 40-900-10 et seq. Community Services Block Grant Guidelines**. This action will repeal the outdated and excessive regulation for the Community Services Block Grant Program.

Statutory Authority: §§ 2.1-590 and 63.1-25 of the Code of Virginia.

Contact: Phyl Parrish, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1895.

February 16, 2001 - 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 State Board of Social

Calendar of Events

Services intends to adopt regulations entitled: **22 VAC 40-901-10 et seq. Community Services Block Grant Program.** The purpose of the proposed regulation is to detail the formula used for the distribution of Community Services Block Grant funds to local community action agencies. The regulation will also require that community action agencies provide matching funds equal to 20% of the grant award.

Statutory Authority: §§ 2.1-590 and 63.1-25 of the Code of Virginia.

Contact: Phyl Parrish, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1895.

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January 19, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 63.1-25 of the Code of Virginia that the State Board of Social Services intends to repeal regulations entitled: **22 VAC 40-230-10 et seq. Agency Placement Adoptions - Preplacement Services.** The purpose of the proposed action is to repeal this regulation. The requirement for development of an adoptive placement plan will be incorporated into foster care policies and procedures to be implemented at the point in time that adoption is selected as the goal for the child.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Contact: Brenda Kerr, Adoption Policy Consultant, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1290.

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January 19, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 63.1-25 of the Code of Virginia that the State Board of Social Services intends to repeal regulations entitled: **22 VAC 40-480-10 et seq. Relocation Assistance General Relief Program.** This regulation provides information to local departments of social services on relocation assistance for general relief recipients. This assistance has not been used in at least five years and is unnecessary and recommended for repeal.

Statutory Authority: §§ 63.1-25 and 63.1-106 of the Code of Virginia.


Contact: Joy Duke, Adult Protective Services Program Consultant, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1260.

January 23, 2001 - 9 a.m. -- Open Meeting
Hanover Department of Social Services, 12304 Washington Highway, Ashland, Virginia. 

A meeting to discuss legislative issues and proposals.

Contact: Pat Rengnerth, State Board Liaison, State Board of Social Services, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1826, FAX (804) 692-1962, toll-free (800) 552-3431.


VIRGINIA SOIL AND WATER CONSERVATION BOARD

January 18, 2001 - 9 a.m. -- Open Meeting
Natural Resources Conservation Service, 1606 Santa Rosa Road, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular business meeting.

Contact: Leon E. App, Acting Deputy Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-6124, FAX (804) 786-6141, e-mail leonapp@dcr.state.va.us.


TRANSPORTATION SAFETY BOARD

January 25, 2001 - 10 a.m. -- Open Meeting
Department of Transportation, 1401 East Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to discuss transportation safety issues.

Contact: Angelisa Jennings, Management Analyst, Transportation Safety Board, 2300 W. Broad St., Richmond, VA 23269, telephone (804) 367-2026, FAX (804) 367-6031.

COMMONWEALTH TRANSPORTATION BOARD

January 17, 2001 - 2 p.m. -- Open Meeting
Department of Transportation, 1221 East Broad Street, Auditorium, Richmond, Virginia. 

A work session of the Commonwealth Transportation Board and the Department of Transportation staff.

Contact: Cathy M. Ghidotti, Assistant Secretary to the Board, Commonwealth Transportation Board, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-6675, FAX (804) 786-6683, e-mail ghidotti_cm@vdot.state.va.us.

January 18, 2001 - 10 a.m. -- Open Meeting
Department of Transportation, 1221 East Broad Street, Auditorium, Richmond, Virginia. 

A monthly meeting 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 VDOT Public Affairs at (804) 786-2715 for schedule.

Contact: Cathy M. Ghidotti, Assistant Secretary to the Board, Commonwealth Transportation Board, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-6675, FAX (804) 786-6683, e-mail ghidotti_cm@vdot.state.va.us.

BOARD OF VETERINARY MEDICINE

† **January 31, 2001 - 9 a.m.** -- Open Meeting
Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, Virginia. ♿

A general business meeting to consider disciplinary and regulatory issues that may come before the board. Public comment will be received at the beginning of the meeting.

Contact: Elizabeth A. Carter, Ph.D., Executive Director, Board of Veterinary Medicine, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9915, FAX (804) 662-9504, (804) 662-7197/TTY ♿, e-mail ecarter@dhp.state.va.us.

VIRGINIA MILITARY INSTITUTE

February 10, 2001 - 8:30 a.m. -- Open Meeting
Virginia Military Institute, Turman Room, Preston Library, Lexington, Virginia. ♿

A regular meeting of the Board of Visitors to hear committee reports and remarks of the superintendent. The Board of Visitors does not provide an opportunity for public comment at this meeting. Public comment is received at the first meeting of the academic year, usually in August.

Contact: Colonel Edwin L. Dooley, Jr., Secretary, Virginia Military Institute, Superintendent's Office, Lexington, VA 24450, telephone (540) 464-7206.

VIRGINIA VOLUNTARY FORMULARY BOARD

February 1, 2001 - 10 a.m. -- Public Hearing
Washington Building, 1100 Bank Street, 2nd Floor, Conference Room, Richmond, Virginia. ♿

A public hearing to consider the adoption and issuance of revisions to the Virginia Voluntary Formulary. The proposed revisions to the formulary add and delete drugs and drug products to the Formulary that became effective July 27, 1998, and the most recent supplement to that revision. Copies of the proposed revisions are available for inspection at the Bureau of Pharmacy Services, Virginia Department of Health, Monroe Building, 101 North 14th Street, Room S-45, Richmond, VA 23219. Written comments sent to the above address and received prior to 5 p.m. on February 1, 2001, will be made a part of the hearing record and considered by the board.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, Department of Health, 101 N. 14th St., S-45, Richmond, VA 23219, telephone (804) 786-4326.

March 1, 2001 - 10:30 a.m. -- Open Meeting
Washington Building, 1100 Bank Street, 2nd Floor, Conference Room, Richmond, Virginia. ♿

A meeting to review public hearing comments and product data for drug products being considered for inclusion in the Virginia Voluntary Formulary.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, Department of Health, Monroe Building, 101 N. 14th St., Room S-45, Richmond, VA 23219, telephone (804) 786-4326.

VIRGINIA WASTE MANAGEMENT BOARD

February 2, 2001 - Public comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Waste Management Board intends to amend regulations entitled: **9 VAC 20-140-10 et seq. Regulations for the Certification of Recycling Machinery and Equipment for Tax Exemption Purposes.** The proposed amendments remove requirements for submittal of proof of purchase price and for equipment to be in a fixed location to qualify for state income tax credit and clarify what is not covered by the regulation.

Statutory Authority: §§ 58.1-338, 58.1-439.7, 58.1-439.8 and 58.1-3661 of the Code of Virginia.

Contact: Daniel S. Gwinner, Virginia Waste Management Board, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4218, e mail dsgwinner@deq.state.va.us.

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† **February 5, 2001 - 1:30 p.m.** -- Public Hearing
Salem Church Library, 2607 Salem Church Road, Library Room B, Fredericksburg, Virginia.

† **February 6, 2001 - 10:30 a.m.** -- Public Hearing
Tidewater Regional Office, Department of Environmental Quality, 5636 Southern Boulevard, Virginia Beach, Virginia.

† **February 13, 2001 - 1 p.m.** -- Public Hearing
West Central Regional Office, Department of Environmental Quality, 3019 Peters Creek Road, Roanoke, Virginia.

March 16, 2001 - 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 Waste Management Board intends to amend regulations entitled: **9 VAC 20-70-10 et seq. Financial Assurance Regulations for Solid Waste Facilities.** The proposed amendments will incorporate statutory changes, update provisions to

Calendar of Events


maintain consistency with federal regulations and require submittal of documentation to verify that financial assurance mechanisms are funded to required amounts.

Statutory Authority: §§ 10.1-1402 and 10.1-1410 of the Code of Virginia.


Contact: Melissa Porterfield, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4238.

January 31, 2001 - 1 p.m. -- Open Meeting

February 7, 2001 - 1 p.m. -- Open Meeting


Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. 

The Technical Advisory Committee (15A) for Amendment of the Hazardous Waste Management Regulations (9 VAC 20-60-10 et seq.) will meet in two sessions to consider any modifications that may be appropriate to the regulations. All aspects of the regulations are possible subjects of discussion by the committee. The last comprehensive review of the regulations was Amendment 14 (1999). Amendment 14 included a change in the regulation's structure by incorporating similar federal text into the Commonwealth's regulations by reference and deleting large portions of text that was redundant to the newly incorporated federal text. On July 11, 2000, the Virginia Waste Management Board adopted the date of July 1, 2000, as the date of the federal text that was incorporated into the Commonwealth's regulations. This action coincidentally incorporated many changes that were amendments to the federal regulations, which were adopted after the date of incorporated federal text as previously defined by Amendment 14. The committee may consider whether adjustments or exceptions to the Commonwealth's regulations should be made in those parts related to incorporation of federal text. It may consider further use of the incorporation of federal regulation and additional removal of text that is redundant to federal regulatory text incorporated by reference. It may consider correction of errors and any other change it feels will be a constructive change to the regulations.

Contact: Robert G. Wickline, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4213, FAX (804) 698-4327, (804) 698-4021/TTY , e-mail rgwickline@deq.state.va.us.

February 7, 2001 - 9 a.m. -- Open Meeting

March 7, 2001 - 9 a.m. -- Open Meeting

Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. 

A meeting of the advisory committee assisting the department in developing proposed amendments to the Voluntary Remediation Regulation.


Contact: Melissa Porterfield, Virginia Waste Management Board, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4238, e-mail mporterfi@deq.state.va.us.

INDEPENDENT


VIRGINIA RETIREMENT SYSTEM

February 13, 2001 - Noon -- Open Meeting

March 14, 2001 - 3 p.m. -- Open Meeting


Virginia Retirement System Headquarters, 1200 East Main Street, Richmond, Virginia. 

A regular meeting of the Investment Advisory Committee.


Contact: Darla K. Glazier, Office Manager, Virginia Retirement System, P.O. Box 2500, Richmond, VA 23218, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY , e-mail dglazier@vrs.state.va.us.

February 15, 2001 - 1 p.m. -- Open Meeting


March 15, 2001 - 1 p.m. -- Open Meeting

Virginia Retirement System Headquarters, 1200 East Main Street, Richmond, Virginia. 

A regular meeting of the Board of Trustees.

Contact: Darla K. Glazier, Office Manager, Virginia Retirement System, P.O. Box 2500, Richmond, VA 23218, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY , e-mail dglazier@vrs.state.va.us.

February 15, 2001 - 10 a.m. -- Open Meeting


Virginia Retirement System Headquarters, 1200 East Main Street, Richmond, Virginia. 

The following committees will meet:

Benefits and Actuarial Committee - 10 a.m.

Audit and Compliance Committee - 11 a.m.


Administration and Personnel Committee - Noon

Contact: Darla K. Glazier, Office Manager, Virginia Retirement System, P.O. Box 2500, Richmond, VA 23218, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY , e-mail dglazier@vrs.state.va.us.

LEGISLATIVE

VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

March 14, 2001 - 10 a.m. -- Open Meeting


General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting.


Contact: Maria J.K. Everett, Executive Director, Virginia Freedom of Information Advisory Council, General Assembly Building, 910 Capitol St., 2nd Floor, Richmond, VA 23219,

telephone (804) 225-3056, FAX (804) 371-0169, toll-free (866) 448-4100, e-mail meverett@leg.state.va.us.

HAMPTON ROADS THIRD CROSSING BRIDGE-TUNNEL COMMISSION

January 15, 2001 - 4 p.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, 6th Floor, Speakers Conference Room, Richmond, Virginia 
(Interpreter for the deaf provided upon request)

A meeting to be held in conjunction with the Hampton Roads Caucus to update caucus members on the plans for the Hampton Roads Third Crossing Bridge-Tunnel. Questions regarding the agenda should be addressed to Alan Wambold, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other special assistance should contact the committee operations office at least 10 working days prior to the meeting.

Contact: Dawn B. Smith, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY 

CHRONOLOGICAL LIST

OPEN MEETINGS

January 15

Agriculture and Consumer Services, Department of
- Virginia Irish Potato Board
Hampton Roads Third Crossing Bridge-Tunnel Commission

January 16

Blind and Vision Impaired, Board for the
Corrections, Board of
- Correctional Services/Policy and Regulations Committee
Higher Education, State Council of
† Mines, Minerals and Energy, Department of
- Virginia Gas and Oil Board
Real Estate Appraiser Board

January 17

Corrections, Board of
- Administration Committee
Funeral Directors and Embalmers, Board of
Independent Living Council, Statewide
Transportation Board, Commonwealth

January 18

Agriculture and Consumer Services, Department of
- Virginia Pesticide Control Board
† Assistive Technology Loan Fund Authority
Manufactured Housing Board, Virginia
Soil and Water Conservation Board, Virginia
Transportation Board, Commonwealth

January 19

Dentistry, Board of

Child Fatality Review Team, State
Library Board

- Archival and Information Services Committee
- Collection Management Services Committee
- Legislative and Finance Committee
- Public Library Development Committee
- Publications and Educational Services Committee
- Records Management Committee

January 22

Barbers and Cosmetology, Board for
Design-Building/Construction Management Review Board
Old Dominion University
- Executive Committee
Nursing, Board of

January 23

Compensation Board
† Marine Resources Commission
† Small Business Financing Authority, Virginia
Social Services, State Board of

January 24

Cemetery Board
Community Colleges, State Board for
† Housing Development Authority, Virginia
- Board of Commissioners
† Labor and Industry, Department of
- Virginia Migrant and Seasonal Farmworkers Board
Nursing, Board of
Sewage Handling and Disposal Appeal Review Board

January 25

Alzheimer's Disease and Related Disorders Commission
Community Colleges, State Board for
Dentistry, Board of
Environmental Quality, Department of
- Environmental Education Advisory Committee, Virginia
Health, Department of
- Biosolids Use Information Committee
- Biosolids Use Regulations Advisory Committee
† Longwood College
- Executive Committee
Mental Health, Mental Retardation and Substance Abuse Services Board, State
Nursing, Board of
† Psychology, Board of
Transportation Safety Board

January 26

† Dentistry, Board of
- Regulatory Review Committee
Medicine, Board of
- Informal Conference Committee
Mental Health, Mental Retardation and Substance Abuse Services Board, State

January 27

Conservation and Recreation, Department of
- Cave Board

January 30

† Environmental Quality, Department of

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† Rights of Virginians with Disabilities, Department for

January 31

† Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for

- Architects Section

† Branch Pilots, Board for

Funeral Directors and Embalmers, Board of

† Veterinary Medicine, Board of

Waste Management Board, Virginia

February 1

† Accountancy, Board of

† Branch Pilots, Board for

Medicine, Board of

- Informal Conference Committee

† Pharmacy, Board of

Voluntary Formulary Board, Virginia

February 2

† Agriculture and Consumer Services, Department of

- Virginia Plant Pollination Advisory Board

Art and Architectural Review Board

Opticians, Board for

February 5

† Rehabilitative Services, Department of

- Commonwealth Neurotrauma Initiative Advisory
Board

February 6

† Agriculture and Consumer Services, Department of

- Virginia Sweet Potato Board

February 7

Agriculture and Consumer Services, Department of

- Virginia Horse Industry Board

† Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for

- Professional Engineers Section

Contractors, Board for

- Tradesman Committee

Waste Management Board, Virginia

February 8

Agriculture and Consumer Services, Department of

- Virginia Charity Food Assistance Advisory Board

† Fire Services Board, Virginia

- Administration and Policy Committee

- Fire Education and Training Committee

- Fire Prevention and Control Committee

- Committee on Finance

February 9

† Fire Services Board, Virginia

February 10

Virginia Military Institute

- Board of Visitors

February 12

Nursing, Board of

- Special Conference Committee

February 13

Nursing, Board of

- Special Conference Committee

Resources Authority, Virginia

Retirement System, Virginia

- Investment Advisory Committee

February 14

† Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for

- Land Surveyors Section

Chesapeake Bay Local Assistance Board

- Grants Committee

† Medicine, Board of

- Informal Conference Committee

† Museum of Fine Arts, Virginia

- Architect Search Committee

- Communications and Marketing Committee

- Education and Programs Committee

- Exhibitions Committee

- Legislative Committee

- Planning Committee

February 15

Asbestos and Lead, Board for

† Assistive Technology Loan Fund Authority

Education, Board of

† Museum of Fine Arts, Virginia

- Board of Trustees

- Buildings and Grounds Committee

- Collections Committee

- Finance Committee

Nursing, Board of

- Special Conference Committee

Retirement System, Virginia

- Board of Trustees

- Administration and Personnel Committee

- Audit and Compliance Committee

- Benefits and Actuarial Committee

February 16

† Air Pollution Control Board, State

February 19

Old Dominion University

- Board of Visitors Executive Committee

February 21

Agriculture and Consumer Services, Department of

- Virginia Cattle Industry Board

† Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for

- Landscape Architects Section

People with Disabilities, Virginia Board for

February 22

Nursing, Board of

- Special Conference Committee

February 23

Nursing, Board of

- Special Conference Committee

February 26

Design-Building/Construction Management Review Board

February 27

† Marine Resources Commission

February 28

† Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
- Certified Interior Designers Section
At-Risk Youth and Families, Comprehensive Services for
- State Executive Council
Funeral Directors and Embalmers, Board of
- Legislative Committee
Sewage Handling and Disposal Appeal Review Board

March 1

Voluntary Formulary Board, Virginia

March 2

Art and Architectural Review Board

March 7

† Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
Waste Management Board, Virginia

March 8

† Agriculture and Consumer Services, Department of
- Virginia Cotton Board

March 13

Resources Authority, Virginia

March 14

Freedom of Information Advisory Council, Virginia
Retirement System, Virginia

March 15

Retirement System, Virginia

March 19

Design-Building/Construction Management Review Board
Library Board
- Archival and Information Services Committee
- Collection Management Services Committee
- Legislative and Finance Committee
- Public Library Development Committee
- Publications and Educational Services Committee
- Records Management Committee
Nursing, Board of
Old Dominion University
- Board of Visitors Executive Committee

March 21

Nursing, Board of

March 22

Education, Board of
Nursing, Board of

March 27

† Marine Resources Commission

March 28

At-Risk Youth and Families, Comprehensive Services for
- State Executive Council

April 5

† Nursing, Board of
- Special Conference Committee

April 12

† Old Dominion University

PUBLIC HEARINGS

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Environmental Quality, Department of
Mines, Minerals and Energy, Department of

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Medicine, Board of

February 1

Voluntary Formulary Board, Virginia

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† Waste Management Board, Virginia

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Deaf and Hard-of-Hearing, Department for the
† Waste Management Board, Virginia

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† Waste Management Board, Virginia

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Contractors, Board for