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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printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Fall 2000 VAC Supplement includes final regulations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.

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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	Repealed	17:8 VA.R. 1192	1/31/01
2 VAC 5-600-10	Amended	17:9 VA.R. 1293	12/14/00
Title 3. Alcoholic Beverages			
3 VAC 5-10-70	Amended	17:10 VA.R. 1528	2/28/01
3 VAC 5-10-240	Amended	17:10 VA.R. 1528	2/28/01
3 VAC 5-70-170	Amended	17:10 VA.R. 1530	2/28/01
3 VAC 5-70-210	Added	17:10 VA.R. 1529	2/28/01
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 20-620-30	Amended	17:10 VA.R. 1530	1/1/01
4 VAC 20-620-40	Amended	17:5 VA.R. 703	10/30/00
4 VAC 20-620-40	Amended	17:10 VA.R. 1531	1/1/01

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4 VAC 20-670-30	Amended	17:10 VA.R. 1532	1/1/01
4 VAC 20-670-40	Amended	17:10 VA.R. 1532	1/1/01
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
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 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	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 20-900-25	Amended	17:10 VA.R. 1533	1/1/01
4 VAC 20-900-30	Amended	17:10 VA.R. 1533	1/1/01
4 VAC 20-900-35	Amended	17:10 VA.R. 1534	1/1/01
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

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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
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
8 VAC 35-10-20	Amended	17:10 VA.R. 1534	12/22/00
8 VAC 35-10-30	Amended	17:10 VA.R. 1535	12/22/00
8 VAC 35-10-50	Amended	17:10 VA.R. 1535	12/22/00
8 VAC 35-10-60	Amended	17:10 VA.R. 1535	12/22/00
8 VAC 35-10-80	Amended	17:10 VA.R. 1535	12/22/00
8 VAC 35-10-90	Amended	17:10 VA.R. 1536	12/22/00
8 VAC 35-20-10 et seq.	Repealed	17:10 VA.R. 1536	12/22/00
8 VAC 35-21-10 through 8 VAC 35-21-360	Added	17:10 VA.R. 1536-1547	12/22/00
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

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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	
9 VAC 5-80-355	Repealed	17:4 VA.R. 585	*
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
9 VAC 20-60-18	Amended	17:2 VA.R. 220	11/8/00
9 VAC 20-170-10 through 9 VAC 20-170-410	Added	17:9 VA.R. 1297-1327	2/16/01
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

* Regulatory process suspended in 17:9 VA.R. 1297.

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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	--
9 VAC 25-640-10 through 9 VAC 25-640-250	Added	17:10 VA.R. 1548-1556	3/2/01
9 VAC 25-640 Appendices I through IX	Added	17:10 VA.R. 1556-1566	3/2/01
9 VAC 25-650-10 through 9 VAC 25-650-210 emer	Added	17:9 VA.R. 1370-1383	12/14/00-12/13/01
9 VAC 25-730-10 through 9 VAC 25-730-40	Added	17:9 VA.R. 1328	2/16/01
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
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 5-90-185 emer	Added	17:11 VA.R. 1670	1/17/01-1/16/02
12 VAC 5-120-10 through 12 VAC 5-120-120 emer	Added	17:11 VA.R. 1671-1672	1/12/01-1/11/02
12 VAC 5-185-10 through 12 VAC 5-185-110	Added	17:9 VA.R. 1329-1331	2/14/01
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 5-475-10 through 12 VAC 5-475-100 emer	Added	17:11 VA.R. 1673-1675	1/17/01-1/16/02
12 VAC 5-507-10 through 12 VAC 5-507-290 emer	Added	17:11 VA.R. 1675-1681	1/17/01-1/16/02
12 VAC 5-508-10 through 12 VAC 5-508-280 emer	Added	17:11 VA.R. 1687-1692	1/23/01-1/22/02
12 VAC 5-510-10 emer	Amended	17:11 VA.R. 1681	1/17/01-1/16/02
12 VAC 5-510-10.1 emer	Added	17:11 VA.R. 1682	1/17/01-1/16/02
12 VAC 5-510-20 emer	Amended	17:11 VA.R. 1682	1/17/01-1/16/02
12 VAC 5-510-30 emer	Amended	17:11 VA.R. 1682	1/17/01-1/16/02
12 VAC 5-510-50 emer	Amended	17:11 VA.R. 1683	1/17/01-1/16/02
12 VAC 5-510-60 emer	Amended	17:11 VA.R. 1683	1/17/01-1/16/02
12 VAC 5-510-70 emer	Amended	17:11 VA.R. 1683	1/17/01-1/16/02

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-510-80 through 12 VAC 5-510-290 emer	Added	17:11 VA.R. 1684-1687	1/17/01-1/16/02
12 VAC 5-520-10 emer	Amended	17:11 VA.R. 1693	1/12/01-1/11/02
12 VAC 5-520-20 emer	Amended	17:11 VA.R. 1694	1/12/01-1/11/02
12 VAC 5-520-30 emer	Amended	17:11 VA.R. 1694	1/12/01-1/11/02
12 VAC 5-520-40 emer	Repealed	17:11 VA.R. 1694	1/12/01-1/11/02
12 VAC 5-520-50 emer	Repealed	17:11 VA.R. 1694	1/12/01-1/11/02
12 VAC 5-520-60 emer	Repealed	17:11 VA.R. 1694	1/12/01-1/11/02
12 VAC 5-520-70 emer	Repealed	17:11 VA.R. 1694	1/12/01-1/11/02
12 VAC 5-520-80 emer	Amended	17:11 VA.R. 1694	1/12/01-1/11/02
12 VAC 5-520-90 emer	Repealed	17:11 VA.R. 1694	1/12/01-1/11/02
12 VAC 5-520-110 emer	Repealed	17:11 VA.R. 1695	1/12/01-1/11/02
12 VAC 5-520-120 emer	Repealed	17:11 VA.R. 1695	1/12/01-1/11/02
12 VAC 5-520-130 through 12 VAC 5-520-210 emer	Added	17:11 VA.R. 1695-1697	1/12/01-1/11/02
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 30-90-19 emer	Added	17:10 VA.R. 1572	1/8/01-1/7/02
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 5-350 (Forms)	Amended	17:11 VA.R. 1698-1700	
14 VAC 5-370-20	Amended	16:25 VA.R. 3264	9/30/00

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
14 VAC 5-370-100	Amended	16:25 VA.R. 3264	9/30/00
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

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
16 VAC 25-130 Appendix IV	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 30-100-10 through 16 VAC 30-100-80	Added	17:9 VA.R. 1331-1334	2/14/01
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 90-50-30	Amended	17:11 VA.R. 1669	3/14/01
18 VAC 90-50-80	Amended	17:11 VA.R. 1669	3/14/01
18 VAC 100-20-5	Added	17:9 VA.R. 1334	3/1/01
18 VAC 100-20-10	Amended	17:9 VA.R. 1334	3/1/01
18 VAC 100-20-20	Repealed	17:9 VA.R. 1335	3/1/01
18 VAC 100-20-30	Repealed	17:9 VA.R. 1335	3/1/01
18 VAC 100-20-40	Repealed	17:9 VA.R. 1335	3/1/01
18 VAC 100-20-50	Amended	17:9 VA.R. 1335	3/1/01
18 VAC 100-20-54	Added	17:9 VA.R. 1335	3/1/01
18 VAC 100-20-55	Added	17:9 VA.R. 1336	3/1/01
18 VAC 100-20-56	Added	17:9 VA.R. 1336	3/1/01
18 VAC 100-20-60	Amended	17:9 VA.R. 1336	3/1/01
18 VAC 100-20-65	Added	17:9 VA.R. 1336	3/1/01
18 VAC 100-20-70	Amended	17:9 VA.R. 1337	3/1/01
18 VAC 100-20-80	Repealed	17:9 VA.R. 1337	3/1/01
18 VAC 100-20-81	Added	17:9 VA.R. 1337	3/1/01
18 VAC 100-20-85	Added	17:9 VA.R. 1338	3/1/01
18 VAC 100-20-87	Added	17:9 VA.R. 1338	3/1/01
18 VAC 100-20-90	Amended	17:9 VA.R. 1338	3/1/01
18 VAC 100-20-100	Amended	17:9 VA.R. 1338	3/1/01
18 VAC 100-20-110	Amended	17:9 VA.R. 1338	3/1/01
18 VAC 100-20-120	Added	17:9 VA.R. 1339	3/1/01
18 VAC 100-20-130	Added	17:9 VA.R. 1339	3/1/01
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 110-20-20 emer	Amended	17:10 VA.R. 1573	1/10/01-1/9/02
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

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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
18 VAC 160-20-10	Amended	17:9 VA.R. 1342	2/15/01
18 VAC 160-20-20 through 18 VAC 160-20-70	Repealed	17:9 VA.R. 1343-1345	2/15/01
18 VAC 160-20-74	Added	17:9 VA.R. 1345	2/15/01
18 VAC 160-20-76	Added	17:9 VA.R. 1345	2/15/01
18 VAC 160-20-80	Amended	17:9 VA.R. 1345	2/15/01
18 VAC 160-20-85	Added	17:9 VA.R. 1345	2/15/01
18 VAC 160-20-90	Amended	17:9 VA.R. 1345	2/15/01
18 VAC 160-20-100	Repealed	17:9 VA.R. 1349	2/15/01
18 VAC 160-20-102	Added	17:9 VA.R. 1350	2/15/01
18 VAC 160-20-104	Added	17:9 VA.R. 1350	2/15/01
18 VAC 160-20-106	Added	17:9 VA.R. 1350	2/15/01
18 VAC 160-20-109	Added	17:9 VA.R. 1350	2/15/01
18 VAC 160-20-110	Repealed	17:9 VA.R. 1351	2/15/01
18 VAC 160-20-120	Added	17:9 VA.R. 1351	2/15/01
18 VAC 160-20-130	Added	17:9 VA.R. 1352	2/15/01
18 VAC 160-20-140	Added	17:9 VA.R. 1353	2/15/01
18 VAC 160-20-160	Amended	17:9 VA.R. 1353	2/15/01
Title 19. Public Safety			
19 VAC 30-20-80	Amended	17:10 VA.R. 1567	3/14/01
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
20 VAC 5-309-10	Amended	17:9 VA.R. 1366	7/1/01
20 VAC 5-309-15	Added	17:9 VA.R. 1366	7/1/01
20 VAC 5-309-20	Amended	17:9 VA.R. 1366	7/1/01
20 VAC 5-309-30	Amended	17:9 VA.R. 1366	7/1/01
20 VAC 5-309-40	Amended	17:9 VA.R. 1366	7/1/01
20 VAC 5-309-50	Amended	17:9 VA.R. 1367	7/1/01
20 VAC 5-309-70	Amended	17:9 VA.R. 1367	7/1/01
20 VAC 5-309-90 through 20 VAC 5-309-220	Added	17:9 VA.R. 1367-1369	7/1/01
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 40-35-10	Amended	17:10 VA.R. 1567	2/28/01
22 VAC 40-35-90	Amended	17:10 VA.R. 1570	2/28/01
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
22 VAC 40-35-127	Added	17:5 VA.R. 828	12/20/00

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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

VA.R. Doc. No. R01-110; Filed January 25, 2001, 2:13 p.m.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Notice of Intended Regulatory Action

† 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 5-360-10 et seq. Rules and Regulations for the Enforcement of the Virginia Commercial Feed Law.** The purpose of the proposed action is to review the regulation for effectiveness and continued need, including compatibility with changes to the Commercial Feed Law enacted by the General Assembly. 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.

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: § 3.1-828.4 of the Code of Virginia.

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

Public comments may be submitted until May 1, 2001.

Public comments may be submitted until March 19, 2001.

Contact: Alan Rogers, Program Manager, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Room 402, Richmond, VA 23219, telephone (804) 786-2476 or FAX (804) 786-1571.

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. R01-109; Filed January 25, 2001, 2:13 p.m.

VA.R. Doc. No. R01-64; Filed December 14, 2000, 2:49 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 Agriculture and Consumer Services intends to consider amending regulations entitled: **2 VAC 5-440-10 et seq. Rules and Regulations for Enforcement of the Virginia Pest Law - Cotton Boll Weevil Quarantine.** The purpose of the proposed action is to review the regulation for effectiveness and continued need, including the effectiveness and clarity of language relating to penalties, exemptions, and reporting and filing deadlines. VDACS also recommends the current regulation be amended to allow liens to be placed on the cotton crops of those producers who do not pay their fees in lieu of destruction of crops. 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.



TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

† Notice of Intended Regulatory Action

Statutory Authority: § 3.1-188.23 of the Code of Virginia.

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 (Rev. J00 and Rev. K00).** The purpose of these proposed actions is to develop state regulations that control emissions from commercial/industrial solid waste incinerators (CISWIs) and small municipal waste combustors (SMWCs) as required by §§ 111(d) and 129 of the federal Clean Air Act.

Public comments may be submitted until May 1, 2001.

Need: Section 111(d) of the Clean Air Act requires the U.S. Environmental Protection Agency (EPA) to establish procedures under which states submit plans to control certain

Contact: Frank M. Fulgham, Program Manager, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Room 703, Richmond, VA 23219, telephone (804) 786-3515 or FAX (804) 371-7793.

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existing sources of certain pollutants. EPA implemented § 111(d) by promulgating Subpart B of 40 CFR Part 60 establishing procedures and requirements for adoption and submittal of state plans for control of "designated pollutants" from "designated facilities." Designated pollutants are pollutants that are not included on a list published under § 108(a) of the Clean Air Act (National Ambient Air Quality Standards) or § 112(b)(1)(A) (Hazardous Air Pollutants), but for which standards of performance for new sources have been established under § 111(b). A designated facility is an existing facility that emits a designated pollutant and that would be subject to a standard of performance for that pollutant if the existing facility were new.

Subpart B of 40 CFR Part 60 provides that EPA publish guideline documents for development of state emission standards after promulgation of any standards of performance for designated pollutants. The documents must specify emission guidelines and times for compliance and include other pertinent information such as discussion of the pollutant's effects on public health and welfare and description of control techniques and their effectiveness and costs. The emission guidelines reflect the degree of emission reduction attainable with the best adequately demonstrated systems of emission reduction, considering costs as applied to existing facilities.

After publication of a final guideline document for the pollutant in question, the states must develop and submit plans for control of that pollutant from designated facilities. After the final plan submittal date, EPA approves or disapproves each plan (or portion thereof). If a state plan (or portion thereof) is disapproved, EPA promulgates a federal plan (or portion thereof). These and related provisions of Subpart B are basically patterned after § 110 of the Clean Air Act and 40 CFR Part 51 (concerning adoption and submittal of state implementation plans under § 110).

Because failure to develop an adequate regulation will result in imposition of a federal program, meeting the basic requirements of the law and its associated regulations will ensure that Virginia retains its rights to govern Virginia sources, and result in the efficient and economical performance of an important governmental function.

Designated pollutant controls are critical for two reasons. First, only a limited number of air pollutants potentially harmful to human health are regulated at the federal level. Second, health risks from small exposures to designated air pollutants can be high, depending on the substances involved. CISWI and SMWC emissions consist of particulate matter, carbon monoxide, dioxin/furan, and other substances known or suspected of causing cancer, nervous system damage, developmental abnormalities, reproductive impairment, immune suppression, liver dysfunction, hormone imbalance, and other serious health effects. Control of such emissions will reduce and prevent such serious health effects.

EPA has determined that CISWI and SMWC facilities should be regulated under § 111 (New Source Performance Standards) of the Clean Air Act because:

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

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

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

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

The 1990 Clean Air Act amendments added a new § 129 to the Act that applies to solid waste incinerators, including large and small municipal waste combustors, hospital/medical/infectious waste incinerators, and commercial/industrial solid waste incinerators. Section 129 of the Act and its associated standards were promulgated because EPA determined that incinerator emissions cause or contribute significantly to air pollution which may reasonably be expected to endanger public health and welfare. The intended effect of the standards and guidelines is to form a basis for state action to develop state regulations controlling CISWI and SMWC emissions to the level achievable by the best demonstrated system of continuous emission reduction, considering costs, nonair quality health and environmental impacts, and energy requirements.

Section 129 of the Act directs that the standards and guidelines for CISWIs and SMWCs be broadened and provides the schedule for this activity. Regulating CISWI and SMWC emissions for new sources under § 111(b) of the Act (New Source Performance Standards) establishes CISWI and SMWC emissions as a designated pollutant, and requires the EPA to promulgate guidelines under § 111(d) for states to use in developing regulations to control pollutants from existing CISWIs and SMWCs. Emissions guidelines for existing CISWIs that began construction on or before November 30, 1999, and for existing SMWCs that began construction on or before August 30, 1999, have been promulgated under §§ 111(d) and 129 of the Act. In order for §§ 111 and 129 to be effected, the specific guidelines are promulgated in the Code of Federal Regulations (CFR) (Subparts DDD and BBBB of 40 CFR Part 60). State regulations must be at least as stringent as the guidelines.

EPA's final rules for CISWIs were published in the Federal Register on December 1, 2000 (65 FR 75338) and for SMWCs on December 6, 2000 (65 FR 76378). State plans are due by December 1 and 6, 2001, respectively.

Potential Issues:

1. New regulations must be promulgated that meet EPA's requirements for increments of progress, waste management plans, operator training and qualification, emission limitations and operating limits, performance testing, initial compliance requirements, continuous compliance requirement, monitoring, recordkeeping and reporting, Title V operating

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permits, good combustion practices (including operator training and certification, and operating requirements), emission limits, monitoring, stack testing, recordkeeping, reporting, and air curtain incinerators.

2. The regulation must also address separate state requirements for odor, toxics, fugitive emissions, and permits.

3. The open burning regulation (Article 40 of 9 VAC 5 Chapter 40, 9 VAC 5-40-5600 et seq.) may need to be revised to address issues related to air curtain incinerators.

Alternatives: The department is considering alternatives to the proposed regulation amendments. The department has tentatively determined that the first 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 discussed below.

1. Amend the regulations to satisfy the provisions of the law and associated regulations and policies. This option is being selected because it meets the stated purpose of the regulatory action, i.e., to comply with the requirements of the federal Clean Air Act.

2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option is not being selected because it will not ensure consistency with federal requirements.

3. Take no action to amend the regulations. This option is not being selected because it will result in the imposition of a federal program.

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, (ii) the impacts of the proposed regulation on farm and forest lands, and (iii) the costs and benefits of the alternatives stated in this notice or other alternatives. The department must receive all comments 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 Karen G. Sabasteanski, Policy Analyst, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240 (e-mail: kgsabastea@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 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 March 29, 2001, 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. on March 29, 2001.

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

Public comments may be submitted until March 29, 2001.

Contact: Karen G. Sabasteanski, Policy Analyst, Department of Environmental Quality, Office of Air Regulatory Development, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, FAX (804) 698-4510, toll-free 1-800-592-5482 or (804) 698-4021/TTY ☎

VA.R. Doc. Nos.R01-112 and R01-113; Filed February 6, 2001, 9:03 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 amending regulations entitled: **9 VAC 25-260-5 et seq. Water Quality Standards.** The intent of this rulemaking is to protect designated and beneficial uses of state waters by adopting regulations that are technically correct, necessary and reasonable. These standards will be used in setting Virginia Pollutant Discharge Elimination System Permit limits and for evaluating the waters of the Commonwealth for inclusion in the Clean Water Act § 305(b) report and on the § 303(d) list. Waters not meeting standards will require development of a Total Maximum Daily Load under the Clean Water Act at § 303(e).

This rulemaking is needed because the last triennial review was completed in December 1997 and new scientific information is available to update the water quality standards. Changes to the regulation are also needed to improve permitting and monitoring programs as well as meet EPA priorities for this triennium. In addition, the agency has to fulfill the legal mandates for a three-year review under § 62.1-

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44.15(3a) of the Code of Virginia and federal regulations 40 CFR Part 131.

Federal and state mandates in the Clean Water Act at § 303(c), 40 CFR Part 131 and the Code of Virginia in § 62.1-44.15(3a) require that water quality standards be adopted, modified or cancelled every three years.

The scope and objective of the Clean Water Act is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. The Clean Water Act at § 303(c)(1) requires that the states hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards.

The scope of the federal regulations at 40 CFR Part 131 is to describe the requirements and procedures for developing, reviewing, revising and approving water quality standards by the states as authorized by § 303(c) of the Clean Water Act. 40 CFR Part 131 specifically requires the states to adopt criteria to protect designated uses.

The scope and purpose of the State Water Control Law is to protect and to restore the quality of state waters, to safeguard the clean waters from pollution, to prevent and to reduce pollution and to promote water conservation. Section 62.1-44.15 (3a) of the State Water Control Law requires the board to establish standards of quality and to modify, amend or cancel any such standards or policies. It also requires the board to hold public hearings from time to time for the purpose of reviewing the water quality standards, and, as appropriate, adopting, modifying or canceling such standards.

The correlation between the proposed regulatory action and the legal authority identified above is that the amendments being considered are modifications of criteria that will protect designated uses and criteria and designated uses are requirements of the Water Quality Standards.

The authority to adopt standards as provided by the provisions in the previously referenced citations is mandated, although the specific standards to be adopted or modified are discretionary to the Environmental Protection Agency and the state.

Need: The rulemaking is essential to the protection of health, safety or welfare of the citizens of the Commonwealth. Proper water quality standards protect water quality and living resources of Virginia's waters for consumption of fish and shellfish, recreational uses and conservation in general.

Potential issues that may need to be addressed are listed in the alternatives sections. It should be noted that all sections of the regulation are open for comment during this mandated triennial review and a revision, addition or deletion could potentially occur in any section of the regulation. However, major revisions under consideration have been listed in the substance and alternatives sections.

Substance: The existing regulation will be changed to address EPA's national priorities for the states which are described in EPA's Guidance to States, Tribes, and Regions on Priorities for the Water Quality Standards Program for FY 2000-2002, January 1999 (www.epa.gov/OST/standards/2000guid.html). Some of the issues in this EPA document are to complete acceptable

antidegradation, mixing zone, narrative criteria and sediment criteria implementation procedures, special protection for endangered and threatened species, updated use designations and biological criteria.

Other issues under consideration for this rulemaking are those items disapproved by EPA under the 1997 triennial review and/or recommended for inclusion in this triennial review. These issues are outlined in a letter from EPA dated August 16, 2000, and include an updated antidegradation policy that applies to all activities and not just those activities under the jurisdiction of the board. Another issue is that the antidegradation policy must require the highest statutory and regulatory requirements to all new and existing point sources discharges for Tier 2 waters rather than all new and increased point sources. Other issues are updated human health and aquatic life criteria (December 10, 1998, Federal Register Vol. 63, No. 237 and April 22, 1999, Federal Register, Vol. 64, No. 77), identification and designation of exceptional state waters and improved protection of special waters by restricting mixing zones.

The department's staff has also provided many needs to be considered for amendments to the regulation. Some of the needs presented include updated definitions, surface water human health and aquatic life criteria, biological criteria, general criteria, groundwater criteria, groundwater standards, groundwater policies, surface water use designations, "Special Standards" and stream descriptions in the river basin section tables. Also needed are clarified language in the antidegradation section, disinfection policy, temperature criteria, shellfish criteria, variance procedures and water effect ratio procedures. DEQ is also considering new nutrient enriched waters designations, wetlands criteria and uses, whole effluent toxicity criteria, seasonal uses for trout streams, wet weather standards, a copper exemption for reservoirs, a site specific copper criterion for Hampton Roads Harbor and procedural requirements for sampling and monitoring. Other revisions for consideration are the mixing zone policy, halogen ban narrative criterion, saltwater/freshwater delineation and river basin numbering system. A complete reformat of the regulation is also an option being considered.

Alternatives: The following are alternatives for consideration but DEQ staff will work in conjunction with other state and federal agencies to find other alternatives. Alternatives provided by the public will also be considered.

The department has not accepted or rejected any alternatives as of yet. Some alternatives being considered by the agency now include, but are not limited to, the following:

- Whether definitions such as, but not limited to, "acute lethality," "mixing zone concepts," "passing and drifting organisms," "toxic substances," and "beneficial uses" should be included in the regulation,
- Whether the narrative biological criteria (General Criteria with Corresponding Use Designations) should be expanded or at least returned to the 1992 water quality standards general standard language to ensure that the intent is to maintain state waters at such quality to protect all existing beneficial uses and support the propagation

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and growth of all aquatic life and/or whether specific biological criteria are needed,

- Whether the antidegradation policy needs to add clarifications such as inserting the words “at least” in front of “the level of water quality” in Tier 1 language so that projects that would increase water quality would be allowed to remove the word “instream “ in Tier 1 so that offstream uses are protected, to reconstruct the Tier 2 language so that high quality waters will not only be maintained when the board has the power to authorize a project or when a change has been socio-economically demonstrated, and to define Tiers 1, 2 and 3 better by placing the different permitting requirements in the regulation,
- Whether whole effluent toxicity criteria (narrative or numerical) should be added to the regulation and/or replace the narrative acute and chronic toxicity criteria,
- Whether mixing zones should be restricted or prohibited for bioaccumulative substances or substances with sediment loading concerns and/or whether mixing zones policy should be clarified in any way (for example, to address tidal mixing, to allow the board’s staff to provide demonstrations for the waiver of the mixing zone requirements in 9 VAC 25-260-20 B 4 b, whether the general criteria and use designations can/cannot apply in mixing zones, whether the mixing zone policy should be expanded beyond the acute and chronic criteria),
- Whether the narrative general criteria should apply at all flows (i.e., even below 7Q10) and/or inside mixing zones,
- Whether wetlands should be specifically listed in the regulation or just referenced to an accepted source (National Wetlands Inventory) or procedure for delineation, how many different types of wetlands should be recognized and what alternative criteria should apply in wetlands (e.g., dissolved oxygen, pH, temperature and total suspended solids),
- Whether specific uses to be protected in wetlands should be listed and what these uses should be (for example: hydrologic functions and conditions, flood control, storage or filtration of sediment, nutrients and other pollutants, erosion protection, habitat for flora and fauna),
- Whether language should be added which clarifies that the temperature criteria apply outside mixing zones and/or whether it should be clarified that the rise above natural temperature and the maximum hourly temperature change criteria apply to streams, and/or whether the determination of “natural temperature” should continue to be that temperature due solely to natural conditions without the influence of point-sources,
- Whether EPA’s new information for mercury, selenium and arsenic should be incorporated into the criteria and what other new or updated criteria are needed (e.g., atrazine, boron, cobalt, diazinon, diquat, iron, nitroglycerine, nitrophenols, nitrotoluenes, nonylphenol, solids, sulfate, petroleum products, and other criteria published in the December 10, 1998, Federal Register Vol. 63, No. 237 pages 68354-68364),
- Whether CAS numbers should be included in the “Table of Parameters” (9 VAC 25-260-140 B),
- Whether the duration, frequency and recurrence interval for the aquatic life criteria (currently listed as four year and one hour averages not to be exceeded more than once every three years on the average) should be changed,
- Whether the steady state design default flows for the dioxin criteria should be the harmonic mean flow or the mean annual flow and whether the words “average effluent limit” should be deleted from this criterion,
- Whether groundwater criteria, standards and antidegradation policy should be updated, what values should these concentration levels be based on (MCL’s, health advisories, etc.) and how existing groundwater remediation and monitoring programs would be affected,
- Whether groundwater criteria, standards and policies should be deleted from the water quality standards and adopted as a separate regulation,
- Whether reservoirs should be exempt from the copper criteria because of the need to use copper to control algae to protect the drinking water use,
- Whether the saltwater copper criterion should be modified to reflect a water effect ratio that has been developed in the Hampton Roads area,
- Whether water effect ratio implementation procedures should be changed (e.g., is it reasonable to implement water effect ratios as permit case decisions) and their application to criteria should be clarified (e.g., currently it is not clear that the WER factor also applies to saltwater metals criteria),
- Whether variances to water quality standards should be reworded to match the “use removal” language in 9 VAC 25-260-10 G (e.g., variances granted where conditions limit the attainment of the designated use rather than the attainment of the water quality criteria),
- Whether tidal water sampling at slack tide is still appropriate for toxics and if the regulation should define how monitoring and analytical procedures for toxics should be conducted,
- Whether language in the disinfection policy should be clarified (e.g., if tidal cycle and “upstream of shellfish waters” should be revised or defined and/or if disinfection waiver procedures need to be clarified, and/or should the policy be moved to Part VII “Special Standards”),
- Whether seasonal uses for trout streams and naturally occurring temperature violations should be recognized and what different criteria should apply in the different seasons and/or whether the variance allowance for temperature violations in stockable trout waters in Part VI “Procedural Requirements” would be easier to apply if written as a footnote to 9 VAC 25-260-50 and whether DGIF’s subclassifications are needed in this regulation and/or whether upstream trout waters should be

Notices of Intended Regulatory Action

classified at the same quality as the downstream trout waters,

- Whether the halogen ban has been an effective regulatory tool to protect endangered and threatened species and trout and whether it would be more effective to update the chlorine standard to protect these species or include a dechlorination requirement to these waters and if any other clarifications are needed in this section, particularly the variance implementation and review procedures,
- Whether all "Special Standards" should be updated (e.g., Chickahominy River Effluent Standards, Rappahannock River effluent standards (Salem Church Dam), pH standards in the Shenandoah Valley and James River Basin),
- Whether both the median fecal coliform criterion for shellfish waters and the "not more than 10%" fecal coliform criterion for shellfish waters should both apply to a data set,
- Whether a public hearing is needed when the board must deny a proposal that results in shellfish bed condemnation or if any clarifications or changes to the requirements in 9 VAC 25-260-270 are needed,
- Whether new waters should be added to the "nutrient enriched waters designation" and/or whether existing nutrient enriched waters designations should be clarified,
- Whether we should update use designations (e.g., public water supplies, trout streams, recreation, shellfish),
- Whether the regulation should be reformatted so that the reader can easily identify a stream segment and the uses and criteria that apply there,
- Whether the river basin numbering system and the saltwater/freshwater delineation should be revised to match the numbering system in the § 305(b) report,
- Whether the stream classifications (e.g., nontidal Class III or mountainous zone Class IV) are correct or if these classifications are needed,
- Whether wet weather conditions and/or standards should be addressed,
- Whether to include the outstanding EPA issues provided to the department in a letter dated August 16, 2000, from the Regional Administrator of EPA III. These issues include an updated antidegradation policy that applies to all activities and not just those activities under the jurisdiction of the board, an antidegradation policy that requires the highest statutory and regulatory requirements to all new and existing point sources discharges for Tier 2 waters rather than all new and increased point sources, updated human health and aquatic life criteria (December 10, 1998, Federal Register Vol. 63, No. 237 and April 22, 1999, Federal Register, Vol. 64, No. 77), an identification and designation of exceptional state waters and an improved protection of special waters by restricting mixing zones.

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. Anyone wishing to submit written comments for the public comment file may do so at the public meeting, by mail, or by e-mail to emdaub@deq.state.va.us. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the close of the comment period.

A public meeting will be held on March 1, 2001, at 2 p.m. in Richmond, Virginia. Notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory Approach: The board seeks comment from the public on whether to use the participatory approach to assist the agency in the development of a proposal.

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

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

Public comments may be submitted until March 30, 2001.

Contact: Eleanore Daub, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4111.

VA.R. Doc. No. R01-78; Filed January 5, 2001, 9:22 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 amending regulations entitled: **12 VAC 5-90-10 et seq. Regulations for Disease Reporting and Control.** The purpose of the proposed action is to provide for notification of persons included in the Virginia Cancer Registry. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 32.1-71.02 of the Code of Virginia.

Public comments may be submitted until March 14, 2001.

Contact: Diane Woolard, Ph.D., M.P.H., Director of Disease Surveillance, Department of Health, Office of Epidemiology, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-6261 or (804) 371-1076.

VA.R. Doc. No. R01-95; Filed January 17, 2001, 12:01 p.m.

Notices of Intended Regulatory Action

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 5-120-10 et seq. Regulations for Testing Children for Elevated Blood-Lead Levels.** The purpose of the proposed action is to establish a protocol for testing all children at risk for having elevated blood-lead levels. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 32.1-46.1 of the Code of Virginia.

NOTE: CORRECTION TO COMMENT DEADLINE.
Public comments may be submitted until March 14, 2001.

Contact: Nancy Vanvoorhis, Department of Health, Office of Family Health Services, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-4568 or (804) 692-0184.

VA.R. Doc. No. R01-88; Filed January 12, 2001, 2:17 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 amending regulations entitled: **12 VAC 5-408-10 et seq. Certificate of Quality Assurance of Managed Care Health Insurance Plan (MCHIP) Licensees.** The purpose of the proposed action is to amend the regulation where necessary, including, but not limited to (i) providing criteria to grant variances, (ii) clarifying the exemptions regarding preferred provider organizations (PPOs) to better address the unique aspects of this type of managed care health insurance plan, (iii) providing better distinction between the plan and the plan's licensees, and (iv) reviewing the Utilization Review and Management section to ensure appropriate application. The intended amendments will be designed to (i) respond to affected parties' concerns, (ii) resolve identified issues, and (iii) clarify the protections that assure the quality of care and services provided to MCHIP enrollees.

Statutory Authority: § 32.1-137.3 of the Code of Virginia.

Public comments may be submitted until March 1, 2001.

Contact: Rene Carbral-Daniels, Senior Policy Analyst, Department of Health, 3600 W. Broad St., Suite 216, Richmond, VA 23230, telephone (804) 367-2100 or (804) 367-2149.

VA.R. Doc. No. R01-77; Filed January 4, 2001, 3:36 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 5-475-10 et seq. Regulations Implementing the Virginia Organ and Tissue Donor Registry.** The purpose of the proposed action is to implement a new registry to contain information about Virginians who have indicated a willingness to donate their organs, eyes and tissues. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 32.1-292.2 of the Code of Virginia.

Public comments may be submitted until March 14, 2001.

Contact: Eileen Guertler, Director, Virginia Transplant Council, Department of Health, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-5589 or (804) 786-0892.

VA.R. Doc. No. R01-93; Filed January 17, 2000, 12:01 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 5-507-10 et seq. Guidelines for General Assembly Nursing Scholarships and Loan Repayment Program Requiring Service in a Long-Term Care Facility and amending 12 VAC 5-510-10 et seq. Guidelines for General Assembly Nursing Scholarships.** The purpose of the proposed action is to implement the scholarship and loan repayment program for registered nurses, licensed practical nurses, and certified nurse aides who agree to work in a Commonwealth long-term care facility for a given period of time. The agency intends to hold a public hearing on the proposed regulations after publication.

Statutory Authority: §§ 32.1-122.6:01, 54.1-3011.1 and 54.1-3011.2 of the Code of Virginia.

Public comments may be submitted until March 14, 2001.

Contact: Norma Marrin, Department of Health, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-4891 or (804) 371-0116.

VA.R. Doc. No. R01-97; Filed January 19, 2001, 10:06 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 State Board of Health intends to consider promulgating regulations entitled: **12 VAC 5-508-10 et seq. Regulations Governing the Virginia Physician Loan Repayment Program.** The purpose of the proposed action is to administer a new loan repayment program for physicians in accordance with an emergency provision of the 2000 Acts of Assembly. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 32.1-122.6:01 of the Code of Virginia.

Public comments may be submitted until March 14, 2001.

Contact: Norma Marrin, Department of Health, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-4891 or (804) 371-0116.

VA.R. Doc. No. R01-106; Filed January 23, 2001, 3:13 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 5-520-10 et seq. Regulations Governing the State Dental**

Notices of Intended Regulatory Action

Scholarship Program. The purpose of the proposed action is to take regulatory action pursuant to HB 1075 and SB 576 of the 2000 Acts of Assembly to provide dental health services where they are needed by amending these regulations to include a loan repayment program. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 32.1-122.9 of the Code of Virginia.

Public comments may be submitted until March 14, 2001.

Contact: Karen Day, DMD, Director, Division of Dental Health Services, Department of Health, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-3556 or (804) 692-0184.

VA.R. Doc. No. R01-87; Filed January 12, 2001, 2:17 p.m.

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES 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 Mental Health, Mental Retardation and Substance Abuse Services Board intends to consider repealing regulations entitled:

12 VAC 35-20-10 et seq. Mandatory Standards for the Certification of First Offender Drug Abuse Diversion and Education Programs.

12 VAC 35-140-10 et seq. Mandatory Standards for Community Mental Health Programs.

12 VAC 35-150-10 et seq. Mandatory Standards for Community Mental Retardation Programs.

12 VAC 35-160-10 et seq. Mandatory Standards for Community Substance Abuse Programs.

The purpose of the proposed action is to repeal regulations that are outdated and that duplicate the function and intent of the existing licensing regulations contained in 12 VAC 35-102-10 et seq. The agency does not intend to hold a public hearing on the proposed repeal after publication.

Statutory Authority: §§ 37.1-10, 37.1-179.1, 37.1-181, and 37.1-182 of the Code of Virginia.

Public comments may be submitted until March 14, 2001.

Contact: Wendy V. Brown, Policy Analyst, Department of Mental Health, Mental Retardation and Substance Abuse Services, Jefferson Bldg., 1220 Bank St., 12th Floor, Richmond, VA 23219, telephone (804) 225-2252 or FAX (804) 371-0092.

VA.R. Doc. Nos. R01-98; R01-99, R01-100, R01-101; Filed January 18, 2001, 8:59 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 State Mental Health, Mental

Retardation and Substance Abuse Services Board intends to consider repealing regulations entitled: **12 VAC 35-102-10 et seq. Rules and Regulations for the Licensure of Facilities and Providers of Mental Health, Mental Retardation and Substance Abuse Services.** The purpose of the proposed action is to repeal the regulation concurrently with the promulgation of a new regulation (12 VAC 35-105-10 et seq.) to provide standards for licensing facilities and providers of mental health, mental retardation and substance abuse services. The agency intends to hold a public hearing on the proposed repeal after publication.

Statutory Authority: §§ 37.1-179.1 and 37.1-182 of the Code of Virginia.

Public comments may be submitted until March 14, 2001.

Contact: William J. Lessard, Jr., Regional Manager, Office of Licensing, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-3475 or FAX (804) 692-0066.

VA.R. Doc. No. R01-104; Filed January 22, 2001, 2:11 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 Mental Health, Mental Retardation and Substance Abuse Services Board intends to consider promulgating regulations entitled: **12 VAC 35-105-10 et seq. Rules and Regulations for the Licensure of Facilities and Providers of Mental Health, Mental Retardation and Substance Abuse Services.** The purpose of the proposed action is to promulgate a new, updated regulation to replace the current regulations for licensing facilities and providers of mental health, mental retardation and substance abuse services. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 37.1-179.1 and 37.1-182 of the Code of Virginia.

Public comments may be submitted until March 14, 2001.

Contact: William J. Lessard, Jr., Regional Manager, Office of Licensing, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-3475 or FAX (804) 692-0066.

VA.R. Doc. No. R01-103; Filed January 22, 2001, 2:11 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 Mental Health, Mental Retardation and Substance Abuse Services Board intends to consider amending regulations entitled: **12 VAC 35-200-10 et seq. Regulations for Respite and Emergency Care Admission to Mental Retardation Facilities.** The purpose of the proposed action is to amend the regulation to change certain definitions to conform to regulatory context or statutory language. Procedural guidance will be updated and clarified.

Notices of Intended Regulatory Action

The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 37.1-10 and 37.1-65.2 of the Code of Virginia.

Public comments may be submitted until March 14, 2001.

Contact: Wendy V. Brown, Policy Analyst, Department of Mental Health, Mental Retardation and Substance Abuse Services, Jefferson Bldg., 1220 Bank St., 12th Floor, Richmond, VA 23219, telephone (804) 225-2252 or FAX (804) 371-0092.

VA.R. Doc. No. R01-102; Filed January 18, 2001, 8:58 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARDS OF NURSING AND 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 Boards of Nursing and Medicine intend to consider amending regulations entitled: **18 VAC 90-40-10 et seq. Regulations for Prescriptive Authority for Nurse Practitioners.** The purpose of the proposed action is to provide less burdensome requirements for site visits and chart reviews by supervising physicians, to make changes related to expanded prescriptive authority, and to clarify requirements or terminology that are not easily understood. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400 and 54.1-2957.01 of the Code of Virginia.

Public comments may be submitted until March 1, 2001.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909 or FAX (804) 662-9943.

VA.R. Doc. No. R01-83; Filed January 10, 2001, 11:39 a.m.

BOARD OF PHARMACY

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 Pharmacy intends to consider amending regulations entitled: **18 VAC 110-20-10 et seq. Regulations Governing the Practice of Pharmacy.** The purpose of the proposed action is to consider amendments in compliance with requirements of Chapter 876 of the 2000 Acts of the Assembly for the establishment of innovative (pilot) projects in pharmacy. Regulations would establish applicable fees for approval of such projects and

would replace emergency regulations currently in effect. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

Public comments may be submitted until March 1, 2001.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9911 or (804) 662-9943.

VA.R. Doc. No. R01-82; Filed January 10, 2001, 11:39 a.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.

REGISTRAR'S NOTICE: Beginning in this issue of the *Virginia Register*, the "Public Comment Periods - Proposed Regulations" section is being discontinued. However, notices of public comment periods regarding state agency proposed regulations will continue to be published in the Calendar of Events section of the *Virginia Register*.

PROPOSED REGULATIONS

For information concerning Proposed Regulations, see Information Page.

Symbol Key

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

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Title of Regulation: 9 VAC 25-210-10 et seq. Virginia Water Protection Permit *Program* Regulation (amending 9 VAC 25-210-10 and 9 VAC 25-210-40 through 9 VAC 25-210-260; adding 9 VAC 25-210-45, 9 VAC 25-210-115, and 9 VAC 25-210-185; repealing 9 VAC 25-210-20 and 9 VAC 25-210-30).

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia.

Public Hearing Date: March 29, 2001 - 4 p.m. (Staunton).
April 2, 2001 - 6 p.m. (Richmond).
April 3, 2001 - 6 p.m. (Woodbridge).
April 5, 2001 - 6 p.m. (Chesapeake).

Public comments may be submitted until April 27, 2001.
(See Calendar of Events section
for additional information)

Agency Contact: Ellen Gilinsky, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4375, e-mail egilinsky@deq.state.va.us.

Basis: Section 62.1-44.15 authorizes the board to adopt rules governing the issuance of water quality permits and directs the State Water Control Board to design regulatory programs to achieve no net loss of existing wetland acreage and function. Section 62.1-44.15:5 authorizes the board to issue a Virginia Water Protection Permit consistent with the provisions of the Clean Water Act and to protect instream beneficial uses. The proposed revisions exceed federal minimum requirements through the reporting of all impacts to wetlands and through the regulation of Tulloch ditching and fill in isolated wetlands, which are currently not federally regulated.

Section 1341 (formerly § 401) of the Clean Water Act (33 USC § 1341) requires state certification of federal permits for discharges into navigable waters.

Purpose: The purpose of the Virginia Water Protection Permit Regulation is to establish the procedures and requirements to be followed in connection with the issuance of a VWP permit by the board pursuant to the State Water Control Law. The proposed amendments are necessary to protect the public health, safety and welfare by providing increased protection of the Commonwealth's wetland resources, which are important for maintaining water quality, flood control and providing fish and wildlife habitat.

Substance: Substantive changes have been made to the regulation to incorporate statutory changes and to clarify requirements to permittees and the general public. The definition section has been expanded to clarify usage of specific terms. A section on how wetland delineations are to

be conducted has been added. The process of applying for a permit and the information the applicant needs to supply have been detailed and clarified, as have the permit review timeframes. The process of avoidance and minimization of impacts, and compensation for unavoidable impacts has been clarified. The types of permit changes that qualify as minor modifications have been expanded. The use of state general permits for wetland impacts has been added.

Issues: Advantages of the proposed regulatory changes to the public and the Commonwealth are that they provide increased protection of the Commonwealth's aquatic resources by regulating excavation and drainage activities and impacts to isolated wetlands not currently within the purview of the U.S. Army Corps of Engineers under § 404 of the Clean Water Act. The changes provide for no net loss of wetland acreage and function, further protecting a valuable resource of the Commonwealth. The proposed changes also streamline the permitting process by providing more clarity and certainty and decreasing the amount of time for permit issuance.

Disadvantages of the proposed regulatory changes to the public are that the activities regulated have been increased (Tulloch ditching and isolated wetlands) and there is now increased reporting of all impacts to wetlands in order to track the goal of no net loss of wetland acreage and function.

Locality Particularly Affected: The regulation is effective statewide; however, as there is a greater prevalence of wetlands in the eastern Piedmont and Coastal Plain compared to the western parts of the state, localities in these areas may feel greater impact from the changes to the regulation.

Public Participation: In addition to any other comments, the board is soliciting comments on (i) the costs and benefits of the proposal and (ii) the impacts of the regulation on farm or forest lands.

All comments must be received by April 27, 2001. Comments may be submitted by mail, facsimile transmission, e-mail, or by personal appearance at the public hearings. Submit comments to Ellen Gilinsky, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240, e-mail egilinsky@deq.state.va.us, FAX (804) 698-4032. All written comments must include the name, address and phone number of the commenter.

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

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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 proposed regulations restore the regulatory jurisdiction of the Department of Environmental Quality (DEQ) in issuing water protection permits over specific areas known as isolated wetlands and over a specific type of excavation activity known as Tulloch ditching.¹ In addition, the proposed regulations will shorten the time allowed for DEQ to issue a permit, expand the maximum time allowed for a permit by 10 years, and allow an applicant to make more changes that qualify as a minor modification to an existing permit.

Estimated economic impact. Wetlands provide a number of important benefits. Their benefits include providing flood control, improving water quality, and providing wildlife habitat. They are particularly suitable for recreational activities such as fishing, hiking, biking, bird watching, and duck hunting. Many of these benefits are not confined to the owner of the wetlands but rather accrue to other land owners and the surrounding community. Because the owners of the wetlands cannot earn income for the value of many of these services, private owners of wetlands may place a private value on wetlands that is much lower than the total contribution of the wetlands to the economy. Consequently, certain activities that have the potential to alter the natural properties of wetlands are generally subject to regulations nationwide. These activities may include excavating, draining, and filling.

Isolated Wetlands and Tulloch Ditching. In Virginia, DEQ was authorized to require permits for fill in isolated wetlands prior to 1997 and for Tulloch ditching prior to 1998. DEQ's authorization to require permits was dependent upon the U.S. Army Corps of Engineers requiring a Clean Water Act permit. The Army Corps' jurisdiction over activities in isolated wetlands and Tulloch ditching in wetlands was legally challenged. The court decisions removed activities affecting isolated wetlands and Tulloch ditching from the Army Corps' jurisdiction in 1997 and 1998, respectively.² Consequently, DEQ lost its legal authority to require permits for these activities. Without proper legal authority, DEQ has not been able to require permits for activities in isolated wetlands since 1997, and for Tulloch ditching of wetlands since 1998. In 2000, the General Assembly passed legislation authorizing DEQ to issue permits for activities in isolated wetlands and for all forms of excavation in wetlands, including Tulloch ditching, independently from Army Corps' Clean Water Act Permits. The proposed changes incorporate these statutory changes into regulations.

The permit requirements introduce additional costs to individuals who want to alter the physical and functional properties of wetlands, but allow them to do so if they are

willing to incur these costs. There are at least three types of additional costs a landowner or developer must incur if they wish to alter or degrade existing wetland acreage and functions through excavating, draining, filling, and performing other type of activities.

First, DEQ will have to make sure that for each application "no net loss of wetland acreage and function" takes place. This is a statutory requirement. This requirement amounts to compensatory development of comparable wetlands by the permit applicant. Wetland compensation can take the form of wetland creation or restoration on-site or off-site by the applicant, purchase of credits in a wetland mitigation bank, or monetary contribution to an in-lieu fund dedicated to no net loss of wetland acreage or function. Based on the Army Corps' guidance, DEQ determines the mitigation needed and the amount of credits in terms of acres needed to achieve the mitigation. The cost of developing a compensatory wetland may vary depending on the real estate prices in the area, the purpose of development, the prices set by the wetland bank, and many other factors. According to DEQ, the cost of an acre of compensatory wetland may vary between \$25,000 and \$125,000, depending on the type of mitigation chosen.

Second, an application package for the work that will be performed on the wetland must be provided by the applicant to obtain a permit. An application package includes a delineation of the wetland on the property, maps and drawings of the property and the permitted activity, information on the property owner, the purpose of the project, a time line for the project, information on how impacts to wetlands have been avoided and minimized to the maximum extent practicable, and the type of compensatory mitigation being proposed. It usually costs from \$500 to \$50,000 to prepare an application package for the permit, depending on the complexity of the project. These costs are borne by the applicant.

Third, the applicant is required to pay an application fee. The application fee varies from \$200 to \$3,000, depending on the size of the wetland project. DEQ believes that the application fee covers only about 10% of the administrative costs.

A permit applicant must incur all of the three types of costs. Given the individual estimates of the associated costs, average total cost of developing an acre of compensatory wetland is expected to be between \$25,700 and \$178,000 for an applicant. Also, DEQ will have to incur additional administrative costs because of the increase in the number of permit applications due to the proposed changes. DEQ has received the funding for three additional full-time positions in fiscal year 2001, and for seven more additional full-time positions in fiscal year 2002 to administer the proposed regulations.

Wetlands may have many alternative uses including agriculture, forestry, fishery, and real estate development. Real estate development is the leading alternative use of isolated wetlands in the Commonwealth.³ Some isolated wetlands in the Commonwealth are suitable for real estate development and are attractive to real estate developers.

¹ Tulloch ditching is a method used to actively drain wetlands without adding fill to the wetland.

² These court decisions are known as the Wilson decision and the Tulloch decision.

^{3, 4} Source: DEQ

Since 1997, approximately 50 cases involving a total of 97 acres of isolated wetlands, where an activity took place to alter the natural wetland properties, would have been subject to permit requirements if DEQ had the legal authority. Much of this development may not have occurred if developers were required to incur the costs associated with obtaining permits. Also, the proposed regulation is likely to reduce potential development activities on isolated wetlands in the future.

Similarly, some individuals have had additional incentives to drain wetlands by Tuloch ditching in the absence of regulatory requirements since 1998. As mentioned, DEQ did not have authority to require a permit for this particular type of ditching. Once a wetland is drained by this method, then it is not considered a "wetland" and consequently not required to have a permit for any alteration activity such as excavating, draining, and filling. Thus, the Tuloch ditching method was providing a way to convert wetlands into real estate development areas without being subject to regulations. DEQ estimates that about 10 cases involving 2,000 acres of wetlands have been subject to drainage attempts through the Tuloch ditching method since 1998. Complete conversion of wetlands through drainage takes several years.⁴ DEQ believes that none of these attempts have been successful so far. Thus, the proposed regulation is likely to prevent a loss of up to 2,000 acres of wetland through the Tuloch ditching method in the Commonwealth. The proposed regulation is also likely to prevent development of more wetlands by reducing the potential Tuloch ditching activities in the future.

In short, reinstating isolated wetlands and Tuloch ditching under permit regulations administered by DEQ is likely to preserve approximately 2,097 net acres of wetlands that otherwise would be lost or damaged over about every two- to three-year period.^{5, 6} However, this does not mean that no wetlands could be developed for real estate purposes and the real estate developers are left without options. Individuals who want to alter the physical and functional properties of wetlands can do so if they are willing to make sure that "no net loss of wetland acreage and function" takes place.

Demand for Wetlands as Private Good. The proposed regulations will increase the costs incurred in developing areas designated as wetlands. This is because, with the proposed changes, the individuals exercising Tuloch ditching on wetlands or other activities to develop isolated wetlands will be required to have a permit and thus, will have to develop compensatory wetlands, or will have to execute their projects with consideration to preserve the existing wetlands. On the other hand, since compensatory wetlands will have to be developed, wetland development businesses are likely to experience revenue increases.

Under the proposed regulations, a permit will guarantee that "no net loss of wetland acreage and function" takes place. Although there will be no change in the acreage of wetlands,

⁵ The number of acres saved may increase over time, as the demand for wetlands is likely to increase in the future.

⁶ Most of the 2,097 acres of wetlands would have been lost rather than being damaged because the purpose of Tuloch ditching is to drain and alter wetlands.

there will be a number of economic impacts. The largest economic impact is likely to be on the owners of wetlands and real estate developers. Before analyzing the effects on the owners and the developers specifically, it should be kept in mind that several years ago similar permit requirements were in effect and the developers had to incur all costs associated with compensatory wetlands, application package, and permit application. Thus, the associated costs are not completely new but rather reintroduce costs that existed several years ago.

The experience during the previous several years provides a unique opportunity to assess the impact of proposed permit requirements by opening a window in time where a permit was unnecessary. Past experience indicates that in the range of 30 isolated wetland cases involving about 60 acres of wetlands would not have taken place had a permit been required. It is also expected that about five of the Tuloch ditching cases involving approximately 1,000 acres of wetlands would not have taken place had a permit been required. The reasons that individuals would not have attempted to alter approximately 1,060 acres of wetlands if the proposed regulations were in effect are the costs associated with compensatory wetlands, the application package, and the application fee. The three types of costs add to the costs of developing wetland for real estate purposes. The higher costs in turn reduce the expected profits from developing an acre of wetland and thus, decrease the quantity of wetlands demanded that are suitable for development.

A decrease in the quantity of wetlands demanded for development will result in less wetland being developed for real estate purposes. Although the costs associated with the permit will affect the quantity of wetlands demanded for real estate purposes, that does not mean that the increased burden of higher development costs will be borne only by demanders. In fact, the total burden will be borne by both the demanders (developers) and the suppliers (wetland owners) of wetlands suitable for development.⁷ After the proposed changes go in effect, developers are likely to incur higher costs because they will not only pay the wetland owner for the property, but also incur the permit costs. Thus, developers will bear a share of the burden. The wetland owners are likely to end up receiving a lower price relative to the previous price because of permit costs. Thus, the wetland owners will similarly bear a share of the burden. There will also be a loss of welfare experienced by developers and the wetland owners because of decreased volume of wetland trade. The wetland trade above a certain number of acres will not take place and this will prevent buyers and sellers from realizing some of the gains from trade that exist in the absence of the proposed regulations. However, the total burden on the developers and the wetland owners may be mitigated largely because of other alternatives available to developers.

It is likely that the developers will substitute non-wetland sites for real estate development to mitigate the burden if they cannot develop wetlands. In other words, there will be some

⁷ A wetland owner who wants to develop a wetland by himself can be considered as a demander as well.

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spillover effects of the proposed regulation from the wetland market to the market for other available areas that are not designated as wetlands. Depending on the degree and availability of substitution, the total burden of the proposed regulation will be reduced. It is reasonable to assume that the substitution of other areas for wetlands is possible and relatively easy in many cases. Under this assumption, the developers will likely demand wetlands for development purposes only in the relatively few cases where the value of the particular site is greater than the cost of obtaining a permit. Thus, the net burden of the proposed regulations may be small due to the high degree of substitutability of other available land for wetlands and the small number of cases where a wetland is desired to be developed in the presence of higher costs. In short, the relevant costs of the proposed regulation is the net burden imposed on the developers and the wetland owners which takes into account potential spillover effects between two different markets. For a given acre of wetland left undeveloped due to this regulation, the net burden on the developers and the wetland owners who were discouraged to develop wetlands is expected to be significantly less than the total costs associated with compensatory wetlands, the application package, and the application fee because of potential substitution of other areas for wetlands. However, an accurate estimate of the size of the burden cannot be provided.

Finally, in cases where a wetland is still desired to be developed even in the presence of the additional costs, the losses of demanders and suppliers will finance the development of compensatory wetlands and produce benefits to the society by achieving the statutory "no net loss of wetland acreage and function" requirement.

Social Demand for Wetlands. Wetlands are different from private goods such as cars, televisions, or tomatoes. Many of the services provided by wetlands are public goods. These services include providing flood control, improving water quality, providing wildlife habitat, and recreational opportunities. Virtually, every individual can consume a public good and it is often impossible or too costly to exclude others from consuming it. For example, it is not feasible or it is too costly to exclude some individuals from enjoying water quality improvements provided by wetlands. The benefits provided to an individual by flood control, or better water quality does not change the benefit of the same wetland services to another individual. Because the consumption of wetland services by one person does not diminish the value of services to other people and many people can benefit from them, the total economic value of wetlands is higher than an individual owner's willingness to pay for wetlands. Thus, if left to the free market, the total prevailing wetland acreage in the Commonwealth would have been lower than what society as a whole desires. The public good characteristic of wetland services is the primary justification for government intervention in the wetland market.

The proposed regulation will introduce a net burden to real estate developers and the wetland owners as discussed. Also, DEQ will incur additional administrative costs. For the proposed regulation to produce net economic benefits to the society, the value attached to the preserved wetlands by society must exceed the net burden to the developers and the

wetland owners plus the administrative costs incurred by DEQ. The value attached to an acre of wetland by the society in the Commonwealth is not known. There exist many studies providing an estimate for the value of an acre of wetland. The estimates provided by these studies vary greatly due to methodological differences they employ, due to the geographic and demographic factors where wetlands are located, due to specific services provided by wetlands, and due to many other factors. Table 1 provides a summary of the findings in the wetland valuation literature.

Wetland Function Valued	Number of Studies	Median	Mean	Range of Means
General-nonusers	12	\$32,903	\$83,159	\$115 – \$347,548
General-users	6	\$623	\$2,512	\$105 – \$9,859
Fishing-users	7	\$362	\$6,571	\$95 – \$28,845
Hunting-users	11	\$1,031	\$1,019	\$18 – \$3,101
Recreation-users	8	\$244	\$1,139	\$91 – \$4,287
Ecological functions	17	\$2,428	\$32,149	\$1 – \$200,994
Amenity and cultural	4	\$448	\$2,722	\$83 – \$9,910

Source: [1]

It is worth mentioning that all of the functions for which a value estimated in Table 1 are nonmarketed goods. The values of marketed goods produced by wetlands such as the value of fish or the value of fur bearing animals are irrelevant since the wetland owners can capture the value of these goods from others who benefit from them. On the other hand, the wetland owner cannot capture the value of nonmarketed goods. Their benefits accrue to the society as a whole. In addition, to the extent that general, fishing, hunting, and recreational users can be excluded from wetlands, a respective reduction to the social (as opposed to private) value of wetlands should be applied.

It is obvious from the table that values of general, fishing, hunting, recreational, ecological, amenity and cultural functions of wetlands vary significantly. For example, estimated economic values for the ecological functions alone range from \$1 to \$200,994. This wide range reflects great uncertainty although the mean and median estimates clearly indicate that, generally, the ecological functions of wetlands provide a significant economic benefit. It is interesting to note that, a higher value is estimated for general functions of wetlands consumed by nonusers than by users. This is because nonusers outnumber the users. The fact that wetlands in the Commonwealth may or may not have one or more of these functions further complicates the matter.

In conclusion, for the proposed regulation to produce net economic benefits to the society, the value attached to the preserved wetlands by the society must exceed the net burden to the developers and the wetland owners plus the administrative costs incurred by DEQ. However, neither the value attached to the wetlands by Virginians, nor the size of

the net burden placed on the developers and the wetland owners is known with enough certainty to allow DPB to determine whether the proposed regulations would produce net benefits or costs to the Commonwealth.

Other Changes. Additionally, there are statutory changes to time allowed for DEQ to issue a Clean Water Act (CWA) permit when a complete application package is received. Previously, DEQ was required by the CWA to make a decision in one year from the date a complete permit application is received. The proposed changes incorporate statutory mandates to reduce the allowed time to 120 days. According to DEQ, up to 100 permit applicants will be affected by this change annually. These permit applicants will benefit from this regulation by securing their permits in a shorter time frame. With the increasing staffing at DEQ, 120 days is expected to be sufficient to conduct a proper evaluation of a permit application. Thus, this proposed change is expected to provide net benefits to the Commonwealth.

Moreover, the proposed regulations will expand the maximum time allowed for a permit by ten years. The length of a particular project determines the length of the permit. Currently, permits can be issued up to five years. If a project is not finished within five years, the permit holder is required to reapply. The proposed regulations increase the maximum time a permit can be valid to 15 years. This change is expected to reduce the costs incurred by permit applicants whose projects cannot be finished within five years. These permit holders will not have to incur costs associated with reapplication for a permit. These costs include project design costs and permit fees. Also, the administrative costs of DEQ associated with evaluating reapplication of permits are expected to decrease. Thus, this proposed change may be beneficial to the permit applicants and DEQ.

Finally, the proposed regulations broaden the definition of minor modifications and narrow the definition of major modifications to a permit. After being issued, a permit can be modified. Minor modifications to a permit can be made without any additional costs. Major modifications, however, may cost the applicant up to \$2,000 in fees paid to DEQ. In addition, the applicant may incur consultant fees for these modifications. The proposed changes redefine some of the major modifications into minor modifications category. Thus, it is expected that the number of minor modification requests will increase because of categorical changes. According to DEQ, these categorical changes will not affect whether a proposed change to the permit will be approved or not. Because of these changes, permit holders will no longer be required to pay fees for some of the modifications. The proposed regulations are expected to benefit permit holders who want to make a minor change which previously would have been considered to be a major change. On the other hand, DEQ will not receive fees from these modifications. It is expected that 10 of 20 major modifications approved annually by DEQ will now be considered as minor modification. DEQ expects to receive about \$13,000 less in fees from major modifications. At the same time, about 10 permit holders will not have to incur these costs and benefit from this change.

Businesses and entities affected. Initially, the proposed regulations are expected to affect wetland owners and real

estate developers involved in 60 cases. Thereafter, about 35 cases are expected to be affected over every two or three year period. In addition to that, about 100 permit applications will be affected from the changes to time allowed to issue a permit annually. Finally, about 10 permit holders will be affected by changes to the definition of minor modification annually.

The proposed regulations are likely to affect the landowners whose property can be an alternative to wetlands suitable for real estate development. Moreover, the proposed regulations are expected to produce benefits to the land owners whose property is adjacent to the wetlands by providing flood control, water quality, and more aesthetic view to them. Also, any wetlands that provide fishery related services, enhance business values where fishery services are an important component of the business.

Localities particularly affected. The proposed regulations apply throughout the Commonwealth. However, geographic areas where wetlands are densely distributed are likely to be affected in particular. Wetlands are known to be highly concentrated in the coastal plain area located east of interstate I-95.

Projected impact on employment. DEQ already hired three full-time employees and will hire seven more to administer the proposed regulations. The real estate developers are likely to develop fewer wetlands for real estate purposes. But, there will be a positive impact on the demand for other areas that are not designated as wetlands and the compensatory wetland development industry will experience an increased business volume. The combined effect of these industries on employment is unclear.

Effects on the use and value of private property. The proposed regulations will make any alteration activity on isolated wetlands or the Tulloch ditching method used to excavate wetlands subject to permit requirements. These changes will limit the alternative uses of wetlands, and may diminish the development value of wetlands affected by these changes. Additionally, the proposed regulations are likely to increase the value of property that can be an alternative to wetlands suitable for real estate development. Finally, the proposed regulations are likely to have a positive impact on the value of property adjacent to affected wetlands since these areas will experience better flood control, better water quality, and better aesthetic view.

References:

- [1] Hemlich, R., E., et al., 1998, "Wetlands and Agriculture: Private Interests and Public Benefits," *U.S. Department of Agriculture, Agricultural Economic Report No. 765.*
- [2] Kooten, G. C. Van, 1993, "Preservation of Waterfowl Habitat in Western Canada: Is the North American Waterfowl Management Plan a Success?" *Natural Resources Journal*, v32, pp. 759-775.
- [3] Porter, R. M., 1993, "Wetlands Preservation on the Canadian Prairies: The Problem of Public Duck," *Canadian Journal of Agricultural Economics*, v41, pp. 401-410.
- [4] Swallow, S. K., 1994, "Renewable and Nonrenewable Resource Theory Applied to Coastal Agriculture, Forest,

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Wetland and Fishery Linkages," *Marine Resource Economics*, v9, pp. 291-310.

[5] Wandschneider, P. R., 1993, "Economics of Wetlands Preservation," *Canadian Journal of Agricultural Economics*, v41, pp. 437-440.

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 no comment.

Summary:

In response to 2000 legislation, the proposed regulations restore the regulatory jurisdiction of the Department of Environmental Quality (DEQ) in issuing water protection permits over specific areas known as isolated wetlands and over a specific type of excavation activity known as Tulloch ditching, which is a method used to actively drain wetlands without adding fill to the wetland. In addition, the proposed regulations will shorten the time allowed for DEQ to issue a permit, expand the maximum time allowed for a permit by 10 years, and allow an applicant to make more changes that qualify as a minor modification to an existing permit.

CHAPTER 210. VIRGINIA WATER PROTECTION PERMIT PROGRAM REGULATION.

PART I. GENERAL.

9 VAC 25-210-10. Definitions.

Unless a different meaning is required by the context, the following terms, as used in this chapter, shall have the following meanings:

"Act" or "Clean Water Act" means 33 USC § 1251 et seq. as amended 1987.

"Adjacent" means bordering, contiguous or neighboring; wetlands separated from other surface water by man-made dikes or barriers, natural river berms, sand dunes and the like are adjacent wetlands.

"Applicant" means ~~an individual, operator or owner filing a joint permit to dredge or fill, or both, or requiring a Federal Energy Regulatory Commission (FERC) permit or conducting other activities which require a permit under this chapter a person applying for a VWP individual or general permit.~~

~~"Approval authority" means the executive director of the State Water Control Board.~~

"Aquatic resources" or "aquatic environment" mean surface waters and the habitat they provide, including both plant and animal communities.

"Avoidance" means not taking or modifying a proposed action or parts of an action so that there is no adverse impact to the aquatic environment.

"Beneficial use" means both instream and offstream uses. 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.

"Best management practices" means a schedule of activities, prohibition of practices, maintenance procedures and other management practices to that prevent or reduce the pollution of surface waters.

"Board" means the State Water Control Board.

~~"Certificate" means certification required under § 401 of the Clean Water Act (33 USC § 1341), provided by the State Water Control Board.~~

"Compensation" or "compensatory mitigation" means actions taken that provide some form of substitute aquatic resource for the impacted aquatic resource.

~~"Composite sample" means a combination of individual samples of sediment or water taken in proportion to the area to be impacted which ensures that a representative sample is obtained.~~

"Consumptive use" means the withdrawal of surface waters, without recycle of said waters to their source or basin of origin.

"Creation" means the establishment of a wetland or other aquatic resource where one did not formerly exist.

"Director" means the Director of the Department of Environmental Quality.

"Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of any pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.

"Draft VWP permit" means a ~~prepared~~ document indicating the board's tentative decision relative to a VWP permit action.

"Draining" means human-induced activities such as ditching, excavation, installation of tile drains, hydrologic modification by surface water runoff diversion, pumping water from wells, or similar activities such that the activities have the effect of artificially dewatering the wetland or altering its hydroperiod.

"Dredged material" means material that is excavated or dredged from surface waters.

"Ecologically preferable" means capable of providing a higher likelihood of replacing existing wetland functions and values, water quality and fish and wildlife resources than alternative proposals.

~~"Effluent" means dredged material or fill, including return flow from confined sites.~~

"Enhancement" means activities conducted in existing wetlands or other aquatic resources that increase one or more aquatic functions or values.

~~"Environmental Protection Agency (EPA)" means the United States Environmental Protection Agency.~~

"Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil or rock.

~~"Executive director" means executive director of the State Water Control Board.~~

"Fill" means replacing portions of surface water with upland, or changing the bottom elevation of a water body or wetland for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris.

"Fill material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a water body for any purpose.

~~"General permit" means a permit issued by the Corps of Engineers, such as Regional or Nationwide Permits or a permit issued by the State Water Control Board (SWCB) under 40 CFR Part 241 authorizing a specified category of activities within a geographic area.~~

"Geographic area of a delineated wetland" means the area contained within and up to a wetland boundary determined by delineation methods consistent with this chapter.

"Impairment" means the damage, loss or degradation of the functions and values of state waters.

"Isolated wetlands of minimal ecological value" means those wetlands that (i) do not have a surface water connection to other state waters; (ii) are less than one-tenth of an acre in size; (iii) are not located in a FEMA designated 100-year floodplain; (iv) are not identified by the Virginia Natural Heritage Program as a rare or state significant natural community; (v) are not forested; and (vi) do not contain listed federal or state threatened or endangered species.

"Joint Permit Application (JPA)" means an application form that is used to apply for permits from the Norfolk District Corps of Engineers, the Virginia Marine Resources Commission, the Virginia Department of Environmental Quality, and local wetland boards for work in waters of the United States and in surface waters of Virginia.

"Minimization" means lessening impacts by reducing the degree or magnitude of the proposed action and its implementation.

"Mitigation" means sequentially avoiding and minimizing impacts to the maximum extent practicable, and then compensating for remaining unavoidable impacts of a proposed action.

"Mitigation banking" means compensating for unavoidable wetland losses in advance of development actions through the sale, purchase or use of credits from a mitigation bank that is operating under a signed banking instrument in accordance with all applicable federal and state laws or

regulations for the establishment, use and operation of mitigation banks.

"Multi-project mitigation site" means an area of wetland restoration, creation, enhancement and, in appropriate circumstances, preservation of wetlands or upland buffers adjacent to wetlands or other state waters, that is or has been utilized to meet compensation requirements for more than one project but that is not a mitigation bank.

~~"Nationwide permit" means a general permit governing specified activities, issued by the U.S. Army Corps of Engineers, the conditions of which are applicable nationwide.~~

"Nonpoint source" means a source of pollution, such as a farm, forest or construction site run-off, urban storm water run-off or mine run-off that is not collected or discharged as a point source.

"Normal agricultural activities" means those activities defined as an agricultural operation in § 3.1-22.29 of the Code of Virginia and any activity that is conducted as part of or in furtherance of such agricultural operation, but shall not include any activity for which a permit would have been required as of January 1, 1997, under 33 USC § 1344 or any regulations promulgated pursuant thereto.

"Normal residential gardening, lawn and landscape maintenance" means ongoing noncommercial residential activities conducted by or on behalf of an individual occupant, including mowing, planting, fertilizing, mulching, tilling, vegetation removal by hand or by hand tools, placement of decorative stone, fencing and play equipment. Other appurtenant noncommercial activities, provided that they do not result in the conversion of a wetland to upland or to a different wetland type, may also be included.

"Normal silvicultural activities" means any silvicultural activity as defined in § 10.1-1181.1 of the Code of Virginia, and any activity that is conducted as part of or in furtherance of such silvicultural activity, but shall not include any activity for which a permit would have been required as of January 1, 1997, under 33 USC § 1344 or any regulations promulgated pursuant thereto.

"Permanent flooding or impounding" means an increase in the duration and/or depth of standing water on a land surface, other than that resulting from extended-detention basins and enhanced extended-detention basins designed, constructed, and maintained to function in accordance with Virginia Department of Conservation and Recreation (DCR) standards for such facilities (Virginia Stormwater Management Handbook, First Edition, 1999, Volume 1, Chapter 3) or local standards that, at a minimum, meet the DCR standards.

~~"Permit" means a Virginia Water Protection Permit (VWP) which is the Commonwealth of Virginia's § 401 Water Quality Certification.~~

~~"Permittee" means an owner or operator the person who currently has an effective VWP permit issued by the board holds a VWP individual or general permit.~~

"Person" means any firm, corporation, association, or partnership, one or more individuals, or any governmental unit or agency of it.

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~~"Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. It does not mean 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 or gas production and disposed of in a well, if the well is used either to facilitate production or for the disposal purposes if approved by the Department of Mines, Minerals and Energy unless the board determines that such injection or disposal will result in the degradation of surface or groundwater 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 (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution" for the terms and purposes of this chapter.~~

~~"Practicable" means available and capable of being done after taking into consideration cost, existing technology and logistics in light of overall project purposes.~~

~~"Preservation" means the protection of resources in perpetuity through the implementation of appropriate legal and physical mechanisms.~~

~~"Public hearing" means a fact finding proceeding held to afford interested persons an opportunity to submit factual data, views and comments to the board pursuant to the board's Procedural Rule No. 1.~~

~~"Regional permit" means a type of general permit issued by the Corps of Engineers authorizing a specified category of activities applicable within the Commonwealth of Virginia or other a specified geographic region and whose conditions are applicable within the geographic area specified.~~

~~"Restoration" means the reestablishment of a wetland or other aquatic resource in an area where it previously existed. Wetland restoration means the reestablishment of wetland hydrology and vegetation in an area where a wetland previously existed. Stream restoration means the process of converting an unstable, altered or degraded stream corridor, including adjacent areas and floodplains, to its natural conditions.~~

~~"Schedule of compliance" means a schedule of remedial measures including a sequence of enforceable actions or operations leading to compliance with the Act, the law, and the board regulations, standards and policies.~~

~~"Significant alteration or degradation of existing wetland acreage or function" means human-induced activities that cause either a diminution of the areal extent of the existing wetland or cause a change in wetland community-type (as defined by the Cowardin classification system or similar terminology) resulting in the loss or more than minimal degradation of its existing ecological functions.~~

~~"Single and complete project" means the total project proposed or accomplished by one person. For linear projects, the "single and complete project" (i.e., a single and complete crossing) will apply to each crossing of a separate water of the United States (i.e., a single waterbody) and to multiple crossings of the same waterbody at separate and distinct locations. However, individual channels in a braided stream or river, or individual arms of a large, irregularly-shaped wetland, lake, etc. are not separate waterbodies. A single and complete project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases are not built can be considered as separate single and complete projects with independent utility.~~

~~"State general permit" means a VWP permit issued by the Commonwealth of Virginia through the State Water Control Board, and applicable statewide, for activities of minimal environmental consequence.~~

~~"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.~~

~~"Surface water" means: all state waters that are not ground water as defined in § 62.1-255 of the Code of Virginia.~~

- ~~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 which are subject to the ebb and flow of the tide;~~
- ~~2. All interstate waters including interstate wetlands;~~
- ~~3. All other waters such as inter/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. Which 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. Which 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 4 through 6 of this definition.~~

"Toxic pollutant" means any agent or material including, but not limited to, those listed under § 307(a) of the Act (33 USC § 1317(a)), which after discharge will, on the basis of available information, cause toxicity. Toxicity means the inherent potential or capacity of a material to cause adverse effects in a living organism, including acute or chronic effects to aquatic life, detrimental effects on human health or other adverse environmental effects.

"VWP general permit" means a regulation that constitutes a VWP permit for a category of activities.

"VWP permit" means an individual or general permit issued by the board under § 62.1-44.15:5 of the Code of Virginia that authorizes activities otherwise unlawful under § 62.1-44.5 of the Code of Virginia or otherwise serves as the Commonwealth of Virginia's § 401 certification.

~~"Water quality standards" means water quality standards 9 VAC 25-260-10 et seq. adopted by the board promulgated by the administrator of the EPA under § 303 of the Act. Note: these can be found at 9 VAC 25-260-5 et seq.~~

"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

9 VAC 25-210-20. Purpose. (Repealed.)

~~This chapter delineates the procedures and requirements to be followed in connection with the Virginia Water Protection Permit issued by the board pursuant to the State Water Control Law. This chapter supersedes Procedural Rule No. 3 of the regulations of the State Water Control Board.~~

9 VAC 25-210-30. Authority for chapter. (Repealed.)

~~The authority for this chapter is pursuant to the State Water Control Law (law), Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1, in particular §§ 62.1-44.15:5, 62.1-44.15(7) and 62.1-44.15(10); and 33-USC § 1251 et seq.~~

9 VAC 25-210-40. Federal guidelines.

The following federal guidelines are incorporated by reference:

Guideline for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part 230 (*Federal Register* December 24, 1980).

9 VAC 25-210-45. Wetland delineation.

Each delineation shall be conducted in accordance with the U.S. Army Corps of Engineers' "Wetland Delineation Manual, Technical Report Y-87-1, January 1987, Final Report" (*Federal Manual*). The *Federal Manual* shall be interpreted in a manner consistent with Corps guidance.

9 VAC 25-210-50. Prohibitions and requirements for VWP permits.

A. No person shall dredge, fill or discharge any pollutant into, or adjacent to surface waters, ~~excavate in a wetland, or otherwise alter the physical, chemical or biological properties of surface waters, except as authorized pursuant to a Virginia Water Protection Permit, or as excluded in 9 VAC 25-210-60 excavate in wetlands, or on or after October 1, 2001, conduct the following activities in a wetland:~~ (i) new activities to cause draining that significantly alters or degrades existing wetland acreage or functions, (ii) filling or dumping, (iii) permanent flooding or impounding, or (iv) new activities that cause significant alteration or degradation of existing wetland acreage or functions.

B. No VWP permit shall be issued for the following:

1. Where the *proposed activity or the terms or conditions of the VWP permit do not comply with state law or regulations including but not limited to § 10.1-1408.5 of the Code of Virginia of Virginia;*
2. For the discharge of any radiological, chemical or biological warfare agent or high level radioactive material into surface waters;
- ~~3. For any discharge which will result in the pollution of surface waters or the violation of standards, regulations or policies adopted by the board pursuant to state law.~~

9 VAC 25-210-60. Exclusions.

The following do not require a Virginia Water Protection Permit but may require other permits under state and federal law:

1. Discharges of dredged or fill material which are addressed *authorized* under a U.S. Army Corps of Engineers Regional, General or Nationwide Permit, and for which ~~no § 401 Water Quality Certificate is required Certification has been granted as of the effective date of this chapter.~~ Such permits include the following activities:
 - ~~a. The placement of aids to navigation and regulatory markers which are approved by and installed in accordance with the requirements of the U.S. Coast Guard (33 CFR 66, Subchapter C, § 10).~~
 - ~~b. Structures constructed in artificial canals within principally residential developments where the connection of the canal to a navigable water of the United States has been previously authorized (33 CFR 322.5(g), § 10).~~
 - ~~c. The repair, rehabilitation or replacement of any previously authorized, currently serviceable structure or fill, or any currently serviceable structure or fill constructed prior to the requirement for authorization, provided such repair, rehabilitation, or replacement does not result in a deviation from the plans of the original structure or fill, and further provided that the structure or fill has not been put to uses differing from uses specified for it in any permit authorizing its original construction. Minor deviations due to changes in materials or construction techniques and which are~~

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necessary to make repair, rehabilitation, or replacement are permitted. Maintenance dredging and beach restoration are not authorized under nationwide permits (33 CFR 330.5(a), § 10).

d. Fish and wildlife harvesting devices and activities such as pound nets, crab traps, eel pots, duck blinds, and clam and oyster digging (33 CFR 330.5(a), § 10).

e. Staff gages, tide gages, water recording devices, water quality testing and improvement devices and similar scientific structures (33 CFR 330.5(a), § 10).

f. Survey activities including core sampling, seismic exploratory operations, and plugging of seismic shot holes and other exploratory type bore holes. Drilling of exploration type bore holes for oil and gas exploration is not authorized by any nationwide permit (33 CFR 330.5(a), § 10).

g. Structures for the exploration, production, and transportation of oil, gas and minerals on the outer continental shelf within areas leased for such purposes by the Department of Interior, Mineral Management Service, provided these structures are not placed within the limits of any designated shipping safety fairway or traffic separation scheme (33 CFR 330.5(a), § 10).

h. Structures placed within anchorage or floating areas to facilitate moorage of vessels where such areas have been established for that purpose by the U.S. Coast Guard (33 CFR 330.5(a), § 10).

i. Noncommercial, single boat, mooring buoys (33 CFR 330.5(a), § 10).

j. Temporary buoys and markers placed for recreational use such as water skiing and boat racing provided that the buoy or marker is removed within 30 days after its use has been discontinued (33 CFR 330.5(a), § 10).

2. Any activity discharge, other than an activity in a surface water governed by §§ 62.1-44.5 and 62.1-44.15:5 of the Code of Virginia, permitted by a Virginia Pollutant Discharge Elimination System (VPDES) permit in accordance with ~~9 VAC 25-30-10~~ 9 VAC 25-31-10 et seq.;

3. Any activity, other than an activity in a surface water governed by §§ 62.1-44.5 and 62.1-44.15:5 of the Code of Virginia, permitted by a Virginia Pollution Abatement (VPA) permit in accordance with ~~9 VAC 25-30-10~~ 9 VAC 25-32-10 et seq.;

4. Land disposal activities including Septic tanks, when authorized by a state Department of Health permit or a State Department of Waste Management Permit;

5. Discharges authorized by EPA under the Safe Drinking Water Act Underground Injection Control Program (UIC). Any activity permitted under Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia, unless state certification is required by § 401 of the Clean Water Act;

6. Normal residential gardening, lawn and landscape maintenance;

~~6.~~ 7. a. Normal farming, agriculture and silviculture and ranching activities such as plowing, seeding, cultivating, minor drainage and harvesting for the production of food, fiber and forest products, or upland soil and water conservation practices. For the purposes of *this* subdivision ~~6 of this subsection~~ 7, cultivating, harvesting, minor drainage, plowing, and seeding are defined as follows:

(1) "Cultivating" means physical methods of soil treatment employed within established farming, ranching and silviculture lands on farm, ranch, or forest crops to aid and improve their growth, quality, or yield.

(2) "Harvesting" means physical measures employed directly upon farm, forest, or ranch crops within established agricultural and silviculture lands to bring about their removal from farm, forest, or ranch land, but does not include the construction of farm, forest, or ranch roads.

(3) "Minor drainage" means:

(a) The discharge of dredged or fill material incidental to connecting upland drainage facilities to surface waters, adequate to effect the removal of excess soil moisture from upland croplands. Construction and maintenance of upland (dryland) facilities, such as ditching and tiling incidental to the planting, cultivating, protecting, or harvesting of crops, involve no discharge of dredged or fill material into surface waters, and as such never require a § 401 Water Quality Certificate, and hence no Virginia Water Protection Permit;

(b) The discharge of dredged or fill material for the purpose of installing ditching or other water control facilities incidental to planting, cultivating, protecting, or harvesting of rice, or other wetland crop species, where these activities and the discharge occur in surface waters which are in established use for such agricultural and silviculture wetland crop production;

(c) The discharge of dredged or fill material for the purpose of manipulating the water levels of, or regulating the flow or distribution of water within, existing impoundments which have been constructed in accordance with applicable requirements of the Act, and which are in established use for the production of rice, or other wetland crop species;

(d) The discharge of dredged or fill material incidental to the emergency removal of sandbars, gravel bars, or other similar blockages which are formed during flood flows or other events, where such blockages close or constrict previously existing drainageways and, if not promptly removed, would result in damage to or loss of existing crops or would impair or prevent the

plowing, seeding, harvesting or cultivating of crops on land in established use for crop production. Such removal does not include enlarging or extending the dimensions of, or changing the bottom elevations of, the affected drainageway as it existed prior to the formation of the blockage. Removal must be accomplished within one year after such blockages are discovered in order to be eligible for exclusion;

(e) Minor drainage in surface waters is limited to drainage within areas that are part of an established farming or silviculture operation. It does not include drainage associated with the immediate or gradual conversion of a wetland to a nonwetland (e.g., wetland species to upland species not typically adapted to life in saturated soil conditions), or conversion from one wetland use to another (for example, silviculture to farming). In addition, minor drainage does not include the construction of any canal, ditch, dike or other waterway or structure which drains or otherwise significantly modifies a stream, lake, swamp, bog or any other wetland or aquatic area constituting surface water. Any discharge of dredged or fill material into surface water incidental to the construction of any such structure or waterway requires a VWP permit.

(4) "Plowing" means all forms of primary tillage, including moldboard, chisel, or wide-blade plowing, discing, harrowing, and similar physical means used on farm, forest or ranch land for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. Plowing does not include the redistribution of soil, rock, sand, or other surficial materials in a manner which changes any area of surface water to dry land. For example, the redistribution of surface materials by blading, grading, or other means to fill in wetland areas is not plowing. Rock crushing activities which result in the loss of natural drainage characteristics, the reduction of water storage and recharge capabilities, or the overburden of natural water filtration capacities does not constitute plowing. Plowing as described above will never involve a discharge of dredged or fill material.

(5) "Seeding" means the sowing of seed and placement of seedlings to produce farm, ranch or forest crops and includes the placement of soil beds for seeds or seedlings on established farm and forest lands.

b. To fall under this exclusion, the activities specified in subdivision 6 7 a of this subsection must be part of an established (i.e., ongoing) farming, ~~or silviculture, or ranching~~ operation, and must be in accordance with applicable best management practices set forth in either *Virginia Forestry Best Management Practices for Virginia, Third Edition, 1997* or *Virginia Agricultural BMP Manual, June 2000*, which facilitate compliance with the § 404(b)(1) guidelines (40 CFR Part 230).

Activities on areas lying fallow as part of a conventional rotational cycle are part of an established operation.

c. Activities which bring a new area into farming, silviculture or ranching use are not part of an established operation. An operation ceases to be established when the area in which it was conducted has been converted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operation. If the activity takes place outside surface waters, or does not involve a discharge, it does not need a ~~§ 401 Water Quality Certificate, and therefore no~~ Virginia Water Protection Permit, whether or not it is part of an established farming, silviculture or ranching operation.

~~7-~~ 8. Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, groins, levees, dams, riprap breakwaters, causeways, bridge abutments or approaches, and transportation *and utility* structures. *Maintenance does not include modifications that change the character, scope, or size of the original design. In order to qualify for this exemption, emergency reconstruction must occur within a reasonable period of time after damage occurs.*

~~8-~~ 9. Construction or maintenance of farm or stock ponds or irrigation ditches or the maintenance (but not construction) of drainage ditches. Discharge associated with siphons, pumps, headgates, wingwalls, weirs, diversion structures, and such other facilities as are appurtenant and functionally related to irrigation ditches are included in this exclusion.

~~9-~~ 10. Construction of temporary sedimentation basins on a construction site which does not include the placement of fill materials into surface waters. The term "construction site" refers to any site involving the erection of buildings, roads, and other discrete structures and the installation of support facilities necessary for construction and utilization of such structures. The term "*construction site*" also includes any other land areas which involve land-disturbing excavation activities, including quarrying or other mining activities, where an increase in run-off of sediment is controlled through the use of temporary sedimentation basins.

~~10-~~ 11. Any activity with respect to which the Commonwealth of Virginia has an approved program under § 208(b)(4) of the Act which meets the requirements of § 208(b)(4)(B) and (C) (33 USC § 1288).

~~11-~~ 12. Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained in accordance with applicable best management practices (BMPs) set forth in either *Virginia Forestry Best Management Practices for Virginia, Third Edition, 1997*, or *Virginia Agricultural BMP Manual, June 2000*, to ensure that flow and circulation patterns and chemical and biological characteristics of surface waters are not impaired, that the reach of such waters is not reduced,

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and that any adverse effect on the aquatic environment will otherwise be minimized. The BMPs which must be applied to satisfy this provision include the following baseline provisions:

a. Permanent roads (for farming or forestry activities), temporary access roads (for mining, forestry, or farm purposes), and skid trails (for logging) in surface waters shall be held to the minimum feasible number, width, and total length consistent with the purpose of specific farming, silviculture or mining operations, and local topographic and climatic conditions;

b. All roads, temporary or permanent, shall be located sufficiently far from streams or other water bodies (except for portions of such roads which must cross water bodies) to minimize discharges of dredged or fill material into surface waters;

c. The road fill shall be bridged, culverted, or otherwise designed to prevent the restriction of expected flood flows;

d. The fill shall be properly stabilized and maintained to prevent erosion during and following construction;

e. Discharges of dredged or fill material into surface waters to construct road fill shall be made in a manner which minimizes the encroachment of trucks, tractors, bulldozers, or other heavy equipment within state waters (including adjacent wetlands) that lie outside the lateral boundaries of the fill itself;

f. In designing, constructing, and maintaining roads, vegetative disturbance in surface waters shall be kept to a minimum;

g. The design, construction and maintenance of the road crossing shall not disrupt the migration or other movement of those species of aquatic life inhabiting the water body;

h. Borrow material shall be taken from upland sources whenever feasible;

i. The discharge shall not take, or jeopardize the continued existence of a federally or state listed threatened or endangered species as defined under the Endangered Species Act (16 USC § 1531 et seq.), in § 29.1-566 of the Code of Virginia and in 4 VAC 15-20-130 B and C, except as provided in § 29.1-568 of the Code of Virginia, or adversely modify or destroy the critical habitat of such species;

j. Discharges into the nesting and breeding areas for migratory waterfowl, spawning areas, and wetlands shall be avoided if practical alternatives exist;

k. The discharge shall not be located in proximity of a public water supply or intake;

l. The discharge shall not occur in areas of concentrated shellfish production;

m. The discharge shall not occur in a component to the National Wild and Scenic River System;

n. The discharge material shall consist of suitable material free from toxic pollutants in toxic amounts; and

o. All temporary fills shall be removed in their entirety and the area restored to its original elevation.

9 VAC 25-210-70. Effect of a VWP permit.

A. As to the permitted activity, compliance with a VWP permit constitutes compliance with the VWP permit requirements of the State Water Control Law and regulations.

B. The issuance of a VWP permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize injury to private property or any invasion of personal rights or any infringement of federal, state or local law or regulation.

PART II. VWP PERMIT APPLICATION AND ISSUANCE DEVELOPMENT.

9 VAC 25-210-80. Application for a VWP permit.

A. ~~Duty How to apply. Any person who is required to obtain a Federal 404 permit or federal license or relicense which requires a § 401 Certification and proposes the discharge of dredged or fill material into or adjacent to surface waters, or proposes to construct an intake for the purpose of withdrawing water from surface waters which has the potential to affect the beneficial use of such waters, or is required to have a permit under 9 VAC 25-210-50, and who does not have an effective permit except persons excluded under 9 VAC 25-210-60, VWP permit shall submit a complete Joint VWP permit application to the State Water Control Board DEQ through the Virginia Marine Resources Commission (VMRC), consisting of the Joint Permit Application (JPA) with the DEQ VWPP Addendum, or submit a complete registration statement for coverage under a VWP general permit, as applicable. These applications are available from VMRC, the Norfolk District, U.S. Army Corps of Engineers, or DEQ.~~

~~1. A complete Joint Permit Application shall be completed and submitted to the Virginia Marine Resources Commission (VMRC) by any owner or applicant who discharges or proposes to discharge dredged or fill materials or requires a FERC permit before a Virginia Water Protection Permit can be issued. These applications are available from VMRC, the Norfolk District, U.S. Army Corps of Engineers, or the State Water Control Board. This item does not apply where Nationwide or general permits, for which the board has waived certification, are applicable.~~

~~2. A complete 404/401/VWPP application to the State Water Control Board, as a minimum, consists of the following:~~

~~a. A joint 404/401/VWPP application being completed in its entirety and all maps, attachments and addenda being included;~~

~~b. The application must be accompanied by a Local Government Approval Form;~~

- ~~c. The application must have an original signature;~~
 - ~~d. A detailed location map of the impact area with the latitude and longitude, hydrologic unit code, stream classification, the drainage area of the affected surface waters and the watershed in which the surface water occurs clearly identified on the map. The map should be of sufficient detail such that the site may be easily located for site inspection;~~
 - ~~e. An assessment of functional values of the affected surface waters including information on existing beneficial uses of the surface waters at the proposed project location;~~
 - ~~f. A complete narrative description of the project, with detailed sketches, of the type of activity to be conducted and showing any physical alteration to surface waters;~~
 - ~~g. If dredged or fill material is involved the applicant must provide evidence that the material is free from toxic contaminants, or that the material, if not free of contaminants, will be placed in an approved disposal area;~~
 - ~~h. An assessment of the impacts of the activity to existing beneficial uses;~~
 - ~~i. A delineation map of all wetlands if any on the site as required by the U.S. Army Corps of Engineers or U.S. EPA or the Federal Energy Regulatory Commission, including the data utilized to develop the delineation map and the latitude and longitude of the center of the wetland area to be impacted;~~
 - ~~j. The drainage area of any wetland identified in subdivision i above, or the watershed in which the wetland occurs;~~
 - ~~k. A plan of mitigation for unavoidable impacts to surface waters which must include: measures taken to avoid impacts, the measures proposed to reduce the impacts to surface waters and where impacts could not be avoided the means by which mitigation will be accomplished (e.g., channel relocation, aquatic habitat enhancement, wetland replacement, recreational enhancement etc.).~~
- ~~3. In addition to requirements of subdivision 2 of this subsection, applications involving a surface water withdrawal or a FERC license or relicense also shall include:~~
- ~~a. The drainage area, the average annual flow and the median monthly flows at the withdrawal point;~~
 - ~~b. The average daily withdrawal, the maximum daily and instantaneous withdrawals and information on the variability of the demand by season;~~
 - ~~c. The consumptive use and the average daily return flow of the proposed project and the location of the return flow;~~

- ~~d. Information on the proposed use of the surface water and information on how the demand for surface water was determined;~~
- ~~e. Information on flow dependent beneficial uses at the proposed project location; and~~
- ~~f. Information on the aquatic life at the proposed project location, including species and habitat requirements.~~

~~4. Where an application is considered incomplete, the board may require the submission of additional information after an application has been filed, and may suspend processing of any application until such time as the applicant has supplied missing or deficient information and the board considers the application complete. Further, where the applicant becomes aware that he omitted one or more relevant facts from a permit application, or submitted incorrect information in a permit application or in any report to the board, he shall immediately submit such facts or the correct information.~~

~~1. The required 15-day timeframe for completeness review for all projects, with the exception of minimum instream flow and water withdrawal projects, will commence upon receipt of the application by the office having authority over the project (i.e., the regional office in the region in which the project is located, or central office for Virginia Department of Transportation projects).~~

~~5. Any person proposing a new discharge for an individual permit of dredged or fill material shall submit a complete Joint Permit Application at least 180 days prior to the date planned for commencement of the activity resulting in the discharge. Any person proposing a new discharge which meets the criteria for a nationwide or state general permit shall submit a complete Joint Permit Application at least 60 days prior to the commencement of the activity resulting in the discharge. 2. There shall be no discharge of dredged or fill material commencement of any activity for which a VWP permit is required prior to the issuance of a VWP permit.~~

Note: The amount of time allowed by statute for processing a complete application for any project, excluding water withdrawal projects, is 15 days for completeness review; 120 days for processing the complete application by issuing a VWP permit, issuing a VWP permit with conditions, denying the VWP permit, or deciding to conduct a public meeting or hearing; 60 days to hold a public meeting or hearing; and 90 days after the public meeting or hearing, if held, to make a final VWP permit decision, pursuant to § 62.1-44.15:5 D of the Code of Virginia.

~~6. For any person possessing a § 401 Water Quality Certificate as of December 31, 1989, such certificate shall remain valid and enforceable until such time as the certificate expires, or reapplication or modification is necessary. For certificates issued under § 401 of the Act after December 31, 1989, the board may at its option issue a Virginia Water Protection Permit.~~

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~~7. Any person with an existing unpermitted discharge of dredged or fill material shall submit a Joint Permit Application immediately upon discovery by the owner or within 30 days upon being requested to by the board which ever comes first.~~

~~8. Pursuant to § 62.1-44.15:3 of the Code of Virginia no application for a new permit will be deemed complete until the board receives notification from the local government body of the county, city or town in which the discharge is to take place that the location and operation of the discharging activity is consistent with all ordinances adopted pursuant to Chapter 11 (§ 15.1-427 et seq.) of Title 15.1, and Chapter 21 (§ 10.1-2100 et seq.) of Title 10.1 of the Code of Virginia where applicable.~~

~~B. Duty to reapply.~~

~~1. Any permittee with an effective permit shall submit a new permit application at least 180 days before the expiration date of an effective permit unless permission for a later date has been granted by the board.~~

~~2. Owners or persons who have effective permits shall submit a new application 180 days prior to any proposed modification to their activity which will:~~

~~a. Result in significantly new or substantially increased discharge of dredged or fill material, or significant change in the nature of the pollutants; or~~

~~b. Violate or lead to the violation of the terms and conditions of the permit or the water quality standards of the Commonwealth.~~

~~C. Informational requirements. All applicants for a Virginia Water Protection Permit shall provide information in accordance with § 404(b)(1) Guidelines for Specification of Disposal Sites of Dredged or Fill Material, 40 CFR 230.60 and 230.61, as revised 1990, where appropriate. All applicants for a permit must submit a complete permit application in accordance with 9 VAC 25-210-80 A.~~

~~D. Confidentiality. In accordance with § 62.1-44.21 of the Code of Virginia or as otherwise required by state or federal law and as provided in 9 VAC 25-210-80 A information submitted to the executive director in accordance with this subpart may be claimed as confidential.~~

~~B. Informational requirements.~~

~~1. A complete VWP permit application, at a minimum, consists of the following: A JPA completed in its entirety with all appropriate maps, appendices, attachments and addenda included. The JPA must include the following information:~~

~~a. Name and address of permittee (and property owner, if different).~~

~~b. Name and address of authorized agent (if applicable).~~

~~c. Name of the waterbody or receiving waters, as applicable, at the project site.~~

~~d. Name of the city or county where the project occurs.~~

~~e. Project purpose, need and description. The purpose and need for the project shall be specified. A complete narrative description of the project shall include: the type of activity to be conducted; any physical alteration to surface waters; and all impacts, permanent and temporary, associated with the project. Wetland impacts should be defined by the Cowardin classification method or similar terminology. Conversion of one type of wetland to another type of wetland is considered to be a permanent impact.~~

~~f. Amount of surface water impacts (wetlands, streams and/or open water) by type in square feet or acres, or linear feet for streams (if applicable).~~

~~g. Materials assessment. If dredged or fill material is involved, the applicant must provide evidence or certification that the material is free from toxic contaminants, or that the material, if not free of contaminants, will be placed in an approved disposal area. If applicable, the applicant may be required to conduct grain size and composition analyses, tests for specific parameters or chemical constituents, or elutriate tests on the dredge material.~~

~~h. Proposed construction schedule. An estimate of the construction timeframe for the project will be used to determine the VWP permit term.~~

~~i. Signed and dated signature page. The application signature page, either on the copy submitted to VMRC or to the DEQ, must have an original signature.~~

~~j. Appendices (from the JPA) that apply to the project.~~

~~k. The Department of Environmental Quality Addendum, including latitude and longitude (to the nearest second) at the center of the project, United States Geological Survey Hydrologic Unit Code for the project and compensatory mitigation site, DEQ stream classification, stream drainage area, functions and values assessment for wetlands impacts (if applicable), wetlands delineation information, state- and federally-listed threatened and endangered species information, mitigation plan (demonstrating avoidance and minimization to the maximum extent practicable, and compensation for unavoidable impacts).~~

~~(1) For wetland impacts greater than one acre and for all water withdrawals, the assessment of functional values of the affected surface waters must include information on existing beneficial uses of the surface waters and information on fish and wildlife resources and habitat at the proposed project location;~~

~~(a) Functional values may include: water quality, floodflow desynchronization, nutrient import or export, stormwater retention or detention, groundwater recharge or discharge, fish and wildlife habitat, recreation, education, and aesthetics. These values shall be assessed using an acceptable method appropriate for the type of impacted resource. This information will be used to determine the type of compensatory mitigation~~

required to ensure no net loss of wetland functions.

(b) Beneficial uses (both instream and offstream uses) include, but are not limited to: the protection of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation, cultural and aesthetic values, domestic (including public water supply), agricultural, electric power generation, commercial and industrial uses.

(2) The assessment of potential impacts to federally-listed and state-listed threatened or endangered species shall include correspondence or documentation from federal or state resource agencies addressing potential impacts to listed species.

(3) A delineation map must be provided of the geographic area of a delineated wetland for all wetlands on the site, in accordance with 9 VAC 25-210-45, including the wetlands data sheets, and the latitude and longitude (to the nearest second) of the center of the wetland impact area. Wetland types should be noted using the Cowardin classification scheme or similar terminology. A copy of the Corps of Engineers' delineation confirmation shall also be provided at the time of application, or if not available at that time, as soon as it becomes available during the VWP permit review. If written confirmation is not available at the time of application, verbal confirmation must be provided and the written confirmation submitted during the VWP permit review. The delineation map should also include the location of all impacted and non-impacted streams, open water and other surface waters on the site, as well as the limits of any Chesapeake Bay Resource Protection Areas (RPAs). Additional state or local requirements may apply if the project is located within an RPA.

(4) The plan of mitigation for unavoidable impacts to surface waters must include, in accordance with current federal regulations: measures taken to avoid impacts to the maximum extent practicable, the measures proposed to reduce the impacts to surface waters, and where impacts could not be avoided, the means by which compensation will be accomplished.

(a) A narrative description must be provided detailing the measures taken during project design and development both to avoid and minimize impacts to surface waters to the maximum extent practicable (see 9 VAC 25-210-115 A);

(b) The compensatory mitigation plan, unless dependent solely on wetland banking or trust fund contributions, shall include the goals and objectives of the plan, in terms of replacement of functions and values and expressed in acres of each wetland or stream type. The plan shall also address any inclusion of buffers, any structures and features necessary for the success of the site,

and the schedule for compensatory mitigation site construction.

(c) In order for an application to be deemed complete, at a minimum, a conceptual compensatory mitigation plan must be submitted, and shall include: the goals and objectives in terms of replacement of wetland or stream acreage and function; a location map, including latitude and longitude (to the nearest second) at the center of the site; a hydrologic analysis, including a draft water budget based on expected monthly inputs and outputs which will project water level elevations for a typical dry and wet year; groundwater elevation data, if available, or the proposed location of groundwater monitoring wells to collect this data; wetland delineation sheets, maps and a jurisdictional determination from the Corps of Engineers for existing wetland areas on the proposed site(s); a conceptual grading plan; a conceptual planting scheme, including suggested plant species, zonation and acreage of each vegetation type proposed; a proposed soil preparation and amendment plan addressing both topsoil and subsoil conditions; and a draft design of any water control structures,

(d) The final compensatory mitigation plan must include complete information on all components of the conceptual compensatory mitigation plan detailed in subpart (ii) above, as well as a site access plan; a monitoring plan, including proposed success criteria, monitoring goals, and the location of photostations, monitoring wells, vegetation sampling points, and reference wetlands (if available); an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan; a construction schedule; and proposed deed restriction language for protecting the compensation site(s) in perpetuity. The final compensatory mitigation plan must include protection of all surface waters and upland areas that are to be preserved in perpetuity within the compensation site(s) boundary.

(e) Any wetland compensation plan proposing the purchase of wetland banking credits shall include:

(i) The name of the proposed wetland mitigation bank within the same or adjacent hydrologic unit code within the same river watershed with available credits;

(ii) The number of credits proposed to be purchased; and

(iii) Certification from the bank owner of the availability of credits.

(f) Applicants proposing off-site compensatory mitigation, purchase or use mitigation bank credits, or contribution to an in-lieu fee fund shall discuss the feasibility of on-site compensatory mitigation. If on-site compensatory mitigation is practicable, applicants must provide

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documentation as to why the proposed off-site compensatory mitigation, mitigation banking, or in-lieu fee fund is ecologically preferable. The evaluation should include, at a minimum, a comparison of the following criteria: water quality benefits, hydrologic source, hydrologic regime, watershed, wetlands functions and values, vegetation type, soils, impact acreage, distance from impacts, timing of compensation vs. impacts, acquisition, constructability, and cost.

(g) Any compensation plan involving stream restoration shall submit a plan that includes: goals and objectives in terms of water quality benefits; location map, including the latitude and longitude (to the nearest second) at the center of the site; the proposed stream segment restoration locations, including plan view and cross-section sketches; the stream deficiencies that need to be addressed; the restoration measures to be employed, including proposed design flows and types of instream structures; and a proposed construction schedule.

1. Detailed project location map; The detailed location map (e.g., a United States Geologic Survey topographic quadrangle map) of the impact area must include the latitude and longitude for the project, hydrologic unit code, and stream classification (if applicable) clearly identified on the map. The map should be of sufficient detail such that the site may be easily located for site inspection;

m. Project plan view and cross-sectional sketches. All plan view sketches and cross-sectional sketches must include, at a minimum, north arrow, scale, existing structures, existing and proposed (if available) contours, limit of jurisdictional areas, ebb and flood or direction of flow, impact limits, location and dimension of all structures in impact areas,

n. Application processing fee. The applicant will be notified by the board as to the appropriate fee for the project in accordance with 9 VAC 25-20-10 et seq. The board will continue to process the application, but the fee must be received prior to release of a draft VWP permit.

2. In addition to requirements of subdivision 1 of this subsection, applications involving a surface water withdrawal or a Federal Energy Regulatory Commission (FERC) license or re-license shall include:

a. The drainage area, the average annual flow and the median monthly flows at the withdrawal point, and historical low flows if available;

b. The average daily withdrawal, the maximum daily and instantaneous withdrawals and information on the variability of the demand by season;

c. Information on how the proposed withdrawal will impact flows in terms of flow reduction;

d. The consumptive use and the average daily return flow of the proposed project and the location of the return flow;

e. Information on the proposed use and need of the surface water and information on how the demand for surface water was determined (e.g., per capita use, population growth rates, new uses, changes to service areas, and if applicable, acreage irrigated and evapotranspiration effects);

f. Information on flow dependent beneficial uses at the proposed project location; and

g. Information on the aquatic life at the proposed project location, including species and habitat requirements.

C. Additional information. The board may require additional information needed to evaluate compliance with this chapter.

D. Incomplete application.

1. Where an application is not accepted complete by the board within 15 days of receipt, the board may request additional specific information from the applicant, and may suspend processing of any application until such time as the applicant has supplied missing or deficient information and the board considers the application complete.

2. Further, where the applicant becomes aware that he omitted one or more relevant facts from a VWP permit application, or submitted incorrect information in a VWP permit application or in any report to the board, he shall immediately submit such facts or the correct information.

9 VAC 25-210-90. Conditions applicable to all VWP permits.

A. Duty to comply. The permittee shall comply with all conditions of the VWP permit. Nothing in this chapter shall be construed to relieve the VWP holder of the duty to comply with all applicable federal and state statutes, regulations and toxic standards and prohibitions. Any VWP permit ~~noncompliance violation~~ is a violation of the Act and law, and is grounds for enforcement action, VWP permit termination, revocation, modification, or denial of a VWP permit ~~renewal application extension or reissuance~~.

B. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a VWP permit has been granted in order to maintain compliance with the conditions of the VWP permit.

C. Duty to mitigate. The permittee shall take all reasonable steps to ~~(i) avoid all adverse environmental impact which could result from the activity, (ii) minimize the adverse environmental impact where avoidance is impractical, and (iii) provide mitigation of the adverse impact on an in-kind basis where impacts cannot be avoided minimize or prevent any impacts in violation of the permit which may have a reasonable likelihood of adversely affecting human health or the environment.~~

D. VWP permit action.

1. A VWP permit may be modified, revoked and reissued, or terminated as set forth in this regulation chapter.

2. If a permittee files a request for VWP permit modification, revocation, or termination, or files a notification of planned changes, or anticipated noncompliance, the VWP permit terms and conditions shall remain effective until the request is acted upon by the board. This provision shall not be used to extend the expiration date of the effective VWP permit. *If the permittee wishes to continue an activity regulated by the VWP permit after the expiration date of the VWP permit, the permittee must apply for and obtain a new VWP permit.*

3. VWP permits may be modified, revoked and reissued or terminated upon the request of the permittee, or upon board initiative to reflect the requirements of any changes in the statutes or regulations *or as a result of VWP permit noncompliance as indicated in subsection A of this section.*

E. Inspection and entry. Upon presentation of credentials, any duly authorized agent of the board may, at reasonable times and under reasonable circumstances:

1. Enter upon any permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP permit conditions;

2. Inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP permit;

3. Sample or monitor any substance, parameter or activity for the purpose of ensuring compliance with the conditions of the VWP permit or as otherwise authorized by law.

F. Duty to provide information.

1. The permittee shall furnish to the board, ~~within a reasonable time,~~ any information which the board may request to determine whether cause exists for modifying, revoking, reissuing and terminating the VWP permit, or to determine compliance with the VWP permit. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.

2. Plans, specifications, maps, conceptual reports and other relevant information shall be submitted as required by the board prior to commencing construction.

G. Monitoring and records requirements.

1. Monitoring of *parameters, other than pollutants*, shall be conducted according to approved analytical methods as specified in the VWP permit ~~as approved by the board. The board may require sediment monitoring in all surface waters where it determines the potential presence of contaminated sediments exists. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.~~

2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP permit, and records of all data used to complete the application for the VWP permit, for a period of at least three years from the date of the expiration of a granted VWP permit. This period may be extended by request of the board at any time.

4. Records of monitoring information shall include:

a. The date, exact place and time of sampling or measurements;

b. The name of the individuals who performed the sampling or measurements;

c. The date the analyses were performed;

d. The name of the individuals who performed the analyses;

e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used; ~~and~~

f. The results of such analyses; *and*

g. *Chain of custody documentation.*

9 VAC 25-210-100. Signatory requirements.

Any application, report, or certification shall be signed as follows:

1. Application:

~~a. For a corporation: by a responsible corporate official. For purposes of this section, a responsible corporate official means (i) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25,000,000 (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.~~

~~b. For a municipality, state, federal or other public agency by either a principal executive officer or ranking elected official. (A principal executive officer of a federal, municipal, or state agency includes the chief executive officer of the agency or head executive officer having responsibility for the overall operation of a principal geographic unit of the agency.)~~

~~c. For a partnership or sole proprietorship, by a general partner or proprietor respectively.~~

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~~d- 1. Any application for a VWP permit under this chapter must bear the signatures of the responsible party and any agent acting on the responsible party's behalf applicant's signature or the signature of a person acting in the applicant's behalf, with the authority to bind the applicant.~~

2. Reports. All reports required by VWP permits and other information requested by the board shall be signed by:

a. One of the persons described in subdivision 1 ~~a, b or c~~ of this section; or

b. A duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in subdivision 1 ~~a, b or c~~ of this section;

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

(3) If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization must be submitted to the board prior to or together with any separate information, or applications to be signed by an authorized representative.

3. Certification of application and reports. Any person signing a document under subdivision 1 or 2 of this section shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

9 VAC 25-210-110. Establishing applicable standards, limitations or other VWP permit conditions.

In addition to the conditions established in 9 VAC 25-210-90 and 9 VAC 25-210-100, each VWP permit ~~may~~ shall include conditions meeting the following requirements where applicable:

1. Instream flow conditions. Subject to the provisions of *Chapter 24* (§ 62.1-242 et seq.) of *Title 62.1* of the Code of Virginia, and subject to the authority of the State Corporation Commission over hydroelectric facilities contained in *Chapter 7* (§ 62.1-80 et seq.) of *Title 62.1* of

the Code of Virginia, instream flow conditions may include but are not limited to conditions that limit the volume and rate at which water may be withdrawn at certain times and conditions that require water conservation and reductions in water use.

2. Water quality standards and state requirements. The VWP permit shall include requirements to comply with all appropriate provisions of state laws and regulations. *VWP permit limitations shall be based on water quality, technology and/or best professional judgment as appropriate.*

3. Toxic pollutants.

a. Where the board finds that appropriate limitations may not ensure compliance with the law or state water quality standards the board shall require the permittee to follow a program of biological or chemical toxics monitoring. The requirement may include a VWP permit reopener to allow the imposition of toxicity reduction or elimination measures determined to be necessary as a result of the board's evaluation of the results of the toxic monitoring and other available information. Based upon this determination, appropriate limitations will be included in the VWP permit to ensure the reduction or elimination of toxic pollutants and allow the board to ensure that the proposed project will comply with water quality standards and other appropriate requirements of state law.

b. Limitations will be included in the VWP permit to control all toxic pollutants which the board determines (based on information reported in a VWP permit application or a notification or on other information) are or may be discharged at a level which would adversely affect the beneficial use of the receiving waters.

4. Duration of VWP permits. ~~Virginia water protection~~ VWP permits issued under this ~~regulation~~ chapter shall have an effective and expiration date which will determine the life of the permit. ~~Virginia water protection~~ VWP permits shall be effective for a fixed term based upon the projected duration of the project, the length of any required monitoring, or other project operations or VWP permit conditions; however, the term shall not exceed 15 years and will be specified in the conditions of the VWP permit. The term of these VWP permits shall not be extended by modification beyond the maximum duration. Extension of VWP permits for the same activity beyond the maximum duration specified in the original VWP permit will require reapplication and reissuance of a new VWP permit.

5. Monitoring requirements as conditions of VWP permits: ~~may include but are not limited to:~~

a. ~~All permits shall specify:~~

~~(4) a.~~ Requirements concerning the proper use, maintenance and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate) when required as a condition of the VWP permit;

(2) *b.* Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity and including, when appropriate, continuous monitoring and composite samples;

(3) *c.* Applicable reporting requirements based upon the impact of the regulated activity on water quality;

~~b. All permits shall include~~ *d.* Requirements to report monitoring results with a frequency dependent on the nature and effect of the discharge, ~~but in no case less than once per year.~~

~~e. In addition, the following monitoring requirements may be included in the permits:~~

~~(1) Mass or other measurements specified in the permit for each pollutant limited in the permit;~~

~~(2) The volume of effluent discharged; or~~

~~(3) Other measurements as appropriate, including intake water.~~

6. Best Management Practices (BMPs). The VWP permit may require the use of BMPs to control or abate the discharge of pollutants.

7. Reissued VWP permits. When a VWP permit is renewed or reissued, limitations, standards or conditions must be in conformance with current limitations, standards, or conditions.

8. Reopening VWP permits. Each VWP permit shall have a condition allowing the reopening of the VWP permit for the purpose of modifying the conditions of the VWP permit to meet new regulatory standards duly adopted by the board. Cause for reopening VWP permits ~~include~~ *includes*, but ~~are~~ *is* not limited to:

~~a. When state law prohibits conditions in a permit which are more stringent than an applicable effluent limitation guideline;~~

~~b. When subsequently promulgated effluent guidelines are modified, and are based on best conventional pollutant control technology; or~~

~~e.~~ when the circumstances on which the previous VWP permit was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change, since the time the VWP permit was issued and thereby constitute cause for VWP permit modification or revocation and reissuance.

9 VAC 25-210-115. Evaluation of mitigation alternatives.

A. Avoidance and minimization opportunities shall be evaluated as follows: The applicant must demonstrate to the satisfaction of the board that practicable alternatives, including design alternatives, have been evaluated and that the proposed activity, in terms of impacts to water quality and fish and wildlife resources, is the least environmentally damaging practicable alternative. The applicant must also demonstrate to the board that all steps have been taken to first avoid and then minimize adverse impacts to state waters

to the maximum extent practicable. Measures, such as reducing the size, scope, configuration, or density of the proposed project, that would avoid or result in less adverse impact to state waters shall be considered to the maximum extent practicable.

B. Compensatory mitigation proposals shall be evaluated as follows:

1. On-site, in-kind compensatory mitigation, when available, shall be deemed the most ecologically preferable form of compensation for project impacts, in most cases. However, off-site and/or out-of-kind compensation opportunities may be considered that prove to be more ecologically preferable or practicable. When the applicant can demonstrate satisfactorily that an off-site and/or out-of-kind compensatory mitigation proposal is practicable and ecologically preferable, then such proposal may be deemed appropriate for compensation of project impacts.

2. Compensatory mitigation for unavoidable project impacts may be met through wetland creation or restoration, the purchase or use of mitigation bank credits, or a contribution to an approved in-lieu fee fund. Preservation of wetlands or preservation or restoration of upland buffers adjacent to state waters is acceptable when utilized in conjunction with creation, restoration or mitigation bank credits as appropriate to ensure protection and/or enhancement of state waters or fish and wildlife resources and their habitat.

Generally, preference shall be given in the following sequence: restoration, creation, mitigation banking, in-lieu fee. However, the appropriate compensatory mitigation option for project impacts shall be evaluated on a case-by-case basis, in terms of replacement of wetland acreage and function.

C. No net loss. Compensatory mitigation for project impacts shall be sufficient to achieve no net loss of existing wetland acreage and functions. Compensatory mitigation ratios appropriate for the type of aquatic resource impacted and the type of compensation provided shall be applied to permitted impacts to help meet this requirement. Credit may be given for preservation of upland buffers already protected under other ordinances to the extent that additional protection and water quality and fish and wildlife resource benefits are provided.

D. Alternatives analysis.

1. An alternatives analysis shall be required to justify that the following alternatives are ecologically preferable and practicable compensatory mitigation options to on-site, in-kind compensation: off-site; out-of-kind; purchase or use of mitigation bank credits; or contribution to an in-lieu fee fund.

2. An alternatives analysis shall include, but is not limited to, the following criteria, which shall be compared between the impacted and replacement sites: water quality benefits; acreage of impacts; distance from impacts; hydrologic source; hydrologic regime; watershed; functions and values; vegetation type; soils;

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constructability; timing; property acquisition; and cost. The alternatives analysis shall compare the ability of each compensatory mitigation option to replace lost acreage and function.

E. In-lieu fee fund approval.

1. In order for contribution to an in-lieu fee fund to be an acceptable form of compensatory mitigation, the fund must be approved for use by the board and must be dedicated to the achievement of no net loss of wetland acreage and function.

2. The board may approve the use of a fund by:

- a. Approving use of a fund on a VWP permit-specific basis when approving an individual VWP permit;
- b. Granting approval of a fund at a board meeting; or
- c. Entering into a memorandum of agreement with the fund administrator.

3. In order for the board to approve the use of a fund, the fund must meet the following criteria:

- a. Demonstration of a no net loss policy in terms of wetland and or stream acreage and function;
- b. Inclusion of DEQ as a significant participant in the management or oversight of the fund; and
- c. Proof, and/or a commitment to provide proof in the future, of disbursement of fund contributions in the watersheds of project impacts through an annual report submitted to the board, which includes an accounting of financial receipts, expenditures and compensatory mitigation projects completed and in progress.

4. The board may approve the use of an in-lieu fund only after publishing a notice of its intent in the Virginia Register of Regulations at least 45 days prior to taking such action and after accepting and considering public comments on its approval of the fund for at least a 30-day period. Where approval is contemplated in accordance with subdivision 2 a of this subsection, compliance with the public notice and comment requirements for approval of the VWP permit shall meet this requirement.

F. Use of mitigation banks and multi-project mitigation sites. The use of mitigation banks or multi-project mitigation sites for compensating project impacts shall be deemed appropriate if the following criteria are met:

1. Except as specified below, the bank or multi-project mitigation site must be in the same U.S.G.S. cataloging unit as the project impacts, or an adjacent cataloging unit within the same river basin:

- a. The U.S.G.S. cataloging units are derived from the Hydrologic Unit Map of the United States (U.S.G.S. 1980).
- b. The river basins are defined in the Water Quality Standards (9 VAC 25-260-5 et seq.).

c. The criteria do not apply if the following criteria are met:

(1) The impacts are a result of a Virginia Department of Transportation linear project or a locality project for a locality with a jurisdiction crossing multiple river basins;

(2) There is no practical compensatory mitigation alternative within the same river basin;

(3) The impacts for a single and complete project are less than one acre within a cataloging unit;

(4) There is no significant harm to water quality or fish and wildlife resources within the river basin of the impacts; and

(5) Impacts within the Chesapeake Bay watershed are mitigated within the Chesapeake Bay watershed (within the Commonwealth) as close as possible to the impact, or impacts within U.S.G.S. cataloging units 02080108, 02080208, and 03010205 are mitigated in-kind within those same cataloging units as close as possible to the impacts.

Note: After July 1, 2002, the above provision for cataloging units 02080108, 02080208, and 03010205 shall only apply to areas within these three units where overlapping watersheds occur, as determined by the board;

2. The bank or multi-project mitigation site is ecologically preferable to practicable on-site and off-site individual compensatory mitigation options;

3. For mitigation banks only, the banking instrument, if approved after July 1, 1996, has been approved by a process that involved public review and comment;

4. The applicant provides verification to DEQ of purchase of the required amount of credits; and

5. For multi-project mitigation sites, the VWP permit shall include conditions sufficient to ensure long term monitoring and maintenance of wetlands functions and values.

9 VAC 25-210-120. Draft VWP permit formulation.

A. ~~Upon receipt~~ After evaluation of a complete application, the board shall make a decision to tentatively issue or deny the ~~application~~ VWP permit pursuant to this section.

B. If a tentative decision is to issue the VWP permit then a draft VWP permit shall be prepared in advance of public notice. The following tentative determinations shall be incorporated into a draft VWP permit:

1. Conditions, discharge limitations, standards and other requirements applicable to the VWP permit;
2. Monitoring requirements; and
3. Requirements for mitigation of adverse environmental impacts.

C. If the tentative decision is to deny the application, the board shall do so in accordance with 9 VAC 25-210-230.

~~C. D.~~ Should a decision be made to waive the requirement for a VWP permit, the board shall do so in accordance with 9 VAC 25-210-220.

9 VAC 25-210-130. State VWP general permits.

A. The board may issue state VWP general permits by regulation for certain specified categories of activities ~~which have been determined to be of minimal environmental consequence as it deems appropriate.~~

~~A. After public interest review, and after such general permits have been issued, individual activities falling within the categories that are authorized do not have to receive an individual permit as described by the procedures of this chapter.~~

~~B. The board will determine by regulation the appropriate conditions, duration of the permit and restrictions to protect the interests of the citizens of the Commonwealth for each general permit issued.~~

~~C. B.~~ When the board determines on a case-by-case basis that concerns for water quality and the aquatic environment so indicate, the board may exercise its authority to require individual applications and VWP individual permits rather than issuing approving coverage under a VWP general permit. Cases where an individual VWP permit may be required include the following:

1. Where the ~~discharges are~~ activity may be a significant contributors of contributor to pollution;
2. Where the ~~discharger~~ applicant or permittee is not in compliance with the conditions of the VWP general permit;
3. When a ~~discharger~~ an applicant or permittee no longer meets VWP general permit conditions;
4. ~~Any owner~~ When a permittee operating under a VWP general permit may request requests to be excluded from the coverage of the VWP general permit by applying for an a VWP individual permit;
5. When an a VWP individual permit is issued to an owner a permittee, the applicability of the VWP general permit to the individual permittee is automatically terminated on the effective date of the VWP individual permit;
6. When a VWP general permit is issued which applies to an owner a permittee already covered by an individual permit, such owner person may request exclusion from the provisions of the VWP general permit and subsequent coverage under an a VWP individual permit; and
7. A VWP general permit may be revoked as to an individual owner permittee for any of the reasons set forth in 9 VAC 25-210-180 subject to appropriate opportunity for a hearing.

C. Coverage under a VWP general permit shall be approved for a fixed term for each category of activities based upon project length and duration. If the VWP general permit under which a project was authorized expires prior to the

expiration of the coverage term, the project shall remain authorized under the replacement VWP general permit unless project conditions have materially changed, and all conditions and requirements imposed under the initial VWP general permit shall be continued and enforced under the replacement VWP general permit. Notwithstanding any other provision, a request for a reissuance of certification of coverage under a VWP general permit in order to complete monitoring requirements shall not be considered an application for coverage and no application fee will be charged.

PART III.
PUBLIC INVOLVEMENT.

9 VAC 25-210-140. Public notice of VWP permit action and public comment period.

A. Every draft VWP permit shall be given public notice paid for by the owner applicant, by publication once in a newspaper of general circulation in the area affected by the discharge. The public notice must be published within 14 days of issuance of a draft VWP permit, or the 120-day VWP permit processing timeframe will be suspended until such publication.

B. The board shall allow a period of at least 30 days following the date of the public notice for interested persons to submit written comments on the tentative decision and to request a public hearing.

C. The contents of the public notice of an application for a VWP permit or proposed VWP permit action shall include:

1. Name and address of the applicant. If the location of the activity differs from the address of the applicant the notice shall also state the location in sufficient detail such that the specific location may be easily identified;
2. Brief description of the business or activity to be conducted at the discharge site;
3. The name of the receiving waterway;
4. A statement of the tentative determination to issue or deny a VWP permit;
5. A brief description of the final determination procedure;
6. The address, e-mail address and phone number of a specific person at the state office from whom further information may be obtained; and
7. A brief description on how to submit comments and request a public hearing.

D. Public notice shall not be required for submission or approval of plans and specifications or conceptual engineering reports not required to be submitted as part of the application.

E. When a VWP permit is denied the board will do so in accordance with 9 VAC 25-210-230.

9 VAC 25-210-150. Public access to information.

All information pertaining to VWP permit processing or in reference to any source of discharge of any pollutant,

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~~including discharges of dredged or fill material, activity requiring a VWP permit under this chapter shall be available to the public, unless the applicant has made a showing that the information has been identified is protected by the applicant as a trade secret covered by § 62.1-44.21 of the Code of Virginia. All information claimed confidential must be identified as such at the time of submission to the board and Virginia Marine Resources Commission.~~

9 VAC 25-210-160. Public comments and hearing.

A. The board shall provide a comment period of at least 30 days following the date of public notice of the formulation of a draft VWP permit during which interested persons may submit written comments and requests for an ~~informal public~~ hearing on the VWP permit. All written comments submitted during the comment period shall be retained by the board and considered during its final decision on the VWP permit.

B. The ~~executive~~ director shall consider all written comments and requests for an ~~informal a public~~ hearing received during the comment period, and shall make a determination on the necessity of an ~~informal a public~~ hearing in accordance with Procedural Rule No. 1 (9 VAC 25-230-10 et seq.). All proceedings, ~~informal public~~ hearings and decisions from it will be in accordance with Procedural Rule No. 1.

C. Should the ~~executive~~ director, in accordance with Procedural Rule No. 1, determine to dispense with the ~~informal public~~ hearing, he may grant the VWP permit, or, at his discretion, transmit the application or request, together with all written comments from it and relevant staff documents and staff recommendations, if any, to the board for its decision.

D. Any ~~owner permittee~~ aggrieved by any action of the board taken without a ~~formal public~~ hearing may request in writing a formal hearing pursuant to Procedural Rule No. 1.

9 VAC 25-210-170. Public notice of hearing.

A. Public notice of any ~~informal public~~ hearing held pursuant to 9 VAC 25-210-160 shall be circulated as follows:

1. Notice shall be published once in a newspaper of general circulation in the county or city where the activity is to occur;
2. Notice of the ~~informal public~~ hearing shall be sent to all persons and government agencies ~~which that~~ received a copy of the notice of VWP permit application and to those persons requesting an ~~informal a public~~ hearing or having commented in response to the public notice.

B. Notice shall be effected pursuant to subdivisions A 1 and 2 of this section at least 30 days in advance of the ~~informal public~~ hearing.

C. The content of the public notice of any ~~informal public~~ hearing held pursuant to 9 VAC 25-210-160 shall include at least the following:

1. Name and address of each person whose application will be considered at the ~~informal public~~ hearing and a brief description of the person's activities or operations;

2. The precise location of such activity and the surface waters that will, or may, be affected. The location should be described, where possible, with reference to route numbers, road intersections, map coordinates or similar information;

3. A brief reference to the public notice issued for the VWP permit application, including identification number and date of issuance unless the public notice includes the ~~informal public~~ hearing notice;

4. Information regarding the time and location for the ~~informal public~~ hearing;

5. The purpose of the ~~informal public~~ hearing;

6. A concise statement of the relevant water quality issues raised by the persons requesting the ~~informal public~~ hearing;

7. Contact person and the address, *e-mail address and phone number* of the ~~State Water Control Board DEQ~~ office at which the interested persons may obtain further information or request a copy of the draft VWP permit prepared pursuant to 9 VAC 25-210-120;

8. A brief reference to the rules and procedures to be followed at the ~~informal public~~ hearing.

D. Public notice of any formal hearing held pursuant to 9 VAC 25-210-160 D shall be in accordance with Procedural Rule No. 1 (9 VAC 25-230-10 et seq.).

PART IV.

VWP PERMIT MODIFICATION, REVOCATION, AND REISSUANCE, TERMINATION AND DENIAL.

9 VAC 25-210-180. Rules for the modification, revocation, and reissuance and termination.

VWP permits shall be modified, revoked, and reissued, or terminated only as authorized by this section as follows:

1. A VWP permit may be modified in whole or in part, revoked and reissued or terminated;

2. VWP permit modifications shall not be used to extend the term of a VWP permit;

3. Modification, revocation and reissuance, or termination may be initiated by the board, on the request of the permittee, or other person at the board's discretion under applicable laws or the provisions of this chapter; and

4. After ~~public~~ notice and opportunity for a formal hearing pursuant to Procedural Rule No. 1 (9 VAC 25-230-100) a VWP permit can be terminated for cause. Causes for termination are as follows:

- a. Noncompliance by the permittee with any condition of the VWP permit;

- b. The permittee's failure in the application or during the VWP permit issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

c. The permittee's violation of a special or judicial order;

d. A determination *by the board* that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by VWP permit modification or termination; and

e. A change in any condition that requires either a temporary or permanent reduction or elimination of any ~~discharge of dredged and fill material activity~~ controlled by the VWP permit.

f. A determination that the permitted activity has ceased and that the compensatory mitigation for unavoidable adverse impacts has been successfully completed.

9 VAC 25-210-185. VWP permit extension.

Any permittee with an effective VWP permit for an activity that is expected to continue after the expiration date of the VWP permit, without any change in the activity authorized by the VWP permit, shall submit written notification requesting an extension. The permittee must file the request prior to the expiration date of the VWP permit. Under no circumstances will the extension be granted for more than 15 years beyond the original effective date of the VWP permit. If the request for extension is denied, the VWP permit will still expire on its original date and, therefore, care should be taken to allow for sufficient time for the board to evaluate the extension request and to process a full VWP permit amendment, if required.

9 VAC 25-210-190. Causes for modification.

A VWP permit may be modified, but not revoked and reissued except when the permittee agrees or requests, when any of the following developments occur:

1. When additions or alterations have been made to the affected facility or activity which require the application of VWP permit conditions that differ from those of the existing VWP permit or are absent from it;

2. When new information becomes available about the operation or ~~discharge activity~~ covered by the VWP permit which was not available at VWP permit issuance and would have justified the application of different VWP permit conditions at the time of VWP permit issuance;

3. When a change is made in the promulgated standards or regulations on which the VWP permit was based;

4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the Act;

~~5. When an effluent standard or prohibition for a toxic pollutant must be incorporated in the permit in accordance with provisions of § 307(a) of the Act;~~

~~6.~~ 5. When changes occur which are subject to "reopener clauses" in the VWP permit; or

~~7.~~ 6. When the board determines that minimum instream flow levels resulting from the permittee's withdrawal of water is detrimental to the instream beneficial use; and the withdrawal of water should be subject to further net limitations or when an area is declared a Surface Water Management Area pursuant to §§ 62.1-242 through 62.1-253 of the Code of Virginia, during the term of the VWP permit;

~~8. When the level of discharge of a pollutant not limited in a permit exceeds the level which can be achieved by available methodology for controlling such discharges;~~

~~9. When the permittee begins or expects to begin to cause the discharge of any toxic pollutant not reported in the application; or~~

~~10. When other states were not notified of the change in the permit and their waters may be affected by the discharge.~~

9 VAC 25-210-200. Transferability of VWP permits.

A. Transfer by modification. Except as provided for under automatic transfer in subsection B of this section, a VWP permit shall be transferred only if the VWP permit has been modified to reflect the transfer or has been revoked and reissued to the new ~~owner~~ permittee.

B. Automatic transfer. Any VWP permit shall be automatically transferred to a new ~~owner~~ permittee if:

1. The current ~~owner~~ permittee notifies the board *within 30 days in advance* of the proposed transfer of the title to the facility or property;

2. The notice to the board includes a written agreement between the existing and proposed ~~new owner~~ permittee containing a specific date of transfer of VWP permit responsibility, coverage and ~~liability between them~~, or that the seller will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of any enforcement activities related to the permitted activity; and

3. The board does not within the 30-day time period notify the existing ~~owner~~ permittee and the proposed ~~owner~~ permittee of its intent to modify or revoke and reissue the VWP permit.

9 VAC 25-210-210. Minor modification.

A. Upon request of the permittee, or upon board initiative with the consent of the permittee, minor modifications may be made in the VWP permit without following the public involvement procedures.

B. For Virginia Water Protection Permits, minor modification may only:

1. Correct typographical errors;

2. Require *monitoring and reporting* by the permittee at a ~~greater~~ different frequency than required in the VWP permit, based on new information justifying the change in conditions;

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3. Change an interim compliance date in a schedule of compliance to no more than ~~120~~ 180 days from the original compliance date and provided it will not interfere with the final compliance date;

4. Allow for a change in ownership or operational control when the board determines that no other change in the VWP permit is necessary, provided that a written agreement containing a specific date for transfer of VWP permit responsibility, coverage and liability from the current to the new permittee has been submitted to the board;

5. Change plans and specifications ~~where no change in discharge limitations in the permit are required that do not result in an increase to permitted project impacts;~~

6. Occur when facility expansion, production increases and modification will not cause significant change in the discharge of pollutants; ~~and~~

7. Delete VWP permit limitation or monitoring requirements for specific pollutants when the activities generating these pollutants are terminated;

8. Occur when subsequent to issuance of a VWP individual permit, the permittee determines that additional wetland or stream impacts are necessary, provided that the cumulative increase in the acreage of wetland impacts is not greater than 1/4 acre and the cumulative increase in stream impacts is less than 50 linear feet, and also provided that the additional impacts are fully mitigated at ratios not less than compensatory mitigation ratios for the original impacts; and

9. Occur when subsequent to issuance of a VWP general permit, the permittee determines that additional wetland or stream impacts are necessary, provided that the cumulative increase in impacts does not exceed the maximum limit of wetland and stream impacts authorized by the appropriate VWP general permit, and also provided that the additional impacts are fully mitigated at ratios not less than compensatory mitigation ratios for the original impacts.

9 VAC 25-210-220. Waiver of a permit VWP permits.

A. In applications where the State Water Control Board determines that a proposed activity or activities will have minimal or no environmental consequence, a waiver of the requirement for a permit may be granted.

B. The applicant and the Corps of Engineers will be notified of this decision. Waiver of the requirement for a permit shall be considered when:

1. The impact of the proposed activity is of minimal environmental consequence;

2. The impacts of the proposed activity are temporarily in nature and recovery of the beneficial use of the area is ensured; and

3. The impacts of the proposed activity will be fully and successfully mitigated by the applicant such that additional conditions imposed by the board are unnecessary.

A. The board may waive permitting requirements when the board determines that an isolated wetland is of minimal ecological value.

B. The board may waive the requirement for a VWP individual permit when the proposed activity qualifies for an Abbreviated Standard Permit issued by the U.S. Army Corps of Engineers and receives a permit from the Virginia Marine Resources Commission, and the activity does not involve impacts to nontidal surface waters or instream flows.

9 VAC 25-210-230. Denial of the VWP permit.

A. The board shall make a decision to tentatively deny the VWP permit if the requirements of this chapter are not met. Basis for denial include, but are not limited to, the following:

1. The project will result in violations of water quality standards or will impair the beneficial uses of state waters.

2. As a result of project implementation, shellfish waters would be condemned in accordance with 9 VAC 25-260-5 et seq.

3. The project that the applicant proposed fails to adequately avoid and minimize impacts to state waters to the maximum extent practicable.

4. The proposed compensatory mitigation plan is insufficient or unsatisfactory for the proposed impacts.

5. The Department of Game and Inland Fisheries indicates that natural or stockable trout waters would be permanently and negatively impacted by the proposed activity.

6. The proposed activity is prohibited by 9 VAC 25-210-50.

7. The effect of project impacts, together with other existing or proposed impacts to wetlands, will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

A. B. The applicant shall be notified by letter of the staff's board's preliminary decision to ~~recommend to the board denial of tentatively deny~~ the VWP permit requested.

B. The staff shall provide sufficient information to the applicant regarding the rationale for denial, such that the applicant may, at his option, modify the application in order to achieve a favorable recommendation, withdraw his application, or proceed with the processing on the original application.

C. Should the applicant withdraw his application, no VWP permit will be issued.

D. Should the applicant elect to proceed with the original project as originally proposed, the staff shall make its recommendation of denial to the executive director for determination of the need for public notice of board may deny the application and advise the applicant pursuant to Procedural Rule No. 1 (9 VAC 25-230-10 et seq.) of the applicant's right to a formal public hearing to consider the denial as provided for in accordance with Procedural Rule No. 1 (9 VAC 25-230-10 et seq.).

PART V.
ENFORCEMENT.

9 VAC 25-210-240. Enforcement.

The board may enforce the provisions of this chapter utilizing all applicable procedures under the law and § 10.1-1186 of the Code of Virginia.

PART VI.
MISCELLANEOUS.

9 VAC 25-210-250. Delegation of authority.

The executive director, 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.

9 VAC 25-210-260. Transition.

Upon the effective date of this chapter the following will occur:

1. ~~Procedural Rule No. 3 (9 VAC 25-240-10 et seq.) will be superseded.~~ A. All applications received after the effective date of the new regulation May 20, 1992, will be processed in accordance with these new procedures.

2. B. Section 401 Water Quality Certificates issued prior to December 31, 1989, have the same effect as a Virginia Water Protection Permit. Water Quality Certificates issued after this date will remain in effect until reissued as Virginia Water Protection Permits.

DOCUMENTS INCORPORATED BY REFERENCE

Virginia Stormwater Management Handbook, First Edition, 1999, Volume I, Chapter 3, Department of Conservation and Recreation.

Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, January 1987, Final Report.

Virginia Forestry Best Management Practices (BMP) Guide for Virginia, Third Edition, 1997, Department of Forestry.

Virginia Agricultural Best Management Practices (BMP) Manual, Revised June 2000, Department of Conservation and Recreation.

Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, Department of Conservation and Recreation.

NOTICE: The forms used in administering 9 VAC 25-210-10 et seq., Virginia Water Protection Permit Program Regulation, are not being published due to the large number of pages; however, the name of each form is listed below. The forms are available for public inspection at the Department of Environmental Quality, 629 E. Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

DEQ Department of Environmental Quality Water Division Permit Application Fee.

~~Local Government Ordinance Form (eff. 8/93).~~

~~Local, State, Federal Joint Permit Application NAOFM-1065 VMRC 30-300 (rev. 1/00).~~

~~Virginia Scoping Coordination Federal and State Agencies Joint General Permit, Form AES 03-1.1 (eff. 9/94).~~

Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia.

VA.R. Doc. No. R00-201; Filed February 6, 2001, 9:04 a.m.

* * * * *

REGISTRAR'S NOTICE: The following four regulations filed by the State Water Control Board are exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 12 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapters 24 (§ 62.1-242 et seq.) and 25 (§ 62.1-254 et seq.) of Title 62.1 if the board: (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 9-6.14:7.1 B; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action, forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 9-6.14:7.1 F; and (iv) conducts at least one public hearing on the proposed general permit.

Title of Regulation: 9 VAC 25-660-10 et seq. Virginia Water Protection General Permit for Impacts Less than One-Half of an Acre.

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia.

Public Hearing Date: March 29, 2001 - 4 p.m. (Staunton).
April 2, 2001 - 6 p.m. (Richmond).
April 3, 2001 - 6 p.m. (Woodbridge).
April 5, 2001 - 6 p.m. (Chesapeake).

Public comments may be submitted until April 27, 2001. (See Calendar of Events section for additional information)

Agency Contact: Ellen Gilinsky, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4375 or e-mail egilinsky@deq.state.va.us.

Basis: Section 62.1-44.15 authorizes the board to adopt rules governing the issuance of water quality permits. Section 62.1-44.15:5 authorizes the board to issue a Virginia Water Protection Permit consistent with the provisions of the Clean Water Act and to protect instream beneficial uses and to develop a general permit for activities causing wetland impacts of less than one half acre. The proposed regulation exceeds federal minimum requirements through the reporting of all impacts to wetlands and through the regulation of Tulloch ditching and fill in isolated wetlands, which are currently not federally regulated.

Section 1341 (formerly § 401) of the Clean Water Act (33 USC § 1341) requires state certification of federal permits for discharges into navigable waters.

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Purpose: The purpose of this proposed regulation is to establish the procedures and requirements to be followed in connection with the issuance of a VWP general permit by the board pursuant to the State Water Control Law for impacts to wetlands of less than one-half acre. The proposed regulation is necessary to protect the public health, safety and welfare by providing a streamlined permitting process while maintaining protection of the Commonwealth's wetland resources, which are important for maintaining water quality, flood control and providing fish and wildlife habitat.

Substance: The proposed regulation establishes a VWP general permit with an expected review period of 45 days for impacts less than one-half acre, including 125 linear feet of perennial stream channel. The process of applying for a VWP general permit, and the information the applicant needs to supply, has been detailed. The process of avoidance and minimization of impacts, and compensation for unavoidable impacts, has been specified. Each authorization for coverage expires three years from the date of authorization; the permit regulation expires five years from the date of promulgation.

Issues: Advantages of the proposed regulation to the public and the Commonwealth include increased protection of the Commonwealth's aquatic resources while streamlining the permitting process for certain small impacts.

Disadvantages of the proposed regulation to the public include reduced project-specific public comment and increased reporting requirements via an abbreviated registration statement for impacts less than one tenth acre in order to track the goal of no net loss of wetland acreage and function.

Locality Particularly Affected: The regulation is effective statewide; however as there is a greater prevalence of wetlands in the eastern Piedmont and Coastal Plain compared to the western parts of the state, localities in these areas may feel greater impact from this regulation.

Public Participation: In addition to any other comments the board is soliciting comments on (i) the costs and benefits of the proposal and (ii) the impacts of the regulation on farm or forest lands.

All comments must be received by April 27, 2001. Comments may be submitted by mail, facsimile transmission, e-mail, or by personal appearance at the public hearing(s). Comments are to be submitted to Ellen Gilinsky, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240, e-mail egilinsky@deq.state.va.us or FAX (804) 698-4032. All written comments must include the name, address and phone number of the commenter.

Summary:

The proposed regulation addresses a new requirement in § 62.1-44.15:5 of the Code of Virginia to develop a general permit for activities causing wetland impacts of less than one-half acre.

CHAPTER 660.

VIRGINIA WATER PROTECTION GENERAL PERMIT FOR IMPACTS LESS THAN ONE-HALF OF AN ACRE.

9 VAC 25-660-10. Definitions.

The words, terms, and provisions used in this chapter shall have the meanings defined in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the Virginia Water Protection (VWP) Permit Regulation (9 VAC 25-210-10 et seq.) unless the context clearly indicates otherwise or unless indicated below.

"Cross-sectional sketch" means a graph or plot of ground elevation across a waterbody or a portion of it, usually along a line perpendicular to the waterbody or direction of flow.

"FEMA" means Federal Emergency Management Agency.

"Histosols" means organic soils that are often called mucks, peats, or mucky peats. The list of histosols in the Commonwealth includes, but is not limited to, the following soil series: Back Bay, Belhaven, Dorovan, Lanexa, Mattamuskeet, Mattan, Palms, Pamlico, Pungo, Pocaty, and Rappahannock. Histosols are identified in the Hydric soils list generated by USDA Natural Resources Conservation Service.

"Impacts" means results caused by human-induced activities conducted in surface waters, such as filling, dumping, dredging, excavating, permanent flooding or impounding or any other new activities on or after October 1, 2001, including draining, that significantly alter or degrade existing acreage or functions of the surface waters.

"Less than one-half of an acre" means 0.00 to 0.49 acre, rounded to the second decimal place.

"Perennial stream" means a stream that has flowing water year round in a typical year. For the purpose of this chapter, a surface water body (or stream segment) having a drainage area of at least 320 acres (1/2 square mile) is a perennial stream, unless field conditions clearly indicate otherwise.

"Registration statement" means a form of preconstruction application or notification.

"Single and complete project" means the total project proposed or accomplished by one person. For linear projects, the "single and complete project" (i.e., a single and complete crossing) will apply to each crossing of a separate water of the United States (i.e., a single waterbody) and to multiple crossings of the same waterbody at separate and distinct locations. However, individual channels in a braided stream or river, or individual arms of a large, irregularly-shaped wetland, lake, etc. are not separate waterbodies. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases are not built can be considered as separate single and complete projects with independent utility.

"State programmatic general permit" means a type of general permit issued by the Department of the Army and

founded on an existing state, local or federal agency program that is designed to avoid duplication with another federal, state or local program provided it has been determined that the environmental consequences of the action are individually and cumulatively minimal.

"Up to one-tenth of an acre" means 0.00 to 0.10 acre, rounded to the second decimal place.

9 VAC 25-660-20. Purpose; delegation of authority; effective date of VWP general permit.

A. The purpose of this chapter is to establish VWP General Permit Number WP1 under the VWPP regulation to govern activities that impact less than one-half of an acre of surface waters (including wetlands), with a maximum of 125 linear feet of perennial stream channel. Applications for coverage under this VWP general permit shall be processed for approval, approval with conditions, or denial by the board.

B. The director, or an authorized representative, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

C. In issuing this VWP general permit, the board has not taken into consideration the structural stability of the proposed structure(s).

D. This VWP general permit regulation will become effective on _____ and will expire three years after the effective date. For any covered activity, this VWP general permit is effective upon compliance with all the provisions of 9 VAC 25-660-30 and the receipt of this VWP general permit.

E. For each individual activity requiring notification, coverage will continue for a maximum of three years from the date of authorization of coverage under this VWP general permit to an individual person or applicant.

9 VAC 25-660-30. Authorization to impact surface waters.

A. Any person governed by this VWP general permit is authorized to impact less than one-half of an acre of surface waters (including wetlands), with a maximum of 125 linear feet of perennial stream channel, provided that the person submits notification as required in 9 VAC 25-660-50 and 9 VAC 25-660-60, remits the required application processing fee (9 VAC 25-20-10 et seq.), complies with the limits and other requirements of 9 VAC 25-660-100, receives approval from the board, and provided that:

1. The applicant shall not have been required to obtain a VWP individual permit under the VWP permit regulation (9 VAC 25-210-10 et seq.) for the proposed project impacts. The applicant, at his discretion, may seek a VWP individual permit, or coverage under another VWP general permit, in lieu of coverage under this VWP general permit.
2. Impacts, including all attendant features both temporary and permanent, are part of a single and complete project.
3. Compensatory mitigation for unavoidable impacts is provided in the form of the purchase or use of mitigation bank credits or a contribution to an approved in-lieu fee fund.

4. Compensatory mitigation for unavoidable impacts is provided at a 2:1 replacement to loss ratio.

B. Only activities in nontidal waters may qualify for coverage under this VWP general permit.

C. The board waives the requirement for coverage under a VWP general permit for activities that occur in an isolated wetland of minimal ecological value as defined in 9 VAC 25-210-10.

D. Receipt of this VWP general permit does not relieve any permittee of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.

E. Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of Engineers, and for which the board has issued or waived § 401 certification existing as of the effective date of this chapter, shall constitute coverage under this VWP general permit until such time as a state programmatic general permit is approved for the covered activity or impact.

9 VAC 25-660-40. Prohibitions.

A. This VWP general permit will not apply in the following areas:

1. Wetland areas composed of 10% or more of the following species (singly or in combination) in any stratum: Atlantic white cedar (*Chamaecyparis thyoides*), bald cypress (*Taxodium distichum*), water tupelo (*Nyssa aquatica*), or overcup oak (*Quercus lyrata*). Percentages may be based on percent aerial cover.
2. Wetland areas underlain by histosols.
3. Nontidal wetlands adjacent to tidal waters.
4. 100-year floodplains as identified by FEMA's flood insurance rate maps or FEMA-approved local floodplain maps.
5. Surface waters with federal or state listed or proposed threatened or endangered species or proposed or designated critical habitat.

B. This VWP general permit cannot be used in combination with other VWP general permits to impact greater than one-half of an acre of nontidal surface waters, including 125 linear feet of perennial stream channel. The use of more than one VWP General Permit WP1 for a single and complete project is prohibited, except when the cumulative impact to surface waters does not exceed the above mentioned limit.

C. The activity to impact surface waters shall not have been prohibited by state law, regulations or policies, nor shall it contravene the Water Quality Standards (9 VAC 25-260-5 et seq.), as amended or adopted by the board.

D. The board shall deny coverage under this VWP general permit to any applicant conducting activities which the board determines cause, may reasonably be expected to cause, or may be contributing to a violation of water quality standards, including discharges or discharge-related activities that are likely to adversely affect aquatic life, or for activities which the board determines that together with other existing or

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proposed impacts to wetlands will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

E. This VWP general permit may not be used for:

1. Any stormwater management facility that is located in perennial streams or in waters designated as oxygen or temperature impaired.
2. The construction of an irrigation impoundment on a perennial stream.
3. Any water withdrawal activities.
4. The location of animal feeding operations or waste storage facilities in state waters.
5. Restoration, creation or any fill in perennial streams in association with the establishment of a mitigation bank.
6. The pouring of wet concrete or the use of tremie concrete or grout bags in state waters, unless the concrete or grout bags is contained within a cofferdam(s).
7. Dredging or maintenance dredging.
8. Disposal of dredge materials or the return flow discharges from dredge disposal sites.
9. The construction of new ski areas or oil and gas wells.
10. The construction of marine railways.
11. The taking of threatened or endangered species.
 - a. Pursuant to § 29.1-564 of the Code of Virginia: "Taking, transportation, sale, etc., of endangered species is prohibited. The taking, transportation, processing, sale or offer for sale within the Commonwealth of any fish or wildlife appearing on any list of threatened or endangered species published by the U.S. Secretary of the Interior pursuant to the provisions of the federal Endangered Species Act of 1973 (P.L. 93-205), or any modifications or amendments thereto, is prohibited except as provided in § 29.1-568."
 - b. Pursuant to § 29.1-566 of the Code of Virginia and 4 VAC 15-20-130 B and C, the taking, transportation, processing, sale, or offer for sale within the Commonwealth of any state-listed endangered or threatened species is prohibited except as provided in § 29.1-568 of the Code of Virginia.

9 VAC 25-660-50. Notification.

A. Notification to the board will be required prior to construction, as follows:

1. Proposed impacts greater than one-tenth of an acre of surface waters shall be reported by the applicant to DEQ via the entire registration statement (9 VAC 25-660-60).
2. For impacts up to one-tenth of an acre, items 1 through 9, 11, 15, 16, 17 and 19 of the registration statement (9 VAC 25-660-60 B) shall be provided.

B. All notifications shall include documentation from the Virginia Department of Game and Inland Fisheries, and the

Virginia Department of Conservation and Recreation's Division of Natural Heritage indicating the presence of any federal or state proposed or listed threatened and endangered species or proposed or designated critical habitat.

C. The DEQ will determine whether the proposed activity requires coordination with the United States Fish and Wildlife Service, the Virginia Department of Conservation and Recreation and the Virginia Department of Game and Inland Fisheries.

9 VAC 25-660-60. Registration statement.

A. Registration statements shall be filed with the board as follows:

1. The person shall file a complete registration statement as described in 9 VAC 25-660-50 for a VWP General Permit WP1 for impacts to surface waters for less than one-half an acre, including a maximum of 125 linear feet of perennial stream channel, which will serve as a notice of intent for coverage under this VWP general permit.
2. Any person proposing an activity under this VWP general permit shall file the required registration statement at least 45 days prior to the date planned for the commencement of the activity to be regulated by the VWP general permit.
3. Any person conducting an activity without a VWP permit, who qualifies for coverage under this VWP general permit, shall file the registration statement immediately upon discovery of the unpermitted activity.

B. The required registration statement shall contain the following information:

1. The applicant's name, mailing address, telephone number and, if applicable, fax number .
2. The authorized agent's (if applicable) name, mailing address, telephone number and, if applicable, fax number.
3. The existing VWP permit number (if applicable).
4. The name of the project, purpose of project, and a description of the activity.
5. The name of water body(ies) or receiving stream, as applicable.
6. The hydrologic unit code (HUC) for the project area.
7. The name of the city or county where the project is located.
8. Latitude and longitude (to the nearest second) from a central location within the project limits.
9. A detailed location map (e.g., a United States Geologic Survey topographic quadrangle map) of the project area. The map should be of sufficient detail such that the site may be easily located for site inspection.
10. The appropriate appendices from the Joint Permit Application.

11. *Project plan view.* All plan view sketches should include, at a minimum, north arrow, scale, existing structures, existing contours, proposed contours (if available), limit of jurisdictional areas, direction of flow, ordinary high water, impact limits, location and dimension of all proposed structures in impact areas. Cross sectional drawings, with the above information, may be required for certain projects to demonstrate minimization of impacts.

12. *Wetland Impact Information* for both permanent and temporary impacts, including a description of the impact, the impact area (in square feet or acres), and the wetland classification based on Cowardin classification system or similar terminology.

13. A description of the measures taken during project design and development both to avoid and minimize impacts to surface waters to the maximum extent practicable as required by 9 VAC 25-210-115 A.

14. A description of the intended compensation for unavoidable impacts, including:

a. Any wetland compensation plan proposing to include contributions to in-lieu fee programs shall include proof of the willingness of the entity to accept the donation and documentation of how the amount of the contribution was calculated.

b. Any wetland compensation plan proposing the purchase of wetland banking credits shall include:

(1) The name of the proposed wetland mitigation bank within the same or adjacent hydrologic unit code within the same river watershed with available credits;

(2) The number of credits proposed to be purchased; and

(3) Certification from the bank owner of the availability of credits.

15. An aerial photo or scale map that clearly shows the property boundaries, location of surface waters including all wetland boundaries, limits of Chesapeake Bay Resource Protection Area(s) (RPAs), if applicable, and all surface water impacts at the site. A copy of the Corps of Engineers' delineation confirmation, including wetland data sheets, shall also be provided at the time of application. If written confirmation is not available at the time of application, verbal confirmation must be provided and the written confirmation submitted during the VWP general permit review. Additional state or local requirements may apply if the project is located within an RPA.

16. A copy of the FEMA flood insurance rate map or FEMA-approved local floodplain map for the project site.

17. Documentation from the Virginia Department of Game and Inland Fisheries, and the Virginia Department of Conservation and Recreation's Division of Natural Heritage regarding the presence of any federal or state

proposed or listed threatened and endangered species or proposed or designated critical habitat.

18. The appropriate application processing fee for a VWP general permit (9 VAC 25-20-10 et seq.).

19. The following certification:

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

C. The registration statement shall be signed in accordance with 9 VAC 25-210-100. If an agent is acting on behalf of an applicant, the applicant shall submit an authorization of the agent that includes the signatures of both the applicant and the agent.

D. Upon receipt of a complete registration statement, coverage under this VWP general permit shall be approved, approved with conditions, or denied within 45 days. If the board fails to act within 45 days, coverage under this VWP general permit shall be deemed approved.

1. In evaluating the registration statement, the board shall make an assessment of the impacts associated with the project in combination with other existing or proposed impacts. Coverage under this VWP general permit shall be denied if the cumulative impacts will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

2. The board may place additional conditions on a project in order to approve the use of this VWP general permit. However, these conditions must be consistent with the VWPP regulation and may not override or conflict with the existing conditions of this VWP general permit related to impacts and compensatory mitigation.

E. *Incomplete registration statement.* Where a registration statement is considered incomplete, the board may require the submission of additional information after a registration statement has been filed, and may suspend processing of any registration statement until such time as the applicant has supplied missing or deficient information and the board considers the registration statement complete. Further, where the applicant becomes aware that he omitted one or more relevant facts from a registration statement, or submitted incorrect information in a registration statement or in any report to the board, he shall immediately submit such facts or the correct information.

9 VAC 25-660-70. Mitigation.

A. For the purposes of this VWP general permit, the board shall assume that the purchase or use of mitigation bank

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credits or a contribution to an in-lieu fee fund is ecologically preferable to practicable on-site and/or off-site individual compensatory mitigation options.

B. Credits or units of wetland mitigation shall be calculated according to the following ratios:

1. One mitigation bank credit equals one unit of wetland mitigation.
2. The monetary equivalent of one acre of wetland creation or restoration in the form of a payment to a wetland trust fund equals one unit of wetland mitigation.

C. In order for contribution to an in-lieu fee fund to be an acceptable form of compensatory mitigation, the fund must be approved for use by the board according to the provisions of 9 VAC 25-210-115 E.

D. The use of mitigation banks for mitigating project impacts shall be deemed appropriate if the bank is operating in accordance with the provisions of § 62.1-44.15:5 E and 9 VAC 25-210-115 and the applicant provides verification to DEQ of purchase or debiting of the required amount of credits.

9 VAC 25-660-80. Modification.

Authorization under this VWP general permit may be modified provided the total impacts to surface waters for a single and complete project are less than one-half of an acre, including 125 linear feet of perennial stream channel, when any of the following developments occur:

1. When additions or alterations have been made to the project which require the application of VWP general permit conditions that differ from those of the existing VWP general permit or are absent from it;
2. When new information becomes available about the operation or activity covered by the VWP general permit which was not available at the time of VWP general permit coverage and would have justified the application of different VWP permit conditions at that time;
3. When a change is made in the promulgated standards or regulations on which the VWP general permit was based;
4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the Act;
5. When changes occur which are subject to "reopener clauses" in the VWP general permit;

9 VAC 25-660-90. Notice of termination.

When all permitted activities requiring notification under 9 VAC 25-660-50 A 1 have been completed, the permittee shall submit a notice of termination within 30 days of final completion. The notice shall contain the following information:

1. Name, mailing address and telephone number of the applicant;
2. Name and location of the activity;
3. The VWP permit authorization number;
4. The following certification:

"I certify under penalty of law that all activities authorized by a VWP general permit have been completed. I understand that by submitting this notice of termination, that I am no longer authorized to perform activities in wetlands in accordance with the VWP general permit, and that performing activities in wetlands is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit."

9 VAC 25-660-100. VWP general permit.

Any applicant whose registration statement is accepted by the board will receive the following VWP general permit and shall comply with the requirements in it and be subject to all requirements of the VWP permit regulation, 9 VAC 25-210-10 et seq.:

VWP General Permit No. WP1

Effective date:

Expiration date:

VWP GENERAL PERMIT FOR IMPACTS OF LESS THAN
ONE-HALF OF AN ACRE
UNDER THE VIRGINIA
WATER PROTECTION PERMIT AND THE
VIRGINIA STATE WATER CONTROL LAW

Based upon an examination of the information submitted by the applicant and in compliance with § 401 of the Clean Water Act as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that the activity authorized by this VWP general permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment of state waters or fish and wildlife resources.

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, citizens of the Commonwealth of Virginia are authorized to impact less than one-half of an acre of surface waters (including wetlands), with a maximum of 125 linear feet of perennial stream channel, within the boundaries of the Commonwealth of Virginia, except in those areas specifically named or excluded in board regulations or policies which prohibit such impacts.

Permittee:

Address:

Activity Location:

Activity Description:

The authorized activity shall be in accordance with this cover page, Part I - Special Conditions, Part II - Mitigation, Monitoring and Reporting, and Part III - Conditions Applicable to All VWP Permits, as set forth herein.

Director, Department of Environmental Quality Date

Part I. Special Conditions.

A. Authorized activities.

1. Any additional impacts to surface waters associated with this project may require modification of this VWP general permit and additional compensatory mitigation.
2. The activities authorized by this VWP general permit must commence and be completed within three years of the date of this authorization.

B. Reapplication. Application for continuation of coverage under this VWP general permit or a new VWP permit may be necessary if any portion of the authorized activities or any VWP general permit requirement has not been completed within three years of the date of authorization. Application consists of an updated or new registration statement.

C. Overall project conditions.

1. The construction or work authorized by this VWP general permit shall be executed in a manner so as to minimize any adverse impact on instream beneficial uses as defined in § 62.1-10(b) of the Code of Virginia.
2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body. No activity may cause more than minimal adverse effect on navigation. Furthermore the activity must not impede the passage of normal or expected high flows and the structure or discharge must withstand expected high flows.
3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters.
4. No fill in surface waters may consist of unsuitable materials (e.g., trash, debris, car bodies, asphalt). All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all Department of Environmental Quality (DEQ) Regulations.
5. Erosion and sedimentation controls shall be designed in accordance with the current Virginia Department of Conservation and Recreation (DCR) Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area stabilizes.
6. Any exposed slopes and streambanks must be stabilized immediately upon completion of the project at each water body. All denuded areas shall be properly stabilized in accordance with the current DCR Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with this project shall be accomplished in such a manner that minimizes construction and/or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

8. No machinery may enter flowing waters, unless authorized by this VWP general permit.

9. Heavy equipment in temporarily-impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable measures, to minimize soil disturbance to the maximum extent practicable.

10. All nonimpacted wetlands within the project or right-of-way limits that are within 50 feet of any clearing, grading, and/or filling activities shall be clearly flagged or marked for the life of the construction activity within that area. The permittee shall notify all contractors that these marked areas are wetlands where no excavation or filling is to occur.

11. Temporary disturbances to wetlands during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to pre-construction conditions and planted or seeded with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested). The permittee shall ensure that all temporarily disturbed wetland areas revegetate with wetland vegetation by the second year post-disturbance. All temporary fills shall be removed in their entirety and the affected area returned to the pre-existing contours.

12. All materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to original contours, stabilized within 30 days following removal of the stockpile, and restored to the original vegetated state.

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures approved by DEQ.

14. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.

15. Time-of-year restrictions imposed by the Department of Game and Inland Fisheries of the Virginia Marine Resources Commission shall be strictly adhered to.

16. Immediately downstream of the construction area, Water Quality Standards (9 VAC 25-260-5 et seq.) shall not be violated as a result of the construction activities.

D. Road crossings.

1. Access roads must be constructed so that the length of the road minimizes the adverse effects on surface waters

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to the maximum extent practicable and is as near as possible to preconstruction contours and elevations. Access roads constructed above preconstruction contours and elevations in surface waters must be properly bridged or culverted to maintain surface flows.

2. At crossings of perennial streams, pipes and culverts shall be countersunk a minimum of six inches to provide for the re-establishment of a natural stream bottom and a low flow channel. Countersinking is not required for existing pipes or culverts that are being maintained or extended.

3. Installation of pipes and road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or other means acceptable to DEQ.

4. All state waters temporarily affected by the construction of a road crossing shall be restored to their original elevations immediately following the construction of that particular crossing.

5. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless authorized by this VWP general permit, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The new stream channel shall be constructed following the typical sections submitted with the application. A low flow channel shall be constructed within the channelized or relocated area. The centerline of the low flow channel shall meander, to the extent possible, to mimic natural stream morphology. The rerouted stream flow must be fully established before construction activities in the old streambed can begin.

E. Utility lines.

1. All utility line work in surface waters shall be performed in such a manner as to minimize disturbance, and the area must be returned to its original contours and stabilized, unless authorized by this VWP general permit.

2. Material resulting from trench excavation may be temporarily sidecast (up to three months) into wetlands, provided the material is not placed in a manner such that it is dispersed by currents or other forces. DEQ may extend the period of temporary sidecasting not to exceed a total of 180 days, where appropriate.

3. The trench for a utility line cannot be constructed in such a manner as to drain wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect).

4. Untreated stormwater runoff shall be prohibited from directly discharging into any state waters. Appropriate best management practices shall be deemed suitable treatment prior to discharge into state waters.

F. Shoreline stabilization.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the most recent edition of the Virginia Department of Conservation and Recreation's Sediment and Erosion Control Handbook.

2. Riprap apron for all outfalls shall be designed in accordance with the most recent edition of the Virginia Department of Conservation and Recreation's Sediment and Erosion Control Handbook.

3. For shoreline protection activities, the area (in square feet) of surface water impact may not exceed four times the length (in linear feet) of the activity (e.g., a maximum of 400 square feet in surface waters for a 100-foot long bulkhead).

4. Bulkhead repair and replacement shall not exceed four feet channelward of existing functional bulkheads. The filling of wetlands behind freestanding bulkheads is prohibited.

5. For shoreline protection activities, the structure and backfill shall be placed as close to the shoreline as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

6. All shoreline erosion structures shall be located so as to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

7. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

G. Stormwater management facilities.

1. The stormwater management facilities shall be designed in accordance with best management practices and watershed protection techniques (i.e., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources) that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.

2. Compensatory mitigation for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.

3. Maintenance excavation shall be in accordance with an approved maintenance plan and shall not exceed the original contours of the facility, as approved and constructed.

4. Maintenance within stormwater management facilities will not require mitigation provided that the maintenance is accomplished in designated maintenance areas as indicated in the maintenance plan.

Part II. Mitigation, Monitoring and Reporting.

A. In order to qualify for this VWP general permit, appropriate and practicable compensatory mitigation will be required for all wetland impacts meeting the conditions outlined in this VWP general permit. The types of

compensatory mitigation options that may be considered under this VWP general permit include:

1. Purchases of credits from approved wetland mitigation banks are in accordance with 9 VAC 25-660-70 and provided that all impacts are compensated at a 2:1 ratio.

2. Contributions to an in lieu fee program approved by DEQ and dedicated to the achievement of no net loss of wetland acreage and function, provided that all impacts are compensated at a 2:1 ratio.

B. The permittee shall make provisions to monitor for any spills of petroleum products or other materials during the construction process. These provisions shall be sufficient to detect and contain the spill and notify the appropriate authorities.

C. The permittee shall submit documentation within 60 days of VWP general permit issuance that the Corps of Engineers has debited the required mitigation credits from the mitigation bank ledger or that the fund contribution has been received.

D. DEQ shall be notified in writing by certified letter at least 10 days prior to the start of any activities authorized by this VWP general permit. The notification shall include identification of the impact area at which work will occur and a projected schedule for completing work at each permitted impact area.

E. The permittee shall notify DEQ in writing when unusual or potentially threatening conditions are encountered which require debris removal or involve potentially toxic substances. Measures to remove the obstruction, material, or toxic substance or to change the location of any structure are prohibited until approved by DEQ.

F. The permittee shall report any fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m. Monday through Friday, DEQ shall be notified at (insert appropriate DEQ office phone number;) otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

G. Written communications required by this VWP general permit shall be submitted to (insert the appropriate DEQ office address.) Please include the VWP general permit number on all correspondence.

H. All submittals required by this VWP general permit shall contain the following signed certification statement:

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

Part III. Conditions Applicable to All VWP Permits.

A. Duty to comply. The permittee shall comply with all conditions of the VWP permit. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations and toxic standards and prohibitions. Any VWP permit noncompliance is a violation of the Clean Water Act and State Water Control Law, and is grounds for enforcement action, VWP permit termination, revocation, modification, or denial of a VWP permit renewal application.

B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any impacts in violation of the VWP general permit which may have a reasonable likelihood of adversely affecting human health or the environment.

C. Reopener. This VWP general permit may be reopened to modify the conditions of the VWP general permit when the circumstances on which the previous VWP general permit was based have materially and substantially changed, or special studies conducted by the department or the permittee show material and substantial change since the time the VWP general permit was issued and thereby constitute cause for VWP general permit modification or revocation and reissuance.

D. Compliance with state and federal law. Compliance with this VWP general permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

E. Property rights. Coverage under this VWP general permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal property rights, nor any infringement of federal, state or local laws or regulations.

F. Severability. The provisions of this VWP general permit are severable.

G. Right of entry. The applicant and/or permittee shall allow authorized state and federal representatives, upon the presentation of credentials, at reasonable times and under reasonable circumstances:

1. To enter the permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP general permit conditions;

2. To inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP general permit;

3. To sample or monitor any substance, parameter or activity for the purpose of assuring compliance with the conditions of the VWP general permit or as otherwise authorized by law.

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For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP permits. This VWP general permit may be transferred to another person by a permittee if:

1. The current permittee notifies the board within 30 days of the transfer of the title to the facility or property;
2. The notice to the board includes a written agreement between the existing and proposed permittee containing a specific date of transfer of VWP general permit responsibility, coverage and liability between them, or that the seller will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of any enforcement activities related to the permitted activity; and
3. The board does not notify the existing and proposed permittee of the board's intent to modify or revoke and reissue the VWP general permit within the 30-day time period.

On the date of the VWP general permit transfer, the transferred VWP general permit shall be as fully effective as if it had been issued directly to the new permittee.

I. VWP permit modification. The permittee shall notify Department of Environmental Quality of any modification of this activity and shall demonstrate in a written statement to the department that said modification will not violate any conditions of this VWP general permit. If such demonstration cannot be made, the permittee shall apply for a modification of this VWP general permit. This VWP general permit may be modified when any of the following developments occur:

1. When additions or alterations have been made to the affected facility or activity which require the application of VWP general permit conditions that differ from those of the existing VWP general permit or are absent from it, provided the total project impacts for a single and complete project are less than one-half of an acre and are fully mitigated;
2. When new information becomes available about the operation or activity covered by the VWP general permit which was not available at VWP general permit issuance and would have justified the application of different permit conditions at the time of VWP general permit issuance;
3. When a change is made in the promulgated standards or regulations on which the VWP general permit was based;
4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the CWA; and
5. When changes occur that are subject to "reopener clauses" in the VWP general permit.

J. VWP permit termination. This VWP general permit authorization is subject to termination. Causes for termination are as follows:

1. Noncompliance by the permittee with any condition of the VWP general permit;
2. The permittee's failure in the application or during the VWP general permit issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;
3. The permittee's violation of a special or judicial order; and
4. A determination by the board that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by VWP general permit modification or termination.

K. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

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

M. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;
2. Excavate in a wetland;
3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or
4. On and after October 1, 2001, conduct the following activities in a wetland:
 - a. New activities to cause draining that significantly alter or degrade existing wetland acreage or functions;
 - b. Filling or dumping;
 - c. Permanent flooding or impounding; or
 - d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

DOCUMENTS INCORPORATED BY REFERENCE

Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, Department of Conservation and Recreation.

VA.R. Doc. No. R00-195; Filed February 6, 2001, 9:07 a.m.

Title of Regulation: 9 VAC 25-670-10 et seq. Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities.

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia.

Public Hearing Date: March 29, 2001 - 4 p.m. (Staunton).
April 2, 2001 - 6 p.m. (Richmond).
April 3, 2001 - 6 p.m. (Woodbridge).
April 5, 2001 - 6 p.m. (Chesapeake).

Public comments may be submitted until April 27, 2001.
(See Calendar of Events section
for additional information)

Agency Contact: Ellen Gilinsky, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4375 or e-mail egilinsky@deq.state.va.us.

Basis: Section 62.1-44.15 authorizes the board to adopt rules governing the issuance of water quality permits. Section 62.1-44.15:5 authorizes the board to issue a Virginia Water Protection Permit consistent with the provisions of the Clean Water Act and to protect instream beneficial uses and to develop a general permit for wetland impacts resulting from the activities of utility projects. The proposed regulation exceeds federal minimum requirements through the reporting of all impacts to wetlands and through the regulation of Tulloch ditching and fill in isolated wetlands, which are currently not federally regulated.

Section 1341 (formerly § 401) of the Clean Water Act (33 USC § 1341) requires state certification of federal permits for discharges into navigable waters.

Purpose: The purpose of this proposed regulation is to establish the procedures and requirements to be followed in connection with the issuance of a VWP general permit by the board pursuant to the State Water Control Law for impacts to wetlands resulting from the activities of utility projects. The proposed regulation is necessary to protect the public health, safety and welfare by providing a streamlined permitting process while maintaining protection of the Commonwealth's wetland resources, which are important for maintaining water quality, flood control and providing fish and wildlife habitat.

Substance: The proposed regulation establishes a VWP general permit with an expected review period of 45 days for permanent impacts less than one acre of surface waters for activities associated with the construction or operation of utility lines. The process of applying for a VWP general permit, and the information the applicant needs to supply, has been detailed. The process of avoidance and minimization of impacts, and compensation for unavoidable impacts, has been specified. Each authorization for coverage expires three years from the date of authorization; the permit regulation expires five years from the date of promulgation.

Issues: Advantages of the proposed regulation to the public and the Commonwealth include increased protection of the

Commonwealth's aquatic resources while streamlining the permitting process for certain small impacts.

Disadvantages of the proposed regulation to the public include reduced project-specific public comment and increased reporting requirements via an abbreviated registration statement for impacts less than one-tenth acre in order to track the goal of no net loss of wetland acreage and function.

Locality Particularly Affected: The regulation is effective statewide; however, as there is a greater prevalence of wetlands in the eastern Piedmont and Coastal Plain compared to the western parts of the state, localities in these areas may feel greater impact from this regulation.

Public Participation: In addition to any other comments the board is soliciting comments on (i) the costs and benefits of the proposal and (ii) the impacts of the regulation on farm or forest lands.

All comments must be received by April 27, 2001. Comments may be submitted by mail, facsimile transmission, e-mail, or by personal appearance at the public hearing(s). Comments are to be submitted to Ellen Gilinsky, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240, e-mail egilinsky@deq.state.va.us or FAX (804) 698-4032. All written comments must include the name, address and phone number of the commenter.

Summary:

The proposed regulations address a new requirement in § 62.1-44.15:5 of the Code of Virginia to develop a general permit for wetland impacts resulting from the activities of utility projects.

CHAPTER 670.

VIRGINIA WATER PROTECTION GENERAL PERMIT FOR FACILITIES AND ACTIVITIES OF UTILITY AND PUBLIC SERVICE COMPANIES REGULATED BY THE FEDERAL ENERGY REGULATORY COMMISSION OR THE STATE CORPORATION COMMISSION AND OTHER UTILITY LINE ACTIVITIES.

9 VAC 25-670-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the Virginia Water Protection (VWP) Permit Regulation (9 VAC 25-210-10 et seq.) unless the context clearly indicates otherwise or unless indicated below.

"Channelization" means the alteration of a stream channel by widening, deepening, straightening, cleaning or paving certain areas.

"Emergent wetland" means a class of wetlands characterized by erect, rooted, herbaceous plants growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content, excluding mosses and lichens. This vegetation is present for most of the growing season in most years and are usually dominated by perennial plants.

"FEMA" means Federal Emergency Management Agency.

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"Forested wetland" means a class of wetlands characterized by woody vegetation that is six meters (20 feet) tall or taller. These areas normally possess an overstory of trees, an understory of trees or shrubs, and an herbaceous layer.

"Impacts" means results caused by human-induced activities conducted in surface waters, such as filling, dumping, dredging, excavating, permanent flooding or impounding or any other new activities on or after October 1, 2001, including draining, that significantly alter or degrade existing acreage or functions of the surface waters.

"Permanent impact" means the filling of a wetland or surface water such that it becomes an upland; the draining of a wetland such that it becomes an upland; or the permanent flooding of a vegetated wetland. This includes, for example, such activities as the construction of access roads or the construction of foundations for substations buildings or the placement of utility lines in surface waters or wetlands at a grade above the original ground surface.

"Registration statement" means a form of preconstruction application or notification.

"Scrub-shrub wetland" means a class of wetlands dominated by woody vegetation less than six meters (20 feet) tall. The species include tree shrubs, young trees, and trees or shrubs that are small or stunted because of environmental conditions.

"Single and complete project" means the total project proposed or accomplished by one person. For linear projects, the "single and complete project" (i.e., a single and complete crossing) will apply to each crossing of a separate water of the United States (i.e., a single waterbody) and to multiple crossings of the same waterbody at separate and distinct locations. However, individual channels in a braided stream or river, or individual arms of a large, irregularly-shaped wetland, lake, etc. are not separate waterbodies. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases are not built can be considered as separate single and complete projects with independent utility.

"State programmatic general permit" means a type of general permit issued by the Department of the Army and founded on an existing state, local or federal agency program that is designed to avoid duplication with another federal, state or local program provided it has been determined that the environmental consequences of the action are individually and cumulatively minimal.

"Temporary impact" means construction activities in wetlands and surface waters in which the ground is restored to its preconstruction contours and elevations, without significantly affecting wetland functions and values.

"Up to one-tenth of an acre" means 0.00 to 0.10 acre, rounded to the second decimal place.

"Up to two acres" means 0.00 to 2.0 acres, rounded to the second decimal place.

"Utility line" means any pipe or pipeline for the transportation of any gaseous, liquid, liquifiable or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages and radio and television communication. The term utility line does not include activities which drain a wetland to convert it to an upland, such as drainage tiles or french drains; however, it does apply to pipes conveying drainage from another area.

9 VAC 25-670-20. Purpose; delegation of authority; effective date of VWP general permit.

A. The purpose of this chapter is to establish VWP General Permit Number WP2 under the VWP permit regulation to govern impacts related to the construction and operation of utility lines. Applications for coverage under this VWP general permit shall be processed for approval, approval with conditions, or denial by the board.

B. The director, or an authorized representative, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

C. In issuing this VWP general permit, the board has not taken into consideration the structural stability of the proposed structure(s).

D. This VWP general permit regulation will become effective on _____ and will expire five years after the effective date. For any covered activity, this VWP general permit is effective upon compliance with all the provisions of 9 VAC 25-670-30 and the receipt of this VWP general permit.

E. For each individual activity requiring notification, coverage will continue for a maximum of three years from the date of authorization of coverage under this VWP general permit to an individual person or applicant.

9 VAC 25-670-30. Authorization to impact surface waters.

A. Any person governed by this VWP general permit is authorized to impact up to one acre of surface waters (including wetlands) for facilities and activities of utilities and public service companies regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and other utility line activities provided that the person submits notification as required in 9 VAC 25-670-50 and 9 VAC 25-670-60, remits the required application processing fee (9 VAC 25-20-10 et seq.), complies with the limitations and other requirements of 9 VAC 25-670-100, receives approval from the board, and provided that:

1. The applicant shall not have been required to obtain a VWP individual permit under the VWP permit regulation (9 VAC 25-210-10 et seq.) for the proposed project impacts. The applicant, at his discretion, may seek a VWP individual permit or coverage under another VWP general permit in lieu of this VWP general permit;

2. Impacts, including all attendant features both temporary and permanent, are part of a single and complete project.

a. Activities authorized include:

(1) The construction, maintenance or repair of utility lines, including outfall structures and the excavation, backfill or bedding for utility lines provided there is no change in preconstruction contours;

(2) The construction, maintenance or expansion of a substation facility or pumping station associated with a power line or utility line;

(3) The construction or maintenance of foundations for overhead utility line towers poles or anchors, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a single pad) are used where feasible;

(4) The construction of access roads for the construction or maintenance of utility lines including overhead power lines and utility line substations, provided the activity in combination with any substation does not exceed the threshold limit of this VWP general permit;

b. Where a utility line has multiple crossings of surface waters (several single and complete projects) with more than minimal impacts, the board may at its discretion require an individual VWPP for the project.

3. Permanent impacts from a single and complete project do not exceed one acre of surface waters in total; and

4. Compensatory mitigation is provided for unavoidable permanent impacts whenever the permanent impact for any single and complete project is greater than one-tenth of an acre.

5. Compensatory mitigation for unavoidable impacts is provided in the form of any one or combination of the following: creation, restoration, the purchase or use of mitigation bank credits, or a contribution to an approved in-lieu fee fund. Preservation of wetlands or preservation or restoration of upland buffers adjacent to state waters may be acceptable when utilized in conjunction with creation, restoration or mitigation bank credits.

6. Compensatory mitigation for unavoidable impacts of one-tenth of an acre or greater is provided at the following compensation to loss ratios:

Emergent wetlands	1:1
Scrub/shrub wetlands	1.5:1
Forested wetlands	2:1
Open water (ponds, lakes, etc.)	1:1 (in-kind or out-of-kind)

7. When functions and values of surface waters are permanently adversely affected, such as for conversion of forested to emergent wetlands in permanently maintained utility right-of-ways, mitigation will be required to reduce and minimize the adverse effects of the project to surface waters. Permanently maintained access corridors no wider than 20 feet will be allowed without compensatory mitigation.

B. The board waives the requirement for coverage under a VWP general permit for activities that occur in an isolated

wetland of minimal ecological value, as defined in 9 VAC 25-210-10.

C. Receipt of this VWP general permit does not relieve any permittee of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.

D. Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of Engineers, and for which the board has issued or waived § 401 certification existing as of the effective date of this chapter, shall constitute coverage under this VWP general permit until such time as a state programmatic general permit is approved for the covered activity or impact.

9 VAC 25-670-40. Prohibitions.

A. This VWP general permit will not apply in the following areas:

1. Wetland areas composed of 10% or more of the following species (singly or in combination) in any stratum: Atlantic white cedar (*Chamaecyparis thyoides*), bald cypress (*Taxodium distichum*), water tupelo (*Nyssa aquatica*), or overcup oak (*Quercus lyrata*). Percentages may be based upon percent aerial cover.

2. Surface waters with federal or state listed or proposed threatened or endangered species or proposed or designated critical habitat.

B. This VWP general permit cannot be used in combination with other VWP general permits to impact greater than one acre. The use of more than one VWP General Permit WP2 for a project is prohibited, except when the cumulative impact to surface waters does not exceed the acreage limit of the VWP general permit with the highest specified acreage limit.

C. The activity to impact surface waters shall not have been prohibited by state law, regulations or policies, nor shall it contravene the Water Quality Standards (9 VAC 25-260-5 et seq.), as amended or adopted by the board.

D. The board shall deny coverage under this VWP general permit to any applicant conducting activities which the board determines cause, may reasonably be expected to cause, or may be contributing to a violation of water quality standards, including discharges or discharge-related activities that are likely to adversely affect aquatic life, or for activities which the board determines that together with other existing or proposed impacts to wetlands will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

E. This VWP general permit may not be used for any water withdrawal activities.

F. Pursuant to § 29.1-564 of the Code of Virginia: "Taking, transportation, sale, etc., of endangered species is prohibited. The taking, transportation, processing, sale or offer for sale within the Commonwealth of any fish or wildlife appearing on any list of threatened or endangered species published by the U.S. Secretary of the Interior pursuant to the provisions of the federal Endangered Species Act of 1973 (P.L. 93-205), or any

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modifications or amendments thereto, is prohibited except as provided in § 29.1-568."

F. Pursuant to § 29.1-566 of the Code of Virginia and 4 VAC 15-20-130 B and C, the taking, transportation, processing, sale or offer for sale within the Commonwealth of any state-listed endangered or threatened species is prohibited except as provided in § 29.1-568 of the Code of Virginia.

9 VAC 25-670-50. Notification.

A. Notification to the board is not required for utility line activities that have only temporary impacts and that do not involve mechanized land clearing of forested wetlands.

B. Notification to the board is required for permanent impacts up to one-tenth of an acre and for mechanized land clearing in forested wetlands. In lieu of the complete registration statement, the applicant shall submit only the information required in subdivisions B 1 through 10, 14, 16 and 17 of 9 VAC 25-670-60 prior to commencing the activity.

C. Notification to the board will be required prior to construction for permanent impacts greater than one-tenth of an acre of wetlands and shall be reported by the applicant to DEQ via the entire registration statement in 9 VAC 25-670-60.

D. The DEQ will determine whether the proposed activity requires coordination with the United States Fish and Wildlife Service, the Virginia Department of Conservation and Recreation and the Virginia Department of Game and Inland Fisheries.

9 VAC 25-670-60. Registration statement.

A. Registration statements shall be filed with the board, as follows:

1. The applicant shall file a complete registration statement as described in 9 VAC 25-670-50 for a VWP General Permit WP2, which will serve as a notice of intent for coverage under the VWP general permit.

2. Any applicant proposing an activity under this VWP general permit shall file the required registration statement at least 45 days prior to the date planned for the commencement of the activity to be regulated by the VWP general permit.

3. Any person conducting an activity without a VWP permit, who qualifies for coverage under this VWP general permit, shall file the registration statement immediately upon discovery of the unpermitted activity.

B. The required registration statement shall contain the following information:

1. The applicant's name, mailing address, telephone number and fax number (if applicable).

2. The authorized agent's (if applicable) name, mailing address, telephone number and fax number (if applicable).

3. The existing VWP permit number (if applicable).

4. The name of the project, purpose of project, and a description of the activity.

5. The name of water body(ies), if applicable.

6. The hydrologic unit code (HUC) for the project area.

7. The name of the city or county where the project is located.

8. Latitude and longitude, to the nearest second, from a central location within the project limits.

9. A detailed location map (e.g., a United States Geologic Survey topographic quadrangle map) of the project area. The map should be of sufficient detail such that the site may be easily located for site inspection.

10. Project plan view. All plan view sketches should include, at a minimum, north arrow, scale, existing structures, existing contours and proposed contours (if available), limit of jurisdictional areas, direction of flow, ordinary high water, impact limits, location and dimension of all proposed structures in impact areas.

11. Wetland impact information, including a description of the impact, the impact area (in square feet or acres), and the wetland classification based on the Cowardin classification system or similar terminology.

12. A description of the measures taken during project design and development both to avoid and minimize impacts to surface waters to the maximum extent practicable, as required by 9 VAC 25-210-115 A.

13. A description of the intended compensation for unavoidable impacts.

a. A conceptual compensatory mitigation plan, at a minimum, must be submitted, and shall include: the goals and objectives in terms of replacement of wetland or stream acreage and function; a location map, including latitude and longitude (to the nearest second) at the center of the site; a hydrologic analysis, including a draft water budget based on expected monthly inputs and outputs which will project water level elevations for a typical, dry and wet year; groundwater elevation data, if available, or the proposed location of groundwater monitoring wells to collect this data; wetland delineation sheets, maps and a jurisdictional determination from the Corps of Engineers for existing wetland areas on the proposed site(s); a conceptual grading plan; a conceptual planting scheme, including suggested plant species, zonation and acreage of each vegetation type proposed; a proposed soil preparation and amendment plan addressing both topsoil and subsoil conditions; and a draft design of any water control structures.

b. Applicants proposing to mitigate off-site, to purchase mitigation bank credits, or to contribute to an in-lieu fee program shall discuss the feasibility of on-site compensatory mitigation. If on-site compensatory mitigation is practicable, applicants must provide documentation as to why the proposed off-site compensatory mitigation, mitigation banking, or in-lieu

fee fund contribution is ecologically preferable. The evaluation should include, but not be limited to, the following assessment criteria: water quality benefits, hydrologic source, hydrologic regime, watershed, wetlands functions and values, vegetation type, soils, impact acreage, distance from impacts, timing of compensation vs. impacts, acquisition, constructability, and cost.

c. Any wetland compensation plan proposing to include contributions to in-lieu fee programs shall include proof of the willingness of the entity to accept the donation and the assumptions or documentation of how the amount of the contribution was calculated.

d. Any wetland compensation plan proposing the purchase of wetland banking credits shall include:

(1) The name of the proposed wetland mitigation bank within the same or adjacent hydrologic unit code within the same river watershed with available credits;

(2) The number of credits proposed to be purchased or used; and

(3) Certification from the bank owner of the availability of credits.

e. A final compensatory mitigation plan may be submitted, if available.

(1) The final compensatory mitigation plan shall include: narrative description of the plan including goals and objectives, site location, existing and proposed grade, schedule for compensatory mitigation site construction, source of hydrology and a water budget (nontidal sites only) for typical and driest years, mean tidal range (tidal sites only), proposed mean low water and mean high water elevations (tidal sites only), plant species, planting scheme indicating expected zonation, planting schedule, an abatement and control plan for undesirable plant species, soil amendments, all structures and features considered necessary for the success of the plan, and number and locations of panoramic photographic stations and ground water monitoring wells (or tide gages, for tidal sites). Rooted seedlings or cuttings should originate from a local nursery or be adapted to local conditions. Vegetation should be native species common to the area, should be suitable for growth in local wetland conditions, and should be from areas approximately 200 miles from the project site.

(2) The final compensatory mitigation plan shall include protection of state waters (including compensatory mitigation areas and nonimpact state waters) within the project boundary in perpetuity. These areas shall be surveyed or platted within 120 days of final plan approval, and the survey or plat shall be recorded in accordance with the requirements of this section. Any restrictions, protections, or preservations, or any similar instrument provided as part of the compensatory

mitigation plan, shall state that no activity will be performed on the property in any area designated as a compensatory mitigation area or nonimpact state water, with the exception of maintenance or corrective action measures authorized by DEQ. Unless specifically authorized by DEQ through the issuance of a VWP individual permit, modification of this VWP general permit, or waiver thereof, this restriction applies to ditching, land clearing or the discharge of dredge or fill material. Such instrument shall contain the specific phrase "ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property. Proof of recordation shall be submitted within 60 days of survey or plat approval. This requirement is to preserve the integrity of compensatory mitigation areas and to ensure that additional impacts to state waters do not occur.

(3) If the final compensatory mitigation plan is submitted prior to authorization for coverage under this VWP general permit, however, it is not deemed complete until after the authorization, the board shall review the plan and approve, approve with modifications or disapprove within 45 days of the completeness determination.

14. An aerial photo or scale map which clearly shows the property boundaries, location of surface waters including all wetland boundaries, and all surface water impacts at the site. A copy of the Corps of Engineers' delineation confirmation, including wetland data sheets, shall also be provided at the time of application. If written confirmation is not available at the time of application, verbal confirmation must be provided and the written confirmation submitted during the VWP general permit review. Where the proposed work involves the discharge of fill material into surface water or wetlands resulting in permanent above grade fills within the 100-year flood plain, the notification must include documentation demonstrating that the proposed work complies with the appropriate FEMA or FEMA-approved floodplain construction requirements.

15. The appropriate application processing fee for a VWP general permit (9 VAC 25-20-10 et seq.).

16. Documentation from the Virginia Department of Game and Inland Fisheries and the Virginia Department of Conservation and Recreation's Division of Natural Heritage, regarding the presence effect on any federal or state proposed or listed threatened and endangered species or proposed or designated critical habitat.

17. The following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for

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gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

C. The registration statement shall be signed in accordance with 9 VAC 25-210-100. If an agent is acting on behalf of an applicant, the applicant shall submit an authorization of the agent that includes the signatures of both the applicant and the agent.

D. Upon receipt of a complete registration statement, coverage under the VWP general permit shall be approved, approved with conditions, or denied within 45 days. If the board fails to act within 45 days, coverage under the VWP general permit shall be deemed approved.

1. In evaluating the registration statement, the board shall make an assessment of the impacts associated with the project in combination with other existing or proposed impacts. Coverage under the VWP general permit shall be denied if the cumulative impacts will cause or contribute to a significant impairment of surface waters or fish and wildlife resources.

2. The board may place additional conditions on a project in order to approve the use of this VWP general permit. However, these conditions must be consistent with the VWPP regulation and may not conflict with the existing conditions of this VWP general permit related to impacts and compensatory mitigation.

E. Incomplete application. Where a registration statement is considered incomplete, the board may require the submission of additional information after an application has been filed, and may suspend processing of any application until such time as the applicant has supplied missing or deficient information and the board considers the application complete. Further, where the applicant becomes aware that he omitted one or more relevant facts from a VWP permit application, or submitted incorrect information in a VWP permit application or in any report to the board, he shall immediately submit such facts or the correct information.

9 VAC 25-670-70. Mitigation.

A. For the purposes of this VWP general permit, the board shall accept wetland creation, wetland restoration, wetland preservation, upland buffer preservation, the purchase or use of mitigation bank credits or a contribution to an in-lieu fee fund or a combination of the above as compensation for unavoidable wetland impacts.

B. Compensatory mitigation for unavoidable permanent wetland impacts shall be provided at the following compensatory mitigation to impact ratios:

1. Impacts to forested wetlands shall be mitigated at a 2:1 replacement to impact ratio.
2. Impacts to scrub-shrub wetlands shall be mitigated at a 1.5:1 replacement to impact ratio.

3. Impacts to emergent wetlands shall be mitigated at a 1:1 replacement to impact ratio.

4. Impacts to open water (ponds, lakes, etc.) shall be mitigated at a 1:1 replacement to impact ratio.

C. Credits or units of wetland compensation shall be calculated according to the following ratios:

1. One acre of wetland creation equals one unit of wetland compensation.
2. One acre of wetland restoration equals one unit wetland compensation.
3. Ten acres of wetland preservation equals one unit of wetland compensation.
4. Twenty acres of upland buffer preservation equals one unit of wetland compensation.
5. One mitigation bank credit equals one unit of wetland compensation.
6. The monetary equivalent of one acre of wetland creation or restoration in the form of a payment to a wetland trust fund equals one unit of wetland compensation.

D. In order for contribution to an in-lieu fee fund to be an acceptable form of mitigation, the fund must be approved for use by the board according to the provisions of 9 VAC 25-210-115 E.

E. The use of mitigation banks for mitigating project impacts shall be deemed appropriate if the bank is operating in accordance with the provisions of § 62.1-44.15:5 E of the Code of Virginia and 9 VAC 25-210-115, and the applicant provides verification to DEQ of purchase or debiting of the required amount of credits.

9 VAC 25-670-80. Modification.

Authorization under this VWP general permit may be modified when any of the following developments occur provided the total impacts to surface waters for a single and complete project do not exceed two acres:

1. When additions or alterations have been made to the project which require the application of VWP permit conditions that differ from those of the existing VWP general permit or are absent from it;
2. When new information becomes available about the operation or activity covered by the VWP general permit which was not available at the time of VWP general permit coverage and would have justified the application of different VWP permit conditions at that time;
3. When a change is made in the promulgated standards or regulations on which the VWP general permit was based;
4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance

schedule be modified to extend beyond any applicable statutory deadline of the Act;

5. When changes occur which are subject to "reopener clauses" in the VWP general permit;

9 VAC 25-670-90. Notice of termination.

When all permitted activities requiring notification have been completed, the applicant shall submit a notice of termination within 30 days of final completion. The notice shall contain the following information:

- 1. Name, mailing address and telephone number of the applicant;
- 2. Name and location of the activity;
- 3. The VWP permit authorization number;
- 4. The following certification:

"I certify under penalty of law that all activities authorized by a VWP general permit have been completed. I understand that by submitting this notice of termination, that I am no longer authorized to perform activities in wetlands in accordance with the VWP general permit, and that performing activities in wetlands is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit."

9 VAC 25-670-100. VWP general permit.

Any applicant whose registration statement is accepted by the board will receive the following VWP general permit and shall comply with the requirements in it and be subject to all requirements of the VWP permit regulation, 9 VAC 25-210-10 et seq.:

VWP General Permit No. WP2

Effective date:

Expiration date:

VWP GENERAL PERMIT FOR FACILITIES AND ACTIVITIES OF UTILITIES AND PUBLIC SERVICE COMPANIES REGULATED BY THE FEDERAL ENERGY REGULATORY COMMISSION OR THE STATE CORPORATION COMMISSION AND OTHER UTILITY LINE ACTIVITIES UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW

Based upon an examination of the information submitted by the applicant and in compliance with § 401 of the Clean Water Act as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that the activity authorized by this VWP general permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a

significant impairment of surface waters or fish and wildlife resources.

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, citizens of the Commonwealth of Virginia are authorized to impact up to one acre of surface waters (including wetlands) within the boundaries of the Commonwealth of Virginia, for the referenced activities, except in those areas specifically named or excluded in board regulations or policies which prohibit such impacts.

Permittee:

Address:

Activity Location:

Activity Description:

The authorized activity shall be in accordance with this cover page, Part I - Special Conditions, Part II - Mitigation, Monitoring and Reporting, and Part III - Conditions Applicable to All VWP Permits, as set forth herein.

Director, Department of Environmental Quality

Date

Part I. Special Conditions.

A. Authorized activities.

- 1. Any additional impacts to surface waters associated with this project may require modification of this VWP general permit and additional compensatory mitigation.
- 2. The activities authorized by this VWP general permit must commence and be completed within three years of the date of this authorization.

B. Reapplication. Application for continuation of coverage under this VWP general permit or a new VWP permit may be necessary if any portion of the authorized activities or any VWP permit requirement (including compensatory mitigation) has not been completed within three years of the date of authorization. Application consists of an updated or new registration statement.

C. Overall project conditions.

- 1. Wet or uncured concrete shall be prohibited from entry into flowing surface waters.
- 2. No fill in surface waters may consist of unsuitable materials (e.g., trash, debris, car bodies, asphalt). All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all Department of Environmental Quality (DEQ) Regulations.
- 3. Erosion and sedimentation controls shall be designed in accordance with the Virginia Department of Conservation and Recreation (DCR) Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading, and maintained in good working order to minimize impacts to surface waters to the maximum extent practicable.

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These controls shall remain in place until the area stabilizes.

4. Any exposed slopes and streambanks must be stabilized immediately upon completion of the utility line crossing of each water body. All denuded areas shall be properly stabilized in accordance with the DCR Erosion and Sediment Control Handbook, Third Edition, 1992.

5. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with this project shall be accomplished in such a manner that minimizes construction and/or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

6. Access roads must be constructed so that the length of the road minimizes the adverse effects on surface waters to the maximum extent practicable and is as near as possible to preconstruction contours and elevations. Mechanized land clearing necessary for the construction, maintenance and expansion of utility line substations, foundations for overhead utility lines and access roads is authorized provided the cleared area is kept to the minimum necessary and preconstruction contours are maintained as near as possible. The area of surface waters or wetlands filled, excavated or flooded must be limited to the minimum necessary to construct the utility line, substations and access roads.

7. No activity may substantially disrupt the movement of aquatic life indigenous to the water body. No activity may cause more than minimal adverse effect on navigation. Access roads constructed above preconstruction contours and elevations in surface waters must be properly bridged or culverted to maintain surface flows. Culverts placed in streams must be installed to maintain low flow conditions. Furthermore the activity must not impede the passage of normal or expected high flows and the structure or discharge must withstand expected high flows.

8. All nonimpacted wetlands within the project limits that are within 50 feet of any clearing, grading, and/or filling activities shall be clearly flagged or marked for the life of the construction activity within that area. The permittee shall notify all contractors that these marked areas are wetlands where no excavation or filling is to occur.

9. Temporary disturbances to wetlands during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preconstruction conditions and planted or seeded with appropriate wetland vegetation. The permittee shall ensure that all temporarily disturbed wetland areas revegetate with wetland vegetation by the second year post-disturbance. Any temporary fills must be removed in their entirety and the effected area returned to their preexisting elevation.

10. Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance to the maximum extent practicable.

11. Material resulting from trench excavation may be temporarily sidecast (up to three months) into wetlands, provided the material is not placed in a manner such that it is dispersed by currents or other forces. DEQ may extend the period of temporary sidecasting not to exceed a total of 180 days, where appropriate.

12. All utility line work in surface waters shall be performed in such a manner as to minimize disturbance to the maximum extent practicable, and the area must be returned to its original contours and stabilized, unless authorized by this VWP general permit.

13. If stream channelization is required, all work in surface waters shall be done in the dry and all flows shall be diverted around the channelization area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The new stream channel shall be constructed following the typical sections submitted with the application. A low flow channel shall be constructed within the channelized area. The center line of the low flow channel shall meander, to the extent possible, to mimic natural stream morphology. The rerouted stream flow must be fully established before construction activities in the old stream bed can begin.

14. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

15. Excess material must be removed to upland areas immediately upon completion of construction.

16. Riprap bank stabilization shall be of an appropriate size and design in accordance with the most recent edition of the Virginia Department of Conservation and Recreation's Sediment and Erosion Control Handbook.

17. Riprap apron for all outfalls shall be designed in accordance with the most recent edition of the Virginia Department of Conservation and Recreation's Sediment and Erosion Control Handbook.

18. The permittee shall contact the Department of Game and Inland Fisheries and the Virginia Marine Resources Commission to determine whether a time of year restriction is appropriate for any period of dredging or construction in waters containing endangered species or waters critical to the movement and reproduction of anadromous fish. The permittee shall maintain a copy of such time of year restriction as is issued, or notification that no restriction is necessary, for the duration of the construction phase of the project.

19. The permittee shall employ measures to prevent spills of fuels or lubricants into surface waters.

20. Immediately downstream of the construction area, the shall not violate Water Quality Standards (9 VAC 25-260-5 et seq.) as a result of construction activities.

21. The trench for a utility line cannot be constructed in such a manner as to drain wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect.)

Part II. Mitigation, Monitoring and Reporting.

A. Wetland mitigation. In order to qualify for this VWP general permit, appropriate and practicable compensatory mitigation will be required for all wetland impacts meeting the conditions outlined in this VWP general permit. The types of compensatory mitigation options that may be considered under this VWP general permit include wetland or stream creation or restoration, the purchase or use of mitigation bank credits, or a contribution to an approved in-lieu fee fund. Preservation of wetlands or streams or preservation or restoration of upland buffers adjacent to state waters is acceptable when utilized in conjunction with creation, restoration or mitigation bank credits.

1. The site(s) depicted in the conceptual compensatory mitigation package submitted with the registration statement, shall constitute the compensatory mitigation package for the approved project, unless otherwise authorized by a VWP permit modification.

2. For compensation involving the purchase or use of mitigation bank credits, the permittee shall submit documentation within 60 days of VWP general permit authorization that the Corps of Engineers has debited the required mitigation credits from the mitigation bank ledger. For projects proposing a contribution to an in-lieu fee program, the permittee shall submit documentation within 60 days of VWP general permit authorization that the fund contribution has been received.

3. All aspects of the compensatory mitigation plan shall be finalized, submitted and approved by DEQ prior to any construction activity in permitted impact areas. DEQ shall review and provide written comments on the plan within 30 days of receipt or it shall be deemed approved. The final compensatory mitigation plan as approved by DEQ shall become an official component of this VWP general permit.

a. The final compensatory mitigation plan shall include: narrative description of the plan including goals and objectives, site location, existing and proposed grade, schedule for compensatory mitigation site construction, source of hydrology and a water budget (nontidal sites only) for typical and driest years, mean tidal range (tidal sites only), proposed mean low water and mean high water elevations (tidal sites only), plant species, planting scheme indicating expected zonation, planting schedule, an abatement and control plan for undesirable plant species, soil amendments, all structures and features considered necessary for the success of the plan, and number and locations of panoramic photographic stations and ground water monitoring wells (or tide gages, for tidal sites). Rooted seedlings or cuttings should originate from a local nursery or be adapted to local conditions. Vegetation should be native species common to the area, should be suitable for growth in local wetland conditions, and

should be from areas approximately 200 miles from the project site.

b. The final compensatory mitigation plan shall include protection of state waters (including compensatory mitigation areas and nonimpact state waters) within the project boundary in perpetuity. These areas shall be surveyed or platted within 120 days of final plan approval, and the survey or plat shall be recorded in accordance with the requirements of this section. The restrictions, protections, or preservations, or similar instrument shall state that no activity will be performed on the property in any area designated as a compensatory mitigation area or nonimpact state water, with the exception of maintenance or corrective action measures authorized by DEQ. Unless specifically authorized by DEQ through the issuance of a VWP individual permit, modification of this VWP general permit, or waiver thereof, this restriction applies to ditching, land clearing or the discharge of dredge or fill material. Such instrument shall contain the specific phrase "ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property. Proof of recordation shall be submitted within 60 days of survey or plat approval. This requirement is to preserve the integrity of compensatory mitigation areas and to ensure that additional impacts to state waters do not occur.

4. Post-grading elevations for the compensatory mitigation site(s) shall be sufficient to ensure that wetland hydrology will be achieved on the site to support the goals and objectives of the compensatory mitigation plan. As a general rule, elevations shall be within 0.2 feet of the elevations proposed in the final compensatory mitigation plan. The final as-built grading plan shall be approved by DEQ prior to any planting and placement of ground water monitoring wells.

5. All work in jurisdictional areas shall cease if compensatory mitigation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by DEQ.

6. The wetland creation portions of the site(s) shall be excavated 6-12 inches below final grade. Topdressing soil shall then be spread to bring the compensatory mitigation site to final grade. A wetland vegetation seed mix shall be applied within seven days of final grading for site stabilization.

7. For compensatory mitigation sites involving restoration, a wetland vegetation seed mix shall be applied for site stabilization within seven days of final grading or soil disturbance.

8. Planting of woody plants shall occur outside the growing season, when the soil is not frozen, between November 1 and March 31.

9. Point sources of stormwater runoff shall be prohibited from entering any wetland compensatory mitigation site

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prior to treatment by appropriate best management practices. Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, and forebays.

10. The success of the compensatory mitigation shall be based on establishing and maintaining a viable wetland with suitable wetland hydrology, hydric soils or soils under hydric conditions, and hydrophytic plant communities.

11. Wetland hydrology shall be considered established if depths to the seasonal high water table, in a typical rainfall year, are equal to or less than one foot for at least 12.5% of the growing season for all monitoring years.

12. The wetland plant community shall be considered established if:

a. Greater than 50% of the woody plants, expressed either by plant stems or canopy coverage, shall be facultative (FAC) or wetter (FACW or OBL). A minimum plant stem count of 400/acre must be achieved in sample plots until canopy coverage is 30% or greater. Of these 400 stems, a minimum of 300 shall be from the targeted species of the compensatory mitigation plan. A minimum of 65% of the planted trees and shrubs must be viable and show signs of growth for the life of the VWP general permit.

b. Greater than 50% of all herbaceous plants shall be FAC or wetter. Aerial coverage shall be a minimum of 60% after one full growing season and 80% after three growing seasons and remaining at or above 80% for the life of the VWP general permit. Scrub/shrub or sapling/forest vegetation is not included in coverage or stem count for herbaceous vegetation.

c. Species composition reflects the desired plant community types stated in the wetland compensatory mitigation plan by the end of the first growing season and is maintained through the last year of the VWP general permit.

d. Noxious weeds are identified and controlled as described in the noxious weed control plan, such that they are not dominant species or do not change the desired community structure. The control plan shall include procedures to notify the VWPP staff of any invasive species occurrences, methods of removal, and successful control.

e. Deviations from this plan must be approved in advance by DEQ.

13. If the compensatory mitigation area fails to be established as viable wetlands, the reasons for this failure shall be determined and a corrective action plan, schedule, and monitoring plan shall be submitted to DEQ for approval prior to or with the next required monitoring report. Replacement of dead plant stock in the wetland compensatory mitigation site shall occur, as necessary, to achieve a minimum of 400 stems/acre for the tree species (until canopy coverage is 30% or greater) and 65% of the original stocking density for the planted herb,

shrub and tree species. Of these 400 stems, a minimum of 300 shall be from the targeted species of the compensatory mitigation plan. All problems shall be corrected by the permittee. Should significant changes be necessary to establish wetlands, the monitoring plan shall begin again, with year one being the year changes are complete.

14. The wetland boundary for the compensatory mitigation site shall be based on the results of the hydrology, soils, and vegetation monitoring data and shall be shown on the site plan. Calculation of total wetland acreage shall be based on that boundary.

15. Herbicides or algicides shall not be used in or immediately adjacent to the compensatory mitigation site(s) without prior authorization by DEQ. All vegetation removal shall be done by mechanical means only, unless authorized by DEQ.

16. This VWP general permit authorization may need to be renewed (or extended) to assure that the compensatory mitigation work has been successful. The request for renewal/extension must be made no less than 60 days prior to the expiration date of this VWP general permit authorization, at which time DEQ will determine if renewal of the VWP general permit authorization is necessary.

B. Compensatory mitigation site monitoring.

1. A post-grading survey, including spot elevations, of the site(s) for wetland compensatory mitigation shall be conducted by a licensed land surveyor or a professional engineer and submitted to DEQ for approval prior to placing the permanent groundwater monitoring wells and planting of the vegetation. Grading elevation plans shall be on a scale of one inch equals 50 feet (or 1:500 metric) with contour intervals of one (or two) feet accompanied by cross section views. The final as-built grading plan shall be submitted to DEQ for approval prior to any planting and placement of ground water monitoring wells.

2. Panoramic photographs shall be taken at the compensatory mitigation site(s) from each of the monitoring well stations. These photographs shall be taken after the initial planting and in August or September every year for the life of the VWP general permit. Permanent markers shall be established to ensure that the same locations and view directions at the sites are monitored in each monitoring period.

3. Compensatory mitigation site monitoring for hydrology, soils, and hydrophytic vegetation shall begin at the first complete growing season (year one) following compensatory mitigation site construction. Monitoring shall be required for years 1, 2, 3, 5, 7 and 10, with years 7 and 10 only required if the site success criteria were not achieved during the previous monitoring event.

4. The establishment of wetland hydrology shall be measured weekly during the growing season. The number of monitoring wells for each site will be determined by DEQ on a site-specific basis. The location of the wells must be approved by DEQ prior to

placement. Adequate hydrology shall be within 12 inches of the surface for 12.5% of the growing season. Monitoring shall include approximate acreage and average depth of any ponded water on the wetland compensatory mitigation site(s). Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, weekly monitoring may be discontinued for the remainder of that monitoring year.

5. The presence of hydric soils or soils under hydric conditions shall be evaluated by digging soil pits at each monitoring station and evaluating the soil profile for hydric soil indicators using a documented method acceptable to DEQ.

6. The establishment of wetland vegetation shall be indicated by percent cover, percent survival, stem counts and species composition monitored in August or September during each reportable growing season in the life of the VWP general permit. At each monitoring station, the following information shall be collected:

a. Percent cover for all herbaceous species shall be estimated using a documented method accepted by DEQ. The approximate species composition of the herbaceous vegetation shall be indicated, including nondominants. The number of stems per acre for woody species shall be provided. A quantitative measure for noxious species present shall also be provided.

b. Percent survival of planted woody species, if applicable, shall be estimated using a documented method accepted by DEQ. The number of stems of all tree species within each sample plot and the density of all tree species (number of stems per acre) shall be provided.

c. The presence of noxious species shall be documented.

C. Construction monitoring.

1. Photo stations shall be established to document the various construction aspects of the project within jurisdictional areas. These stations shall be established to document the existing and post-construction conditions of the project site. These stations shall be photographed prior to construction, during construction, and within one week after the completion of construction. Photos shall be taken during construction at the end of the first, second and twelfth months of construction, and then annually for the remainder of the construction project.

2. The permittee shall make provisions to monitor for any spills of petroleum products or other materials during the construction process. These provisions shall be sufficient to detect and contain the spill and notify the appropriate authorities.

3. Stream bottom elevations at road crossings shall be measured and recorded prior to construction and within one week after the completion of construction. This requirement shall only apply to those streams not designated as intermittent or those streams not designated in association with stream channelization.

4. Monitoring of water quality parameters shall be conducted during rerouting of the live streams through the new channels in the following manner:

a. A sampling station shall be located upstream and immediately downstream of the relocated channel;

b. Temperature, pH and dissolved oxygen (D.O.) measurements shall be taken once every half hour for at least three readings at each station prior to opening the new channels;

c. After opening the new channel, temperature, pH and D.O. readings shall be taken once every half hour for at least three readings at each station within 24 hours of opening the new channel.

D. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate Department of Environmental Quality office. The VWP general permit authorization number shall be included on all correspondence.

2. DEQ shall be notified in writing by certified letter at least 10 days prior to the start of construction activities authorized by this VWP general permit. The notification shall include identification of the impact area at which work will occur and a projected schedule for completing work at each permitted impact area.

3. After construction begins, construction monitoring reports shall be submitted to DEQ within 30 days of each monitoring event as required in condition D 1 of Part II of this VWP general permit. The reports shall include, at a minimum, the following:

a. A written statement regarding when work started in the identified impact area, where work was performed, what work was performed, and what work was completed.

b. Properly labeled photographs (to include date and time, name of the person taking the photograph, and VWP permit number) showing representative construction activities (including, but not limited to, flagging nonimpact wetland areas, site grading and excavation, installation and maintenance of erosion and sediment controls, culvert installation, bridge and ramp construction, dredging, dredge disposal, etc.). Photographs are not necessary during periods of no activity within jurisdictional areas.

4. The permittee shall notify DEQ in writing when unusual or potentially complex conditions are encountered which require debris removal or involve potentially toxic substance. Measures to remove the obstruction, material, or toxic substance or to change the location of any structure are prohibited until approved by DEQ.

5. The permittee shall report any fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, DEQ shall be notified at (insert appropriate DEQ office phone number); otherwise, the

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Department of Emergency Management shall be notified at 1-800-468-8892.

6. Violations of state water quality standards shall be reported within 24 hours to the appropriate DEQ office.

7. The final plans of compensatory mitigation shall be submitted to and approved by DEQ prior to any construction in permitted impact areas.

8. An official copy of the instrument of restriction, protection, or preservation of wetlands and state waters provided as part of the compensatory mitigation plan shall be submitted to the DEQ within 60 days of recordation as outlined in the mitigation portion of this VWP general permit.

7. The mitigation bank account ledgers shall be submitted denoting the purchase of the required credits from the proposed bank(s).

8. All compensatory mitigation monitoring reports required by the special conditions in Section B above shall be submitted annually by November 30 with the exception of the final report in the life of the VWP general permit which shall be submitted by November 30 of that monitoring year or 180 days prior to VWP general permit expiration, whichever occurs sooner. Alterations and maintenance conducted on the compensatory mitigation sites shall be reported. Invasive species occurrences and control of these occurrences shall also be reported to DEQ.

9. All submittals required by this VWP general permit shall contain the following signed certification statement:

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

Part III. Conditions Applicable to All VWP Permits.

A. *Duty to comply.* The permittee shall comply with all conditions of the VWP permit. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations and toxic standards and prohibitions. Any VWP permit noncompliance is a violation of the Clean Water Act and State Water Control Law, and is grounds for enforcement action, VWP permit termination, revocation, modification, or denial of a VWP permit renewal application.

B. *Duty to mitigate.* The permittee shall take all reasonable steps to minimize or prevent any impacts in violation of the VWP general permit which may have a reasonable likelihood of adversely affecting human health or the environment.

C. *Reopener.* This VWP general permit may be reopened to modify the conditions of the VWP general permit when the circumstances on which the previous VWP general permit was based have materially and substantially changed, or special studies conducted by the department or the permittee show material and substantial change since the time the VWP general permit was issued and, thereby, constitute cause for VWP general permit modification or revocation and reissuance.

D. *Compliance with state and federal law.* Compliance with this VWP general permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

E. *Property rights.* The issuance of this VWP general permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal property rights, nor any infringement of federal, state or local laws or regulations.

F. *Severability.* The provisions of this VWP general permit are severable.

G. *Right of entry.* The applicant and/or permittee shall allow authorized state and federal representatives, upon the presentation of credentials, at reasonable times and under reasonable circumstances:

1. To enter the permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP general permit conditions;
2. To inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP general permit;
3. To sample or monitor any substance, parameter or activity for the purpose of assuring compliance with the conditions of the VWP general permit or as otherwise authorized by law.

For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

H. *Transferability of VWP permits.* This VWP general permit may be transferred to another person by a permittee if:

1. The current permittee notifies the Department of Environmental Quality 30 days prior to the proposed transfer of the title to the facility or property;
2. The notice of the proposed transfer includes a written agreement between the existing and proposed new permittee containing a specific date of transfer of VWP general permit responsibility, coverage and liability between them; and

3. The Department of Environmental Quality does not notify the existing permittee of the State Water Control Board's intent to modify or revoke and reissue the VWP general permit within the 30-day time period.

Such a transferred VWP general permit shall, as of the date of the transfer, be as fully effective as if it had been issued directly to the new permittee.

I. VWP permit modification. The permittee shall notify the Department of Environmental Quality of any modification of this activity and shall demonstrate in a written statement to the department that said modification will not violate any conditions of this VWP general permit. If such demonstration cannot be made, the permittee shall apply for a modification of this VWP general permit. This VWP general permit may be modified when any of the following developments occur:

1. When additions or alterations have been made to the affected facility or activity which require the application of VWP permit conditions that differ from those of the existing VWP general permit or are absent from it, provided the total project impacts for a single and complete project do not exceed two acres and are fully mitigated;
2. When new information becomes available about the operation or activity covered by the VWP general permit which was not available at VWP general permit issuance and would have justified the application of different VWP general permit conditions at the time of VWP general permit issuance;
3. When a change is made in the promulgated standards or regulations on which the VWP general permit was based;
4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the CWA; and
5. When changes occur which are subject to "reopener clauses" in the VWP general permit.

J. VWP permit termination. This VWP general permit, after notice and opportunity for a hearing, is subject to termination. Causes for termination are as follows:

1. Noncompliance by the permittee with any condition of the VWP general permit;
2. The permittee's failure in the application or during the VWP general permit issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;
3. The permittee's violation of a special or judicial order;
4. A determination by the board that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by VWP general permit modification or termination; or

5. A determination that the permitted activity has ceased and that the compensatory mitigation for unavoidable adverse impacts has been successfully completed.

K. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

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

M. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;
2. Excavate in a wetland;
3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or
4. On and after October 1, 2001, conduct the following activities in a wetland:
 - a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
 - b. Filling or dumping;
 - c. Permanent flooding or impounding; or
 - d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

DOCUMENTS INCORPORATED BY REFERENCE

Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, Department of Conservation and Recreation.

VA.R. Doc. No. R00-196; Filed February 6, 2001, 9:06 a.m.

Title of Regulation: 9 VAC 25-680-10 et seq. **Virginia Water Protection General Permit for Linear Transportation Projects.**

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia.

Public Hearing Date: March 29, 2001 - 4 p.m. (Staunton).
April 2, 2001 - 6 p.m. (Richmond).
April 3, 2001 - 6 p.m. (Woodbridge).
April 5, 2001 - 6 p.m. (Chesapeake).

Public comments may be submitted until April 27, 2001. (See Calendar of Events section for additional information)

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Agency Contact: Ellen Gilinsky, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4375 or e-mail egilinsky@deq.state.va.us.

Basis: Section 62.1-44.15 authorizes the board to adopt rules governing the issuance of water quality permits. Section 62.1-44.15:5 authorizes the board to issue a Virginia Water Protection Permit consistent with the provisions of the Clean Water Act and to protect instream beneficial uses and to develop a general permit for activities causing wetland impacts of less than one half acre. The proposed regulation exceeds federal minimum requirements through the reporting of all impacts to wetlands and through the regulation of Tulloch ditching and fill in isolated wetlands, which are currently not federally regulated.

Section 1341 (formerly § 401) of the Clean Water Act (33 USC § 1341) requires state certification of federal permits for discharges into navigable waters.

Purpose: The purpose of this proposed regulation is to establish the procedures and requirements to be followed in connection with the issuance of a VWP general permit by the board pursuant to the State Water Control Law for impacts to wetlands resulting from the construction and operation of linear transportation projects. The proposed regulation is necessary to protect the public health, safety and welfare by providing a streamlined permitting process while maintaining protection of the Commonwealth's wetland resources, which are important for maintaining water quality, flood control and providing fish and wildlife habitat.

Substance: The proposed regulation establishes a VWP general permit with an expected review period of 45 days for permanent impacts less than two acres of surface waters (including wetlands), with a maximum of 500 linear feet of perennial stream and 1,500 linear feet of nonperennial stream for activities associated with the construction or operation of linear transportation projects. The process of applying for a VWP general permit, and the information the applicant needs to supply, has been detailed. The process of avoidance and minimization of impacts, and compensation for unavoidable impacts, has been specified. Each authorization for coverage expires five years from the date of authorization; the permit regulation expires five years from the date of promulgation.

Issues: Advantages of the proposed regulation to the public and the Commonwealth include increased protection of the Commonwealth's aquatic resources while streamlining the permitting process for certain small impacts.

Disadvantages of the proposed regulation to the public include reduced project-specific public comment and increased reporting requirements via an abbreviated registration statement for impacts less than one tenth acre in order to track the goal of no net loss of wetland acreage and function.

Locality Particularly Affected: The regulation is effective statewide; however, as there is a greater prevalence of wetlands in the eastern Piedmont and Coastal Plain compared to the western parts of the state, localities in these areas may feel greater impact from this regulation.

Public Participation: In addition to any other comments the board is soliciting comments on (i) the costs and benefits of the proposal and (ii) the impacts of the regulation on farm or forest lands.

All comments must be received by April 27, 2001. Comments may be submitted by mail, facsimile transmission, e-mail, or by personal appearance at the public hearing(s). Comments are to be submitted to Ellen Gilinsky, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240, e-mail egilinsky@deq.state.va.us or FAX (804) 698-4032. All written comments must include the name, address and phone number of the commenter.

Summary:

The proposed regulations address a new requirement in § 62.1-44.15:5 of the Code of Virginia to develop a general permit for wetland impacts resulting from the activities of transportation projects.

CHAPTER 680.

VIRGINIA WATER PROTECTION GENERAL PERMIT FOR LINEAR TRANSPORTATION PROJECTS.

9 VAC 25-680-10. Definitions.

The words, terms and provisions used in this chapter shall have the meanings defined in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the Virginia Water Protection (VWP) Permit Regulation (9 VAC 25-210-10 et seq.) unless the context clearly indicates otherwise.

"Channelization" means the alteration of a stream channel by widening, deepening, straightening, cleaning or paving certain areas.

"Cross-sectional sketch" means a graph or plot of ground elevation across a waterbody or a portion of it, usually along a line perpendicular to the waterbody or direction of flow.

"Emergent wetland" means a class of wetlands characterized by erect, rooted, herbaceous plants growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content, excluding mosses and lichens. This vegetation is present for most of the growing season in most years and is usually dominated by perennial plants.

"FEMA" means Federal Emergency Management Agency.

"Forested wetland" means a class of wetlands characterized by woody vegetation that is six meters (20 feet) tall or taller. These areas normally possess an overstory of trees, an understory of trees or shrubs, and an herbaceous layer.

"Impacts" means results caused by human-induced activities conducted in surface waters, such as filling, dumping, dredging, excavating, permanent flooding or impounding or any other new activities on or after October 1, 2001, including draining, that significantly alter or degrade existing acreage or functions of the surface waters.

"Linear transportation project" means the construction, expansion, modification or improvement of features such as, but not limited to, roadways, railways, trails, bicycle and

pedestrians paths, and airport runways and taxiways, including all attendant features both temporary and permanent. Nonlinear features commonly associated with transportation projects, such as, but not limited to, vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars are not included in this definition.

"Perennial stream" means a stream that has flowing water year round in a typical year. For the purpose of this regulation, a surface water body (or stream segment) having a drainage area of at least 320 acres (1/2 square mile) is a perennial stream, unless field conditions clearly indicate otherwise.

"Registration statement" means a form of preconstruction application or notification.

"Riprap" means a layer of material such as stone or chunks of concrete on an embankment slope for the purpose of preventing erosion.

"Scrub-shrub wetland" means a class of wetlands dominated by woody vegetation less than six meters (20 feet) tall. The species include tree shrubs, young trees, and trees or shrubs that are small or stunted because of environmental conditions.

"Single and complete project" means the total project proposed or accomplished by one person. For linear projects, the "single and complete project" (i.e., a single and complete crossing) will apply to each crossing of a separate water of the United States (i.e., a single waterbody) and to multiple crossings of the same waterbody at separate and distinct locations. However, individual channels in a braided stream or river, or individual arms of a large, irregularly-shaped wetland, lake, etc. are not separate waterbodies. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases are not built can be considered as separate single and complete projects with independent utility.

"State programmatic general permit" means a type of general permit issued by the Department of the Army and founded on an existing state, local or federal agency program that is designed to avoid duplication with another federal, state or local program provided it has been determined that the environmental consequences of the action are individually and cumulatively minimal.

"Up to one tenth of an acre" means 0.00 to 0.10 acre, rounded to the second decimal place.

"Up to two acres" means 0.00 to 2.00 acres, rounded to the second decimal place.

"Utility line" means any pipe or pipeline for the transportation of any gaseous, liquid, liquifiable or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages and radio and television communication. The term utility line does not include activities which drain a wetland to convert it to an upland,

such as drainage tiles or french drains; however, it does apply to pipes conveying drainage from another area.

9 VAC 25-680-20. Purpose; delegation of authority; effective date of VWP general permit.

A. The purpose of this regulation is to establish General Permit Number WP3 under the VWPP regulation to govern impacts related to the construction and operation of Virginia Department of Transportation or other linear transportation projects. Applications for coverage under this VWP general permit shall be processed for approval, approval with conditions, or denial by the board.

B. The director or an authorized representative may perform any act of the board provided under this chapter except as limited by § 62.1-44.14 of the Code of Virginia.

C. In issuing this VWP general permit, the board has not taken into consideration the structural stability of the proposed structure(s).

D. This VWP general permit regulation will become effective on _____ and will expire five years after the effective date. For any covered activity, this VWP general permit is effective upon compliance with all the provisions of 9 VAC 25-680-30 and the receipt of this VWP general permit.

E. For each individual activity requiring notification, coverage will continue for a maximum of five years from the date of authorization of coverage under this VWP general permit to an individual person or applicant.

9 VAC 25-680-30. Authorization to impact surface waters.

A. Any person governed by this VWP general permit is authorized to impact up to two acres of surface waters (including wetlands), with a maximum of 500 linear feet of perennial stream and 1,500 linear feet of nonperennial stream, for linear transportation projects provided that the applicant submits notification as required in 9 VAC 25-680-50 and 9 VAC 25-680-60, remits the required application processing fee (9 VAC 25-20-10 et seq.), complies with the limitations and other requirements of 9 VAC 25-680-100, receives approval from the board, and provided that:

1. The applicant shall not have been required to obtain a VWP individual permit under the VWP permit regulation (9 VAC 25-210-10 et seq.) for the proposed project impacts. The applicant, at his discretion, may seek a VWP individual permit, or coverage under another VWP permit, in lieu of coverage under this VWP general permit.

2. Impacts, including all attendant features both temporary and permanent, are part of a single and complete project.

a. Activities authorized include the construction, expansion, modification or improvement of linear transportation crossings (e.g., highways, railways, trails, and airport runways and taxiways).

b. Where a road segment (i.e., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of state waters (several

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single and complete projects), the board may at its discretion require an individual VWP.

c. For the purposes of this chapter, when an interchange has multiple crossings of state waters, the entire interchange shall be considered the single and complete project.

3. Impacts from a single and complete project do not exceed two acres of surface waters (including wetlands), with a maximum of 500 linear feet of perennial stream channel and 1,500 linear feet of nonperennial stream channel.

a. The linear feet of stream impact applies to all components of the project, including any structures and stream channel manipulations.

b. Stream channel manipulations (e.g., tie-ins or cleanout) may not exceed 100 linear feet on the upstream or downstream end of a crossing.

4. Dredging does not exceed 5,000 cubic yards. Only mechanical dredging is authorized. Dredged areas shall not exceed the controlling depths for ingress or egress, whichever is less.

5. Compensatory mitigation for unavoidable impacts is provided in the form of any one or combination of the following: creation, restoration, the purchase or use of mitigation bank credits, or a contribution to an approved in-lieu fee fund. Preservation of wetlands or preservation or restoration of upland buffers adjacent to surface waters may be acceptable when utilized in conjunction with creation, restoration or mitigation bank credits.

6. Compensatory mitigation for unavoidable impacts of one-tenth of an acre or greater is provided at the following compensation to loss ratios:

Emergent Wetlands	1:1
Scrub/Shrub Wetlands	1.5:1
Forested Wetlands	2:1
Open water (ponds, lakes, etc.)	1:1 (in-kind or out-of-kind)

7. Compensatory mitigation for unavoidable impacts to streams is provided at a 1:1 replacement to loss ratio via stream relocation, restoration or purchase of mitigation bank credits or contribution to an in-lieu fee fund that includes stream restoration.

B. The board waives the requirement for coverage under a VWP permit for activities that occur in an isolated wetland of minimal ecological value as defined in 9 VAC 25-210-10.

C. Receipt of this VWP general permit does not relieve any permittee of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.

D. Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of Engineers, and for which the board has issued or waived § 401 certification existing as of the effective date of this regulation, shall constitute coverage under this VWP general permit until such

time as a state programmatic general permit is approved for the covered activity or impact.

9 VAC 25-680-40. Prohibitions.

A. This VWP general permit will not apply in the following areas:

1. Wetland areas composed of 10% or more of the following species (singly or in combination) in any stratum: Atlantic white cedar (*Chamaecyparis thyoides*), bald cypress (*Taxodium distichum*), water tupelo (*Nyssa aquatica*), or overcup oak (*Quercus lyrata*). Percentages may be based upon stem counts, basal area, or percent aerial cover.

2. State waters with federal or state listed or proposed threatened or endangered species or proposed or designated critical habitat.

B. This VWP general permit cannot be used in combination with other VWP permits to impact greater than two acres of surface waters (including wetlands), with a maximum of 500 linear feet of perennial stream and 1,500 linear feet of nonperennial stream. The use of more than one VWP General Permit Number WP3 for a single and complete project is prohibited, except when the cumulative impact to surface waters does not exceed the above-mentioned limits.

C. This VWP general permit may not be used to authorize nonlinear features commonly associated with transportation projects, such as, but not limited to, vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

D. The activity to impact surface waters shall not have been prohibited by state law, regulations or policies, nor shall it contravene the Water Quality Standards (9 VAC 25-260-5 et seq.), as amended or adopted by the board.

E. The board shall deny coverage under this VWP general permit to any applicant conducting activities which the board determines cause, may reasonably be expected to cause, or may be contributing to a violation of water quality standards, including discharges or discharge-related activities that are likely to adversely affect aquatic life, or for activities which the board determines that together with other existing or proposed impacts to wetlands will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

F. This VWP general permit does not authorize activities that cause more than minimal changes to the hydraulic flow characteristics, increase flooding, or cause more than minimal degradation of the water quality of any stream.

G. This VWP general permit may not be used for:

1. Any stormwater management facility that is located in perennial streams or in oxygen- or temperature-impaired waters.

2. The construction of an irrigation impoundment on a perennial stream.

3. Any water withdrawal activities.

4. The location of animal feeding operations or waste storage facilities in state waters.
5. Restoration, creation or any fill in perennial streams in association with the establishment of a mitigation bank.
6. The pouring of wet concrete or the use of tremie concrete or grout bags in state waters, unless the concrete or grout bags is contained within a cofferdam(s).
7. Return flow discharges from dredge disposal sites.
8. Overboard disposal of dredge materials.
9. Disposal of dredge materials in wetlands.
10. Dredging in marinas or maintenance dredging of marine terminals.
11. Dredging of shellfish areas, submerged aquatic vegetation beds and other highly productive areas.
12. Federal navigation projects.
13. The taking of threatened or endangered species.

a. Pursuant to § 29.1-564 of the Code of Virginia: "Taking, transportation, sale, etc., of endangered species is prohibited. The taking, transportation, processing, sale or offer for sale within the Commonwealth of any fish or wildlife appearing on any list of threatened or endangered species published by the U.S. Secretary of the Interior pursuant to the provisions of the federal Endangered Species Act of 1973 (P.L. 93-205), or any modifications or amendments thereto, is prohibited except as provided in § 29.1-568."

b. Pursuant to § 29.1-566 of the Code of Virginia and 4 VAC 15-20-130 B and C, the taking, transportation, processing, sale, or offer of sale within the Commonwealth of any state-listed endangered or threatened species is prohibited except as provided in § 29.1-568 of the Code of Virginia.

9 VAC 25-680-50. Notification.

A. Notification to the board will be required prior to construction, as follows:

1. Proposed impacts greater than one-tenth of an acre of wetlands shall be reported by the applicant to DEQ via the entire registration statement as described in 9 VAC 25-680-60.
2. For proposed impacts up to one-tenth of an acre subdivisions B 1 through 9, 11, 17, 19 and 21 of the registration statement (9 VAC 25-660-60) shall be provided.

B. All notifications shall include documentation from the Virginia Department of Game and Inland Fisheries and the Virginia Department of Conservation and Recreation's Division of Natural Heritage indicating that the project will not affect any federal or state proposed or listed threatened and endangered species or proposed or designated critical habitat or heritage resource areas.

C. The DEQ will determine whether the proposed activity requires coordination with the United States Fish and Wildlife Service, the Virginia Department of Conservation and Recreation and the Virginia Department of Game and Inland Fisheries.

9 VAC 25-680-60. Registration statement.

A. Registration statements shall be filed with the board as follows:

1. The applicant shall file a complete registration statement, as described in 9 VAC 25-680-50, for a VWP General Permit Number WP3 for surface water impacts from linear transportation projects which will serve as a notice of intent for coverage under this VWP general permit. The Virginia Department of Transportation may use its monthly Interagency Coordination Meeting (IACM) process for submitting registration statements.

2. Any person proposing an activity under this VWP general permit shall file the required registration statement at least 45 days prior to the date planned for the commencement of the activity to be regulated by the VWP general permit.

3. Any person conducting an activity without a VWP permit, who qualifies for coverage under this VWP general permit, shall file the registration statement immediately upon discovery of the unpermitted activity.

B. The required registration statement shall contain the following information:

1. The applicant's name, mailing address, telephone number and, if applicable, fax number.

2. The authorized agent's (if applicable) name, mailing address, telephone number and, if applicable, fax number.

3. The existing VWP permit number (if applicable).

4. The name of the project, purpose of project, and a description of the activity.

5. The name of water body(ies) or receiving stream, as applicable.

6. The hydrologic unit code (HUC) for the project area.

7. The name of the city or county where the project is located.

8. Latitude and longitude (to the nearest second) from a central location within the project limits.

9. A detailed location map (e.g., a United States Geologic Survey topographic quadrangle map) of the project area. The map should be of sufficient detail such that the site may be easily located for site inspection.

10. The appropriate appendices from the Joint Permit Application.

11. Project plan view. All plan view sketches should include, at a minimum, north arrow, scale, existing structures, existing and proposed contours (if available), limit of jurisdictional areas, direction of flow, ordinary high

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water mark, impact limits, location and dimension of all proposed structures in impact areas. Cross-sectional sketches, with the above information, may be required for certain projects to demonstrate minimization of impacts.

12. Dredge material management plan (for dredging projects only) including plan and cross-section view drawings of the disposal and/or dewatering area, the dimensions and design of the proposed berm and spillway, and the capacity of the proposed disposal and/or dewatering site.

13. Wetland impact information for both temporary and permanent impacts, including a description of the impact, the impact area (in square feet or acres), and the wetland classification based on Cowardin classification system or similar terminology.

14. Functional values assessments for impacts to wetlands greater than one acre. The functional assessment shall consist of a narrative description of the existing wetland functions and values and the impact that the project will have on these functions and values.

15. A description of the measures taken during project design and development both to avoid and minimize impacts to surface waters to the maximum extent practicable as required by 9 VAC 25-210-115 A.

16. A description of the intended compensation for unavoidable impacts.

a. A conceptual compensatory mitigation plan, at a minimum, must be submitted, and shall include the goals and objectives in terms of replacement of wetland or stream acreage and function; a location map, including latitude and longitude (to the nearest second) at the center of the site; a hydrologic analysis, including a draft water budget based on expected monthly inputs and outputs which will project water level elevations for a typical, dry and wet year; groundwater elevation data, if available, or the proposed location of groundwater monitoring wells to collect this data; wetland delineation sheets, maps and a jurisdictional determination from the Corps of Engineers for existing wetland areas on the proposed site(s); a conceptual grading plan; a conceptual planting scheme, including suggested plant species, zonation and acreage of each vegetation type proposed; a proposed soil preparation and amendment plan addressing both topsoil and subsoil conditions; and a draft design of any water control structures.

b. Applicants proposing to mitigate off-site, to purchase mitigation bank credits, or to contribute to an in-lieu fee program shall discuss the feasibility of on-site compensatory mitigation. If on-site compensatory mitigation is practicable, applicants must provide documentation as to why the proposed off-site compensatory mitigation, mitigation banking, or in-lieu fee fund contribution is ecologically preferable. The evaluation should include, but not be limited to, the following assessment criteria: water quality benefits, hydrologic source, hydrologic regime, watershed, wetlands functions and values, vegetation type, soils,

impact acreage, distance from impacts, timing of compensation versus impacts, acquisition, constructability, and cost.

c. Any compensation plan involving stream restoration shall submit a plan that includes goals and objectives in terms of water quality benefits; location map, including the latitude and longitude at the center of the site; the proposed stream segment restoration locations, including plan view and cross-section sketches; the stream deficiencies that need to be addressed; the restoration measures to be employed, including proposed design flows and types of instream structures; and a proposed construction schedule.

d. Any wetland compensation plan proposing to include contributions to in-lieu fee programs shall include proof of the willingness of the entity to accept the donation and the assumptions or documentation of how the amount of the contribution was calculated.

e. Any wetland compensation plan proposing the purchase of wetland banking credits shall include:

(1) The name of the proposed wetland mitigation bank within the same or adjacent hydrologic unit code within the same river watershed with available credits;

(2) The number of credits proposed to be purchased or used; and

(3) Certification from the bank owner of the availability of credits.

f. A final compensatory mitigation plan may be submitted, if available.

(1) The final compensatory mitigation plan shall include: narrative description of the plan including goals and objectives, site location, existing and proposed grade, schedule for compensatory mitigation site construction, source of hydrology and a water budget (nontidal sites only) for typical and driest years, mean tidal range (tidal sites only), proposed mean low water and mean high water elevations (tidal sites only), plant species, planting scheme indicating expected zonation, planting schedule, an abatement and control plan for undesirable plant species, soil amendments, all structures and features considered necessary for the success of the plan, and number and locations of panoramic photographic stations and ground water monitoring wells (or tide gages, for tidal sites). Rooted seedlings or cuttings should originate from a local nursery or be adapted to local conditions. Vegetation should be native species common to the area, should be suitable for growth in local wetland conditions, and should be from areas approximately 200 miles from the project site.

(2) The final compensatory mitigation plan shall include protection of state waters (including compensatory mitigation areas and nonimpact state waters) within the project boundary in perpetuity. These areas shall be surveyed or platted within 120

days of final plan approval, and the survey or plat shall be recorded in accordance with the requirements of this section. Any restrictions, protections, or preservations, or any similar instrument provided as part of the compensatory mitigation plan, shall state that no activity will be performed on the property in any area designated as a compensatory mitigation area or nonimpact state water, with the exception of maintenance or corrective action measures authorized by DEQ. Unless specifically authorized by DEQ through the issuance of an VWP individual permit, modification of this VWP general permit, or waiver thereof, this restriction applies to ditching, land clearing or the discharge of dredge or fill material. Such instrument shall contain the specific phrase "ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property. Proof of recordation shall be submitted within 60 days of survey or plat approval. This requirement is to preserve the integrity of compensatory mitigation areas and to ensure that additional impacts to state waters do not occur.

(3) If the final compensatory mitigation plan is submitted prior to authorization for coverage under this VWP general permit, however, it is not deemed complete until after the authorization, the board shall review the plan and approve, approve with modifications or disapprove within 45 days of the completeness determination.

17. An aerial photo or scale map which clearly shows the property boundaries, location of surface waters including all wetland boundaries, and all surface water impacts at the site. A copy of the Corps of Engineers' delineation confirmation, including wetland data sheets, shall also be provided at the time of application. If written confirmation is not available at the time of application, verbal confirmation must be provided and the written confirmation submitted during the VWP general permit review.

18. A copy of the FEMA flood insurance rate map or FEMA-approved local floodplain map for the project site.

19. Documentation from the Virginia Department of Game and Inland Fisheries and the Virginia Department of Conservation and Recreation's Division of Natural Heritage regarding the presence of any federal or state proposed or listed threatened and endangered species or proposed or designated critical habitat.

20. The appropriate application processing fee for a VWP permit (9 VAC 25-20-10 et seq.).

21. The following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the

system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

C. The registration statement shall be signed in accordance with 9 VAC 25-210-100. If an agent is acting on behalf of an applicant, the applicant shall submit an authorization of the agent that includes the signatures of both the applicant and the agent.

D. Upon receipt of a complete registration statement, coverage under this VWP general permit shall be approved, approved with conditions, or denied within 45 days. If the board fails to act within 45 days, coverage under this VWP general permit shall be deemed approved.

1. In evaluating the registration statement, the board shall make an assessment of the impacts associated with the project in combination with other existing or proposed impacts. Coverage under this VWP general permit shall be denied if the cumulative impacts will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

2. The board may place additional conditions on a project in order to approve the use of this VWP general permit. However, these conditions must be consistent with the VWPP regulation and may not override or conflict with the existing conditions of this VWP general permit related to impacts and compensatory mitigation.

E. Incomplete registration statement. Where a registration statement is considered incomplete, the board may require the submission of additional information after a registration statement has been filed, and may suspend processing of any registration statement until such time as the applicant has supplied missing or deficient information and the board considers the registration statement complete. Further, where the applicant becomes aware that he omitted one or more relevant facts from a registration statement, or submitted incorrect information in a registration statement or in any report to the board, he shall immediately submit such facts or the correct information.

9 VAC 25-680-70. Mitigation.

A. For the purposes of this VWP general permit, the board shall accept any one or combination of the following as compensation for unavoidable impacts: wetland or stream creation or restoration, the purchase or use of mitigation bank credits, or a contribution to an approved in-lieu fee fund. Preservation of wetlands or streams or preservation or restoration of upland buffers adjacent to state waters is acceptable when utilized in conjunction with creation, restoration or mitigation bank credits.

B. Compensatory mitigation for unavoidable wetland impacts shall be provided at the following compensation to impact ratios:

1. Impacts to forested wetlands shall be mitigated at 2:1.

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2. Impacts to scrub shrub wetlands shall be mitigated at 1.5:1.

3. Impacts to emergent wetlands shall be mitigated at 1:1.

4. Impacts to open water (ponds, lakes, etc.) shall be mitigated at 1:1.

C. Credits or units of wetland mitigation shall be calculated according to the following ratios:

1. One acre of wetland creation equals one unit of wetland mitigation.

2. One acre of wetland restoration equals one unit wetland mitigation.

3. Ten acres of wetland preservation equals one unit of wetland mitigation.

4. Twenty acres of upland buffer preservation equals one unit of wetland mitigation.

5. One mitigation bank credit equals one unit of wetland mitigation.

6. The monetary equivalent of one acre of wetland creation or restoration in the form of a payment to a wetland trust fund equals one unit of wetland mitigation.

D. In order for contribution to an in-lieu fee fund to be an acceptable form of compensatory mitigation, the fund must be approved for use by the board according to the provisions of 9 VAC 25-210-115 E.

E. The use of mitigation banks for compensating project impacts shall be deemed appropriate if the bank is operating in accordance with the provisions of § 62.1- 44.15:5 E of the Code of Virginia and 9 VAC 25-210-115, and the applicant provides verification to DEQ of purchase or debiting of the required amount of credits.

F. Unavoidable impacts to streams shall be compensated on a one-to-one basis through the restoration or preservation of similar order streams, when practicable.

9 VAC 25-680-80. Modification.

Authorization under this VWP general permit may be modified provided the total impacts to nontidal surface waters for a single and complete project do not exceed two acres, 500 linear feet of perennial stream, or 1,500 linear feet of nonperennial stream when any of the following developments occur:

1. When additions or alterations have been made to the project which require the application of VWP permit conditions that differ from those of the existing VWP general permit or are absent from it;

2. When new information becomes available about the operation or activity covered by the VWP general permit which was not available at the time of VWP general permit coverage and would have justified the application of different VWP permit conditions at that time;

3. When a change is made in the promulgated standards or regulations on which the VWP general permit was based;

4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the Act; and

5. When changes occur that are subject to "reopener clauses" in the VWP general permit;

9 VAC 25-680-90. Notice of termination.

When all permitted activities requiring notification under 9 VAC 25-680-50 A 1 have been completed, the permittee shall submit a notice of termination within 30 days of final completion. The notice shall contain the following information:

1. Name, mailing address and telephone number of the applicant;

2. Name and location of the activity;

3. The VWP permit authorization number; and

4. The following certification:

"I certify under penalty of law that all activities authorized by a VWP general permit have been completed. I understand that by submitting this notice of termination, that I am no longer authorized to perform activities in wetlands in accordance with the VWP general permit, and that performing activities in wetlands is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit."

9 VAC 25-680-100. VWP general permit.

Any applicant whose registration statement is accepted by the board will receive the following VWP general permit and shall comply with the requirements in it and be subject to all requirements of the VWP permit regulation, 9 VAC 25-210-10 et seq.:

VWP General Permit No. WP3

Effective date:

Expiration date:

VWP GENERAL PERMIT FOR LINEAR TRANSPORTATION
PROJECTS
UNDER THE VIRGINIA
WATER PROTECTION PERMIT AND THE
VIRGINIA STATE WATER CONTROL LAW

Based upon an examination of the information submitted by the applicant and in compliance with § 401 of the Clean Water Act as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that the activity authorized by this general permit, if conducted

in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment of state waters or fish and wildlife resources.

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, citizens of the Commonwealth of Virginia are authorized to impact up to two acres of surface waters (including wetlands), with a maximum of 500 linear feet of perennial stream and 1,500 linear feet of nonperennial stream channels within the boundaries of the Commonwealth of Virginia, except in those areas specifically named or excluded in board regulations or policies which prohibit such impacts.

Permittee:

Address:

Activity Location:

Activity Description:

The authorized activity shall be in accordance with this cover page, Part I - Special Conditions, Part II - Mitigation, Monitoring and Reporting, and Part III - Conditions Applicable to All VWP Permits, as set forth herein.

Director, Department of Environmental Quality

Date

Part I. Special Conditions.

A. Authorized activities.

1. Any additional impacts to surface waters associated with this project may require modification of this VWP general permit and additional compensatory mitigation.
2. The activities authorized by this VWP general permit must commence and be completed within five years of the date of this authorization.

B. Reapplication. Application for continuation of coverage under this VWP general permit or a new VWP permit may be necessary if any portion of the authorized activities or any VWP permit requirement (including compensatory mitigation) has not been completed within five years of the date of authorization. Application consists of an updated or new registration statement. Notwithstanding any other provision, a request for a reissuance of certification of coverage under a VWP general permit in order to complete monitoring requirements shall not be considered an application for coverage and shall not require an application processing fee.

C. Overall project conditions.

1. The construction or work authorized by this VWP general permit shall be executed in a manner so as to minimize any adverse impact on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.
2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body. No activity may cause more than minimal adverse effect on navigation.

Furthermore the activity must not impede the passage of normal or expected high flows and the structure or discharge must withstand expected high flows.

3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters.

4. No fill in surface waters may consist of unsuitable materials (e.g., trash, debris, car bodies, asphalt). All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all Department of Environmental Quality (DEQ) regulations.

5. Erosion and sedimentation controls shall be designed in accordance with the Virginia Department of Conservation and Recreation (DCR) Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area stabilizes.

6. Any exposed slopes and streambanks must be stabilized immediately upon completion of the project at each water body. All denuded areas shall be properly stabilized in accordance with the current DCR Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with this project shall be accomplished in such a manner that minimizes construction and/or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

8. No machinery may enter flowing waters, unless authorized by this VWP general permit.

9. Heavy equipment in temporarily-impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable measures, to minimize soil disturbance to the maximum extent practicable.

10. All nonimpacted wetlands within the project or right-of-way limits that are within 50 feet of any clearing, grading, and/or filling activities shall be clearly flagged or marked for the life of the construction activity within that area. The permittee shall notify all contractors that these marked areas are wetlands where no excavation or filling is to occur.

11. Temporary disturbances to wetlands during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to pre-construction conditions and planted or seeded with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested). The permittee shall ensure that all temporarily disturbed wetland areas revegetate with wetland vegetation by the second year post-disturbance. All temporary fills shall be removed in their entirety and the affected area returned to the pre-existing contours.

12. All materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in

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wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to original contours, stabilized within 30 days following removal of the stockpile, and restored to the original vegetated state.

13. Flow downstream of the project area shall be maintained to protect all uses.

14. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures approved by DEQ.

15. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.

16. Immediately downstream of the construction area, Water Quality Standards (9 VAC 25-260-5 et seq.) shall not be violated as a result of the construction activities.

D. Road crossings.

1. Access roads must be constructed so that the length of the road minimizes the adverse effects on surface waters to the maximum extent practicable and is as near as possible to preconstruction contours and elevations. Access roads constructed above preconstruction contours and elevations in surface waters must be properly bridged or culverted to maintain surface flows.

2. At crossings of perennial streams, pipes and culverts shall be countersunk a minimum of six inches to provide for the reestablishment of a natural stream bottom and a low flow channel.

3. Installation of pipes and road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, or other means acceptable to DEQ.

4. All surface waters temporarily affected by the construction of a road crossing shall be restored to their original elevations immediately following the construction of that particular crossing.

5. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless authorized by this VWP general permit, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The new stream channel shall be constructed following the typical sections submitted with the application. A low flow channel shall be constructed within the channelized or relocated area. The centerline of the low flow channel shall meander, to the extent possible, to mimic natural stream morphology. The rerouted stream flow must be fully established before construction activities in the old streambed can begin.

E. Utility lines.

1. All utility line work in surface waters shall be performed in such a manner as to minimize disturbance, and the area must be returned to its original contours and stabilized, unless authorized by this VWP general permit.

2. Material resulting from trench excavation may be temporarily sidecast (up to three months) into wetlands, provided the material is not placed in a manner such that it is dispersed by currents or other forces. DEQ may extend the period of temporary sidecasting not to exceed a total of 180 days, where appropriate.

3. The trench for a utility line cannot be constructed in such a manner as to drain wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect).

4. Untreated stormwater runoff shall be prohibited from directly discharging into any state waters. Appropriate best management practices shall be deemed suitable treatment prior to discharge into state waters.

F. Shoreline stabilization.

1. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

2. All materials removed from the stream substrate shall be disposed of in an approved upland area.

3. Riprap bank stabilization shall be of an appropriate size and design in accordance with the most recent edition of the DCR's Erosion and Sediment Control Handbook.

4. Riprap apron for all outfalls shall be designed in accordance with the most recent edition of the DCR's Erosion and Sediment Control Handbook.

5. For shoreline protection activities, the structure and backfill shall be placed as close to the shoreline as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

6. All shoreline erosion structures shall be located so as to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

7. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

G. Dredging.

1. Barges used for the transportation of dredge material shall be filled in such a manner to prevent any overflow of dredged materials.

2. Double handling of dredged material in state waters shall not be permitted. Utilization of the Craney Island Rehandling Basin is not considered double handling.

3. Over-dredging to reduce the frequency of maintenance dredging should not exceed one foot deeper than adjacent natural water bodies and only as wide as necessary to avoid creating circulation and flushing problems.

4. A minimum of 15 feet shall be maintained between the top of the dredge cut and the toe of the bank. This landward limit of encroachment shall be flagged and inspected prior to construction.

5. A buffer of four times the depth of the dredge cut shall be maintained between the top of the dredge cut and the channelward limit of wetlands or mean low water.

6. Pipeline outfalls and spillways shall be located at opposite ends of the dewatering area to allow for maximum retention and settling time. Filter fabric shall be used to line the dewatering area and to cover the outfall pipe to further reduce sedimentation to state waters.

7. Side slope cuts of the dredging area shall not exceed a two horizontal to one vertical slope to prevent slumping of material into the dredged area.

Part II. Mitigation, Monitoring and Reporting.

A. Wetland mitigation: In order to qualify for this VWP general permit, appropriate and practicable compensatory mitigation will be required for all wetland impacts meeting the conditions outlined in this VWP general permit. The types of compensatory mitigation options that may be considered under this VWP general permit include wetland or stream creation or restoration, the purchase or use of mitigation bank credits, or a contribution to an approved in-lieu fee fund. Preservation of wetlands or streams or preservation or restoration of upland buffers adjacent to state waters is acceptable when utilized in conjunction with creation, restoration or mitigation bank credits.

1. The site(s) depicted in the conceptual compensatory mitigation package submitted with the registration statement, shall constitute the compensatory mitigation package for the approved project, unless otherwise authorized by a VWP general permit modification.

2. For compensation involving the purchase or use of mitigation bank credits, the permittee shall submit documentation within 60 days of VWP general permit authorization that the Corps of Engineers has debited the required mitigation credits from the Mitigation Bank ledger. For projects proposing a contribution to an in-lieu fee program, the permittee shall submit documentation within 60 days of VWP general permit authorization that the fund contribution has been received.

3. All aspects of the compensatory mitigation plan shall be finalized, submitted and approved by DEQ prior to any construction activity in permitted impact areas. DEQ shall review and provide written comments on the plan within 30 days of receipt or it shall be deemed approved. The final compensatory mitigation plan as approved by DEQ shall become an official component of this VWP general permit.

a. The final compensatory mitigation plan shall include: Narrative description of the plan including goals and objectives, site location, existing and proposed grade, schedule for compensatory mitigation site construction, source of hydrology and a water budget (nontidal sites only) for typical and driest years, mean tidal range

(tidal sites only), proposed mean low water and mean high water elevations (tidal sites only), plant species, planting scheme indicating expected zonation, planting schedule, an abatement and control plan for undesirable plant species, soil amendments, all structures and features considered necessary for the success of the plan, and number and locations of panoramic photographic stations and ground water monitoring wells (or tide gages, for tidal sites). Rooted seedlings or cuttings should originate from a local nursery or be adapted to local conditions. Vegetation should be native species common to the area, should be suitable for growth in local wetland conditions, and should be from areas approximately 200 miles from the project site.

b. The final compensatory mitigation plan shall include protection of state waters (including compensatory mitigation areas and nonimpact state waters) within the project boundary in perpetuity. These areas shall be surveyed or platted within 120 days of final plan approval, and the survey or plat shall be recorded in accordance with the requirements of this section. The restrictions, protections, or preservations, or similar instrument, shall state that no activity will be performed on the property in any area designated as a compensatory mitigation area or nonimpact state water, with the exception of maintenance or corrective action measures authorized by DEQ. Unless specifically authorized by DEQ through the issuance of a VWP individual permit, modification of this VWP general permit, or waiver thereof, this restriction applies to ditching, land clearing or the discharge of dredge or fill material. Such instrument shall contain the specific phrase "ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property. Proof of recordation shall be submitted within 60 days of survey or plat approval. This requirement is to preserve the integrity of compensatory mitigation areas and to ensure that additional impacts to State waters do not occur.

4. Post-grading elevations for the compensatory mitigation site(s) shall be sufficient to ensure that wetland hydrology will be achieved on the site to support the goals and objectives of the compensatory mitigation plan. As a general rule, elevations shall be within 0.2 feet of the elevations proposed in the final compensatory mitigation plan. The final as-built grading plan shall be approved by DEQ prior to any planting and placement of ground water monitoring wells.

5. All work in jurisdictional areas shall cease if compensatory mitigation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by DEQ.

6. The wetland creation portions of the site(s) shall be excavated 6-12 inches below final grade. Topdressing soil shall then be spread to bring the compensatory

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mitigation site to final grade. A wetland vegetation seed mix shall be applied within seven days of final grading for site stabilization.

7. For compensatory mitigation sites involving restoration, a wetland vegetation seed mix shall be applied for site stabilization within seven days of final grading or soil disturbance.

8. Planting of woody plants shall occur outside the growing season, when the soil is not frozen, between November 1 and March 31.

9. Point sources of stormwater runoff shall be prohibited from entering any wetland compensatory mitigation site prior to treatment by appropriate best management practices. Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, and forebays.

10. The success of the compensatory mitigation shall be based on establishing and maintaining a viable wetland with suitable wetland hydrology, hydric soils or soils under hydric conditions, and hydrophytic plant communities.

11. Wetland hydrology shall be considered established if depths to the seasonal high water table, in a typical rainfall year, are equal to or less than one foot for at least 12.5% of the growing season for all monitoring years.

12. The wetland plant community shall be considered established if:

a. Greater than 50% of the woody plants, expressed either by plant stems or canopy coverage, shall be facultative (FAC) or wetter (FACW or OBL). A minimum plant stem count of 400/acre must be achieved in sample plots until canopy coverage is 30% or greater. Of these 400 stems, a minimum of 300 shall be from the targeted species of the compensatory mitigation plan. A minimum of 65% of the planted trees and shrubs must be viable and show signs of growth for the life of the VWP general permit.

b. Greater than 50% of all herbaceous plants shall be FAC or wetter. Aerial coverage shall be a minimum of 60% after one full growing season and 80% after three growing seasons and remaining at or above 80% for the life of the VWP general permit. Scrub/shrub or sapling/forest vegetation is not included in coverage or stem count for herbaceous vegetation.

c. Species composition reflects the desired plant community types stated in the wetland compensatory mitigation plan by the end of the first growing season and is maintained through the last year of the VWP general permit.

d. Noxious weeds are identified and controlled as described in the noxious weed control plan, such that they are not dominant species or do not change the desired community structure. The control plan shall include procedures to notify the VWPP staff of any

invasive species occurrences, methods of removal, and successful control.

e. Deviations from this plan must be approved in advance by DEQ.

13. If the compensatory mitigation area fails to be established as viable wetlands, the reasons for this failure shall be determined and a corrective action plan, schedule, and monitoring plan shall be submitted to DEQ for approval prior to or with the next required monitoring report. Replacement of dead plant stock in the wetland compensatory mitigation site shall occur, as necessary, to achieve a minimum of 400 stems/acre for the tree species (until canopy coverage is 30% or greater) and 65% of the original stocking density for the planted herb, shrub and tree species. Of these 400 stems, a minimum of 300 shall be from the targeted species of the compensatory mitigation plan. All problems shall be corrected by the permittee. Should significant changes be necessary to establish wetlands, the monitoring plan shall begin again, with year one being the year changes are complete.

14. The wetland boundary for the compensatory mitigation site shall be based on the results of the hydrology, soils, and vegetation monitoring data and shall be shown on the site plan. Calculation of total wetland acreage shall be based on that boundary.

15. Herbicides or algicides shall not be used in or immediately adjacent to the compensatory mitigation site(s) without prior authorization by DEQ. All vegetation removal shall be done by mechanical means only, unless authorized by DEQ.

16. This VWP general permit authorization may need to be renewed (or extended) to assure that the compensatory mitigation work has been successful. The request for renewal/extension must be made no less than 60 days prior to the expiration date of this VWP general permit authorization, at which time DEQ will determine if renewal of the VWP general permit authorization is necessary.

B. Compensatory mitigation site monitoring.

1. A post-grading survey, including spot elevations, of the site(s) for wetland compensatory mitigation shall be conducted by a licensed land surveyor or a professional engineer and submitted to DEQ for approval prior to placing the permanent groundwater monitoring wells and planting of the vegetation. Grading elevation plans shall be on a scale of 1" equals 50' (or 1:500 metric) with contour intervals of one (or two) feet accompanied by cross section views. The final as-built grading plan shall be submitted to DEQ for approval prior to any planting and placement of ground water monitoring wells.

2. Panoramic photographs shall be taken at the compensatory mitigation site(s) from each of the monitoring well stations. These photographs shall be taken after the initial planting and in August or September every year for the life of the VWP general permit. Permanent markers shall be established to ensure that

the same locations and view directions at the sites are monitored in each monitoring period.

3. Compensatory mitigation site monitoring for hydrology, soils, and hydrophytic vegetation shall begin at the first complete growing season (year 1) following compensatory mitigation site construction. Monitoring shall be required for years 1, 2, 3, 5, 7 and 10, with years 7 and 10 only required if the site success criteria were not achieved during the previous monitoring event.

4. The establishment of wetland hydrology shall be measured weekly during the growing season. The number of monitoring wells for each site will be determined by DEQ on a site-specific basis. The location of the wells must be approved by DEQ prior to placement. Adequate hydrology shall be within 12 inches of the surface for 12.5% of the growing season. Monitoring shall include approximate acreage and average depth of any ponded water on the wetland compensatory mitigation site(s). Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, weekly monitoring may be discontinued for the remainder of that monitoring year.

5. The presence of hydric soils or soils under hydric conditions shall be evaluated by digging soil pits at each monitoring station and evaluating the soil profile for hydric soil indicators using a documented method acceptable to DEQ.

6. The establishment of wetland vegetation shall be indicated by percent cover, percent survival, stem counts and species composition monitored in August or September during each reportable growing season in the life of the VWP general permit. At each monitoring station, the following information shall be collected:

a. Percent cover for all herbaceous species shall be estimated using a documented method accepted by DEQ. The approximate species composition of the herbaceous vegetation shall be indicated, including non-dominants. The number of stems per acre for woody species shall be provided. A quantitative measure for noxious species present shall also be provided.

b. Percent survival of planted woody species, if applicable, shall be estimated using a documented method accepted by DEQ. The number of stems of all tree species within each sample plot and the density of all tree species (number of stems per acre) shall be provided.

c. The presence of noxious species shall be documented.

C. Stream restoration monitoring.

1. Representative photographs shall be taken along the stream segment(s). These photographs shall be taken prior to restoration, after restoration work is complete, and in August or September for three years after completion. Permanent markers shall be established to ensure that the same locations and view directions at the sites are monitored in each monitoring period.

2. Monitoring for stream restoration success shall begin at the first complete growing season (year 1) following site restoration. Monitoring shall be required for years 1, 2, and 3. Monitoring shall consist of an evaluation of the stability and success of any instream structures, vegetative monitoring of any established riparian buffers, and a pre- and post-construction assessment of the benthic community of the stream.

D. Construction monitoring.

1. Photo stations shall be established to document the various construction aspects of the project within jurisdictional areas. These stations shall be established to document the existing and post-construction conditions of the project site. These stations shall be photographed prior to construction, during construction, and within one week after the completion of construction. Photos shall be taken during construction at the end of the first, second and twelfth months of construction, and then annually for the remainder of the construction project.

2. The permittee shall make provisions to monitor for any spills of petroleum products or other materials during the construction process. These provisions shall be sufficient to detect and contain the spill and notify the appropriate authorities.

3. Stream bottom elevations at road crossings shall be measured and recorded prior to construction and within one week after the completion of construction. This requirement shall only apply to those streams not designated as intermittent or those streams not designated in association with stream channelization.

4. Monitoring of water quality parameters shall be conducted during rerouting of the live streams through the new channels in the following manner:

a. A sampling station shall be located upstream and immediately downstream of the relocated channel.

b. Temperature, pH and dissolved oxygen (D.O) measurements shall be taken once every half hour for at least three readings at each station prior to opening the new channels.

c. After opening the new channel, temperature, pH and D.O. readings shall be taken once every half hour for at least three readings at each station within 24 hours of opening the new channel.

E. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate Department of Environmental Quality office. The VWP general permit authorization number shall be included on all correspondence.

2. DEQ shall be notified in writing by certified letter at least 10 days prior to the start of construction activities authorized by this VWP general permit. The notification shall include identification of the impact area at which work will occur and a projected schedule for completing work at each permitted impact area.

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3. After construction begins, construction monitoring reports shall be submitted to DEQ within 30 days of each monitoring event as required in condition D 1 of Part II of this VWP general permit. The reports shall include, at a minimum, the following:

a. A written statement regarding when work started in the identified impact area, where work was performed, what work was performed, and what work was completed.

b. Properly labeled photographs (to include date and time, name of the person taking the photograph, and VWP permit number) showing representative construction activities (including, but not limited to, flagging nonimpact wetland areas, site grading and excavation, installation and maintenance of erosion and sediment controls, culvert installation, bridge and ramp construction, dredging, dredge disposal, etc.). Photographs are not necessary during periods of no activity within jurisdictional areas.

4. The permittee shall notify DEQ in writing when unusual or potentially complex conditions are encountered which require debris removal or involve potentially toxic substance. Measures to remove the obstruction, material, or toxic substance or to change the location of any structure are prohibited until approved by DEQ.

5. The permittee shall report any fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, DEQ shall be notified at (Insert appropriate DEQ office phone number); otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

6. Violations of state water quality standards shall be reported within 24 hours to the appropriate DEQ office.

7. The final plans of compensatory mitigation shall be submitted to and approved by DEQ prior to any construction in permitted impact areas.

8. An official copy of the instrument of restriction, protection, or preservation of wetlands and state waters provided as part of the compensatory mitigation plan shall be submitted to the DEQ within 60 days of recordation as outlined in the mitigation portion of this VWP general permit.

9. The mitigation bank account ledgers shall be submitted denoting the purchase of the required credits from the proposed bank(s).

10. All compensatory mitigation monitoring reports required by the special conditions in subsection B above shall be submitted annually by November 30 with the exception of the final report in the life of the VWP general permit which shall be submitted by November 30 of that monitoring year or 180 days prior to VWP general permit expiration, whichever occurs sooner. Alterations and maintenance conducted on the compensatory mitigation sites shall be reported. Invasive species occurrences and control of these occurrences shall also be reported to DEQ.

11. All submittals required by this VWP general permit shall contain the following signed certification statement:

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

Part III. Conditions Applicable to All VWP Permits.

A. Duty to comply. The permittee shall comply with all conditions of the VWP permit. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations and toxic standards and prohibitions. Any VWP permit noncompliance is a violation of the Clean Water Act and State Water Control Law, and is grounds for enforcement action, VWP permit termination, revocation, modification, or denial of a VWP permit renewal application.

B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any impacts in violation of the VWP general permit that may have a reasonable likelihood of adversely affecting human health or the environment.

C. Reopener. This VWP general permit may be reopened to modify the conditions of the VWP general permit when the circumstances on which the previous VWP general permit was based have materially and substantially changed, or special studies conducted by the department or the permittee show material and substantial change since the time the VWP general permit was issued and thereby constitute cause for VWP general permit modification or revocation and reissuance.

D. Compliance with state and federal law. Compliance with this VWP general permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

E. Property rights. The issuance of this VWP general permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal property rights, nor any infringement of federal, state or local laws or regulations.

F. Severability. The provisions of this VWP general permit are severable.

G. Right of entry. The applicant and/or permittee shall allow authorized state and federal representatives, upon the

presentation of credentials, at reasonable times and under reasonable circumstances:

1. To enter the permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP general permit conditions;
2. To inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP general permit;
3. To sample or monitor any substance, parameter or activity for the purpose of assuring compliance with the conditions of the VWP general permit or as otherwise authorized by law.

For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP permits. This VWP general permit may be transferred to another person by a permittee if:

1. The current permittee notifies the board within 30 days of the transfer of the title to the facility or property;
2. The notice to the board includes a written agreement between the existing and proposed permittee containing a specific date of transfer of VWP general permit responsibility, coverage and liability between them, or that the seller will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of any enforcement activities related to the permitted activity; and
3. The board does not notify the existing and proposed permittee of the board's intent to modify or revoke and reissue the VWP general permit within the 30-day time period.

On the date of the VWP general permit transfer, the transferred VWP general permit shall be as fully effective as if it had been issued directly to the new permittee.

I. VWP permit modification. The permittee shall notify DEQ of any modification of this activity and shall demonstrate in a written statement that said modification will not violate any conditions of this VWP general permit. If such demonstration cannot be made, the permittee shall apply for a modification of this VWP general permit. This VWP general permit may be modified when any of the following developments occur:

1. When additions or alterations have been made to the affected facility or activity which require the application of VWP general permit conditions that differ from those of the existing VWP general permit or are absent from it, provided the total project impacts for a single and complete project do not exceed two acres, including 500 linear feet of perennial stream or 1,500 linear feet of nonperennial stream and are fully mitigated;
2. When new information becomes available about the operation or activity covered by the VWP general permit which was not available at VWP general permit issuance and would have justified the application of different VWP

general permit conditions at the time of VWP general permit issuance;

3. When a change is made in the promulgated standards or regulations on which the VWP general permit was based;

4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the CWA; and

5. When changes occur which are subject to "reopener clauses" in the VWP general permit;

J. VWP permit termination. This VWP general permit, after public notice and opportunity for a hearing, is subject to termination. Causes for termination are as follows:

1. Noncompliance by the permittee with any condition of the VWP general permit;
2. The permittee's failure in the application or during the VWP general permit issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;
3. The permittee's violation of a special or judicial order;
4. A determination by the board that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by VWP general permit modification or termination; or
5. A determination that the permitted activity has ceased and that the compensatory mitigation for unavoidable adverse impacts has been successfully completed.

K. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve the applicant from civil and criminal penalties for noncompliance.

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

M. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;
2. Excavate in a wetland;
3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or

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4. On and after October 1, 2001, conduct the following activities in a wetland:

- a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
- b. Filling or dumping;
- c. Permanent flooding or impounding; or
- d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

DOCUMENTS INCORPORATED BY REFERENCE

Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, Department of Conservation and Recreation.

VA.R. Doc. No. R00-197; Filed February 6, 2001, 9:04 a.m.

* * * * *

Title of Regulation: 9 VAC 25-690-10 et seq. **Virginia Water Protection General Permit for Impacts from Development Activities.**

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia.

Public Hearing Date: March 29, 2001 - 4 p.m. (Staunton).
April 2, 2001 - 6 p.m. (Richmond).
April 3, 2001 - 6 p.m. (Woodbridge).
April 5, 2001 - 6 p.m. (Chesapeake).

Public comments may be submitted until April 27, 2001.
(See Calendar of Events section for additional information)

Agency Contact: Ellen Gilinsky, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4375 or e-mail egilinsky@deq.state.va.us.

Basis: Section 62.1-44.15 authorizes the board to adopt rules governing the issuance of water quality permits. Section 62.1-44.15:5 authorizes the board to issue a Virginia Water Protection Permit consistent with the provisions of the Clean Water Act and to protect instream beneficial uses and to develop a general permit for wetland impacts resulting from the activities of development projects. The proposed regulation exceeds federal minimum requirements through the reporting of all impacts to wetlands and through the regulation of Tulloch ditching and fill in isolated wetlands, which are currently not federally regulated.

Section 1341 (formerly § 401) of the Clean Water Act (33 USC § 1341) requires state certification of federal permits for discharges into navigable waters.

Purpose: The purpose of this proposed regulation is to establish the procedures and requirements to be followed in connection with the issuance of a VWP general permit by the board pursuant to the State Water Control Law for impacts to wetlands resulting from the construction and operation of development activities. The proposed regulation is necessary to protect the public health, safety and welfare by providing a streamlined permitting process while maintaining protection of the Commonwealth's wetland and stream resources, which

are important for maintaining water quality, flood control and providing fish and wildlife habitat.

Substance: The proposed regulation establishes a VWP general permit with an expected review period of 45 days for permanent impacts less than two acres of surface waters (including wetlands), with a maximum of 500 linear feet of perennial stream and 1,500 linear feet of nonperennial stream for activities associated with the construction or operation of development projects. The process of applying for a VWP general permit, and the information the applicant needs to supply, has been detailed. The process of avoidance and minimization of impacts, and compensation for unavoidable impacts, has been specified. Each authorization for coverage expires five years from the date of authorization; the permit regulation expires five years from the date of promulgation.

Issues: Advantages of the proposed regulation to the public and the Commonwealth include increased protection of the Commonwealth's aquatic resources while streamlining the permitting process for certain small impacts.

Disadvantages of the proposed regulation to the public include reduced project-specific public comment and increased reporting requirements via an abbreviated registration statement for impacts less than one tenth acre in order to track the goal of no net loss of wetland acreage and function.

Locality Particularly Affected: The regulation is effective statewide; however as there is a greater prevalence of wetlands in the eastern Piedmont and Coastal Plain compared to the western parts of the state, localities in these areas may feel greater impact from this regulation.

Public Participation: In addition to any other comments the board is soliciting comments on (i) the costs and benefits of the proposal and (ii) the impacts of the regulation on farm or forest lands.

All comments must be received by April 27, 2001. Comments may be submitted by mail, facsimile transmission, e-mail, or by personal appearance at the public hearing(s). Comments are to be submitted to Ellen Gilinsky, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240, e-mail egilinsky@deq.state.va.us or FAX (804) 698-4032. All written comments must include the name, address and phone number of the commenter.

Summary:

The proposed regulations address a new requirement in § 62.1-44.15:5 of the Code of Virginia to develop a general permit for wetland impacts resulting from the activities of development projects.

CHAPTER 690. VIRGINIA WATER PROTECTION GENERAL PERMIT FOR IMPACTS FROM DEVELOPMENT ACTIVITIES.

9 VAC 25-690-10. Definitions.

The words, terms, and provisions used in this chapter shall have the meanings defined in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the Virginia Water Protection (VWP) Permit Regulation (9 VAC 25-210-10

et seq.) unless the context clearly indicates otherwise or unless indicated below.

"Bioengineering method" means a biological measure incorporated into a facility design to benefit water quality and minimize adverse effects to aquatic resources, to the maximum extent practicable, for long-term aquatic resource protection and improvement.

"Channelization" means the alteration of a stream channel by widening, deepening, straightening, cleaning or paving certain areas.

"Cross-sectional sketch" means a graph or plot of ground elevation across a waterbody or a portion of it, usually along a line perpendicular to the waterbody or direction of flow.

"Emergent wetland" means a class of wetlands characterized by erect, rooted, herbaceous plants growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content, excluding mosses and lichens. This vegetation is present for most of the growing season in most years and is usually dominated by perennial plants.

"Farm tract" means, as identified by the Farm Service Agency, a unit of contiguous land under one ownership which is operated as a farm or part of a farm.

"FEMA" means Federal Emergency Management Agency.

"Forebay" means a deeper area at the upstream end of a stormwater management facility that would be maintained through excavation.

"Forested wetland" means a class of wetlands characterized by woody vegetation that is six meters (20 feet) tall or taller. These areas typically possess an overstory of trees, an understory of trees or shrubs, and an herbaceous layer.

"Histosols" means organic soils that are often called mucks, peats, or mucky peats. The list of histosols in the Commonwealth includes, but is not limited to, the following soil series: Back Bay, Belhaven, Dorovan, Lanexa, Mattamuskeet, Mattan, Palms, Pamlico, Pungo, Pocaty, and Rappahannock. Histosols are identified in the Hydric soils list generated by USDA Natural Resources Conservation Service.

"Impacts" means results caused by human-induced activities conducted in surface waters, such as filling, dumping, dredging, excavating, permanent flooding or impounding or any other new activities on or after October 1, 2001, including draining, that significantly alter or degrade existing acreage or functions of the surface waters.

"NRCS" means Natural Resources Conservation Service.

"Perennial stream" means a stream that has flowing water year round in a typical year. For the purpose of this chapter, a surface water body (or stream segment) having a drainage area of at least 320 acres (1/2 square mile) is a perennial stream, unless field conditions clearly indicate otherwise.

"Real estate subdivision" means a tract of land divided into smaller parcels for the purpose of selling, conveying,

transferring, leasing, or developing said parcels. The tract of land includes the entire area of a residential, commercial, or other real estate subdivision, including all parcels and parts thereof.

"Recreational facility" means an activity that is integrated into the natural landscape and does not substantially change preconstruction grades or deviate from natural landscape contours.

"Registration statement" means a form of preconstruction application or notification.

"Riprap" means a layer of material such as stone or chunks of concrete on an embankment slope for the purpose of preventing erosion.

"Scrub-shrub wetland" means a class of wetlands dominated by woody vegetation less than six meters (20 feet) tall. The species include true shrubs, young trees, and trees or shrubs that are small or stunted because of environmental conditions.

"Shoreline protection" means activities employed to stabilize channel banks and combat existing erosion problems. Such measures may include the construction of riprap revetments, sills, rock vanes, beach nourishment, breakwaters, bulkheads, groins, spurs, levees, marsh toe stabilization, anti-scouring devices, and submerged sills.

"Single and complete project" means the total project proposed or accomplished by one person. For linear projects, the "single and complete project" (i.e., a single and complete crossing) will apply to each crossing of a separate water of the United States (i.e., a single waterbody) and to multiple crossings of the same waterbody at separate and distinct locations. However, individual channels in a braided stream or river, or individual arms of a large, irregularly-shaped wetland, lake, etc., are not separate waterbodies. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases are not built can be considered as separate single and complete projects with independent utility.

"State programmatic general permit" means a type of general permit issued by the Department of the Army and founded on an existing state, local or federal agency program that is designed to avoid duplication with another federal, state or local program provided it has been determined that the environmental consequences of the action are individually and cumulatively minimal.

"Up to one-tenth of an acre" means 0.00 to 0.10 acre, rounded to the second decimal place.

"Up to two acres" means 0.00 to 2.00 acres, rounded to the second decimal place.

"Utility line" means any pipe or pipeline for the transportation of any gaseous, liquid, liquifiable or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages and radio and television

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communication. The term utility line does not include activities which drain a wetland to convert it to an upland, such as drainage tiles or french drains; however, it does apply to pipes conveying drainage from another area.

9 VAC 25-690-20. Purpose; delegation of authority; effective date of VWP general permit.

A. The purpose of this chapter is to establish VWP General Permit Number WP4 under the VWPP regulation to govern impacts related to the construction and operation of development activities. Applications for coverage under this VWP general permit shall be processed for approval, approval with conditions, or denial by the board.

B. The director or an authorized representative may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

C. In issuing this VWP general permit, the board has not taken into consideration the structural stability of the proposed structure.

D. This VWP general permit regulation will become effective on _____ and will expire five years after the effective date. For any covered activity, this VWP general permit is effective upon compliance with all the provisions of 9 VAC 25-690-30 and the receipt of this VWP general permit.

E. For each individual activity requiring notification, coverage will continue for a maximum of five years from the date of authorization of coverage under this VWP general permit to an individual person or applicant.

9 VAC 25-690-30. Authorization to impact surface waters.

A. Any person governed by this VWP general permit is authorized to impact up to two acres of surface waters, including 500 linear feet of perennial stream channel and 1,500 linear feet of nonperennial stream channel for general development activities, provided that the applicant submits notification as required in 9 VAC 25-690-50 and 9 VAC 25-690-60, remits the required application processing fee (9 VAC 25-20-10 et seq.), complies with the limitations and other requirements of 9 VAC 25-690-100, receives approval from the board, and provided that:

1. The applicant shall not have been required to obtain a VWP individual permit under the VWP permit regulation (9 VAC 25-210-10 et seq.) for the proposed project impacts. The applicant, at his discretion, may seek a VWP individual permit, or coverage under another VWP general permit, in lieu of coverage under this VWP general permit.

2. Impacts, including all attendant features both temporary and permanent, are part of a single and complete project.

a. Activities authorized include residential, commercial, institutional, agricultural, recreational, and stormwater management facilities as described in 9 VAC 25-690-50.

b. Where a road segment (i.e., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of surface waters

(several single and complete projects), the board may, at its discretion, require an individual VWPP.

c. For the purposes of this chapter, when an interchange has multiple crossings of surface waters, the entire interchange shall be considered the single and complete project.

3. Impacts from a single and complete project do not exceed two acres of surface waters, 500 linear feet of perennial stream, or 1,500 linear feet of nonperennial stream.

a. The stream impact criterion applies to all components of the project, including any structures and stream channel manipulations.

b. Stream channel manipulations (e.g., tie-ins or cleanout) may not exceed 100 linear feet on the upstream or downstream end of a stream crossing.

4. Dredging does not exceed 5,000 cubic yards. Only mechanical dredging is authorized. Dredged areas shall not exceed the controlling depths for ingress or egress, whichever is less.

5. Compensatory mitigation for unavoidable impacts is provided in the form of any one or combination of the following: creation, restoration, the purchase or use of mitigation bank credits, or a contribution to an approved in-lieu fee fund. Preservation of wetlands or preservation or restoration of upland buffers adjacent to state waters may be acceptable when utilized in conjunction with creation, restoration or mitigation bank credits.

6. Compensatory mitigation for unavoidable impacts of one-tenth of an acre or greater is provided at the following compensation to loss ratios:

Emergent wetlands	1:1
Scrub/shrub wetlands	1.5:1
Forested wetlands	2:1
Open water (ponds, lakes, etc.)	1:1 (in-kind or out-of-kind)

7. Compensatory mitigation for unavoidable impacts to streams is provided at a 1:1 replacement to loss ratio via stream relocation, restoration, purchase of mitigation bank credits or contribution to an in-lieu fee fund that includes stream restoration.

B. The board waives the requirement for coverage under a VWP general permit for activities that occur in an isolated wetland of minimal ecological value, as defined in 9 VAC 25-210-10.

C. Receipt of this VWP general permit does not relieve any permittee of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.

D. Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of Engineers, and for which the board has issued or waived § 401 certification existing as of the effective date of this chapter, shall constitute coverage under this VWP general permit until such time as a

state programmatic general permit is approved for the covered activity or impact.

9 VAC 25-690-40. Prohibitions.

A. This VWP general permit will not apply in the following areas:

1. Wetland areas composed of 10% or more of the following species (singly or in combination) in any stratum: Atlantic white cedar (*Chamaecyparis thyoides*), bald cypress (*Taxodium distichum*), water tupelo (*Nyssa aquatica*), or overcup oak (*Quercus lyrata*). Percentages may be based upon stem counts, basal area, or percent aerial cover.
2. Wetland areas underlain by histosols.
3. Surface waters with federal or state listed or proposed threatened or endangered species or proposed or designated critical habitat.

B. This VWP general permit cannot be used in combination with other VWP permits to impact greater than two acres of surface waters, 500 linear feet of perennial stream, or 1,500 linear feet of nonperennial stream. The use of more than one VWP General Permit WP4 for a single and complete project is prohibited, except when the cumulative impact to surface waters does not exceed the above-mentioned limits.

C. This VWP general permit cannot be used for any activity in any real estate subdivision which would cause the aggregate total loss of surface waters in the subdivision to exceed two acres of nontidal state waters, 500 linear feet of perennial stream, or 1,500 linear feet of nonperennial stream.

D. The activity to impact surface waters shall not have been prohibited by state law, regulations or policies, nor shall it contravene the Water Quality Standards (9 VAC 25-260-5 et seq.), as amended or adopted by the board.

E. The board shall deny coverage under this VWP general permit to any person conducting activities which the board determines cause, may reasonably be expected to cause, or may be contributing to a violation of water quality standards, including discharges or discharge-related activities that are likely to adversely affect aquatic life, or for activities which the board determines that together with other existing or proposed impacts to wetlands will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

F. This VWP general permit does not authorize activities that cause more than minimal changes to the peak hydraulic flow characteristics, increase flooding, or cause more than minimal degradation of the water quality of any stream.

G. This VWP general permit may not be used for:

1. Any stormwater management facility that is located in perennial streams or in waters designated as oxygen- or temperature-impaired.
2. The construction of an irrigation impoundment on a perennial stream.
3. Any water withdrawal activities.

4. The location of animal feeding operations or waste storage facilities in state waters.

5. Restoration, creation or any fill in wetlands or perennial streams in association with the establishment of a mitigation bank.

6. The pouring of wet concrete or the use of tremie concrete or grout bags in state waters, unless the area is contained within a cofferdam and the work is performed in the dry.

7. Return flow discharges from dredge disposal sites.

8. Overboard disposal of dredge materials.

9. Disposal of dredge materials in wetlands.

10. Dredging in marinas.

11. Maintenance dredging of marine terminals.

12. Dredging of shellfish areas, submerged aquatic vegetation beds or other highly productive areas.

13. Federal navigation projects.

14. The construction of new ski areas or oil and gas wells.

15. The construction of marine railways.

16. The taking of threatened or endangered species.

a. Pursuant to § 29.1-564 of the Code of Virginia: "Taking, transportation, sale, etc., of endangered species is prohibited. The taking, transportation, processing, sale or offer for sale within the Commonwealth of any fish or wildlife appearing on any list of threatened or endangered species published by the U.S. Secretary of the Interior pursuant to the provisions of the federal Endangered Species Act of 1973 (P.L. 93-205), or any modifications or amendments thereto, is prohibited except as provided in 29.1-568."

b. Pursuant to § 29.1-566 of the Code of Virginia and 4 VAC 15-20-130 B and C, the taking, transportation, processing, sale or offer for sale within the Commonwealth of any state-listed endangered or threatened species is prohibited except as provided in § 29.1-568 of the Code of Virginia.

9 VAC 25-690-50. Activities covered.

A. Residential, commercial, institutional. This chapter authorizes the construction or expansion of building foundations, building pads and attendant features for residential, commercial and institutional development activities.

1. Residential developments include both single and multiple units.

2. Commercial developments include, but are not limited to, retail stores, industrial facilities, restaurants, business parks, office buildings and shopping centers.

3. Institutional developments include, but are not limited to, schools, fire stations, government office buildings,

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judicial buildings, public works buildings, libraries, hospitals, and places of worship.

4. Attendant features include, but are not limited to, roads, parking lots, garages, yards, utility lines, stormwater management facilities, and recreation facilities (such as playgrounds, playing fields and golf courses). Attendant features must be necessary for the use and maintenance of the structures.

B. *Agricultural.* This chapter authorizes activities related to the improvement of agricultural production and the construction of building pads for farm buildings.

1. The following activities are authorized:

- a. The installation, placement, or construction of drainage tiles, ditches or levees;
- b. Mechanized land clearing;
- c. Land leveling; and
- d. The relocation of existing serviceable ditches constructed in state waters.

2. Activities that qualify for an exemption under § 404(f) of the Clean Water Act are exempt, even though a categorical minimal effects exemption, minimal effect exemption, or mitigation exemption from NRCS pursuant to the Food Security Act of 1985 (16 USC § 3801 et seq.), as amended, may be required.

3. Activities authorized by this VWP general permit may not exceed a total of two acres for a farm tract.

4. For the improvement of agricultural production, USDA program participants must:

- a. Obtain a categorical minimal effects exemption, minimal effect exemption, or mitigation exemption from NRCS in accordance with the provisions of the Food Security Act of 1985, as amended;
- b. Have an NRCS-certified wetland delineation;
- c. If required, implement an NRCS-approved compensatory mitigation plan that fully offsets wetland losses; and
- d. Not cause the loss of greater than two acres of state waters on a farm tract.

5. For the improvement of agricultural production, non-USDA program participants (or USDA program participants for which the proposed work does not qualify for authorization under subdivision 3 of this subsection) must:

- a. Provide a delineation of the affected wetlands;
- b. Provide a compensatory mitigation proposal to offset losses of state waters;
- c. Not cause the loss of greater than two acres of state waters on a farm tract.

6. For the construction of building pads for farm buildings, the activity must not cause the loss of greater than two

acres of wetlands that were in agricultural production prior to December 23, 1985 (i.e., farmed wetlands).

7. Activities in other state waters is limited to the relocation of existing serviceable drainage ditches constructed in nontidal streams.

C. *Recreational facilities.* This chapter authorizes activities related to the construction or expansion of recreational facilities and small support facilities.

1. Recreational facilities include, but are not limited to, hiking trails, bike paths, horse paths, nature centers, and campgrounds (but not trailer parks). Boat ramps (concrete or open-pile timber), boathouses, covered boat lifts, mooring piles and dolphins, fender piles, camels (wooden floats serving as fenders alongside piers), and open-pile piers (including floating piers, travel-lift piers, etc.) associated with recreational facilities are also included.

2. Recreational facilities do not include as a primary function the use of motor vehicles, buildings or impervious surfaces.

3. Golf courses and ski area expansions may qualify as recreational facilities provided the construction of the proposed facility does not result in a substantial deviation from the natural contours and the facility is designed to minimize adverse effects on state waters and riparian areas. Measures that may be used to minimize adverse effects on waters and riparian areas include the implementation of integrated pest management plans, adequate stormwater management, vegetated buffers, and fertilizer management plans.

4. Small support facilities are authorized provided they are directly related to the recreational activity. Small support facilities include, but are not limited to, maintenance storage buildings and stables.

5. The following do not qualify as recreational facilities: hotels, restaurants, playing fields (e.g., baseball, soccer or football fields), basketball and tennis courts, racetracks, stadiums, arenas or new ski areas.

6. The recreational facility must have an adequate water quality management plan, such as a stormwater management facility, to ensure that the recreational facility results in no substantial adverse effects to water quality.

D. *Stormwater management facilities.* This chapter authorizes activities related to the construction, maintenance, and excavation of stormwater management facilities; the installation and maintenance of water control structures, outfall structures, and emergency spillways; and the maintenance dredging of existing stormwater management facilities.

1. Stormwater management facilities include stormwater ponds and facilities, detention basins, retention basins, and other facilities designed to reduce pollutants in stormwater runoff.

2. The stormwater management facility must:

a. To the maximum extent practicable, be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity and flow rates);

b. Not permanently restrict or impede the passage of normal or expected high flows, unless the primary purpose of the facility is to impound waters;

c. Withstand expected high flows;

d. To the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and not increase water flows from the project site, relocate water, or redirect flow beyond preconstruction conditions;

e. To the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the facility is part of a larger system designed to manage water flows; and

f. Be designed using best management practices (BMPs) and watershed protection techniques. Examples include forebays, vegetated buffers, bioengineering methods, and siting considerations to minimize adverse effects to aquatic resources.

3. Maintenance excavation shall be in accordance with an approved maintenance plan and shall not exceed the original contours of the facility as approved and constructed.

9 VAC 25-690-60. Notification.

A. Notification to the board will be required prior to construction as follows:

1. Impacts equal to or greater than one-tenth of an acre of surface waters shall be reported by the applicant to DEQ via the entire registration statement in 9 VAC 25-690-70. For any real estate subdivision created or subdivided after October 5, 1984, a notification is required for any activity which would cause the aggregate total loss of state waters for the entire subdivision to exceed one-tenth of an acre.

2. For impacts up to one-tenth of an acre, subdivisions 1 through 9, 11, 17, 18, 19 and 21 of the registration statement (9 VAC 25-690-70) shall be provided.

B. All notifications shall include documentation from the Virginia Department of Game and Inland Fisheries and the Virginia Department of Conservation and Recreation's Division of Natural Heritage indicating the presence of any federal or state proposed or listed threatened and endangered species or proposed or designated critical habitat or heritage resource areas.

C. The DEQ will determine whether the proposed activity requires coordination with the United States Fish and Wildlife Service, the Virginia Department of Conservation and Recreation and the Virginia Department of Game and Inland Fisheries.

9 VAC 25-690-70. Registration statement.

A. Registration statements shall be filed with the board as follows:

1. The applicant shall file a complete registration statement, as described in 9 VAC 25-690-60 for a VWP general permit WP4 for surface water impacts from development activities, which will serve as a notice of intent for coverage under this VWP general permit.

2. Any applicant proposing an activity under this VWP general permit shall file the required registration statement at least 45 days prior to the date planned for the commencement of the activity to be regulated by the VWP general permit.

3. Any person conducting an activity without a VWP permit, who qualifies for coverage under this VWP general permit, shall file the registration statement immediately upon discovery of the unpermitted activity.

B. The required registration statement shall contain the following information:

1. The applicant's name, mailing address, telephone number and, if applicable, fax number.

2. The authorized agent's (if applicable) name, mailing address, telephone number and, if applicable, fax number.

3. The existing VWP permit number (if applicable).

4. The name of the project, purpose of project, and a description of the activity.

5. The name of water body(ies) or receiving stream, as applicable.

6. The hydrologic unit code (HUC) for the project area.

7. The name of the city or county where the project is located.

8. Latitude and longitude (to the nearest second) from a central location within the project limits.

9. A detailed location map (e.g., a United States Geologic Survey topographic quadrangle map) of the impact area. The map should be of sufficient detail such that the site may be easily located for site inspection.

10. The appropriate appendices from the Joint Permit Application.

11. Project plan view. All plan view sketches should include, at a minimum, north arrow, scale, existing structures, existing contours, proposed contours (if available), limit of jurisdictional areas, direction of flow, ordinary high water, impact limits, location and dimension of all proposed structures in impact areas. Cross-sectional sketches, with the above information, may be required for certain projects to demonstrate minimization of impacts.

12. Dredge material management plan (for dredging projects only) including plan and cross-section view drawings of the disposal and/or dewatering area, the

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dimensions and design of the proposed berm and spillway, and the capacity of the proposed disposal and/or dewatering site.

13. Wetland Impact Information for both temporary and permanent impacts, including a description of the impact, the impact area (in square feet or acres), and the wetland classification based on Cowardin classification system or similar terminology.

14. Functional values assessments for impacts to wetlands greater than one acre. The functional assessment shall consist of a narrative description of the existing wetland functions and values and the impact that the project will have on these functions and values.

15. A description of the measures taken during project design and development both to avoid and minimize impacts to surface waters to the maximum extent practicable, as required by 9 VAC 25-210-115 A.

16. A description of the intended compensation for unavoidable impacts.

a. A conceptual compensatory mitigation plan, at a minimum, must be submitted, and shall include: the goals and objectives in terms of replacement of wetland or stream acreage and function; a location map, including latitude and longitude (to the nearest second) at the center of the site; a hydrologic analysis, including a draft water budget based on expected monthly inputs and outputs which will project water level elevations for a typical, dry and wet year; groundwater elevation data, if available, or the proposed location of groundwater monitoring wells to collect this data; wetland delineation sheets, maps and a jurisdictional determination from the Corps of Engineers for existing wetland areas on the proposed site(s); a conceptual grading plan; a conceptual planting scheme, including suggested plant species, zonation and acreage of each vegetation type proposed; a proposed soil preparation and amendment plan addressing both topsoil and subsoil conditions; and a draft design of any water control structures.

b. Applicants proposing to mitigate off-site, to purchase mitigation bank credits, or to contribute to an in-lieu fee program shall discuss the feasibility of on-site compensatory mitigation. If on-site compensatory mitigation is practicable, applicants must provide documentation as to why the proposed off-site compensatory mitigation, mitigation banking, or in-lieu fee fund contribution is ecologically preferable. The evaluation should include, but not be limited to, the following assessment criteria: water quality benefits, hydrologic source, hydrologic regime, watershed, wetlands functions and values, vegetation type, soils, impact acreage, distance from impacts, timing of compensation vs. impacts, acquisition, constructability, and cost.

c. Any compensation plan involving stream restoration shall submit a plan that includes: goals and objectives in terms of water quality benefits; location map, including the latitude and longitude at the center of the

site; the proposed stream segment restoration locations, including plan view and cross-section sketches; the stream deficiencies that need to be addressed; the restoration measures to be employed, including proposed design flows and types of instream structures; and a proposed construction schedule.

d. Any wetland compensation plan proposing to include contributions to in-lieu fee programs shall include proof of the willingness of the entity to accept the donation and the assumptions or documentation of how the amount of the contribution was calculated.

e. Any wetland compensation plan proposing the purchase of wetland banking credits shall include:

(1) The name of the proposed wetland mitigation bank within the same or adjacent hydrologic unit code within the same river watershed with available credits;

(2) The number of credits proposed to be purchased or used; and

(3) Certification from the bank owner of the availability of credits.

f. A final compensatory mitigation plan may be submitted, if available.

(1) The final compensatory mitigation plan shall include: narrative description of the plan including goals and objectives, site location, existing and proposed grade, schedule for compensation site construction, source of hydrology and a water budget (nontidal sites only) for typical and driest years, mean tidal range (tidal sites only), proposed mean low water and mean high water elevations (tidal sites only), plant species, planting scheme indicating expected zonation, planting schedule, an abatement and control plan for undesirable plant species, soil amendments, all structures and features considered necessary for the success of the plan, and number and locations of panoramic photographic stations and ground water monitoring wells (or tide gages, for tidal sites). Rooted seedlings or cuttings should originate from a local nursery or be adapted to local conditions. Vegetation should be native species common to the area, should be suitable for growth in local wetland conditions, and should be from areas approximately 200 miles from the project site.

(2) The final compensatory mitigation plan shall include protection of state waters (including compensatory mitigation areas and nonimpact state waters) within the project boundary in perpetuity. These areas shall be surveyed or platted within 120 days of final plan approval, and the survey or plat shall be recorded in accordance with the requirements of this section. Any restrictions, protections, or preservations, or any similar instrument provided as part of the compensatory mitigation plan, shall state that no activity will be performed on the property in any area designated as

a compensatory mitigation area or nonimpact state water, with the exception of maintenance or corrective action measures authorized by DEQ. Unless specifically authorized by DEQ through the issuance of a VWP individual permit, modification of this VWP general permit, or waiver thereof, this restriction applies to ditching, land clearing or the discharge of dredge or fill material. Such instrument shall contain the specific phrase "ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property. Proof of recordation shall be submitted within 60 days of survey or plat approval. This requirement is to preserve the integrity of compensatory mitigation areas and to ensure that additional impacts to state waters do not occur.

(3) If the final compensatory mitigation plan is submitted prior to authorization for coverage under this VWP general permit, however it is not deemed complete until after the authorization, the board shall review the plan and approve, approve with modifications or disapprove within 45 days of the completeness determination.

17. An aerial photo or scale map which clearly shows the property boundaries, location of surface waters including all wetland boundaries, limits of Chesapeake Bay Resource Protection Area(s) (RPAs) if applicable, and all surface water impacts at the site. A copy of the Corps of Engineers' delineation confirmation, including wetland data sheets, shall also be provided at the time of application. If written confirmation is not available at the time of application, verbal confirmation must be provided and the written confirmation submitted during the VWP general permit review. Additional state or local requirements may apply if the project is located within an RPA.

18. A copy of the FEMA flood insurance rate map or FEMA-approved local floodplain map for the project site.

19. Documentation from the Virginia Department of Game and Inland Fisheries and the Virginia Department of Conservation and Recreation's Division of Natural Heritage regarding the presence of any federal or state proposed or listed threatened and endangered species or proposed or designated critical habitat.

20. The appropriate application processing fee for a VWP general permit (9 VAC 25-20-10 et seq.).

21. The following certification:

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

penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

C. The registration statement shall be signed in accordance with 9 VAC 25-210-100. If an agent is acting on behalf of an applicant, the applicant shall submit an authorization of the agent that includes the signatures of both the applicant and the agent.

D. Upon receipt of a complete registration statement, coverage under this VWP general permit shall be approved, approved with conditions, or denied within 45 days. If the board fails to act within 45 days, coverage under this VWP general permit shall be deemed approved.

1. In evaluating the registration statement, the board shall make an assessment of the impacts associated with the project in combination with other existing or proposed impacts. Coverage under this VWP general permit shall be denied if the cumulative impacts will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

2. The board may place additional conditions on a project in order to approve the use of this VWP general permit. However, these conditions must be consistent with the VWP regulation and may not override or contradict the existing conditions of this VWP general permit related to impacts and mitigation.

E. Incomplete registration statement. Where a registration statement is considered incomplete, the board may require the submission of additional information after the registration statement has been filed, and may suspend processing of any registration statement until such time as the applicant has supplied missing or deficient information and the board considers the registration statement complete. Further, where the applicant becomes aware that he omitted one or more relevant facts from a registration statement, or submitted incorrect information in a registration statement or in any report to the board, he shall immediately submit such facts or the correct information.

9 VAC 25-690-80. Mitigation.

A. For the purposes of this VWP general permit, the board shall accept any one or combination of the following as compensation for unavoidable impacts: wetland or stream creation or restoration, the purchase or use of mitigation bank credits, or a contribution to an approved in-lieu fee fund. Preservation of wetlands or streams or preservation or restoration of upland buffers adjacent to state waters may be acceptable when utilized in conjunction with creation, restoration or mitigation bank credits.

B. Compensatory mitigation for unavoidable wetland impacts shall be provided at the following compensation to impact ratios:

1. Impacts to forested wetlands shall be mitigated at 2:1.
2. Impacts to scrub shrub wetlands shall be mitigated at 1.5:1.

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3. Impacts to emergent wetlands shall be mitigated at 1:1.

C. Credits or units of wetland compensation shall be calculated according to the following ratios:

1. One acre of wetland creation equals one unit of wetland compensation.
2. One acre of wetland restoration equals one unit of wetland compensation.
3. Ten acres of wetland preservation equals one unit of wetland compensation.
4. Twenty acres of upland buffer preservation equals one unit of wetland compensation.
5. One mitigation bank credit equals one unit of wetland compensation.
6. The monetary equivalent of one acre of wetland creation or restoration in the form of a payment to a wetland trust fund equals one unit of wetland compensation.

D. In order for contribution to an in-lieu fee fund to be an acceptable form of compensatory mitigation, the fund must be approved for use by the board according to the provisions of 9 VAC 25-210-115 E.

E. The use of mitigation banks for compensating project impacts shall be deemed appropriate if the bank is operating in accordance with the provisions of § 62.1- 44.15:5 E of the Code of Virginia and 9 VAC 25-210-115, and the applicant provides verification to DEQ of purchase or debiting of the required amount of credits.

F. Unavoidable impacts to streams shall be compensated on a one-to-one basis through the restoration or preservation of similar order streams, when practicable.

9 VAC 25-690-90. Modification.

Authorization under this VWP general permit may be modified provided the total impacts to surface waters for a single and complete project do not exceed two acres of nontidal state waters, 500 linear feet of perennial stream, or 1,500 linear feet of nonperennial stream when any of the following developments occur:

1. When additions or alterations have been made to the project which require the application of VWP permit conditions that differ from those of the existing VWP general permit or are absent from it;
2. When new information becomes available about the operation or activity covered by the VWP general permit which was not available at the time of VWP general permit coverage and would have justified the application of different VWP permit conditions at that time;
3. When a change is made in the promulgated standards or regulations on which the VWP general permit was based;
4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee

has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the Act; and

5. When changes occur which are subject to "reopener clauses" in the VWP general permit.

9 VAC 25-690-100. Notice of termination.

When all permitted activities requiring notification under 9 VAC 25-690-60 A 1 have been completed, the permittee shall submit a notice of termination within 30 days of final completion. The notice shall contain the following information:

1. Name, mailing address and telephone number of the applicant;
2. Name and location of the activity;
3. The VWP permit authorization number; and
4. The following certification:

"I certify under penalty of law that all activities authorized by a VWP general permit have been completed. I understand that by submitting this notice of termination, that I am no longer authorized to perform activities in wetlands in accordance with the VWP general permit, and that performing activities in wetlands is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit."

9 VAC 25-690-110. VWP general permit.

Any applicant whose registration statement is accepted by the board will receive the following VWP general permit and shall comply with the requirements in it and be subject to all requirements of the VWP permit regulation, 9 VAC 25-210-10 et seq.:

VWP General Permit No. WP4

Effective date:

Expiration date:

VWP GENERAL PERMIT FOR IMPACTS FROM
DEVELOPMENT ACTIVITIES
UNDER THE VIRGINIA
WATER PROTECTION PERMIT AND THE
VIRGINIA STATE WATER CONTROL LAW

Based upon an examination of the information submitted by the applicant and in compliance with § 401 of the Clean Water Act as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that the activity authorized by this VWP general permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a

significant impairment of state waters or fish and wildlife resources.

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, citizens of the Commonwealth of Virginia are authorized to impact up to 2.0 acres of surface waters (including wetlands), with a maximum of 500 linear feet of perennial stream channel and 1,500 linear feet of nonperennial stream channel, within the boundaries of the Commonwealth of Virginia, except in those areas specifically named or excluded in board regulations or policies which prohibit such impacts.

Permittee:

Address:

Activity Location:

Activity Description:

The authorized activity shall be in accordance with this cover page, Part I - Special Conditions, Part II - Mitigation, Monitoring and Reporting, and Part III - Conditions Applicable to All VWP Permits, as set forth herein.

Director, Department of Environmental Quality

Date

Part I. Special Conditions.

A. Authorized activities.

1. Any additional impacts to surface waters associated with this project may require modification of this VWP general permit and additional compensatory mitigation.

2. The activities authorized by this VWP general permit must commence and be completed within five years of the date of this authorization.

B. Reapplication. Application for continuation of coverage under this VWP general permit or a new VWP permit may be necessary if any portion of the authorized activities or any VWP general permit requirement (including compensatory mitigation) has not been completed within five years of the date of authorization. Application consists of an updated or new registration statement. Notwithstanding any other provision, a request for a reissuance of certification of coverage under a VWP general permit in order to complete monitoring requirements shall not be considered an application for coverage and no application fee will be charged.

C. Overall project conditions.

1. The construction or work authorized by this VWP general permit shall be executed in a manner so as to minimize any adverse impact on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body. No activity may cause more than minimal adverse effect on navigation. Furthermore the activity must not impede the passage of normal or expected high flows and the structure or discharge must withstand expected high flows.

3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters.

4. No fill in surface waters may consist of unsuitable materials (e.g., trash, debris, car bodies, asphalt). All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all Department of Environmental Quality (DEQ) regulations.

5. Erosion and sedimentation controls shall be designed in accordance with the current Virginia Department of Conservation and Recreation (DCR) Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area stabilizes.

6. Any exposed slopes and streambanks must be stabilized immediately upon completion of the project at each water body. All denuded areas shall be properly stabilized in accordance with the current DCR Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with this project shall be accomplished in such a manner that minimizes construction and/or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

8. No machinery may enter flowing waters, unless authorized by this VWP general permit.

9. Heavy equipment in temporarily-impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable measures, to minimize soil disturbance to the maximum extent practicable.

10. All nonimpacted wetlands within the project or right-of-way limits that are within 50 feet of any clearing, grading, and/or filling activities shall be clearly flagged or marked for the life of the construction activity within that area. The permittee shall notify all contractors that these marked areas are wetlands where no excavation or filling is to occur.

11. Temporary disturbances to wetlands during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preconstruction conditions and planted or seeded with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested). The permittee shall ensure that all temporarily disturbed wetland areas revegetate with wetland vegetation by the second year post-disturbance. All temporary fills shall be removed in their entirety and the affected area returned to the preexisting contours.

12. All materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following

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completion of that construction activity. Disturbed areas shall be returned to original contours, stabilized within 30 days following removal of the stockpile, and restored to the original vegetated state.

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures approved by DEQ.

14. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.

15. Time of year restrictions imposed by the Department of Game and Inland Fisheries of the Virginia Marine Resources Commission shall be strictly adhered to.

16. Immediately downstream of the construction area, Water Quality Standards (9 VAC 25-260-5 et seq.) shall not be violated as a result of the construction activities.

D. Road crossings.

1. Access roads must be constructed so that the length of the road minimizes the adverse effects on surface waters to the maximum extent practicable and is as near as possible to preconstruction contours and elevations. Access roads constructed above preconstruction contours and elevations in surface waters must be properly bridged or culverted to maintain surface flows.

2. At crossings of perennial streams, pipes and culverts shall be countersunk a minimum of six inches to provide for the reestablishment of a natural stream bottom and a low flow channel. Countersinking is not required for existing pipes or culverts that are being maintained or extended.

3. Installation of pipes and road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or other means acceptable to DEQ.

4. All state waters temporarily affected by the construction of a road crossing shall be restored to their original elevations immediately following the construction of that particular crossing.

5. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless authorized by this VWP general permit, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The new stream channel shall be constructed following the typical sections submitted with the application. A low flow channel shall be constructed within the channelized or relocated area. The centerline of the low flow channel shall meander, to the extent possible, to mimic natural stream morphology. The rerouted stream flow must be fully established before construction activities in the old streambed can begin.

E. Utility lines.

1. All utility line work in surface waters shall be performed in such a manner as to minimize disturbance, and the area must be returned to its original contours and stabilized, unless authorized by this VWP general permit.

2. Material resulting from trench excavation may be temporarily sidecast (up to three months) into wetlands, provided the material is not placed in a manner such that it is dispersed by currents or other forces. DEQ may extend the period of temporary sidecasting not to exceed a total of 180 days, where appropriate.

3. The trench for a utility line cannot be constructed in such a manner as to drain wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect.).

4. Untreated stormwater runoff shall be prohibited from directly discharging into any state waters. Appropriate best management practices shall be deemed suitable treatment prior to discharge into state waters.

F. Shoreline stabilization.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the most recent edition of the Virginia Department of Conservation and Recreation's Sediment and Erosion Control Handbook.

2. Riprap apron for all outfalls shall be designed in accordance with the most recent edition of the Virginia Department of Conservation and Recreation's Sediment and Erosion Control Handbook.

3. For shoreline protection activities, the area (in square feet) of surface water impact may not exceed four times the length (in linear feet) of the activity (e.g., a maximum of 400 square feet in surface waters for a 100-foot long bulkhead).

4. Bulkhead repair and replacement shall not exceed four feet channelward of existing functional bulkheads. The filling of wetlands behind freestanding bulkheads is prohibited.

5. For shoreline protection activities, the structure and backfill shall be placed as close to the shoreline as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

6. All shoreline erosion structures shall be located so as to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

7. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

G. Dredging.

1. Dredging depths shall be determined and authorized according to the proposed use and controlling depths outside the area to be dredged.

2. Dredging shall be accomplished in such a manner as to minimize disturbance of the bottom and minimize turbidity levels in the water column. Recommendations outlined in the Corps 1984 research document,

"Sediment Resuspension Characteristics of Selected Dredges," shall be followed when applicable.

3. If evidence of impaired water quality, such as a fish kill, is observed during the dredging, dredging operations shall cease and the DEQ shall be notified immediately.

4. Barges used for the transportation of dredge material shall be filled in such a manner to prevent any overflow of dredged materials.

5. Double handling of dredged material in state waters shall not be permitted. Utilization of the Craney Island Rehandling Basin is not considered double handling.

6. Overdredging to reduce the frequency of maintenance dredging should not exceed one foot deeper than adjacent natural water bodies and only as wide as necessary to avoid creating circulation and flushing problems.

7. A minimum of 15 feet shall be maintained between the top of the dredge cut and the toe of the bank. This landward limit of encroachment shall be flagged and inspected prior to construction.

8. A buffer of four times the depth of the dredge cut shall be maintained between the top of the dredge cut and the channelward limit of wetlands or mean low water.

9. Side slope cuts of the dredging area shall not exceed a two horizontal to one vertical slope to prevent slumping of material into the dredged area.

10. A dredged material management plan for the designated upland disposal site shall be submitted and approved 30 days prior to initial dredging activity.

11. Pipeline outfalls and spillways shall be located at opposite ends of the dewatering area to allow for maximum retention and settling time. Filter fabric shall be used to line the dewatering area and to cover the outfall pipe to further reduce sedimentation to state waters.

12. The dredge material dewatering area shall be of adequate size to contain the dredge material and to allow for adequate dewatering and settling out of sediment prior to discharge back into state waters.

13. The dredge material dewatering area shall utilize an earthen berm and/or straw bales covered with filter fabric along the edge of the area to contain the dredged material, and shall be properly stabilized prior to placing the dredged material within the containment area.

14. Overtopping of the dredge material containment berms with dredge materials shall be strictly prohibited.

H. Stormwater management facilities.

1. The stormwater management facilities shall be designed in accordance with best management practices and watershed protection techniques (i.e., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic

resources) that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.

2. Compensatory mitigation for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.

3. Maintenance excavation shall be in accordance with an approved maintenance plan and shall not exceed the original contours of the facility, as approved and constructed.

4. Maintenance within stormwater management facilities will not require mitigation provided that the maintenance is accomplished in designated maintenance areas as indicated in the maintenance plan.

Part II. Mitigation, Monitoring and Reporting.

A. Wetland mitigation. In order to qualify for this VWP general permit, appropriate and practicable compensatory mitigation will be required for all wetland impacts meeting the conditions outlined in this VWP general permit. The types of compensatory mitigation options that may be considered under this VWP general permit include wetland or stream creation or restoration, the purchase or use of mitigation bank credits, or a contribution to an approved in-lieu fee fund. Preservation of wetlands or streams or preservation or restoration of upland buffers adjacent to state waters is acceptable when utilized in conjunction with creation, restoration or mitigation bank credits.

1. The site(s) depicted in the conceptual compensatory mitigation package submitted with the registration statement, shall constitute the compensatory mitigation package for the approved project, unless otherwise authorized by a VWP general permit modification.

2. For compensation involving the purchase or use of mitigation bank credits, the permittee shall submit documentation within 60 days of VWP general permit authorization that the Corps of Engineers has debited the required mitigation credits from the Mitigation Bank ledger. For projects proposing a contribution to an in-lieu fee program, the permittee shall submit documentation within 60 days of VWP general permit authorization that the fund contribution has been received.

3. All aspects of the compensatory mitigation plan shall be finalized, submitted and approved by DEQ prior to any construction activity in permitted impact areas. DEQ shall review and provide written comments on the plan within 30 days of receipt or it shall be deemed approved. The final compensatory mitigation plan as approved by DEQ shall become an official component of this VWP general permit.

a. The final compensatory mitigation plan shall include: narrative description of the plan including goals and objectives, site location, existing and proposed grade, schedule for compensatory mitigation site construction, source of hydrology and a water budget (nontidal sites only) for typical and driest years, mean tidal range (tidal sites only), proposed mean low water and mean high water elevations (tidal sites only), plant species,

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planting scheme indicating expected zonation, planting schedule, an abatement and control plan for undesirable plant species, soil amendments, all structures and features considered necessary for the success of the plan, and number and locations of panoramic photographic stations and ground water monitoring wells (or tide gages, for tidal sites). Rooted seedlings or cuttings should originate from a local nursery or be adapted to local conditions. Vegetation should be native species common to the area, should be suitable for growth in local wetland conditions, and should be from areas approximately 200 miles from the project site.

b. The final compensatory mitigation plan shall include protection of state waters (including compensatory mitigation areas and nonimpact state waters) within the project boundary in perpetuity. These areas shall be surveyed or platted within 120 days of final plan approval, and the survey or plat shall be recorded in accordance with the requirements of this section. The restrictions, protections, or preservations, or similar instrument, shall state that no activity will be performed on the property in any area designated as a compensatory mitigation area or nonimpact state water, with the exception of maintenance or corrective action measures authorized by DEQ. Unless specifically authorized by DEQ through the issuance of a VWP individual permit, modification of this VWP general permit, or waiver thereof, this restriction applies to ditching, land clearing or the discharge of dredge or fill material. Such instrument shall contain the specific phrase "ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property. Proof of recordation shall be submitted within 60 days of survey or plat approval. This requirement is to preserve the integrity of compensatory mitigation areas and to ensure that additional impacts to state waters do not occur.

4. Post-grading elevations for the compensatory mitigation site(s) shall be sufficient to ensure that wetland hydrology will be achieved on the site to support the goals and objectives of the compensatory mitigation plan. As a general rule, elevations shall be within 0.2 feet of the elevations proposed in the final compensatory mitigation plan. The final as-built grading plan shall be approved by DEQ prior to any planting and placement of ground water monitoring wells.

5. All work in jurisdictional areas shall cease if compensatory mitigation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by DEQ.

6. The wetland creation portions of the site(s) shall be excavated 6-12 inches below final grade. Topdressing soil shall then be spread to bring the compensatory mitigation site to final grade. A wetland vegetation seed

mix shall be applied within seven days of final grading for site stabilization.

7. For compensatory mitigation sites involving restoration, a wetland vegetation seed mix shall be applied for site stabilization within seven days of final grading or soil disturbance.

8. Planting of woody plants shall occur outside the growing season, when the soil is not frozen, between November 1 and March 31.

9. Point sources of stormwater runoff shall be prohibited from entering any wetland compensatory mitigation site prior to treatment by appropriate best management practices. Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, and forebays.

10. The success of the compensatory mitigation shall be based on establishing and maintaining a viable wetland with suitable wetland hydrology, hydric soils or soils under hydric conditions, and hydrophytic plant communities.

11. Wetland hydrology shall be considered established if depths to the seasonal high water table, in a typical rainfall year, are equal to or less than one foot for at least 12.5% of the growing season for all monitoring years.

12. The wetland plant community shall be considered established if:

a. Greater than 50% of the woody plants, expressed either by plant stems or canopy coverage, shall be facultative (FAC) or wetter (FACW or OBL). A minimum plant stem count of 400/acre must be achieved in sample plots until canopy coverage is 30% or greater. Of these 400 stems, a minimum of 300 shall be from the targeted species of the compensatory mitigation plan. A minimum of 65% of the planted trees and shrubs must be viable and show signs of growth for the life of the VWP general permit.

b. Greater than 50% of all herbaceous plants shall be FAC or wetter. Aerial coverage shall be a minimum of 60% after one full growing season and 80% after three growing seasons and remaining at or above 80% for the life of the VWP general permit. Scrub/shrub or sapling/forest vegetation is not included in coverage or stem count for herbaceous vegetation.

c. Species composition reflects the desired plant community types stated in the wetland compensatory mitigation plan by the end of the first growing season and is maintained through the last year of the VWP general permit.

d. Noxious weeds are identified and controlled as described in the noxious weed control plan, such that they are not dominant species or do not change the desired community structure. The control plan shall include procedures to notify the VWPP staff of any invasive species occurrences, methods of removal, and successful control.

e. Deviations from this plan must be approved in advance by DEQ.

13. If the compensatory mitigation area fails to be established as viable wetlands, the reasons for this failure shall be determined and a corrective action plan, schedule, and monitoring plan shall be submitted to DEQ for approval prior to or with the next required monitoring report. Replacement of dead plant stock in the wetland compensatory mitigation site shall occur, as necessary, to achieve a minimum of 400 stems/acre for the tree species (until canopy coverage is 30% or greater) and 65% of the original stocking density for the planted herb, shrub and tree species. Of these 400 stems, a minimum of 300 shall be from the targeted species of the compensatory mitigation plan. All problems shall be corrected by the permittee. Should significant changes be necessary to establish wetlands, the monitoring plan shall begin again, with year one being the year changes are complete.

14. The wetland boundary for the compensatory mitigation site shall be based on the results of the hydrology, soils, and vegetation monitoring data and shall be shown on the site plan. Calculation of total wetland acreage shall be based on that boundary.

15. Herbicides or algicides shall not be used in or immediately adjacent to the compensatory mitigation site(s) without prior authorization by DEQ. All vegetation removal shall be done by mechanical means only, unless authorized by DEQ.

16. This VWP general permit authorization may need to be renewed (or extended) to assure that the compensatory mitigation work has been successful. The request for renewal/extension must be made no less than 60 days prior to the expiration date of this VWP general permit authorization, at which time DEQ will determine if renewal of the VWP general permit authorization is necessary.

B. Compensatory mitigation site monitoring.

1. A post-grading survey, including spot elevations, of the site(s) for wetland compensatory mitigation shall be conducted by a licensed land surveyor or a professional engineer and submitted to DEQ for approval prior to placing the permanent groundwater monitoring wells and planting of the vegetation. Grading elevation plans shall be on a scale of 1 inch equals 50 feet (or 1:500 metric) with contour intervals of one (or two) feet accompanied by cross section views. The final as-built grading plan shall be submitted to DEQ for approval prior to any planting and placement of ground water monitoring wells.

2. Panoramic photographs shall be taken at the compensatory mitigation site(s) from each of the monitoring well stations. These photographs shall be taken after the initial planting and in August or September every year for the life of the VWP general permit. Permanent markers shall be established to ensure that the same locations and view directions at the sites are monitored in each monitoring period.

3. Compensatory mitigation site monitoring for hydrology, soils, and hydrophytic vegetation shall begin at the first complete growing season (year 1) following compensatory mitigation site construction. Monitoring shall be required for years 1, 2, 3, 5, 7 and 10, with years 7 and 10 only required if the site success criteria were not achieved during the previous monitoring event.

4. The establishment of wetland hydrology shall be measured weekly during the growing season. The number of monitoring wells for each site will be determined by DEQ on a site-specific basis. The location of the wells must be approved by DEQ prior to placement. Adequate hydrology shall be within 12 inches of the surface for 12.5% of the growing season. Monitoring shall include approximate acreage and average depth of any ponded water on the wetland compensatory mitigation site(s). Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, weekly monitoring may be discontinued for the remainder of that monitoring year.

5. The presence of hydric soils or soils under hydric conditions shall be evaluated by digging soil pits at each monitoring station and evaluating the soil profile for hydric soil indicators using a documented method acceptable to DEQ.

6. The establishment of wetland vegetation shall be indicated by percent cover, percent survival, stem counts and species composition monitored in August or September during each reportable growing season in the life of the VWP general permit. At each monitoring station, the following information shall be collected:

a. Percent cover for all herbaceous species shall be estimated using a documented method accepted by DEQ. The approximate species composition of the herbaceous vegetation shall be indicated, including nondominants. The number of stems per acre for woody species shall be provided. A quantitative measure for noxious species present shall also be provided.

b. Percent survival of planted woody species, if applicable, shall be estimated using a documented method accepted by DEQ. The number of stems of all tree species within each sample plot and the density of all tree species (number of stems per acre) shall be provided.

c. The presence of noxious species shall be documented.

C. Stream restoration monitoring.

1. Representative photographs shall be taken along the stream segment(s). These photographs shall be taken prior to restoration, after restoration work is complete, and in August or September for three years after completion. Permanent markers shall be established to ensure that the same locations and view directions at the sites are monitored in each monitoring period.

2. Monitoring for stream restoration success shall begin at the first complete growing season (year 1) following

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site restoration. Monitoring shall be required for years 1, 2, and 3. Monitoring shall consist of an evaluation of the stability and success of any instream structures, vegetative monitoring of any established riparian buffers, and a pre- and post-construction assessment of the benthic community of the stream.

D. Construction monitoring.

1. Photo stations shall be established to document the various construction aspects of the project within jurisdictional areas. These stations shall be established to document the existing and post-construction conditions of the project site. These stations shall be photographed prior to construction, during construction, and within one week after the completion of construction. Photos shall be taken during construction at the end of the first, second and twelfth months of construction, and then annually for the remainder of the construction project.

2. The permittee shall make provisions to monitor for any spills of petroleum products or other materials during the construction process. These provisions shall be sufficient to detect and contain the spill and notify the appropriate authorities.

3. Stream bottom elevations at road crossings shall be measured and recorded prior to construction and within one week after the completion of construction. This requirement shall only apply to those streams not designated as intermittent or those streams not designated in association with stream channelization.

4. Monitoring of water quality parameters shall be conducted during rerouting of the live streams through the new channels in the following manner:

a. A sampling station shall be located upstream and immediately downstream of the relocated channel;

b. Temperature, pH and dissolved oxygen (D.O.) measurements shall be taken once every half hour for at least three readings at each station prior to opening the new channels;

c. After opening the new channel, temperature, pH and D.O. readings shall be taken once every half hour for at least three readings at each station within 24 hours of opening the new channel.

E. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate Department of Environmental Quality office. The VWP general permit authorization number shall be included on all correspondence.

2. DEQ shall be notified in writing by certified letter at least 10 days prior to the start of construction activities authorized by this VWP general permit. The notification shall include identification of the impact area at which work will occur and a projected schedule for completing work at each permitted impact area.

3. After construction begins, construction monitoring reports shall be submitted to DEQ within 30 days of each

monitoring event as required in condition D 1 of Part II of this VWP general permit. The reports shall include, at a minimum, the following:

a. A written statement regarding when work started in the identified impact area, where work was performed, what work was performed, and what work was completed.

b. Properly labeled photographs (to include date and time, name of the person taking the photograph, and VWP permit number) showing representative construction activities (including, but not limited to, flagging nonimpact wetland areas, site grading and excavation, installation and maintenance of erosion and sediment controls, culvert installation, bridge and ramp construction, dredging, dredge disposal, etc.). Photographs are not necessary during periods of no activity within jurisdictional areas.

4. The permittee shall notify DEQ in writing when unusual or potentially complex conditions are encountered which require debris removal or involve potentially toxic substance. Measures to remove the obstruction, material, or toxic substance or to change the location of any structure are prohibited until approved by DEQ.

5. The permittee shall report any fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, DEQ shall be notified at (insert appropriate DEQ office phone number); otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

6. Violations of state water quality standards shall be reported within 24 hours to the appropriate DEQ office.

7. The final plans of compensatory mitigation shall be submitted to and approved by DEQ prior to any construction in permitted impact areas.

8. An official copy of the instrument of restriction, protection, or preservation of wetlands and State waters provided as part of the compensatory mitigation plan shall be submitted to the DEQ within 60 days of recordation as outlined in the mitigation portion of this VWP general permit.

9. The mitigation bank account ledgers shall be submitted denoting the purchase of the required credits from the proposed bank(s).

10. All compensatory mitigation monitoring reports required by the special conditions in subsection B above shall be submitted annually by November 30 with the exception of the final report in the life of the VWP general permit which shall be submitted by November 30 of that monitoring year or 180 days prior to VWP general permit expiration, whichever occurs sooner. Alterations and maintenance conducted on the compensatory mitigation sites shall be reported. Invasive species occurrences and control of these occurrences shall also be reported to DEQ.

11. All submittals required by this VWP general permit shall contain the following signed certification statement:

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

Part III. Conditions Applicable to All VWP Permits.

A. Duty to comply. The permittee shall comply with all conditions of the VWP permit. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations and toxic standards and prohibitions. Any VWP permit noncompliance is a violation of the Clean Water Act and State Water Control Law, and is grounds for enforcement action, VWP permit termination, revocation, modification, or denial of a VWP permit renewal application.

B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any impacts in violation of the VWP general permit which may have a reasonable likelihood of adversely affecting human health or the environment.

C. Reopener. This VWP general permit may be reopened to modify the conditions of the VWP general permit when the circumstances on which the previous VWP general permit was based have materially and substantially changed, or special studies conducted by the department or the permittee show material and substantial change since the time the VWP general permit was issued and thereby constitute cause for VWP general permit modification or revocation and reissuance.

D. Compliance with state and federal law. Compliance with this VWP general permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

E. Property rights. The issuance of this VWP general permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal property rights, nor any infringement of federal, state or local laws or regulations.

F. Severability. The provisions of this VWP general permit are severable.

G. Right of entry. The applicant and/or permittee shall allow authorized state and federal representatives, upon the

presentation of credentials, at reasonable times and under reasonable circumstances:

1. To enter the permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP general permit conditions;
2. To inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP general permit;
3. To sample or monitor any substance, parameter or activity for the purpose of assuring compliance with the conditions of the VWP general permit or as otherwise authorized by law.

For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP permits. This VWP general permit may be transferred to another person by a permittee if:

1. The current permittee notifies the board within 30 days of the transfer of the title to the facility or property;
2. The notice to the board includes a written agreement between the existing and proposed permittee containing a specific date of transfer of VWP general permit responsibility, coverage and liability between them, or that the seller will retain such responsibility, coverage or liability, including liability for compliance with the requirements of any enforcement activities related to the permitted activity; and
3. The board does not notify the existing and proposed permittee of the board's intent to modify or revoke and reissue the VWP general permit within the 30-day time period.

On the date of the VWP general permit transfer, the transferred VWP general permit shall be as fully effective as if it had been issued directly to the new permittee.

I. VWP permit modification. The permittee shall notify the Department of Environmental Quality of any modification of this activity and shall demonstrate in a written statement to the department that said modification will not violate any conditions of this VWP general permit. If such demonstration cannot be made, the permittee shall apply for a modification of this VWP general permit. This VWP general permit may be modified when any of the following developments occur:

1. When additions or alterations have been made to the affected facility or activity which require the application of VWP permit conditions that differ from those of the existing VWP general permit or are absent from it, provided the total project impacts for a single and complete project do not exceed two acres, including 500 linear feet of perennial stream or 1,500 linear feet of nonperennial stream and are fully mitigated;
2. When new information becomes available about the operation or activity covered by the VWP general permit which was not available at VWP general permit issuance and would have justified the application of different VWP

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permit conditions at the time of VWP general permit issuance;

3. When a change is made in the promulgated standards or regulations on which the VWP general permit was based;

4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the Clean Water Act; and

5. When changes occur which are subject to "reopener clauses" in the VWP general permit.

J. VWP permit termination. This VWP general permit, after public notice and opportunity for a hearing, is subject to termination. Causes for termination are as follows:

1. Noncompliance by the permittee with any condition of the VWP general permit;

2. The permittee's failure in the application or during the VWP general permit issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

3. The permittee's violation of a special or judicial order;

4. A determination that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by VWP general permit modification or termination; or

5. A determination that the permitted activity has ceased and that the compensatory mitigation for unavoidable adverse impacts has been successfully completed.

K. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

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

M. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;

2. Excavate in a wetland;

3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or

4. On and after October 1, 2001, conduct the following activities in a wetland:

a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;

b. Filling or dumping;

c. Permanent flooding or impounding; or

d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

DOCUMENTS INCORPORATED BY REFERENCE

Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, Department of Conservation and Recreation.

VA.R. Doc. No. R00-196; Filed February 6, 2001, 9:06 a.m.



TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: 12 VAC 30-10-10 et seq. State Plan under Title XIX of the Social Security Act Medical Assistance Program; General Provisions (adding 12 VAC 30-10-1000).

12 VAC 30-20-10 et seq. Administration of Medical Assistance Services (adding 12 VAC 30-20-290 through 12 VAC 30-20-490 and 12 VAC 30-20-500 through 12 VAC 30-20-560).

12 VAC 30-70-10 et seq. Methods and Standards for Establishing Payment Rates; Inpatient Hospital Care (repealing 12 VAC 30-70-140, 12 VAC 30-70-141, 12 VAC 30-70-142, 12 VAC 30-70-143, 12 VAC 30-70-144, and 12 VAC 30-70-145 (Part II Hospital Appeals of Reimbursement Rates)).

12 VAC 30-90-10 et seq. Methods and Standards for Establishing Payment Rates for Long-Term Care (repealing 12 VAC 30-90-130, 12 VAC 30-90-131, 12 VAC 30-90-132, 12 VAC 30-90-133, and 12 VAC 30-90-135).

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

Public Hearing Date: N/A -- Public comments may be submitted until April 27, 2001.

(See Calendar of Events section for additional information)

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

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical

Assistance in lieu of board action pursuant to the board's requirements.

Purpose: The purpose of this proposal is to promulgate permanent regulations to provide for provider appeals of reimbursement issues. These permanent regulations are not expected to have a direct impact on the public's health, safety, or welfare.

Presently, the State Plan for Medical Assistance contains language addressing provider appeals via the inpatient hospital reimbursement and the nursing facility reimbursement methodologies. These existing regulations have been superseded in intent and outcome by the passage of House Bill 892 and, therefore, are being repealed.

On April 9, 2000, the 2000 General Assembly passed and the Governor enacted House Bill 892, which requires the processing of provider appeals within six months at the informal level and within six months at the formal level. If the department does not meet its statutory time frames, the appeal decision is deemed to be in favor of the appealing provider as provided in the new statute. The statute applies to all administrative appeals filed on or after July 1, 2000. In order to conduct these appeals to conclusion within the statutorily set time limits, DMAS must include the various specified time periods in the State Plan for Medical Assistance.

In developing the previous emergency regulations, DMAS conferred with five affected provider organizations: the Virginia Health Care Association (VHCA), the Virginia Association of Non-Profit Homes for the Aging (VANHA), the Virginia Association for Home Care (VAHC), the Virginia Hospital and Healthcare Association (VHHA), and the Medical Society of Virginia. The VHCA commented and also transmitted comments from VANHA and VAHC. The VHCA also provided the draft regulations to two provider attorneys and two provider accountants. DMAS also met with the VHCA to discuss its comments.

Issues: These regulations will help DMAS process providers' appeals more quickly. This will benefit the taxpayers because issues under dispute will be resolved more promptly than in the past and will result in quicker repayment of overpayments, should any be due. Providers specifically requested this legislation from the 2000 General Assembly and, therefore, are supportive of DMAS efforts in this area. Therefore, DMAS anticipates provider support in implementing this proposed change.

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 proposed regulatory action permanently implements current emergency regulations concerning provider appeals of reimbursement issues and repeals provisions that will be superceded and replaced by the proposed regulation.

The permanent regulation establishes uniform procedures for all providers and requires completion of informal appeals within 180 days and the completion of formal appeals within a subsequent 180 days. Prior to the emergency regulations, provider appeals were addressed only in the inpatient hospital reimbursement and nursing facility reimbursement methodologies. All other providers' appeals were handled through the Administrative Process Act (APA).

Estimated economic impact. Given that the intent and nature of the appeals process remains the same, these changes are not expected to have any significant economic effects aside from the benefits associated with establishing uniformity and setting time limits on the appeals process.

Businesses and entities affected. The proposed regulation could affect any of the approximately 44,000 facilities and health care professionals that provide services to Medicaid recipients.

Localities particularly affected. The proposed regulation is not expected to disproportionately affect any particular locality.

Projected impact on employment. The proposed regulation is not expected to have any significant impact on employment in Virginia.

Effects on the use and value of private property. The proposed regulation is not expected to have any significant impact on the use and value of private property in Virginia.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Provider Appeals.

Summary:

This proposed action will promulgate provider appeal regulations for all provider appeal issues. It also provides for the completion of informal appeals within 180 days and the completion of formal appeals within another 180 days.

12 VAC 30-10-1000. General provider appeals.

These provisions shall apply to all provider types for informal and formal administrative appeals.

12 VAC 30-20-500 (Attachment 7.5) describes the process, procedures, and time frames for all provider informal and formal administrative appeals.

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PART X.
PROVIDER APPEALS.

12 VAC 30-20-290 through 12 VAC 30-20-490. (Reserved.)

12 VAC 30-20-500. Definitions.

The following words, when used in this part, shall have the following meanings:

"Day" means a calendar day unless otherwise stated.

"DMAS" means the Virginia Department of Medical Assistance Services or its agents or contractors.

"Hearing officer" means an individual selected by the Executive Secretary of the Supreme Court of Virginia to conduct the formal appeal in an impartial manner pursuant to §§ 9-6.14:12 and 32.1-325.1 of the Code of Virginia and this part.

"Informal appeals agent" means a DMAS employee who conducts the informal appeal in an impartial manner pursuant to §§ 9-6.14:11 and 32.1-325.1 of the Code of Virginia and this part.

"Provider" means an individual or entity that has a contract with DMAS to provide covered services and that is not operated by the Commonwealth of Virginia.

12 VAC 30-20-510. Reserved.

12 VAC 30-20-520. Provider appeals: general provisions.

A. This part governs all DMAS informal and formal provider appeals and shall supersede any other provider appeals regulations.

B. A provider may appeal any DMAS action that is subject to appeal under the Virginia Administrative Process Act (Chapter 1.1:1 of Title 9 of the Code of Virginia), including DMAS' interpretation and application of payment methodologies. A provider may not appeal the actual payment methodologies.

C. DMAS shall mail all items to the last known address of the provider. It is presumed that DMAS mails items on the date noted on the item. It is presumed that providers receive items mailed to their last known address within three days after DMAS mails the item.

D. Whenever DMAS or a provider is required to file a document, the document shall be considered filed when it is date stamped by the DMAS Appeals Division in Richmond, Virginia.

E. Whenever the last day specified for the filing of any document or the performance of any other act falls on a day on which DMAS is officially closed, the time period shall be extended to the next day on which DMAS is officially open.

F. Conferences and hearings shall be conducted at DMAS' main office in Richmond, Virginia, or at such other place as agreed to by the parties.

G. Whenever DMAS or a provider is required to attend a conference or hearing, failure by one of the parties to attend the conference or hearing shall result in dismissal of the appeal in favor of the other party.

H. DMAS shall reimburse a provider for reasonable and necessary attorneys' fees and costs associated with an informal or formal administrative appeal if the provider substantially prevails on the merits of the appeal and DMAS' position is not substantially justified, unless special circumstances would make an award unjust. In order to substantially prevail on the merits of the appeal, the provider must be successful on more than 50% of the dollar amount involved in the issues identified in the provider's notice of appeal.

12 VAC 30-20-530. Reserved.

12 VAC 30-20-540. Informal appeals.

A. Providers appealing a DMAS decision shall file a written notice of informal appeal with the DMAS Appeals Division within 30 days of the provider's receipt of the decision. Providers appealing adjustments to a cost report shall file a written notice of informal appeal with the DMAS Appeals Division within 90 days of the provider's receipt of the notice of program reimbursement. The notice of informal appeal shall identify the issues being appealed. Failure to file a written notice of informal appeal within 30 days of receipt of the decision or within 90 days of receipt of the notice of program reimbursement shall result in dismissal of the appeal.

B. DMAS shall file a written case summary with the DMAS Appeals Division within 30 days of the filing of the provider's notice of informal appeal. DMAS shall mail a complete copy of the case summary to the provider on the same day that the case summary is filed with the DMAS Appeals Division. The case summary shall address each adjustment, patient, service date, or other disputed matter and shall state DMAS' position for each adjustment, patient, service date, or other disputed matter. The case summary shall contain the factual basis for each adjustment, patient, service date, or other disputed matter and any other information, authority, or documentation DMAS relied upon in taking its action or making its decision. Failure to file a written case summary with the Appeals Division in the detail specified within 30 days of the filing of the provider's notice of informal appeal shall result in dismissal in favor of the provider on those issues not addressed in the detail specified.

C. The informal appeals agent shall conduct the conference within 90 days from the filing of the notice of informal appeal. If DMAS and the provider and the informal appeals agent agree, the conference may be conducted by way of written submissions. If the conference is conducted by way of written submissions, the informal appeals agent shall specify the time within which the provider may file written submissions, not to exceed 90 days from the filing of the notice of informal appeal. Only written submissions filed within the time specified by the informal appeals agent shall be considered.

D. The conference may be recorded for the convenience of the informal appeals agent. Since the conference is not an adversarial or evidentiary proceeding, recordings shall not be made part of the administrative record and shall not be made available to anyone other than the informal appeals agent.

E. Upon completion of the conference, the informal appeals agent shall specify the time within which the provider may file

additional documentation or information, if any, not to exceed 30 days. Only documentation or information filed within the time specified by the informal appeals agent shall be considered.

F. The informal appeal decision shall be issued within 180 days of receipt of the notice of informal appeal.

12 VAC 30-20-550. Reserved.

12 VAC 30-20-560. Formal appeals.

A. Any provider appealing a DMAS informal appeal decision shall file a written notice of formal appeal with the DMAS Appeals Division within 30 days of the provider's receipt of the informal appeal decision. The notice of formal appeal shall identify the issues being appealed. Failure to file a written notice of formal appeal within 30 days of receipt of the informal appeal decision shall result in dismissal of the appeal.

B. DMAS and the provider shall exchange and file with the hearing officer all documentary evidence on which DMAS or the provider relies within 21 days of the filing of the notice of formal appeal. Only documents filed within 21 days of the filing of the notice of formal appeal shall be considered. DMAS and the provider shall file any objections to the admissibility of documentary evidence within seven days of the filing of the documentary evidence. Only objections filed within seven days of the filing of the documentary evidence shall be considered. The hearing officer shall rule on any objections within seven days of the filing of the objections.

C. The hearing officer shall conduct the hearing within 45 days from the filing of the notice of formal appeal.

D. Hearings shall be transcribed by a court reporter retained by DMAS.

E. Upon completion of the hearing, DMAS and the provider shall have 30 days to exchange and file with the hearing officer an opening brief. Only opening briefs filed within 30 days after the hearing shall be considered. DMAS and the provider shall have 10 days to exchange and file with the hearing officer a reply brief after the opening brief has been filed. Only reply briefs filed within 10 days after the opening brief has been filed shall be considered.

F. The hearing officer shall submit a recommended decision to the DMAS director with a copy to the provider within 120 days of receipt of the formal appeal request. If the hearing officer does not submit a recommended decision within 120 days, then DMAS shall give written notice to the hearing officer and the Executive Secretary of the Supreme Court that a recommended decision is due.

G. Upon receipt of the hearing officer's recommended decision, the DMAS director shall notify DMAS and the provider in writing that any written exceptions to the hearing officer's recommended decision shall be filed within 30 days of receipt of the DMAS director's letter. Only exceptions filed within 30 days of receipt of the DMAS director's letter shall be considered. The DMAS director shall issue the final agency case decision within 60 days of receipt of the hearing officer's recommended decision.

12 VAC 30-70-140. Right to appeal and initial agency decision. (Repealed.)

~~A. Right to appeal. Any hospital seeking to appeal its prospective payment rate for operating costs related to inpatient care or other allowable costs shall submit a written request to the Department of Medical Assistance Services within 30 days of the date of the letter notifying the hospital of its prospective rate unless permitted to do otherwise under 12 VAC 30-70-144 E. The written request for appeal must contain the information specified in subsection B of this section. The department shall respond to the hospital's request for additional reimbursement within 30 days or after receipt of any additional documentation requested by the department, whichever is later. Such agency response shall be considered the initial agency determination.~~

~~B. Required information. Any request to appeal the prospective payment rate must specify: (i) the nature of the adjustment sought; (ii) the amount of the adjustment sought; and (iii) current and prospective cost containment efforts, if appropriate.~~

~~C. Nonappealable issues. The following issues will not be subject to appeal: (i) the organization of participating hospitals into peer groups according to location and bed size and the use of bed size and the urban/rural distinction as a generally adequate proxy for case mix and wage variations between hospitals in determining reimbursement for inpatient care; (ii) the use of Medicaid and applicable Medicare Principles of Reimbursement to determine reimbursement of costs other than operating costs relating to the provision of inpatient care; (iii) the calculation of the initial group ceilings on allowable operating costs for inpatient care as of July 1, 1982; (iv) the use of the inflation factor identified in the State Plan as the prospective escalator; and (v) durational limitations set forth in the State Plan (the "twenty-day rule").~~

~~D. The rate which may be appealed shall include costs which are for a single cost reporting period only.~~

~~E. The hospital shall bear the burden of proof throughout the administrative process.~~

12 VAC 30-70-141. Administrative appeal of adverse initial agency determination. (Repealed.)

~~A. The administrative appeal of an adverse initial agency determination shall be made in accordance with the Virginia Administrative Process Act, § 9-6.14:11 through § 9-6.14:14 of the Code of Virginia, as set forth below.~~

~~B. The informal proceeding:~~

~~1. The hospital shall submit a written request to appeal an adverse initial agency determination in accordance with § 9-6.14:11 of the Code of Virginia within 15 days of the date of the letter transmitting the initial agency determination.~~

~~2. The request for an informal conference in accordance with § 9-6.14:11 of the Code of Virginia shall include the following information:~~

~~a. the adverse agency action appealed from;~~

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b. a detailed description of the factual data, argument or information the hospital will rely on to challenge the adverse agency decision.

3. The agency shall afford the hospital an opportunity for an informal conference in accordance with § 9-6.14:11 of the Code of Virginia.

4. The Director of the Appeals Division of the Department of Medical Assistance Services, or a designee, shall preside over the informal conference. As hearing officer, the director, or the designee, may request such additional documentation or information from the hospital or agency staff as may be necessary in order to render an opinion.

5. After the informal conference, the Director of the Appeals Division, having considered the criteria for relief set forth in 12 VAC 30-70-143 and 12 VAC 30-70-144, shall take any of the following actions:

- a. Notify the provider that its request for relief is denied setting forth the reasons for such denial;
- b. Notify the provider that its appeal has merit and advise it of the agency action which will be taken; or
- c. Notify the provider that its request for relief will be granted in part and denied in part, setting forth the reasons for the denial in part and the agency action which will be taken to grant relief in part.

6. The decision of the informal hearing officer shall be rendered within 90 days of the conclusion of the informal conference.

12 VAC 30-70-142. The formal administrative hearing: procedures. (Repealed.)

A. The hospital shall submit its written request for a formal administrative hearing under § 9-6.14:12 of the Code of Virginia within 15 days of the date of the letter transmitting the adverse informal agency decision.

B. At least 21 days prior to the date scheduled for the formal hearing, the hospital shall provide the agency with:

1. Identification of the adverse agency action appealed from, and
2. A summary of the factual data, argument and proof the provider will rely on in connection with its case.

C. The agency shall afford the provider an opportunity for a formal administrative hearing within 45 days of the receipt of the request.

D. The Director of the Department of Medical Assistance Services, or his designee, shall preside over the hearing. Where a designee presides, he shall make recommended findings and a recommended decision to the director. In such instance, the provider shall have an opportunity to file exceptions to the proposed findings and conclusions. In no case shall the designee presiding over the formal administrative hearing be the same individual who presided over the informal appeal.

E. The Director of the Department of Medical Assistance Services shall make the final administrative decision in each case.

F. The decision of the agency shall be rendered within 60 days of the conclusion of the administrative hearing.

12 VAC 30-70-143. The formal administrative hearing: necessary demonstration of proof. (Repealed.)

A. The hospital shall bear the burden of proof in seeking relief from its prospective payment rate.

B. A hospital seeking additional reimbursement for operating costs relating to the provision of inpatient care shall demonstrate that its operating costs exceed the limitation on operating costs established for its peer group and set forth the reasons for such excess.

C. In determining whether to award additional reimbursement to a hospital for operating costs relating to the provision of inpatient care, the Director of the Department of Medical Assistance Services shall consider the following:

1. Whether the hospital has demonstrated that its operating costs are generated by factors generally not shared by other hospitals in its peer group. Such factors may include, but are not limited to, the addition of new and necessary services, changes in case mix, extraordinary circumstances beyond the control of the hospital, and improvements imposed by licensing or accrediting standards.
2. Whether the hospital has taken every reasonable action to contain costs on a hospital-wide basis.

a. In making such a determination, the director or his designee may require that an appellant hospital provide quantitative data, which may be compared to similar data from other hospitals within that hospital's peer group or from other hospitals deemed by the director to be comparable. In making such comparisons, the director may develop operating or financial ratios which are indicators of performance quality in particular areas of hospital operation. A finding that the data or ratios or both of the appellant hospital fall within a range exhibited by the majority of comparable hospitals may be construed by the director to be evidence that the hospital has taken every reasonable action to contain costs in that particular area. Where applicable, the director may require the hospital to submit to the agency the data it has developed for the Virginia Department of Health (formerly Virginia Health Services Cost Review Council). The director may use other data, standards or operating screens acceptable to him. The appellant hospital shall be afforded an opportunity to rebut ratios, standards or comparisons utilized by the director or his designee in accordance with this section.

b. Factors to be considered in determining effective cost containment may include the following:

- Average daily occupancy
- Average hourly wage
- FTE's per adjusted occupied bed

- Nursing salaries per adjusted patient day
- Average length of stay
- Average cost per surgical case
- Cost (salary/nonsalary) per ancillary procedure
- Average cost (food/nonfood) per meal served
- Average cost per pound of laundry
- Cost (salary/nonsalary) per pharmacy prescription
- Housekeeping cost per square foot
- Maintenance cost per square foot
- Medical records cost per admission
- Current ratio (current assets to current liabilities)
- Age of receivables
- Bad debt percentage
- Inventory turnover
- Measures of case mix

c. In addition, the director may consider the presence or absence of the following systems and procedures in determining effective cost containment in the hospital's operation.

- Flexible budgeting system
- Case mix management systems
- Cost accounting systems
- Materials management system
- Participation in group purchasing arrangements
- Productivity management systems
- Cash management programs and procedures
- Strategic planning and marketing
- Medical records systems
- Utilization/Peer review systems

d. Nothing in this provision shall be construed to require a hospital to demonstrate every factor set forth above or to preclude a hospital from demonstrating effective cost containment by using other factors.

The director or his designee may require that an onsite operational review of the hospital be conducted by the department or its designee.

3. Whether the hospital has demonstrated that the Medicaid prospective payment rate it receives to cover operating costs related to inpatient care is insufficient to provide care and service that conforms to applicable state and federal laws, regulations and quality and safety standards.¹

D. In no event shall the Director of the Department of Medical Assistance Services award additional reimbursement to a hospital for operating costs relating to the provision of inpatient care, unless the hospital demonstrates to the satisfaction of the director that the Medicaid rate it receives under the Medicaid prospective payment system is insufficient to ensure Medicaid recipients reasonable access to sufficient inpatient hospital services of adequate quality.²

In making such demonstration, the hospital shall show that:

1. The current Medicaid prospective payment rate jeopardizes the long-term financial viability of the hospital. Financial jeopardy is presumed to exist if, by providing care to Medicaid recipients at the current Medicaid rate, the hospital can demonstrate that it is, in the aggregate, incurring a marginal loss.³

For purposes of this section, marginal loss is the amount by which total variable costs for each patient day exceed the Medicaid payment rate. In calculating marginal loss, the hospital shall compute variable costs at 60% of total inpatient operating costs and fixed costs at 40% of total inpatient operating costs; however, the director may accept a different ratio of fixed and variable operating costs if a hospital is able to demonstrate that a different ratio is appropriate for its particular institution.

Financial jeopardy may also exist if the hospital is incurring a marginal gain but can demonstrate that it has unique and compelling Medicaid costs, which if unreimbursed by Medicaid, would clearly jeopardize the hospital's long-term financial viability.

2. The population served by the hospital seeking additional financial relief has no reasonable access to other inpatient hospitals. Reasonable access exists if most individuals served by the hospital seeking financial relief can receive inpatient hospital care within a 30-minute travel time at a total per diem rate which is less to Department of Medical Assistance Services than the costs which would be incurred by DMAS per patient day were the appellant hospital granted relief.⁴

E. In determining whether to award additional reimbursement to a hospital for reimbursable costs which are other than operating costs related to the provision of inpatient care, the director shall consider Medicaid and applicable Medicare rules of reimbursement.

¹ See 42 USC § 1396a(a)(13)(A). This provision reflects the Commonwealth's concern that she reimburse only those excess operating costs which are incurred because they are needed to provide adequate care. The Commonwealth recognizes that hospitals may choose to provide more than "just adequate" care and, as a consequence, incur higher costs. In this regard, the Commonwealth notes that "Medicaid programs do not guarantee that each recipient will receive that level of health care precisely tailored to his or her particular needs. Instead, the benefit provided through Medicaid is a particular package of health care services ... that package of services has the general aim of assuring that individuals will receive necessary medical care, but the benefit provided remains the individual services offered—not 'adequate health care.'" *Alexander v. Choate*, U.S., decided January 9, 1985, 53 L.W., 4072, 4075.

² In *Mary Washington Hospital v. Fisher*, the court ruled that the Medicaid rate "must be adequate to ensure reasonable access." *Mary Washington Hospital v. Fisher*, at p. 18. The need to demonstrate that the Medicaid rate is inadequate to ensure recipients reasonable access derives directly from federal law and regulation. In its response to comments on the NPRM published September 30, 1981, HCFA points out Congressional intent regarding the access issue:

The report on H.R. 3982 states the expectation that payment levels for inpatient services will be adequate to assure that a sufficient number of facilities providing a sufficient level of services actively participate in the Medicaid program to enable all Medicaid beneficiaries to obtain quality inpatient services. This report further states that payments should be set at a level that ensures the active treatment of Medicaid patients in a majority of the hospitals in the state. 46 FR 47970.

³ The Commonwealth believes that Congressional intent is threatened in situations in which a hospital is incrementally harmed for each additional day a Medicaid patient is treated—and therefore has good cause to consider withdrawal from the program—and where no alternative is readily available to the patient, should withdrawal occur. Otherwise, although the rate being paid a hospital may be less than that paid by other payors—indeed, less than average cost per day for all patients—it nonetheless equals or exceeds the variable cost per day, and therefore benefits the hospital by offsetting some amount of fixed costs, which it would incur even if the bed occupied by the Medicaid patient were left empty.

It should be emphasized that application of this marginal loss or "incremental harm" concept is a device to assess the potential harm to a hospital continuing

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to treat Medicaid recipients, and not a mechanism for determining the additional payment due to a successful appellant. As discussed below, once a threat to access has been demonstrated, the Commonwealth may participate in the full average costs associated with the circumstances underlying the appeal.

⁴With regard to the 30-minute travel standard, this requirement is consistent with general health planning criteria regarding acceptable travel time for hospital care.

12 VAC 30-70-144. Available relief. (Repealed.)

A. Any relief granted under 12 VAC 30-70-140 through 12 VAC 30-70-143 shall be for one cost reporting period only.

B. Relief for hospitals seeking additional reimbursement for operating costs incurred in the provision of inpatient care shall not exceed the difference between:

1. The cost per allowable Medicaid day arising specifically as a result of circumstances identified in accordance with 12 VAC 30-70-143 (excluding plant and education costs and return on equity capital); and
2. The prospective operating costs per diem, identified in the Medicaid Cost Report and calculated by DMAS.⁵

⁵The Commonwealth recognizes that in cases where circumstances warrant relief beyond the existing payment rate, she may share in the cost associated with those circumstances. This is consistent with the existing policy, whereby payment is made on an average per diem basis. The Commonwealth will not reimburse more than her share of fixed costs. Any relief to an appellant hospital will be computed using patient days adjusted for the level of occupancy during the period under appeal. In no case will any additional payments made under this rule reflect lengths of stay which exceed the 21-day limit currently in effect.

C. Relief for hospitals seeking additional reimbursement for (i) costs considered as "pass-throughs" under the prospective payment system or (ii) costs incurred in providing care to a disproportionate number of Medicaid recipients or (iii) costs incurred in providing extensive neonatal care shall not exceed the difference between the payment made and the actual allowable cost incurred.

D. Any relief awarded under 12 VAC 30-70-140 through 12 VAC 30-70-143 shall be effective from the first day of the cost period for which the challenged rate was set. Cost periods for which relief will be afforded are those which begin on or after January 4, 1985. In no case shall this limitation apply to a hospital which noted an appeal of its prospective payment rate for a cost period prior to January 4, 1985.

E. All hospitals for which a cost period began on or after January 4, 1985, but prior to the effective date of these regulations, shall be afforded an opportunity to be heard in accordance with these regulations if the request for appeal set forth in 12 VAC 30-70-140 A is filed within 90 days of the effective date of these regulations.

12 VAC 30-70-145. Catastrophic occurrence. (Repealed.)

A. Nothing in this part shall be construed to prevent a hospital from seeking additional reimbursement for allowable costs incurred as a consequence of a natural or other catastrophe. Such reimbursement will be paid for the cost period in which such costs were incurred and for cost periods beginning on or after July 1, 1982.

B. In order to receive relief under this section, a hospital shall demonstrate that the catastrophe met the following criteria:

1. One time occurrence;
2. Less than 12 months duration;
3. Could not have been reasonably predicted;
4. Not of an insurable nature;
5. Not covered by federal or state disaster relief;
6. Not a result of malpractice or negligence.

C. Any relief sought under this section must be calculable and auditable.

D. The agency shall pay any relief afforded under this section in a lump sum.

12 VAC 30-90-130. Dispute resolution for nonstate operated nursing facilities. (Repealed.)

A. NF's have the right to appeal the DMAS's interpretation and application of state and federal Medicaid and applicable Medicare principles of reimbursement in accordance with the Administrative Process Act, § 9-6.14:1 et seq. and § 32.1-325.1 of the Code of Virginia.

B. Nonappealable issues are identified below:

1. The use of state and federal Medicaid and applicable Medicare principles of reimbursement.
2. The organization of participating NF's into peer groups according to location as a proxy for cost variation across facilities with similar operating characteristics. The use of individual ceilings as a proxy for determining efficient operation within each peer group.
3. Calculation of the initial peer group ceilings using the most recent cost settled data available to DMAS that reflects NF operating costs inflated to September 30, 1990.
4. The use of the moving average of the Skilled Nursing Facility market basket of routine service costs, as developed by Data Resources, Incorporated, adjusted for Virginia, as the prospective escalator.
5. The establishment of separate ceilings for direct operating costs and indirect operating costs.
6. The use of Service Intensity Indexes to identify the resource needs of given NF's patient mix relative to the needs present in other NF's.
7. The development of Service Intensity Indexes based on:
 - a. Determination of resource indexes for each patient class that measures relative resource cost.
 - b. Determination of each NF's average relative resource cost index across all patients.
 - c. Standardizing the average relative resource cost indexes of each NF across all NF's.
8. The use of the DMAS Long Term Care Information System (LTCIS), assessment form (currently DMAS-95), Virginia Center on Aging Study, the State of Maryland Time and Motion Study of the Provision of Nursing

Service in Long Term Care Facilities, and the KPMG Peat Marwick Survey of Virginia long-term care NF's nursing wages to determine the patient class system and resource indexes for each patient class.

9. The establishment of payment rates based on service intensity indexes.

12 VAC 30-90-131. Conditions for appeal. (Repealed.)

An appeal shall not be heard until the following conditions are met:

1. Where appeals result from desk or field audit adjustments, the provider shall have received a notification of program reimbursement (NPR) in writing from the DMAS.

2. Any and all moneys due to DMAS shall be paid in full, unless a repayment plan has been agreed to by DMAS.

3. All first level appeal requests shall be filed in writing with the DMAS within 90 business days following the date of a DMAS notice of program reimbursement that adjustments have been made to a specific cost report.

12 VAC 30-90-132. Appeal procedure. (Repealed.)

A. There shall be two levels of administrative appeal.

B. Informal appeals shall be decided by the Director of the Appeals Division after an informal fact finding conference is held. The decision of the Director of the Appeals Division shall be sent in writing to the provider within 90 business days following conclusion of the informal fact finding conference.

C. If the provider disagrees with such initial decision the provider may, at its discretion, file a notice of appeal to the Director of the DMAS. Such notice shall be in writing and filed within 30 business days of the date of the initial decision.

D. Within 30 business days of the date of such notice of appeal, the director shall appoint a hearing officer to conduct the proceedings, to review the issues and the evidence presented, and to make a written recommendation.

E. The director shall notify the provider of his final decision within the time frames set for disposition of appeals in this subpart and the Administrative Process Act, § 9-6.14:1 et seq. of the Code of Virginia.

F. The director's final written decision shall conclude the provider's administrative appeal.

G. Formal hearing procedures, as developed by DMAS, shall control the conduct of the formal administrative proceedings.

12 VAC 30-90-133. Appeals time frames. (Repealed.)

Appeal time frames noted throughout this section may be extended for the following reasons:

1. The provider submits a written request prior to the due date requesting an extension for good cause and the DMAS approves the extension.

2. Delays on the part of the NF documented by the DMAS shall automatically extend DMAS's time frame to the extent of the time delayed.

3. Extensions of time frames shall be granted to the DMAS for good cause shown.

4. When appeals for multiple years are submitted by a NF or a chain organization or common owners are coordinating appeals for more than one NF, the time frames shall be reasonably extended for the benefit of the DMAS.

5. Disputes relating to the time lines established in 12 VAC 30-90-132 B or to the grant of extensions to the DMAS shall be resolved by application to the Director of the DMAS or his designee.

12 VAC 30-90-135. Reimbursement of legal fees associated with appeals having substantial merit. (Repealed.)

A. The Department of Medical Assistance Services shall reimburse a nursing facility for reasonable and necessary legal fees associated with an informal or formal appeal brought pursuant to the Administrative Process Act, only if the nursing facility substantially prevails on the merit of the appeal. The term "substantially prevails" is defined as being successful on more than 50% of the issue as appealed and on more than 50% of the amount under appeal. The reimbursement of legal fees remains subject to the State Plan for Medical Assistance and all existing ceilings. Any legal fees claimed must be supported by adequate, detailed, and verifiable documentation.

B. Subject to the requirements of subsection A of this section, the reimbursable legal fees will be included in the calculation of total allowable costs in the fiscal year the appeal process is concluded and Medicaid will reimburse the nursing facility for its Medicaid proportionate share.

VA.R. Doc. No. R00-291; Filed February 5, 2001, 3:08 p.m.



TITLE 13. HOUSING

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

Withdrawal

Title of Regulation: **13 VAC 10-180-10 et seq. Rules and Regulations for Allocation of Low-Income Housing Tax Credits.**

The proposed amendments to 13 VAC 10-180-10 et seq., Rules and Regulations for Allocation of Low-Income Housing Tax Credits, published in 17:4 VA.R. 547-560, November 6, 2000, have been incorporated into and are superseded by the proposed amendments to such regulations being published in this issue of the Virginia Register.

VA.R. Doc. No. R01-26; Filed January 30, 2001, 1:47 p.m.

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REGISTRAR'S NOTICE: The Virginia Housing Development Authority is exempt from the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) pursuant to § 9-6.14:4.1 A 4; however, under the provisions of § 9-6.14:22, it is required to publish all proposed and final regulations.

Title of Regulation: 13 VAC 10-180-10 et seq. **Rules and Regulations for Allocation of Low-Income Housing Tax Credits (amending 13 VAC 10-180-10, 13 VAC 10-180-40, 13 VAC 10-180-60, 13 VAC 10-180-70, 13 VAC 10-180-90, and 13 VAC 10-180-100).**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Agency Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220, telephone (804) 343-5540 or FAX (804) 783-6701.

Summary:

The proposed amendments (i) prohibit applications for 9.0% credits for developments for which tax-exempt bonds have already been issued; (ii) provide that rehabilitation developments not submitting an early VHDA notification form letter will receive the 10 points for the form letter if submitted with the application and the locality supports the development and will not be penalized the negative 50 points if the locality does not support the development; (iii) provide a threshold of 25 points for tax-exempt financed developments in the credit request scoring category; (iv) provide 25 points for any development to be located in a qualified census tract that will contribute to a concerted community revitalization plan; (v) provide points for developments subject to section 8 and 236 loans and Federal Home Loan Bank AHP loans and/or grants; (vi) provide 10 points for developments in which leasing preference will be given to families with children; (vii) add amenity items and increase points for amenities from 45 to 50 points; (viii) add 20 points for "Hard to Develop" developments; (ix) reduce points for credits per unit from 240 to 180 points and reduce points for cost per unit from 110 to 75 points; (x) move bonus point categories to regular scoring categories; (xi) add up to 10 bonus points for restricting rents at or below 30% of 40% of the area median income; (xii) provide that developments located in localities with area median incomes at or below the state area median income will qualify for up to the maximum 60 points when restricting rents only to the 50% and 40% levels; (xiii) provide 5 points for developments intended for eventual tenant ownership; (xiv) provide that localities may encourage mixed income developments by requesting VHDA to use only tax credit units in the calculation for points in the bonus point categories; (xv) increase the threshold score from 475 to 550 for the competitive credit; (xvi) give preference between tied applications to the application with the highest combination of bonus points and points for community revitalization projects in a qualified census tract; (xvii) require market studies on all developments receiving a reservation of credits; (xviii)

conform compliance monitoring regulations to changes in the Internal Revenue Service regulations; (xix) make a written explanation available to the general public for any allocation of housing credit dollar amount that is not made in accordance with established priorities and selection criteria of the authority; and (xx) make other miscellaneous administrative clarification changes.

13 VAC 10-180-10. Definitions.

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

"*Applicant*" means an applicant for credits under this chapter and also means the owner of the development to whom the credits are allocated.

"*Credits*" means the low-income housing tax credits as described in § 42 of the IRC.

"*IRC*" means the Internal Revenue Code of 1986, as amended, and the rules, regulations, notices and other official pronouncements promulgated thereunder.

"*IRS*" means the Internal Revenue Service.

"*Low-income housing units*" means those units which are defined as "low income units" under § 42 of the IRC.

"*Low-income jurisdiction*" means any city or county in the Commonwealth with an area median income at or below the statewide area median income established by the U.S. Department of Housing and Urban Development.

"*Qualified application*" means a written request for tax credits which is submitted on a form or forms prescribed or approved by the executive director together with all documents required by the authority for submission and meets all minimum scoring requirements.

"*Qualified low-income buildings*" or "*qualified low-income development*" means the buildings or development which meets the applicable requirements in § 42 of the IRC to qualify for an allocation of credits thereunder.

13 VAC 10-180-40. Adoption of allocation plan; solicitations of applications.

The IRC requires that the authority adopt a qualified allocation plan which shall set forth the selection criteria to be used to determine housing priorities of the authority which are appropriate to local conditions and which shall give certain priority to and preference among developments in accordance with the IRC. The executive director from time to time may cause housing needs studies to be performed in order to develop the qualified allocation plan and, based upon any such housing needs study and any other available information and data, may direct and supervise the preparation of and approve the qualified allocation plan and any revisions and amendments thereof in accordance with the IRC. The IRC requires that the qualified allocation plan be subject to public approval in accordance with rules similar to those in § 147(f)(2) of the IRC. The executive director may include all or any portion of this chapter in the qualified allocation plan. However, the authority may amend the qualified allocation

plan without public approval if required to do so by changes to the IRC.

The executive director may from time to time take such action as he may deem necessary or proper in order to solicit applications for credits. Such actions may include advertising in newspapers and other media, mailing of information to prospective applicants and other members of the public, and any other methods of public announcement which the executive director may select as appropriate under the circumstances. The executive director may impose requirements, limitations and conditions with respect to the submission of applications and the selection thereof as he shall consider necessary or appropriate.

No application for credits will be accepted for any building that has previously claimed credits and is still subject to the compliance period for such credits after the year such building is placed in service. *No application will be accepted, and no reservation or allocation will be made, for credits available under § 42(h)(3)(C) in the case of any buildings or development for which tax-exempt bonds of the authority, or an issuer other than the authority, have been issued and which may receive credits without an allocation of credits under § 42(h)(3)(C).*

13 VAC 10-180-60. Review and selection of applications; reservation of credits.

The executive director may divide the amount of credits into separate pools. The division of such pools may be based upon one or more of the following factors: geographical areas of the state; types or characteristics of housing, construction, financing, owners, occupants, or source of credits; or any other factors deemed appropriate by him to best meet the housing needs of the Commonwealth.

An amount, as determined by the executive director, not less than 10% of the Commonwealth's annual state housing credit ceiling for credits, shall be available for reservation and allocation to buildings or developments with respect to which the following requirements are met:

1. A "qualified nonprofit organization" (as described in § 42(h)(5)(C) of the IRC) which is authorized to do business in Virginia and is determined by the executive director, on the basis of such relevant factors as he shall consider appropriate, to be substantially based or active in the community of the development and is to materially participate (regular, continuous and substantial involvement as determined by the executive director) in the development and operation of the development throughout the "compliance period" (as defined in § 42(i)(1) of the IRC); and
2. (i) The "qualified nonprofit organization" described in the preceding subdivision 1 is to own (directly or through a partnership), prior to the reservation of credits to the buildings or development, all of the general partnership interests of the ownership entity thereof; (ii) the executive director of the authority shall have determined that such qualified nonprofit organization is not affiliated with or controlled by a for-profit organization; (iii) the executive director of the authority shall have determined that the qualified nonprofit organization was not formed by one or

more individuals or for-profit entities for the principal purpose of being included in any nonprofit pools (as defined below) established by the executive director, and (iv) the executive director of the authority shall have determined that no staff member, officer or member of the board of directors of such qualified nonprofit organization will materially participate, directly or indirectly, in the proposed development as a for-profit entity.

In making the determinations required by the preceding subdivision 1 and clauses (ii), (iii) and (iv) of subdivision 2 of this section, the executive director may apply such factors as he deems relevant, including, without limitation, the past experience and anticipated future activities of the qualified nonprofit organization, the sources and manner of funding of the qualified nonprofit organization, the date of formation and expected life of the qualified nonprofit organization, the number of paid staff members and volunteers of the qualified nonprofit organization, the nature and extent of the qualified nonprofit organization's proposed involvement in the construction or rehabilitation and the operation of the proposed development, the relationship of the staff, directors or other principals involved in the formation or operation of the qualified nonprofit organization with any persons or entities to be involved in the proposed development on a for-profit basis, and the proposed involvement in the construction or rehabilitation and operation of the proposed development by any persons or entities involved in the proposed development on a for-profit basis. The executive director may include in the application of the foregoing factors any other nonprofit organizations which, in his determination, are related (by shared directors, staff or otherwise) to the qualified nonprofit organization for which such determination is to be made.

For purposes of the foregoing requirements, a qualified nonprofit organization shall be treated as satisfying such requirements if any qualified corporation (as defined in § 42(h)(5)(D)(ii) of the IRC) in which such organization (by itself or in combination with one or more qualified nonprofit organizations) holds 100% of the stock satisfies such requirements.

The applications shall include such representations and warranties and such information as the executive director may require in order to determine that the foregoing requirements have been satisfied. In no event shall more than 90% of the Commonwealth's annual state housing credit ceiling for credits be available for developments other than those satisfying the preceding requirements. The executive director may establish such pools ("nonprofit pools") of credits as he may deem appropriate to satisfy the foregoing requirement. If any such nonprofit pools are so established, the executive director may rank the applications therein and reserve credits to such applications before ranking applications and reserving credits in other pools, and any such applications in such nonprofit pools not receiving any reservations of credits or receiving such reservations in amounts less than the full amount permissible hereunder (because there are not enough credits then available in such nonprofit pools to make such reservations) shall be assigned to such other pool as shall be appropriate hereunder; provided, however, that if credits are later made available (pursuant to the IRC or as a result of

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either a termination or reduction of a reservation of credits made from any nonprofit pools or a rescission in whole or in part of an allocation of credits made from such nonprofit pools or otherwise) for reservation and allocation by the authority during the same calendar year as that in which applications in the nonprofit pools have been so assigned to other pools as described above, the executive director may, in such situations, designate all or any portion of such additional credits for the nonprofit pools (or for any other pools as he shall determine) and may, if additional credits have been so designated for the nonprofit pools, reassign such applications to such nonprofit pools, rank the applications therein and reserve credits to such applications in accordance with the IRC and this chapter. In the event that during any round (as authorized hereinbelow) of application review and ranking the amount of credits reserved within such nonprofit pools is less than the total amount of credits made available therein, the executive director may either (i) leave such unreserved credits in such nonprofit pools for reservation and allocation in any subsequent round or rounds or (ii) redistribute, to the extent permissible under the IRC, such unreserved credits to such other pool or pools as the executive director shall designate reservations therefor in the full amount permissible hereunder (which applications shall hereinafter be referred to as "excess qualified applications") or (iii) carry over such unreserved credits to the next succeeding calendar year for inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year. Notwithstanding anything to the contrary herein, no reservation of credits shall be made from any nonprofit pools to any application with respect to which the qualified nonprofit organization has not yet been legally formed in accordance with the requirements of the IRC. In addition, no application for credits from any nonprofit pools or any combination of pools may receive a reservation or allocation of annual credits in an amount greater than \$500,000 unless credits remain available in such nonprofit pools after all eligible applications for credits from such nonprofit pools receive a reservation of credits.

Notwithstanding anything to the contrary herein, applicants relying on the experience of a local housing authority for developer experience points described hereinbelow and/or using Hope VI funds from the U.S. Department of Housing and Urban Development (HUD) in connection with the proposed development shall not be eligible to receive a reservation of credits from any nonprofit pools.

The authority shall review each application, and, based on the application and other information available to the authority, shall assign points to each application as follows:

1. Readiness.

a. Written evidence satisfactory to the authority of (i) ~~preliminary conditional~~ approval by local authorities of the plan of development or site plan for the proposed development (30 points) or (ii) approval by local authorities of the plan of development or site plan for the proposed development or that such approval is not required. (40 points)

b. Written evidence satisfactory to the authority (i) of approval by local authorities of proper zoning or special use permit for such site or (ii) that no zoning

requirements or special use permits are applicable. (40 points)

c. Valid building permit(s) or letter dated within three months prior to the application deadline stating that all approvals are in place and building permits will be issued upon receipt of all fees. (20 points)

d. Submission of plans and specifications or, in the case of rehabilitation for which plans will not be used, a unit-by-unit work write-up for such rehabilitation with certification in such form and from such person satisfactory to the executive director as to the completion of such plans or specifications or work write-up. (20 points multiplied by the quotient calculated by dividing the percentage of completion of such plans and specifications or such work write-up by 75% not to exceed 20 points.)

2. Housing needs characteristics.

a. Submission of the letter in the form prescribed by the authority with the necessary attachments, addressed to the current chief executive officer (or the equivalent) of the locality in which the proposed development is located, soliciting input on the proposed development from the locality within the deadlines established by the executive director. (10 points; failure to make timely submission, minus 50 points for any proposed development other than a rehabilitation of existing apartments)

b. (1) A letter dated within three months prior to the application deadline addressed to the authority and signed by the chief executive officer of the locality in which the proposed development is to be located stating, without qualification or limitation, the following:

"The construction or rehabilitation of (name of development) and the allocation of federal housing tax credits available under IRC Section 42 for that development will help meet the housing needs and priorities of (name of locality). Accordingly, (name of locality) supports the allocation of federal housing tax credits requested by (name of applicant) for that development." (50 points; or 60 points if the proposed development is a rehabilitation of existing apartments that did not receive points in subdivision 2(a) above)

(2) No letter from the chief executive officer of the locality in which the proposed development is to be located, or a letter addressed to the authority and signed by such chief executive officer stating neither support (as described in subdivision b (1) above) nor opposition (as described in subdivision b (3) below) as to the allocation of credits to the applicant for the development. (25 points)

(3) A letter in response to its notification to the chief executive officer of the locality in which the proposed development is to be located opposing the allocation of credits to the applicant for the development. In any such letter, the chief executive officer must

certify that the proposed development is not consistent with current zoning or other applicable land use regulations. (0 points)

c. Documentation from the local authorities that the proposed development is located in (i) a ~~Qualified Census Tract (QCT) or such other~~ locally identified revitalization area, or determination by the authority that the proposed development is located in a Difficult Development Area as defined by HUD or in an Enterprise Zone designated by the state- (20 points) or (ii) a *qualified census tract and the development of which contributes to a concerted community revitalization plan.* (25 points)

d. Commitment by the applicant to give leasing preference to individuals and families (i) *with children*, (ii) on public housing waiting lists maintained by the local housing authority operating in the locality in which the proposed development is to be located and notification of the availability of such units to the local housing authority by the applicant, or ~~(iii)~~ (iii) on section 8 (as defined in 13 VAC 10-180-90) waiting lists maintained by the local or nearest section 8 administrator for the locality in which the proposed development is to be located and notification of the availability of such units to the local section 8 administrator by the applicant. (10 points *each for (i), and either (ii) or (iii) above*)

e. Any of the following: (i) firm financing commitment(s) from the local government, housing authority, *Federal Home Loan Bank affordable housing funds*, or the Rural Development of the U.S. Department of Agriculture or (ii) a resolution passed by the locality in which the proposed development is to be located committing a grant or below-market rate loan or a waiver of taxes and fees, donation of land or other similar support to the development or (iii) evidence from Rural Development that the development will remain subject to existing financing from Rural Development. In the case of (iii) above, if the applicant is, or has any common interests with, the current owner, directly or indirectly, the application will only qualify for these points if the applicant waives all rights to any developer's fee and any other fees associated with the acquisition and rehabilitation (or rehabilitation only) of the development unless permitted by the executive director for good cause. (The amount of such financing or value of local support will be divided by the total development sources of funds and the proposed development receives two points for each percentage point up to a maximum of 40 points.)

f. *Any development subject to HUD's section 8 or section 236 programs at the time of application.* (20 points)

3. Development characteristics.

a. The average unit size. (100 points multiplied by the sum of the products calculated by multiplying, for each unit type as defined by the number of bedrooms per unit, (i) the quotient of the number of units of a given

unit type divided by the total number of units in the proposed development, times (ii) the quotient of the average actual gross square footage per unit for a given unit type minus the lowest gross square footage per unit for a given unit type established by the executive director divided by the highest gross square footage per unit for a given unit type established by the executive director minus the lowest gross square footage per unit for a given unit type established by the executive director. *If the average actual gross square footage per unit for a given unit type is less than the lowest gross square footage per unit for a given unit type established by the executive director or greater than the highest gross square footage per unit for a given unit type established by the executive director, the lowest or highest, as the case may be, gross square footage per unit for a given unit type established by the executive director shall be used in the above calculation rather than the actual gross square footage per unit for a given unit type.*)

b. Rehabilitation of existing housing stock and adaptive reuse developments (points equal to (percentage of households at or below 60% of the Area Median Income (AMI) in the proposed development's census tract (not less than 10% and not to exceed 90%) times 100) minus 10). Increase of housing stock attributable to new construction (points equal to 90 minus (percentage of households at or below 60% of the AMI in the proposed development's census tract (not less than 10% and not to exceed 90%) times 100)). Developments involving both rehabilitation and new construction will be scored on a weighted average of the point calculations above. Proposed new construction developments to be located in the jurisdictions included in the rural pool established by the executive director will receive an additional 20 points; however, no applicant will receive more than 80 points under this subdivision. Notwithstanding the above, the applicant shall receive the maximum 80 points in this subdivision if the applicant provides a letter signed by the chief executive officer of the locality in which the proposed development is located requesting the authority to override the point calculations and provide the maximum points under this subdivision.

c. Lower amount of credit request. (Fifty points multiplied by the percentage by which the total amount of the annual tax credits requested is less than \$1,000,000, including negative points using the percentage in which the total amount of annual credits requested is greater than \$1,000,000. *Developments financed with tax-exempt bonds will receive an automatic 25 points under this scoring category.*)

d. Evidence satisfactory to the authority documenting the quality of the proposed development's amenities as determined by the following:

(1) The following points are available for any application:

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- (a) If all 2-bedroom units have 1.5 bathrooms and all 3-bedroom units have 2 bathrooms. (15 points)
 - (b) If all units have a washer and dryer. (7 points)
 - (c) If all units have a balcony or patio. (5 points)
 - (d) If all units have a washer and dryer hook-up only. (3 points, *no points if points awarded in subdivision 1 (b) above*)
 - (e) If all units have a dishwasher. (2 points)
 - (f) If all units have a garbage disposal. (1 point)
 - (g) If the development has a laundry room. (1 point, *no points if points awarded in subdivision 1 (b) above*)
 - (h) If a community/meeting room with a minimum of 800 square feet is provided. (5 points)
 - (i) If all units have a range hood above the stove. (1 point)
 - (j) If all metal windows have thermal breaks, and if insulating glass for *metal or vinyl* windows and sliding glass doors have a 10-year warranty against breakage of the seal from date of delivery. (1 point)
 - (k) If all insulation complies with Virginia Power Energy Efficient Home Requirements, with a minimum R=30 insulation for roofs. (2 points)
 - (l) If all refrigerators are frost free, a minimum size of 14 cubic feet, and provide separate doors for freezer and refrigerator compartments. (1 point)
 - (m) If all exterior doors exposed to weather are metal. (1 point)
 - (n) Brick exterior walls. (15 points times the percentage of exterior walls covered by brick)
 - (o) *Durable siding other than brick that complies with ASTM 1186 standard specifications and is warranted to last for 50 or more years. (5 points)*
 - (p) *If the development has a minimum STC (sound transmission class) rating of 52 for the floor construction between units. (3 points)*
 - (q) *All kitchen cabinets comply with authority minimum guidelines. (1 point)*
 - (r) *All closet doors are side hinged (no bi-fold or sliding doors). (1 point)*
 - (s) *All exterior wood, including trim, fascia and rake boards are clad in aluminum. (1 point)*
- (2) The following points are available to applications electing to serve elderly and/or **handicapped physically disabled** tenants as elected in subdivision 4 a of this section:
- (a) If all cooking ranges have front controls. (1 point)
 - (b) If all units are adaptable for the handicapped in buildings with elevators. (2 points)
 - (c) If all units have an emergency call system. (3 points)
 - (d) If all bathrooms have grab bars and slip-resistant bottoms for bathtubs. (1 point)
 - (e) If all bathrooms have an independent or supplemental heat source. (1 point)
 - (f) If all corridors have a handrail on one side. (1 point)
 - (g) *If all entrance doors to each unit have two eye viewers, one at 48 inches and the other at standard height. (1 point)*
- (3) The following points are available to ~~projects~~ *proposed developments* which rehabilitate or adaptively reuse an existing structure:
- (a) If all bathrooms, including ones with windows, have exhaust fans ducted out. (1 point)
 - (b) If all existing, single-glazed windows in good condition have storm windows, and all windows in poor condition are replaced with new windows with integral storm sash or insulating glass. The insulating glass metal windows must have a thermal break. The insulated glass must have a 10-year warranty against breakage of the seal. (2 3 points)
 - (c) If all apartments have a minimum of one electric smoke detector with battery backup. (1 point)
 - (d) If all bathrooms have ground fault interrupter electrical receptacles. (1 point)
 - (e) If the structure is historic, by virtue of being listed individually in the National Register of Historic Places, or due to its location in a registered historic district and certified by the Secretary of the Interior as being of historical significance to the district, and the rehabilitation will be completed in such a manner as to be eligible for historic rehabilitation tax credits. (5 points)
 - (f) All buildings have a minimum insulation of R=30 for attics and R=19 for crawl spaces. (2 3 points)
 - (g) All public areas, such as community rooms, laundry rooms, and rental office are accessible to persons in wheelchairs. (1 point)
 - (h) *If replacing the roof, removing the old roof and felt. (1 point)*
- The maximum number of points that may be awarded under any combination of the scoring categories under subdivision 3 d of this section is ~~45~~ 50 points.

(e) Any proposed 50 unit or less development that meets at least three of the following criteria: (i) sets maximum rents on all units at or below 25% of the gross income of households at or below 50% of the area median income (without vouchers or rental assistance); (ii) restricts at least 20% of the units for occupancy by households with incomes at or below 40% of the area median income; (iii) requires at least 60% of the developer's fee to pay development costs; and (iv) has below market rate financial assistance from local, state or federal government. (20 points)

4. Tenant population characteristics.

a. Commitment by the applicant to lease low-income housing units in the proposed development only to one or more of the following: (i) persons 55 years or older elderly households as defined by the United States Fair Housing Act, (ii) homeless persons or families, or (iii) physically or mentally disabled persons. Applicants committing to serve physically disabled persons must meet the requirements of the federal Americans with Disabilities Act (42 USC § 12101 et seq.). Applicants receiving points under this subdivision a may not receive points under subdivision b below. (30 points)

b. Commitment by the applicant to creating a development in which 20% or more of the low-income units have three or more bedrooms. Applicants receiving points under this subdivision b may not receive points under subdivision a above. (30 points)

c. Commitment by the applicant to provide relocation assistance to displaced households at such level required by the authority. (30 points)

5. Sponsor characteristics.

a. Evidence that the development team for the proposed development has the demonstrated experience, qualifications and ability to perform. (10 points)

b. Participation by a qualified nonprofit organization (or by a wholly-owned subsidiary of such organization) authorized to do business in Virginia and substantially based or active in the community of the development that acts as a managing general partner under the partnership agreement. (20 points) No staff member, officer or member of the board of directors of such qualified nonprofit organization may materially participate, directly or indirectly, in the proposed development through a for-profit entity.

6. Efficient use of resources.

a. The percentage by which the total of the amount of credits per low-income housing unit (the "per unit credit amount") of the proposed development is less than the standard per unit credit amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. (If the per unit credit amount of the proposed development equals or exceeds the applicable standard per unit credit amount established by the executive director, the proposed development is

assigned no points; if the per unit credit amount of the proposed development is less than the applicable standard per unit credit amount established by the executive director, the difference is calculated as a percentage of such standard per unit credit amount established by the executive director, and then multiplied by 240 180 points.)

b. The percentage by which the cost per low-income housing unit (the "per unit cost"), adjusted by the authority for location, of the proposed development is less than the standard per unit cost amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. (If the per unit cost of the proposed development equals or exceeds the applicable standard per unit cost amount established by the executive director, the proposed development is assigned no points; if the per unit cost of the proposed development is less than the applicable standard per unit cost amount established by the executive director, the difference is calculated as a percentage of such standard per unit cost amount established by the executive director, and then multiplied by 440 75 points.)

The executive director may use a standard per square foot credit amount and a standard per square foot cost amount in establishing the per unit credit amount and the per unit cost amount in subdivision 6 above. For the purpose of calculating the points to be assigned pursuant to such ~~subdivision~~ subdivisions 3c and 6 above, all credit amounts shall include any credits previously allocated to the development, and the per unit credit amount for any building documented by the applicant to be located in a qualified census tract or difficult development area (such tract or area being as defined in the IRC) shall be determined based upon 100% of the eligible basis of such building, in the case of new construction, or 100% of the rehabilitation expenditures, in the case of rehabilitation of an existing building, notwithstanding any use by the applicant of 130% of such eligible basis or rehabilitation expenditures in determining the amount of credits as provided in the IRC.

~~After points have been assigned to each application in the manner described above, the executive director shall compute the total number of points assigned to each such application. Notwithstanding any other provisions herein, any application which is assigned a total number of points less than a threshold amount of 475 points shall be rejected from further consideration hereunder and shall not be eligible for any reservation or allocation of credits.~~

7. Bonus points. ~~For each application to which the total number of points assigned is equal to or more than the above-described threshold amount of points, bonus points shall be assigned as follows:~~

a. Commitment by the applicant to impose income limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development

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to be a qualified low-income development. Applicants receiving points under this subdivision a may not receive points under subdivision b below. (The product of (i) 50 points multiplied by (ii) the percentage of ~~low-income housing units restricted for occupancy in the proposed development both rent restricted to and occupied by households at or below 50% of the area median gross income; plus 1 point for each percentage point of such housing units in the proposed development which are further restricted to rents at or below 30% of 40% of the area median gross income up to an additional 10 points.~~)

b. Commitment by the applicant to impose rent limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision b may not receive points under subdivision a above. (The product of (i) 25 points *(50 points for proposed developments in low-income jurisdictions)* multiplied by (ii) the percentage of ~~low-income housing units restricted to the rents required for occupancy in the proposed development rent restricted to households at or below 50% of the area median gross income; plus 1 point for each percentage point of such housing units in the proposed development which are further restricted to the rents at or below 30% of 40% of the area median gross income up to an additional 10 points.~~)

c. Commitment by the applicant to maintain the low-income housing units in the development as a qualified low-income housing development beyond the 30-year extended use period (as defined in the IRC). Applicants receiving points under this subdivision c may not receive bonus points under subdivision d below. (40 points for a 10-year commitment beyond the 30-year extended use period or 50 points for a 20-year commitment beyond the 30-year extended use period.)

d. Participation by a qualified nonprofit organization or local housing authority substantially based or active in the community with at least a 10% ownership interest in the general partnership interest of the partnership and a commitment by the applicant to sell the proposed development pursuant to an executed, recordable option or right of first refusal to such qualified nonprofit organization or to a wholly owned subsidiary of such organization or authority, at the end of the 15-year compliance period, as defined by IRC, for a price not to exceed the outstanding debt and exit taxes of the for-profit entity. The applicant must record such option or right of first refusal immediately after the low-income housing commitment described in 13 VAC 10-180-70 and give the qualified nonprofit veto power over any refinancings of the development. Applicants receiving points under this subdivision d may not receive bonus points under subdivision c above. (60 points or, if the applicant receives 20 points under subdivision 5 (b) of this section, 50 points; *plus*

5 points if the qualified nonprofit organization submits a homeownership plan satisfactory to the authority in which the qualified nonprofit organization commits to sell the units in the development to tenants whose incomes shall not exceed the applicable income limit at the time of their initial occupancy of such units.)

In calculating the points for subdivisions 7(a) and (b) above, (i) any unit with rental assistance that exceeds the rent limit for 50% or 40% of the area median gross income, whichever is applicable, will not be counted as a low-income unit with incomes below those required by the IRC in order for the development to be a qualified low-income development for bonus point purposes when calculating the percentage of such low-income units in the proposed development and (ii) any units in the proposed development required by the locality to exceed 60% of the area median gross income will not be considered when calculating the percentage of low-income units of the proposed development with incomes below those required by the IRC in order for the development to be a qualified low-income development, provided that the locality submits evidence satisfactory to the authority of such requirement.

After points have been assigned to each application in the manner described above, the executive director shall compute the total number of points assigned to each such application. Notwithstanding any other provisions herein, any application that is assigned a total number of points less than a threshold amount of 550 (475 points for developments financed with tax-exempt bonds) points shall be rejected from further consideration hereunder and shall not be eligible for any reservation or allocation of credits.

The executive director may exclude and disregard any application which he determines is not submitted in good faith or which he determines would not be financially feasible.

Upon assignment of points to all of the applications, the executive director shall rank the applications based on the number of points so assigned. If any pools shall have been established, each application shall be assigned to a pool and shall be ranked within such pool. Those applications assigned more points shall be ranked higher than those applications assigned fewer points.

In the event of a tie in the number of points assigned to two or more applications within the same pool, or, if none, within the state, and in the event that the amount of credits available for reservation to such applications is determined by the executive director to be insufficient for the financial feasibility of all of the developments described therein, the authority shall, to the extent necessary to fully utilize the amount of credits available for reservation within such pool or, if none, within the Commonwealth, select one or more of the applications with the ~~most bonus~~ *highest combination of points as described from subdivision 2(c)(ii) and subdivision 7 above, and each application so selected shall receive (in order based upon the number of such ~~bonus~~ points, beginning with the application with the ~~most bonus~~ highest number of such points) a reservation of credits in the lesser of the full amount determined by the executive director to be permissible hereunder or the amount of credits remaining therefor in such pool or, if none, in the Commonwealth. If two*

or more of the tied applications receive the same number of bonus points from subdivision 2(c)(ii) and subdivision 7 above and if the amount of credits available for reservation to such tied applications is determined by the executive director to be insufficient for the financial feasibility of all the developments described therein, the executive director shall select one or more of such applications by lot, and each application so selected by lot shall receive (in order of such selection by lot) the lesser of the full amount determined by the executive director to be permissible hereunder or the amount of credits remaining therefor in such pool or, if none, in the Commonwealth.

For each application which may receive a reservation of credits, the executive director shall determine the amount, as of the date of the deadline for submission of applications for reservation of credits, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC. In making this determination, the executive director shall consider the sources and uses of the funds, the available federal, state and local subsidies committed to the development, the total financing planned for the development as well as the investment proceeds or receipts expected by the authority to be generated with respect to the development, and the percentage of the credit dollar amount used for development costs other than the costs of intermediaries. He shall also examine the development's costs, including developer's fees and other amounts in the application, for reasonableness and, if he determines that such costs or other amounts are unreasonably high, he shall reduce them to amounts that he determines to be reasonable. The executive director shall review the applicant's projected rental income, operating expenses and debt service for the credit period. The executive director may establish such criteria and assumptions as he shall deem reasonable for the purpose of making such determination, including, without limitation, criteria as to the reasonableness of fees and profits and assumptions as to the amount of net syndication proceeds to be received (based upon such percentage of the credit dollar amount used for development costs, other than the costs of intermediaries, as the executive director shall determine to be reasonable for the proposed development), increases in the market value of the development, and increases in operating expenses, rental income and, in the case of applications without firm financing commitments (as defined hereinabove) at fixed interest rates, debt service on the proposed mortgage loan. The executive director may, if he deems it appropriate, consider the development to be a part of a larger development. In such a case, the executive director may consider, examine, review and establish any or all of the foregoing items as to the larger development in making such determination for the development.

At such time or times during each calendar year as the executive director shall designate, the executive director shall reserve credits to applications in descending order of ranking within each pool, if applicable, until either substantially all credits therein are reserved or all qualified applications therein have received reservations. (For the purpose of the preceding sentence, if there is not more than a de minimis amount, as determined by the executive director, of credits remaining in a pool after reservations have been made,

"substantially all" of the credits in such pool shall be deemed to have been reserved.) The executive director may rank the applications within pools at different times for different pools and may reserve credits, based on such rankings, one or more times with respect to each pool. The executive director may also establish more than one round of review and ranking of applications and reservation of credits based on such rankings, and he shall designate the amount of credits to be made available for reservation within each pool during each such round. The amount reserved to each such application shall be equal to the lesser of (i) the amount requested in the application or (ii) an amount determined by the executive director, as of the date of application, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC; provided, however, that in no event shall the amount of credits so reserved exceed the maximum amount permissible under the IRC.

If the amount of credits available in any pool is determined by the executive director to be insufficient for the financial feasibility of the proposed development to which such available credits are to be reserved, the executive director may (i) permit the applicant to modify such proposed development and his application so as to achieve financial feasibility based upon the amount of such available credits, provided that the applicant's modified development produces at least 75% of the units and bedrooms described in the application for the proposed development, or (ii) move the proposed development and the credits available to another pool. Any modifications shall be subject to the approval of the executive director; however, in no event shall such modifications result in a material reduction in the number of points assigned to the application pursuant to this section. If any credits remain in any pool after accepting any modifications to an applicant's proposed development or moving proposed developments and credits to another pool, the executive director may reserve the remaining credits to any proposed development(s) scoring at or above the minimum point threshold established by this chapter without regard to the ranking of such application. If necessary, the executive director may, for developments which meet the requirements of § 42(h)(1)(E) of the IRC only, reserve additional credits from the Commonwealth's annual state housing credit ceiling for the following year in such an amount necessary for the financial feasibility of the proposed development. However, the reservation of credits from the Commonwealth's annual state housing credit ceiling for the following year shall be in the reasonable discretion of the executive director if he determines it to be in the best interest of the plan. In the event a reservation or an allocation of credits from the current year or a prior year is reduced, terminated or cancelled, the executive director may substitute such credits for any credits reserved from the following year's annual state housing credit ceiling.

In the event that during any round of application review and ranking the amount of credits reserved within any pools is less than the total amount of credits made available therein during such round, the executive director may either (i) leave such unreserved credits in such pools for reservation and allocation in any subsequent round or rounds or (ii) redistribute such unreserved credits to such other pool or

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pools as the executive director may designate or (iii) carry over such unreserved credits to the next succeeding calendar year for inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year.

Notwithstanding anything contained herein, the executive director shall not reserve more than \$1.2 million of credits to any general partner(s) or principal(s) of such general partner(s), directly or indirectly, in any credit year.

Within a reasonable time after credits are reserved to any applicants' applications, the executive director shall notify each applicant for such reservations of credits either of the amount of credits reserved to such applicant's application (by issuing to such applicant a written binding commitment to allocate such reserved credits subject to such terms and conditions as may be imposed by the executive director therein, by the IRC and by this chapter) or, as applicable, that the applicant's application has been rejected or excluded or has otherwise not been reserved credits in accordance herewith. The written binding commitment shall prohibit any transfer, direct or indirect, of partnership interests (except those involving the admission of limited partners) prior to the placed-in-service date of the proposed development unless the transfer is consented to by the executive director. The written binding commitment shall further limit the developers' fees to the amounts established during the review of the applications for reservation of credits and such amounts shall not be increased unless consented to by the executive director. The executive director ~~may~~ shall, as a condition to the binding commitment, require each applicant to obtain a market study, in form and substance satisfactory to the authority, that shows adequate demand for the housing units to be produced by each applicant's proposed development.

If credits are reserved to any applicants for developments which have also received an allocation of credits from prior years, the executive director may reserve additional credits from the current year equal to the amount of credits allocated to such developments from prior years, provided such previously allocated credits are returned to the authority. Any previously allocated credits returned to the authority under such circumstances shall be placed into the credit pools from which the current year's credits are reserved to such applicants.

The executive director shall make a written explanation available to the general public for any allocation of housing credit dollar amount which is not made in accordance with established priorities and selection criteria of the authority.

The authority's board shall review and consider the analysis and recommendation of the executive director for the reservation of credits to an applicant, and, if it concurs with such recommendation, it shall by resolution ratify the reservation by the executive director of the credits to the applicant, subject to such terms and conditions as it shall deem necessary or appropriate to assure compliance with the aforementioned binding commitment issued or to be issued to the applicant, the IRC and this chapter. If the board determines not to ratify a reservation of credits or to establish any such terms and conditions, the executive director shall so notify the applicant.

Subsequent to such ratification of the reservation of credits, the executive director may, in his discretion and without ratification or approval by the board, increase the amount of such reservation by an amount not to exceed 10% of the initial reservation amount. The executive director may require the applicant to make a good faith deposit or to execute such contractual agreements providing for monetary or other remedies as it may require, or both, to assure that the applicant will comply with all requirements under the IRC, this chapter and the binding commitment (including, without limitation, any requirement to conform to all of the representations, commitments and information contained in the application for which points were assigned pursuant to this section). Upon satisfaction of all such aforementioned requirements (including any post-allocation requirements), such deposit shall be refunded to the applicant or such contractual agreements shall terminate, or both, as applicable.

If, as of the date the application is approved by the executive director, the applicant is entitled to an allocation of the credits under the IRC, this chapter and the terms of any binding commitment that the authority would have otherwise issued to such applicant, the executive director may at that time allocate the credits to such qualified low-income buildings or development without first providing a reservation of such credits. This provision in no way limits the authority of the executive director to require a good faith deposit or contractual agreement, or both, as described in the preceding paragraph, nor to relieve the applicant from any other requirements hereunder for eligibility for an allocation of credits. Any such allocation shall be subject to ratification by the board in the same manner as provided above with respect to reservations.

The executive director may require that applicants to whom credits have been reserved shall submit from time to time or at such specified times as he shall require, written confirmation and documentation as to the status of the proposed development and its compliance with the application, the binding commitment and any contractual agreements between the applicant and the authority. If on the basis of such written confirmation and documentation as the executive director shall have received in response to such a request, or on the basis of such other available information, or both, the executive director determines any or all of the buildings in the development which were to become qualified low-income buildings will not do so within the time period required by the IRC or will not otherwise qualify for such credits under the IRC, this chapter or the binding commitment, then the executive director may terminate the reservation of such credits and draw on any good faith deposit. If, in lieu of or in addition to the foregoing determination, the executive director determines that any contractual agreements between the applicant and the authority have been breached by the applicant, whether before or after allocation of the credits, he may seek to enforce any and all remedies to which the authority may then be entitled under such contractual agreements.

The executive director may establish such deadlines for determining the ability of the applicant to qualify for an allocation of credits as he shall deem necessary or desirable

to allow the authority sufficient time, in the event of a reduction or termination of the applicant's reservation, to reserve such credits to other eligible applications and to allocate such credits pursuant thereto.

Any material changes to the development, as proposed in the application, occurring subsequent to the submission of the application for the credits therefor shall be subject to the prior written approval of the executive director. As a condition to any such approval, the executive director may, as necessary to comply with this chapter, the IRC, the binding commitment and any other contractual agreement between the authority and the applicant, reduce the amount of credits applied for or reserved or impose additional terms and conditions with respect thereto. If such changes are made without the prior written approval of the executive director, he may terminate or reduce the reservation of such credits, impose additional terms and conditions with respect thereto, seek to enforce any contractual remedies to which the authority may then be entitled, draw on any good faith deposit, or any combination of the foregoing.

In the event that any reservation of credits is terminated or reduced by the executive director under this section, he may reserve, allocate or carry over, as applicable, such credits in such manner as he shall determine consistent with the requirements of the IRC and this chapter.

13 VAC 10-180-70. Allocation of credits.

At such time as one or more of an applicant's buildings or an applicant's development which has received a reservation of credits is (i) placed in service or satisfies the requirements of § 42(h)(1)(E) of the IRC and (ii) meets all of the preallocation requirements of this chapter, the binding commitment and any other applicable contractual agreements between the applicant and the authority, the applicant shall so advise the authority, shall request the allocation of all of the credits so reserved or such portion thereof to which the applicant's buildings or development is then entitled under the IRC, this chapter, the binding commitment and the aforementioned contractual agreements, if any, and shall submit such application, certifications, legal and accounting opinions, evidence as to costs, a breakdown of sources and uses of funds, pro forma financial statements setting forth anticipated cash flows, and other documentation as the executive director shall require in order to determine that the applicant's buildings or development is entitled to such credits as described above. The applicant shall certify to the authority the full extent of all federal, state and local subsidies which apply (or which the applicant expects to apply) with respect to the buildings or the development.

As of the date of allocation of credits to any building or development and as of the date such building or such development is placed in service, the executive director shall determine the amount of credits to be necessary for the financial feasibility of the development and its viability as a qualified low-income housing development throughout the credit period under the IRC. In making such determinations, the executive director shall consider the sources and uses of the funds, the available federal, state and local subsidies committed to the development, the total financing planned for the development as well as the investment proceeds or

receipts expected by the authority to be generated with respect to the development and the percentage of the credit dollar amount used for development costs other than the costs of intermediaries. He shall also examine the development's costs, including developer's fees and other amounts in the application, for reasonableness and, if he determines that such costs or other amounts are unreasonably high, he shall reduce them to amounts that he determines to be reasonable. The executive director shall review the applicant's projected rental income, operating expenses and debt service for the credit period. The executive director may establish such criteria and assumptions as he shall then deem reasonable (or he may apply the criteria and assumptions he established pursuant to 13 VAC 10-180-60) for the purpose of making such determinations, including, without limitation, criteria as to the reasonableness of fees and profits and assumptions as to the amount of net syndication proceeds to be received (based upon such percentage of the credit dollar amount used for development costs, other than the costs of intermediaries, as the executive director shall determine to be reasonable for the proposed development), increases in the market value of the development, and increases in operating expenses, rental income and, in the case of applications without firm financing commitments (as defined in 13 VAC 10-180-60) at fixed interest rates, debt service on the proposed mortgage loan. The amount of credits allocated to the applicant shall in no event exceed such amount as so determined by the executive director by more than a de minimis amount of not more than \$100.

Prior to allocating credits to an applicant, the executive director shall require the applicant to execute and deliver to the authority a valid IRS Form 8821, Tax Information Authorization, naming the authority as the appointee to receive tax information. The Forms 8821 of all applicants will be forwarded to the IRS, which will authorize the IRS to furnish the authority with all IRS information pertaining to *the applicants' developments, including audit findings and assessments.*

Prior to allocating the credits to an applicant, the executive director shall require the applicant to execute, deliver and record among the land records of the appropriate jurisdiction or jurisdictions an extended low-income housing commitment in accordance with the requirements of the IRC. Such commitment shall require that the applicable fraction (as defined in the IRC) for the buildings for each taxable year in the extended use period (as defined in the IRC) will not be less than the applicable fraction specified in such commitment and which prohibits both (i) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of a low-income unit and (ii) any increase in the gross rent with respect to such unit not otherwise permitted under the IRC. The amount of credits allocated to any building shall not exceed the amount necessary to support such applicable fraction, including any increase thereto pursuant to § 42(f)(3) of the IRC reflected in an amendment to such commitment. The commitment shall provide that the extended use period will end on the day 15 years after the close of the compliance period (as defined in the IRC) or on the last day of any longer period of time specified in the application during which low-income housing units in the development will be occupied

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by tenants with incomes not in excess of the applicable income limitations; provided, however, that the extended use period for any building shall be subject to termination, in accordance with the IRC, (i) on the date the building is acquired by foreclosure or instrument in lieu thereof unless a determination is made pursuant to the IRC that such acquisition is part of an agreement with the current owner thereof, a purpose of which is to terminate such period or (ii) on the last day of the one-year period following the written request by the applicant as specified in the IRC (such period in no event beginning earlier than the end of the fourteenth year of the compliance period) if the authority is unable to present during such one-year period a qualified contract (as defined in the IRC) for the acquisition of the building by any person who will continue to operate the low-income portion thereof as a qualified low-income building. In addition, such termination shall not be construed to permit, prior to close of the three-year period following such termination, the eviction or termination of tenancy of any existing tenant of any low-income housing unit other than for good cause or any increase in the gross rents over the maximum rent levels then permitted by the IRC with respect to such low-income housing units. Such commitment shall also contain such other terms and conditions as the executive director may deem necessary or appropriate to assure that the applicant and the development conform to the representations, commitments and information in the application and comply with the requirements of the IRC and this chapter. Such commitment shall be a restrictive covenant on the buildings binding on all successors to the applicant and shall be enforceable in any state court of competent jurisdiction by individuals (whether prospective, present or former occupants) who meet the applicable income limitations under the IRC.

In accordance with the IRC, the executive director may, for any calendar year during the project period (as defined in the IRC), allocate credits to a development, as a whole, which contains more than one building. Such an allocation shall apply only to buildings placed in service during or prior to the end of the second calendar year after the calendar year in which such allocation is made, and the portion of such allocation allocated to any building shall be specified not later than the close of the calendar year in which such building is placed in service. Any such allocation shall be subject to satisfaction of all requirements under the IRC.

If the executive director determines that the buildings or development is so entitled to the credits, he shall allocate the credits (or such portion thereof to which he deems the buildings or the development to be entitled) to the applicant's qualified low-income buildings or to the applicant's development in accordance with the requirements of the IRC. If the executive director shall determine that the applicant's buildings or development is not so entitled to the credits, he shall not allocate the credits and shall so notify the applicant within a reasonable time after such determination is made. In the event that any such applicant shall not request an allocation of all of its reserved credits or whose buildings or development shall be deemed by the executive director not to be entitled to any or all of its reserved credits, the executive director may reserve or allocate, as applicable, such unallocated credits to the buildings or developments of other qualified applicants at such time or times and in such manner

as he shall determine consistent with the requirements of the IRC and this chapter.

The executive director may prescribe (i) such deadlines for submissions of requests for allocations of credits for any calendar year as he deems necessary or desirable to allow sufficient processing time for the authority to make such allocations within such calendar year and (ii) such deadlines for satisfaction of all preallocation requirements of the IRC the binding commitment, any contractual agreements between the authority and the applicant and this chapter as he deems necessary or desirable to allow the authority sufficient time to allocate to other eligible applicants any credits for which the applicants fail to satisfy such requirements.

The executive director may make the allocation of credits subject to such terms as he may deem necessary or appropriate to assure that the applicant and the development comply with the requirements of the IRC.

The executive director may also (to the extent not already required under 13 VAC 10-180-60) require that all applicants make such good faith deposits or execute such contractual agreements with the authority as the executive director may require with respect to the credits, (i) to ensure that the buildings or development are completed in accordance with the binding commitment, including all of the representations made in the application for which points were assigned pursuant to 13 VAC 10-180-60 and (ii) only in the case of any buildings or development which are to receive an allocation of credits hereunder and which are to be placed in service in any future year, to assure that the buildings or the development will be placed in service as a qualified low-income housing project (as defined in the IRC) in accordance with the IRC and that the applicant will otherwise comply with all of the requirements under the IRC.

In the event that the executive director determines that a development for which an allocation of credits is made shall not become a qualified low-income housing project (as defined in the IRC) within the time period required by the IRC or the terms of the allocation or any contractual agreements between the applicant and the authority, the executive director may terminate the allocation and rescind the credits in accordance with the IRC and, in addition, may draw on any good faith deposit and enforce any of the authority's rights and remedies under any contractual agreement. An allocation of credits to an applicant may also be cancelled with the mutual consent of such applicant and the executive director. Upon the termination or cancellation of any credits, the executive director may reserve, allocate or carry over, as applicable, such credits in such manner as he shall determine consistent with the requirements of the IRC and this chapter.

13 VAC 10-180-90. Monitoring for IRS compliance.

A. Federal law requires the authority to monitor developments receiving credits for compliance with the requirements of § 42 of the IRC and notify the IRS of any noncompliance of which it becomes aware. Compliance with the requirements of § 42 of the IRC is the responsibility of the owner of the building for which the credit is allowable. The monitoring requirements set forth hereinbelow are to qualify the authority's allocation plan of credits. The authority's

obligation to monitor for compliance with the requirements of § 42 of the IRC does not make the authority liable for an owner's noncompliance, nor does the authority's failure to discover any noncompliance by an owner excuse such noncompliance.

B. The owner of a low-income housing development must keep records for each qualified low-income building in the development that show for each year in the compliance period:

1. The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit).
2. The percentage of residential rental units in the building that are low-income units.
3. The rent charged on each residential rental unit in the building (including any utility allowances).
4. The number of occupants in each low-income unit, but only if rent is determined by the number of occupants in each unit under § 42(g)(2) of the IRC (as in effect before the amendments made by the federal Revenue Reconciliation Act of 1989).
5. The low-income unit vacancies in the building and information that shows when, and to whom, the next available units were rented.
6. The annual income certification of each low-income tenant per unit.
7. Documentation to support each low-income tenant's income certification (for example, a copy of the tenant's federal income tax return, Forms W-2, or verifications of income from third parties such as employers or state agencies paying unemployment compensation). Tenant income is calculated in a manner consistent with the determination of annual income under section 8 of the United States Housing Act of 1937, 42 USC § 1401 et seq. ("section 8"), not in accordance with the determination of gross income for federal income tax liability. In the case of a tenant receiving housing assistance payments under section 8, the documentation requirement of this subdivision 7 is satisfied if the public housing authority provides a statement to the building owner declaring that the tenant's income does not exceed the applicable income limit under § 42(g) of the IRC.
8. The eligible basis and qualified basis of the building at the end of the first year of the credit period.
9. The character and use of the nonresidential portion of the building included in the building's eligible basis under § 42(d) of the IRC (e.g., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the development).

The owner of a low-income housing development must retain the records described in this subsection B for at least six years after the due date (with extensions) for filing the federal income tax return for that year. The records for the

first year of the credit period, however, must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.

In addition, the owner of a low-income housing development must retain any original local health, safety, or building code violation reports or notices issued by the Commonwealth or local government (as described in subdivision C 6 of this section) for the authority's inspection. Retention of the original violation reports or notices is not required once the authority reviews the violation reports or notices and completes its inspection, unless the violation remains uncorrected.

C. The owner of a low-income housing development must certify annually to the authority, on the form prescribed by the authority, that, for the preceding 12-month period:

1. The development met the requirements of the 20-50 test under § 42(g)(1)(A) of the IRC or the 40-60 test under § 42(g)(2)(B) of the IRC, whichever minimum set-aside test was applicable to the development.
2. There was no change in the applicable fraction (as defined in § 42(c)(1)(B) of the IRC) of any building in the development, or that there was a change, and a description of the change.
3. The owner has received an annual income certification from each low-income tenant, and documentation to support that certification; or, in the case of a tenant receiving section 8 housing assistance payments, the statement from a public housing authority described in subdivision 7 of subsection B of this section (unless the owner has obtained a waiver from the IRS pursuant to § 42(g)(8)(B) of the IRC).
4. Each low-income unit in the development was rent-restricted under § 42(g)(2) of the IRC.
5. All units in the development were for use by the general public and used on a nontransient basis ~~(except for transitional housing for the homeless provided under § 42(i)(3)(B)(iii) of the IRC)~~ *(as defined in IRS Regulation § 1.42-9) and that no finding of discrimination under the Fair Housing Act has occurred for the development. (A finding of discrimination includes an adverse final decision by the Secretary of HUD, 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 USC § 3616(a)(1), or adverse judgment from federal court.)*
6. Each building in the development was suitable for occupancy, taking into account local health, safety, and building codes *(or other habitability standards), and that the Commonwealth or local government unit responsible for making local health, safety, and building code inspections did not issue a violation report for any building or low-income unit in the development. (If a violation report or notice was issued by the governmental unit, the owner must attach a statement summarizing the violation report or notice or a copy of the violation report or notice to the annual certification. In addition the owner must state whether the violation has been corrected.)*

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7. There was no change in the eligible basis (as defined in § 42(d) of the IRC) of any building in the development, or if there was a change, the nature of the change (e.g., a common area has become commercial space or a fee is now charged for a tenant facility formerly provided without charge).

8. All tenant facilities included in the eligible basis under § 42(d) of the IRC of any building in the development, such as swimming pools, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the building.

9. If a low-income unit in the development became vacant during the year, that reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the development were or will be rented to tenants not having a qualifying income.

10. If the income of tenants of a low-income unit in the development increased above the limit allowed in § 42(g)(2)(D)(ii) of the IRC, the next available unit of comparable or smaller size in the development was or will be rented to tenants having a qualifying income.

11. An extended low-income housing commitment as described in § 42(h)(6) of the IRC was in effect (for buildings subject to § 7108(c)(1) of the federal Revenue Omnibus Budget Reconciliation Act of 1989).

12. *All units in the development were used on a nontransient basis (except for transitional housing for the homeless provided under § 42(i)(3)(B)(iii) of the IRC or single-room-occupancy units rented on a month-by-month basis under § 42(i)(3)(B)(iv) of the IRC).*

Such certifications shall be made annually covering each year of the compliance period and must be made under the penalty of perjury.

In addition, each owner of a low-income housing development must provide to the authority, on a form prescribed by the authority, a certification containing such information necessary for the Commonwealth to determine the eligibility of tax credits for the first year of the development's compliance period.

D. The authority will review each certification set forth in subsection C of this section for compliance with the requirements of § 42 of the IRC. Also, the authority will ~~inspect at least 20% of low-income housing developments each year and will conduct on-site inspections of all the buildings in the development by the end of the second calendar year following the year the last building in the development is placed in service and, for at least 20% of the development's low-income housing units, inspect the low-income certification, the documentation the owner has received to support that certification, and the rent record for each low-income tenant in the tenants in those units. In addition, at least once every three years, the authority will conduct on-site inspections of all the buildings in each low-income housing development and, for at least 20% of the low-income units in those developments~~ *development's low-*

income units, inspect the units, the low-income certifications, the documentation the owner has received to support the certifications, and the rent record for the tenants in those units. The authority will determine which low-income housing developments will be reviewed in a particular year and which tenant's records are to be inspected.

In addition, the authority, at its option, may request an owner of a low-income housing development not selected for the review procedure set forth above in a particular year to submit to the authority for compliance review copies of the annual income certifications, the documentation such owner has received to support those certifications and the rent record for each low-income tenant of the low-income units in their development.

All low-income housing developments may be subject to review at any time during the compliance period.

E. The authority has the right to perform, and each owner of a development receiving credits shall permit the performance of, an on-site inspection of any low-income housing development through the end of the compliance period of the building. The inspection provision of this subsection E is separate from the review of low-income certifications, supporting documents and rent records under subsection D of this section.

The owner of a low-income housing development should notify the authority when the development is placed in service. The authority reserves the right to inspect the property prior to issuing IRS Form 8609 to verify that the development conforms to the representations made in the Application for Reservation and Application for Allocation.

F. The authority will provide written notice to the owner of a low-income housing development if the authority does not receive the certification described in subsection C of this section, or does not receive or is not permitted to inspect the tenant income certifications, supporting documentation, and rent records described in subsection D of this section or discovers by inspection, review, or in some other manner, that the development is not in compliance with the provisions of § 42 of the IRC.

Such written notice will set forth a correction period which shall be that period specified by the authority during which an owner must supply any missing certifications and bring the development into compliance with the provisions of § 42 of the IRC. The authority will set the correction period for a time not to exceed 90 days from the date of such notice to the owner. The authority may extend the correction period for up to 6 months, but only if the authority determines there is good cause for granting the extension.

The authority will file Form 8823, "Low-Income Housing Credit Agencies Report of Noncompliance," with the IRS no later than 45 days after the end of the correction period (as described above, including any permitted extensions) and no earlier than the end of the correction period, whether or not the noncompliance or failure to certify is corrected. The authority must explain on Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify. Any change in either the applicable fraction or eligible basis

under subdivisions 2 and 7 of subsection C of this section, respectively, that results in a decrease in the qualified basis of the development under § 42(c)(1)(A) of the IRC is noncompliance that must be reported to the IRS under this subsection F. If the authority reports on Form 8823 that a building is entirely out of compliance and will not be in compliance at any time in the future, the authority need not file Form 8823 in subsequent years to report that building's noncompliance.

The authority will retain records of noncompliance or failure to certify for six years beyond the authority's filing of the respective Form 8823. In all other cases, the authority must retain the certifications and records described in subsection C of this section for three years from the end of the calendar year the authority receives the certifications and records.

G. If the authority decides to enter into the agreements described below, the review requirements under subsection D of this section will not require owners to submit, and the authority is not required to review, the tenant income certifications, supporting documentation and rent records for buildings financed by ~~the Rural Economic and Community Development (RECD)~~ under the § 515 program, or buildings of which 50% or more of the aggregate basis (taking into account the building and the land) is financed with the proceeds of obligations the interest on which is exempt from tax under § 103 (tax-exempt bonds). In order for a monitoring procedure to except these buildings, the authority must enter into an agreement with ~~the RECD Rural Development~~ or tax-exempt bond issuer. Under the agreement, ~~the RECD Rural Development~~ or tax-exempt bond issuer must agree to provide information concerning the income and rent of the tenants in the building to the authority. The authority may assume the accuracy of the information provided by ~~RECD Rural Development~~ or the tax-exempt bond issuer without verification. The authority will review the information and determine that the income limitation and rent restriction of § 42(g)(1) and (2) of the IRC are met. However, if the information provided by ~~the RECD Rural Development~~ or tax-exempt bond issuer is not sufficient for the authority to make this determination, the authority will request the necessary additional income or rent information from the owner of the buildings. For example, because ~~RECD Rural Development~~ determines tenant eligibility based on its definition of "adjusted annual income," rather than "annual income" as defined under section 8, the authority may have to calculate the tenant's income for purposes of § 42 of the IRC and may need to request additional income information from the owner.

H. The owners of low-income housing developments must pay to the authority such fees in such amounts and at such times as the authority shall reasonably require the owners to pay in order to reimburse the authority for the costs of monitoring compliance with § 42 of the IRC.

I. The owners of low-income housing developments that have submitted IRS Forms 8821, Tax Information Authorization, naming the authority as the appointee to receive tax information on such owners shall submit from time to time renewals of such Forms 8821 as required by the authority throughout the extended use period.

13 VAC 10-180-100. Tax-exempt bonds.

In the case of any buildings or development to be financed by certain tax-exempt bonds of the authority, or an issuer other than the authority, in such amount so as not to require under the IRC an allocation of credits hereunder, the owner of the buildings or development shall submit to the authority, in a timely fashion, an application for allocation of credits and supporting information and documents as described in 13 VAC 10-180-70, and such other information and documents as the executive director may require. The executive director shall determine, in accordance with the IRC, whether such buildings or development satisfies the requirements for allocation of credits hereunder. For the purposes of such determination, buildings or a development shall be deemed to satisfy the requirements for allocation of credits hereunder if (i) the application submitted to the authority in connection therewith is assigned not fewer than the threshold number of points (~~exclusive of bonus points~~) under the ranking system described in 13 VAC 10-180-60, and (ii) the executive director shall determine that the buildings or development shall receive an amount of credits necessary for the financial feasibility of the development and its viability as a qualified low-income housing development throughout the credit period under the IRC, and more fully described in 13 VAC 10-180-70. The owner of the buildings or development shall, as required by the executive director, pay such fees as described in 13 VAC 10-180-50, and such good faith deposits as described in 13 VAC 10-180-70. Furthermore, the owner of the buildings or development shall satisfy all other requirements for an allocation as required by the executive director, including execution, delivery and recordation of an extended low-income housing commitment as more fully described in 13 VAC 10-180-70 and all requirements for compliance monitoring as described in 13 VAC 10-180-90.

VA.R. Doc. No. R01-111; Filed January 30, 2001; 1:47 p.m.



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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

VA.R. Doc. No. R00-260; Filed February 7, 2001, 10:26 a.m.

REGISTRAR'S NOTICE: The basis, purpose, substance, and issues statements; the economic impact analyses; the agency response; and the text of and amendments to the proposed public participation guidelines of the Boards of Audiology and Speech-Language Pathology, Dentistry, Funeral Directors and Embalmers, Health Professions, Medicine, Nursing, Nursing Home Administrators, Optometry, Pharmacy, Counseling, Social Work, and Veterinary Medicine are substantively the same and are set out only once. Some minor editorial changes have been made to these documents in order to consolidate these 12 separate regulatory actions into one statement for publication purposes.

BOARD OF NURSING

18 VAC 90-10-10 et seq. Public Participation Guidelines (amending 18 VAC 90-10-10, 18 VAC 90-10-20, 18 VAC 90-10-30, 18 VAC 90-10-40, 18 VAC 90-10-60, 18 VAC 90-10-70, 18 VAC 90-10-80, 18 VAC 90-10-100).

VA.R. Doc. No. R00-261; Filed February 7, 2001, 9:25 a.m.

BOARD OF NURSING HOME ADMINISTRATORS

18 VAC 95-10-10 et seq. Public Participation Guidelines (amending 18 VAC 95-10-10, 18 VAC 95-10-20, 18 VAC 95-10-30, 18 VAC 95-10-40, 18 VAC 95-10-60, 18 VAC 95-10-70, 18 VAC 95-10-80, 18 VAC 95-10-100).

VA.R. Doc. No. R00-262; Filed February 7, 2001, 9:24 a.m.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

Title of Regulations: **18 VAC 30-10-10 et seq. Public Participation Guidelines (amending 18 VAC 30-10-10, 18 VAC 30-10-20, 18 VAC 30-10-30, 18 VAC 30-10-40, 18 VAC 30-10-60, 18 VAC 30-10-70, 18 VAC 30-10-80, 18 VAC 30-10-100).**

VA.R. Doc. No. R00-255; Filed February 7, 2001, 9:24 a.m.

BOARD OF OPTOMETRY

18 VAC 105-10-10 et seq. Public Participation Guidelines (amending 18 VAC 105-10-10, 18 VAC 105-10-20, 18 VAC 105-10-30, 18 VAC 105-10-40, 18 VAC 105-10-60, 18 VAC 105-10-70, 18 VAC 105-10-80, 18 VAC 105-10-100).

VA.R. Doc. No. R00-263; Filed February 7, 2001, 9:20 a.m.

BOARD OF DENTISTRY

18 VAC 60-10-10 et seq. Public Participation Guidelines (amending 18 VAC 60-10-10, 18 VAC 60-10-20, 18 VAC 60-10-30, 18 VAC 60-10-40, 18 VAC 60-10-60, 18 VAC 60-10-70, 18 VAC 60-10-80, 18 VAC 60-10-100).

VA.R. Doc. No. R00-257; Filed February 7, 2001, 9:22 a.m.

BOARD OF PHARMACY

18 VAC 110-10-10 et seq. Public Participation Guidelines (amending 18 VAC 110-10-10, 18 VAC 110-10-20, 18 VAC 110-10-30, 18 VAC 110-10-40, 18 VAC 110-10-60, 18 VAC 110-10-70, 18 VAC 110-10-80, 18 VAC 110-10-100).

VA.R. Doc. No. R00-266; Filed February 7, 2001, 9:21 a.m.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

18 VAC 65-10-10 et seq. Public Participation Guidelines (amending 18 VAC 65-10-10, 18 VAC 65-10-20, 18 VAC 65-10-30, 18 VAC 65-10-40, 18 VAC 65-10-60, 18 VAC 65-10-70, 18 VAC 65-10-80, 18 VAC 65-10-100).

VA.R. Doc. No. R00-258; Filed February 7, 2001, 10:26 a.m.

BOARD OF COUNSELING

18 VAC 115-10-10 et seq. Public Participation Guidelines (amending 18 VAC 115-10-10, 18 VAC 115-10-20, 18 VAC 115-10-30, 18 VAC 115-10-40, 18 VAC 115-10-60, 18 VAC 115-10-70, 18 VAC 115-10-80, 18 VAC 115-10-100).

VA.R. Doc. No. R00-256; Filed February 7, 2001, 9:19 a.m.

BOARD OF HEALTH PROFESSIONS

18 VAC 75-10-10 et seq. Public Participation Guidelines (amending 18 VAC 75-10-10, 18 VAC 75-10-20, 18 VAC 75-10-30, 18 VAC 75-10-40, 18 VAC 75-10-60, 18 VAC 75-10-70, 18 VAC 75-10-80, 18 VAC 75-10-100).

VA.R. Doc. No. R00-259; Filed February 7, 2001, 9:22 a.m.

BOARD OF SOCIAL WORK

18 VAC 140-10-10 et seq. Public Participation Guidelines (amending 18 VAC 140-10-10, 18 VAC 140-10-20, 18 VAC 140-10-30, 18 VAC 140-10-40, 18 VAC 140-10-60, 18 VAC 140-10-70, 18 VAC 140-10-80, 18 VAC 140-10-100).

VA.R. Doc. No. R00-254; Filed February 7, 2001, 9:18 a.m.

BOARD OF MEDICINE

18 VAC 85-10-10 et seq. Public Participation Guidelines (amending 18 VAC 85-10-10, 18 VAC 85-10-20, 18 VAC 85-10-30, 18 VAC 85-10-40, 18 VAC 85-10-60, 18 VAC 85-10-70, 18 VAC 85-10-80, 18 VAC 85-10-100).

BOARD OF VETERINARY MEDICINE

18 VAC 150-10-10 et seq. Public Participation Guidelines (amending 18 VAC 150-10-10, 18 VAC 150-10-20, 18 VAC 150-10-30, 18 VAC 150-10-40, 18 VAC 150-10-60, 18 VAC 150-10-70, 18 VAC 150-10-80, 18 VAC 150-10-100).

VA.R. Doc. No. R00-265; Filed February 7, 2001, 9:23 a.m.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2400 of the Code of Virginia.

Public Hearing Dates:

March 1, 2001 - 9 a.m. (18 VAC 150-10-10 et seq.)
March 2, 2001 - 9:45 a.m. (18 VAC 115-10-10 et seq.)
March 2, 2001 - 10 a.m. (18 VAC 140-10-10 et seq.)
March 6, 2001 - 8:45 a.m. (18 VAC 110-10-10 et seq.)
March 7, 2001 - 9 a.m. (18 VAC 65-10-10 et seq.)
March 9, 2001 - 8:15 a.m. (18 VAC 105-10-10 et seq.)
March 9, 2001 - 9 a.m. (18 VAC 60-10-10 et seq.)
March 20, 2001 - 3 p.m. (18 VAC 90-10-10 et seq.)
March 24, 2001 - 10 a.m. (18 VAC 30-10-10 et seq.)
April 6, 2001 - 8 a.m. (18 VAC 85-10-10 et seq.)
April 11, 2001 - 10:30 a.m. (18 VAC 95-10-10 et seq.)
April 17, 2001 - 9 a.m. (18 VAC 75-10-10 et seq.)

Public comments may be submitted until April 27, 2001.
(See Calendar of Events section for additional information)

Agency Contact: Elaine Yeatts, Department of Health Professions, Southern States Building, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9918.

Basis: Section 9-6.14:7.1 of the Administrative Process Act mandates the adoption of public participation guidelines pursuant to the provisions of the Act. Section 54.1-2400 provides the general authority to the regulatory boards to promulgate regulations.

Purpose: Since the effective date of the current public participation guidelines in 1994, the boards have followed the regulations by sending notices to the public for any meeting at which a regulatory action is to be considered, for an intended regulatory action, for comment on a proposed regulation, and for adoption of a final regulation. Opportunities for written and oral comment have been provided at each stage of the regulatory process, including holding a public hearing on any regulatory amendments affecting the licensure of the professions that the boards regulate. With the availability of e-mail and fax, comments may now be received electronically. In addition, the board has provided information on the Virginia Regulatory Town Hall to all persons on the public participation guidelines mailing list with instruction on how to access regulatory submissions and how to request to join the mailing list.

Regulations have allowed for individuals and organizations to petition the boards for rulemaking on an issue of interest and have also provided for the appointment of advisory committees on issues such as continuing competency.

Following a review of every regulation, the boards have determined that the current public participation guidelines are reasonable, clearly stated and adequate to protect the public interest in the development and promulgation of regulations. Amendments proposed are necessary for additional clarity and updating of the requirements in order to provide for electronic submissions by the agency and the affected parties. These regulations are intended to ensure participation in the process of developing and promulgating

regulations for the health professions that are essential for public health, safety and welfare.

Substance: The boards are recommending amendments to their public participation guidelines in order to improve the clarity of the rule, to incorporate forms of notification through the Virginia Regulatory Town Hall and the VIPNet Commonwealth Calendar, and to improve the procedures for public involvement in the process.

Issues: The primary issue identified during the review of these regulations was the need to incorporate electronic forms of regulatory submission, notification and communication that are currently available or may become available in the near future. Therefore, amendments that would permit notification and comment by facsimile, e-mail or other electronic means were incorporated in proposed amendments. Amendments will also ensure that the board may maintain an electronic mailing list on a state website in addition to the traditional list for mailings.

While requirements for public participation in the regulatory process should be electronically inclusive, the boards continue to be obligated to notify by regular mail if an entity chooses that form of notification. The regulations must continue to provide for notification and comment in that fashion.

Advantages and Disadvantages: There are no disadvantages of the proposed regulations to members of the public who may choose to remain on the regular mailing list or be notified of regulatory actions electronically or both. Public comment on Notices of Intended Regulatory Action or proposed regulations is currently permitted and being received by facsimile or e-mail, but amended regulations will ensure that type of transmission.

There are no disadvantages to the boards since they are currently posting meeting notices affecting regulations and all regulatory submissions on the Town Hall. If electronic notification and comment becomes more prevalent, there may be a modest reduction in the boards' mailing costs.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of these proposed regulations 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 regulations 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 regulations, 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 regulations. The Boards of Audiology and Speech-Language Pathology, Dentistry, Funeral Directors and Embalmers, Health Professions, Medicine, Nursing, Nursing Home Administrators, Optometry, Pharmacy, Counseling, Social Work, and Veterinary Medicine

Proposed Regulations

propose to revise their public participation guidelines to incorporate electronic forms of regulatory submission, notification, and communication that are currently available or may become available in the near future. Specific amendments include permitting notification and comment by facsimile, e-mail, or other electronic means, and allowing electronic mailing lists to be maintained in addition to traditional paper lists.

Estimated economic impact. Under the Administrative Process Act, all state agencies that promulgate regulations are required to maintain public participation mailing lists containing the names of all parties that have registered an interest in a particular regulation. Membership on these lists typically includes members of the regulated community, public interest groups, law firms, and individual citizens with an interest in a particular area of regulation.

There are no clear disadvantages associated with the changes proposed by the boards. Interested parties will be encouraged to be notified of regulatory actions electronically through the Virginia Regulatory Town Hall. However, individuals may also choose to remain on the traditional mailing lists, which will continue to be maintained by the boards.

If electronic notification and comment becomes more prevalent, there would be a reduction in printing and mailing costs incurred by the boards. In addition to the potential fiscal benefits, these changes also allow the boards to increase the speed of notification and the amount of information readily available to interested parties, which will increase efficiency and may enhance public participation.

Businesses and entities affected. The proposed changes will affect individuals and organizations interested in the regulations governing individuals licensed by the boards. The numbers of entities listed on the public participation guidelines mailing list for the boards are as follows:

- Board of Audiology and Speech-Language Pathology - 66
- Board of Dentistry - 136
- Board of Funeral Directors and Embalmers - 108
- Board of Health Professions - 156
- Board of Medicine - 200
- Board of Nursing - 1,000
- Board of Nursing Home Administrators - 62
- Board of Optometry - 72
- Board of Pharmacy - 22
- Board of Counseling - 316
- Board of Social Work - 110
- Board of Veterinary Medicine - 63

Localities particularly affected. No localities are particularly affected by the proposed changes to these regulations.

Projected impact on employment. The proposed changes to these regulations are not anticipated to have a significant effect on employment.

Effects on the use and value of private property. The proposed changes to these regulations are not anticipated to have a significant effect on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Boards of Audiology and Speech-Language Pathology, Dentistry, Funeral Directors and Embalmers, Health Professions, Medicine, Nursing, Nursing Home Administrators, Optometry, Pharmacy, Counseling, Social Work, and Veterinary Medicine concur with the analyses of the Department of Planning and Budget for the public participation guidelines.

Summary:

The public participation guidelines for the boards under the Department of Health Professions provide for public participation in the regulatory process of the boards. The regulations set forth provisions for (i) a mailing list to receive documents related to the promulgation of regulations, (ii) procedures to be followed in a petition for rulemaking, (iii) notices, (iv) public hearings, (v) a periodic review of regulations, and (vi) advisory committees in the development of regulations.

The proposed amendments clarify existing requirements and provide for electronic submissions by the agency and the affected parties.

Editor's Note: The section numbers listed in this regulation are shown, for example, as "18 VAC AA-10-10." "AA" is a variable, unique to each board, that identifies a specific board. In 18 VAC AA-10-10 and 18 VAC AA-10-20, "XXX" is the variable that identifies the board by name.

PART I. GENERAL PROVISIONS.

18 VAC AA-10-10. Purpose.

The purpose of this chapter is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the Board of **XXX**. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia). *These rules seek to expand participation by providing for electronic exchange with the public and thereby increasing participation, reducing costs, and improving the speed of communication.*

18 VAC AA-10-20. Definitions.

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

"*Administrative Process Act*" means Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.

"*Board*" means the Board of **XXX**.

"Notification lists" means lists used by the board to notify persons pursuant to these rules. Such lists may include electronic mailing lists maintained through a state website or regular mailing lists maintained by the board.

"Person" means an individual, a corporation, a partnership, an association, a governmental body, a municipal corporation, or any other legal entity.

PART II.
~~MAILING LIST NOTIFICATION LISTS.~~

18 VAC AA-10-30. Composition of the mailing list lists.

A. The board shall maintain ~~a list~~ lists of persons ~~or entities~~ who have requested to be notified of the formation and promulgation of regulations.

B. Any person ~~or entity~~ may request to be placed on ~~the mailing~~ a notification list by indicating so *electronically* or in writing to the board. The board may add to ~~the~~ a list any person ~~or entity~~ it believes will serve the purpose of enhancing participation in the regulatory process.

C. The board may maintain additional ~~mailing~~ lists for persons ~~or entities~~ who have requested to be informed of specific regulatory issues, proposals, or actions.

D. The board shall periodically request those *persons* on the ~~mailing list~~ notification lists to indicate their desire to *either* continue to receive documents *by regular mail, be notified electronically* or be deleted from the ~~list~~ lists. *Persons who elect to be included on an electronic mailing list may also request that all notices and mailings be sent in hard copy. When either regular or electronic mail is returned as undeliverable or there has been no response to the request from the board, individuals or organizations such persons shall be deleted from the list.*

18 VAC AA-10-40. Documents to be sent to persons ~~or entities~~ on the mailing list lists.

Persons ~~or entities~~ on the ~~mailing list~~ notification lists, as described in 18 VAC ~~AA-10-30~~, shall be mailed *or have electronically transmitted* the following documents related to the promulgation of regulations:

1. A notice of intended regulatory action.
2. A notice of *the* comment period *on a proposed regulation and instructions as to how to obtain a copy of the regulation and any supporting documents, either electronically or from the board office.*
3. A ~~copy of any notification of the adoption of a final regulation adopted by the board~~ *and instructions as to how to obtain a copy of the regulation and any supporting documents, either electronically or from the board office.*
4. A notice soliciting comment on a final regulation when the regulatory process has been extended.

18 VAC AA-10-60. Notice of Intended Regulatory Action.

A. The notice of intended regulatory action (NOIRA) shall state the purpose of the action and a brief statement of the need or problem the proposed action will address.

B. The NOIRA shall indicate whether the board intends to hold a public hearing on the proposed regulation after it is published. If the board does not intend to hold a public hearing, it shall state the reason in the NOIRA.

~~C. The NOIRA shall state that a public hearing will be scheduled if, during prior to the close of the 30-day comment period on the NOIRA, the board receives requests a request for a public hearing on the proposed regulation from at least 25 persons, such a hearing shall be scheduled.~~

18 VAC AA-10-70. Notice of Comment Period.

A. The notice of comment period (NOCP) shall indicate that copies of the proposed regulation are available *electronically* or from the board and may be requested in writing from the contact person specified in the NOCP.

B. The NOCP shall indicate that copies of the statement of substance, issues, basis, purpose, and estimated impact of the proposed regulation may also be requested in writing.

~~C. The NOCP shall make provision for either oral or written submittals on comments pertaining to the proposed regulation or on the impact on regulated entities and the public and on the cost of compliance with the proposed regulation by regular mail, Internet, facsimile or electronic means. With the exception of comment received at a scheduled public hearing, oral comment may not be accepted.~~

18 VAC AA-10-80. Notice of meeting.

A. At any meeting of the board or advisory committee at which the formation or adoption of a regulation is anticipated, the subject shall be described in ~~the~~ a notice of meeting, *which has been posted electronically on the Internet* and transmitted to the Registrar of Regulations for inclusion in The Virginia Register.

B. If the board anticipates action on a regulation for which an exemption to the Administrative Process Act is claimed under § 9-6.14:4.1 of the Code of Virginia, the notice of meeting shall indicate that a copy of the *proposed* regulation is available *on a state website* or upon request *to the board* at least two days prior to the meeting. A copy of the regulation shall be made available to the public attending such meeting.

18 VAC AA-10-100. ~~Biennial~~ Periodic review of regulations.

~~A. At least once each biennium Unless otherwise directed by executive order, the board shall conduct an informational proceeding at least every two years to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.~~

B. Such proceeding may be conducted separately or in conjunction with other informational proceedings or hearings.

C. Notice of the proceeding shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register and shall be sent to the mailing list identified in 18 VAC ~~AA-10-30~~.



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 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

REGISTRAR'S NOTICE: The following regulations filed by the Marine Resources Commission are exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 F of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: 4 VAC 20-252-10 et seq. **Pertaining to the Taking of Striped Bass (amending 4 VAC 20-252-70, 4 VAC 20-252-90, 4 VAC 20-252-100, 4 VAC 20-252-110 and 4 VAC 20-252-140).**

Statutory Authority: §§ 28.2-201 and 28.2-204.1 of the Code of Virginia.

Effective Date: January 26, 2001.

Summary:

The amendments (i) provide that the minimum size limits for the spring trophy-size striped bass and the coastal striped bass recreational fisheries shall correspond to those established by the Potomac River Fisheries Commission for the mainstem Potomac River, (ii) eliminate the maximize size limit for bay fall striped bass and coastal striped bass recreational fisheries, and (iii) eliminate the eight-day December closed period associated with commercial fisheries.

Agency Contact: Copies of the regulation may be obtained from Deborah R. Cawthon, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

4 VAC 20-252-70. Potomac River tributaries spring trophy-size striped bass recreational fishery.

A. The open season for the Potomac River tributaries spring trophy-size striped bass recreational fishery shall correspond to the open season as established by the Potomac River Fisheries Commission for the mainstem Potomac River spring trophy-size fishery.

B. The area open for this fishery shall be those tributaries of the Potomac River that are within Virginia's jurisdiction beginning with, and including, Flag Pond thence upstream to the Route 301 bridge.

C. The minimum size limit for this fishery shall be 32 inches total length correspond to the minimum size limit as established by the Potomac River Fisheries Commission for the mainstem Potomac River spring trophy-size fishery.

D. The possession limit for this fishery shall be one fish per person.

E. This fishery, combined with the fishery defined by 4 VAC 20-252-60 shall have a target take of 30,000 total fish coming from both the Virginia and Maryland portions of the Chesapeake Bay and any tributaries of the Chesapeake Bay and Potomac River, and includes the area under the jurisdiction of the Potomac River Fisheries Commission. The season for this fishery shall be closed when it is determined that this total target has been reached.

F. Persons engaging in this fishery shall report the retention of any striped bass to the commission. Filing the report shall be the responsibility of the person retaining the striped bass, or, in the case of any charter boat or vessel, the captain of the charter boat or vessel. These reports are due 15 days after the close of this fishery and shall be on forms provided by the commission. There will be separate forms for persons and for charter boats or vessels.

4 VAC 20-252-90. Bay fall striped bass recreational fishery.

A. The open season for the bay fall striped bass recreational fishery shall be October 4 through December 31, inclusive.

B. The area open for this fishery shall be the Chesapeake Bay and its tributaries.

C. The minimum size limit for this fishery shall be 18 inches total length.

~~D. The maximum size limit for this fishery shall be 34 inches total length; however, the maximum size limit shall only apply to one fish of the possession limit.~~

~~E. D.~~ The possession limit for this fishery shall be two fish per person.

4 VAC 20-252-100. Potomac River tributaries fall striped bass recreational fishery.

A. The open season for the Potomac River tributaries fall striped bass fishery shall correspond to the open fall season as established by the Potomac River Fisheries Commission for the mainstem Potomac River.

B. The area open for this fishery shall be the Potomac River tributaries.

C. The minimum size limit for this fishery shall be 18 inches total length.

D. The maximum size limit for this fishery shall be 34 inches total length correspond to the maximum size limit as established by the Potomac River Fisheries Commission for the mainstem Potomac River fall striped bass recreational fishery; however, the maximum size limit shall only apply to one fish of the possession limit.

E. The possession limit for this fishery shall be two fish per person.

4 VAC 20-252-110. Coastal striped bass recreational fishery.

A. The open seasons for the coastal striped bass recreational fishery shall be January 1 through March 31 and May 16 through December 31, inclusive.

B. The area open for this fishery shall be the coastal area as defined in this chapter.

C. The minimum size limit for this fishery shall be 28 inches total length.

~~D. The maximum size limit for this fishery shall be 34 inches total length; however, the maximum size limit shall only apply to one fish of the possession limit.~~

~~E. D.~~ The possession limit for this fishery shall be two fish per person.

4 VAC 20-252-140. Commercial seasons, areas, and size limits.

Except as may be adjusted pursuant to 4 VAC 20-252-150, the open commercial striped bass fishing seasons, areas, and applicable size limits shall be as follows:

1. In the Chesapeake Bay and its tributaries and the Potomac River tributaries, the open commercial season shall be from February 1 through December 23 31, inclusive. The minimum size limit shall be 18 inches total length during the periods of February 1 through December 23 31. The maximum size limit shall be 28 inches from March 26 through June 15.

2. In the coastal area, the open commercial season shall be February 1 through December 23 31, inclusive, and the minimum size limit shall be 28 inches total length.

VA.R. Doc. No. R01-107; Filed January 26, 2001, 2:30 p.m.

Title of Regulation: **4 VAC 20-995-10 et seq. Pertaining to Commercial Hook-and-Line Fishing (amending 4 VAC 20-995-20).**

Statutory Authority: §§ 28.2-201 and 28.2-204 of the Code of Virginia.

Effective Date: January 26, 2001.

Summary:

The amendment establishes the criteria and administration for exemptions to the entry limitations.

Agency Contact: Copies of the regulation may be obtained from Deborah R. Cawthon, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

4 VAC 20-995-20. Entry limitation; catch restrictions; transfers.

A. The sale of commercial hook-and-line licenses shall be limited to registered commercial fishermen meeting either of the following two requirements, *except as provided by subsection B of this section:*

1. The fisherman shall have held a 1996 commercial hook-and-line license or a 1997 commercial hook-and-line license that was purchased prior to August 26, 1997, provided the fisherman has reported sales of at least 1,000 pounds of seafood during the course of the previous two years as documented by the commission's mandatory harvest reporting program.

2. The fisherman shall hold a valid and current striped bass permit issued by the Marine Resources Commission.

~~B.~~ *The fisherman otherwise qualified under subdivision A 1 of this section shall have been granted an exemption from the requirement to report sales of at least 1,000 pounds of seafood during the course of the previous two years as documented by the commission's mandatory harvest reporting system.*

1. *Exemptions shall be based solely on documented medical hardships or active military leave that prevented the fisherman from fully satisfying the requirements described in subdivision A 1 of this section.*

2. *Exemptions may only be granted by the commissioner or his designee.*

~~B. C.~~ The maximum number of general hook-and-line licenses is established as 200 and includes those fishermen who either satisfy the provisions of subdivision A 1 of this section or are chosen by random drawing, to be held annually, should the number of licensees at the start of any year be less than 200.

~~C. D.~~ Persons who are eligible to purchase a commercial hook-and-line license by meeting the provisions of subdivision A 2 of this section may take only striped bass by commercial hook and line.

~~D. E.~~ Any person licensed for commercial hook and line under the provisions of subdivision A 1 of this section may transfer such license to any registered commercial fisherman, provided that the transferee shall have documented, through the commission's mandatory harvest reporting program, the sale of at least 1,000 pounds of seafood during the course of the previous two years. Transfer of licenses between family members shall be exempt from this requirement. All transfers shall be documented on the form provided by the Marine Resources Commission and approved by the Marine Resources Commissioner. Upon approval, the person entering the commercial hook-and-line fishery shall purchase a commercial hook-and-line license in his own name. No commercial hook-and-line license shall be transferred more than once per calendar year.

VA.R. Doc. No. R01-108; Filed January 26, 2001, 2:30 p.m.



Final Regulations

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Title of Regulation: 8 VAC 20-110-10 et seq. Regulations Governing Pupil Accounting Records (amending 8 VAC 20-110-10, 8 VAC 20-110-40, and 8 VAC 20-110-50; repealing 8 VAC 20-110-20, 8 VAC 20-110-60, 8 VAC 20-110-70, and 8 VAC 20-110-140).

Statutory Authority: §§ 22.1-16, 22.1-20 and 22.1-259 of the Code of Virginia.

Effective Date: March 28, 2001.

Summary:

The amendments eliminate the requirement that school divisions either maintain paper records (i.e., Virginia Teacher's Register) of student enrollment and attendance data or implement equivalent centralized (automated) systems. School divisions will be permitted to maintain student information in ways best suited to their local needs and procure automated systems without costly software customization. Additionally, the amendments clarify the authority of school boards to approve student participation in activities and events away from school and count students as "present" (e.g., service as a General Assembly page).

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Jerry Mathews, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 225-2950.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 17:1 VA.R. 44-46 September 25, 2000 without change. Therefore, pursuant to § 9-6.14:22 A of the Code of Virginia, the text of the final regulation is not set out.

VA.R. Doc. No. R00-7; Filed February 8, 2001, 11:12 a.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: Transportation as an Administrative Expense.

12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12 VAC 30-50-300 and 12 VAC 30-50-530).

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

Effective Date: April 2, 2001.

Summary:

This regulatory action establishes the coverage of Medicaid transportation as an administrative expense as permitted by federal regulations, instead of as a medical expense. This applies to nonemergency transportation services only. This change will permit the coordination of trips and a reduction in expenditures by broker contractors.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

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

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 17:1 VA.R. 44-46 September 25, 2000 without change. Therefore, pursuant to § 9-6.14:22 A of the Code of Virginia, the text of the final regulation is not set out.

VA.R. Doc. No. R00-102; Filed February 6, 2001, 11:29 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PSYCHOLOGY

Title of Regulation: 18 VAC 125-20-10 et seq. Regulations Governing the Practice of Psychology (amending 18 VAC 125-20-10 and 18 VAC 125-20-30; adding 18 VAC 125-20-43).

Statutory Authority: § 54.1-2400 and Chapter 36 (§ 54.1-3600 et seq.) of Title 54.1 of the Code of Virginia.

Effective Date: March 28, 2001.

Summary:

The amendments establish licensure fees and application instructions for licensure as school psychologists-limited for individuals who are licensed by the Board of Education with an endorsement in psychology and a master's degree in psychology.

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 Evelyn B. Brown, Board of Psychology, 6606 West Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9967.

18 VAC 125-20-10. Definitions.

The following words and terms, in addition to the words and terms defined in § 54.1-3600 of the Code of Virginia, when

used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"APA" means the American Psychological Association.

"APPIC" means the Association of Psychology Postdoctoral and Internship Centers.

"Applicant" means a person who submits a complete application for licensure with the appropriate fees.

"Board" means the Virginia Board of Psychology.

"Candidate for licensure" means a person who has satisfactorily completed the appropriate educational and experience requirements for licensure and has been deemed eligible by the board to sit for the required examinations.

"Demonstrable areas of competence" means those therapeutic and assessment methods and techniques, and populations served, for which one can document adequate graduate training, workshops, or appropriate supervised experience.

"Internship" means an ongoing, supervised and organized practical experience obtained in an integrated training program identified as a psychology internship. Other supervised experience or on-the-job training does not constitute an internship.

"NASP" means the National Association of School Psychologists.

"NCATE" means the National Council for the Accreditation of Teacher Education.

"Professional psychology program" means an integrated program of doctoral study designed to train professional psychologists to deliver services in psychology.

"Regional accrediting agency" means one of the six regional accrediting agencies recognized by the United States Secretary of Education established to accredit senior institutions of higher education.

"Residency" means a post-internship, post-terminal degree, supervised experience approved by the board.

"School psychologist-limited" means a person licensed pursuant to § 54.1-3606 of the Code of Virginia to provide school psychology services solely in public school divisions.

"Supervision" means the ongoing process performed by a supervisor who monitors the performance of the person supervised and provides regular, documented individual consultation, guidance and instruction with respect to the skills and competencies of the person supervised.

"Supervisor" means an individual who assumes full responsibility for the education and training activities of a person and provides the supervision required by such a person.

18 VAC 125-20-30. Fees required by the board.

A. The board has established fees for the following:

	<i>Applied psychologists Clinical psychologists School psychologists</i>	<i>School psychologists- limited</i>
1. Registration of residency (per residency request)	\$50	
2. Add or change supervisor	\$25	
3. Application processing and initial licensure	\$200	\$85
4. Biennial renewal of license	\$225	\$100
5. Late renewal	\$80	\$35
6. Verification of license to another jurisdiction	\$25	[\$40 \$25]
7. Duplicate license	\$5	[\$5]
8. Additional or replacement wall certificate	\$15	\$15
9. Returned check	\$25	\$25
10. Reinstatement of a lapsed license	\$270	[\$125]
11. Reinstatement following revocation or suspension	\$500	[\$500]

B. Fees shall be paid by check or money order made payable to the Treasurer of Virginia and forwarded to the board. All fees are nonrefundable.

C. Examination fees shall be established and made payable as determined by the board.

18 VAC 125-20-43. Requirements for licensure as a school psychologist-limited.

A. Every applicant [~~for examination~~] for licensure as a school psychologist-limited shall submit to the board:

1. A copy of a current license issued by the Board of Education showing an endorsement in psychology.
2. An official transcript showing completion of a master's degree in psychology.
3. A completed Employment Verification Form.
4. The application fee.

B. At the time of licensure renewal, school psychologists-limited shall be required to submit an updated Employment Verification Form if there has been a change in school district.

Final Regulations

NOTICE: The forms used in administering 18 VAC 125-20-10 et seq., Regulations Governing the Practice of Psychology, are listed below. Added forms are reflected in the listing and have not changed since the proposed publication. See 16:25 3224-3226 August 28, 2000 for copies of the new forms.

FORMS

Psychologist Application for Licensure by Examination, PSYEX1 (rev. 2/00).

Application for Licensure as a School Psychologist-Limited, SCHLTD 1 (eff. 8/00).

Employment Verification Form, SCHLTD 2 (eff. 8/00).

Registration of Residency – Post-Graduate Degree Supervised Experience, PSY2 (rev. 2/00).

Psychologist Application for Licensure by Endorsement, PSYEN1 (rev. 2/00).

Psychologist Application for Reinstatement of a Lapsed License, PSYREIN (eff. 2/00).

Psychologist Application for Reinstatement Following Disciplinary Action, PSYREDISC (eff. 2/00).

Verification of Post-Degree Supervision, PSY3 (rev. 6/99).

Internship Verification, PSY4 (rev. 6/99).

Licensure/Certification Verification, PSY5 (rev. 6/99).

Areas of Graduate Study, PSY6 (rev. 6/99).

Renewal Notice and Application (rev. 2/00).

VA.R. Doc. No. R99-186; Filed February 7, 2001, 10:27 a.m.



GENERAL NOTICES/ERRATA

STATE CORPORATION COMMISSION

Bureau of Insurance

January 29, 2001

Administrative Letter 2001-1

TO: ANY CARRIER ENTERING INTO PROVIDER CONTRACTS ON OR AFTER JULY 1, 1999

RE: ETHICS AND FAIRNESS IN CARRIER BUSINESS PRACTICES

Section 38.2-3407.15 of the Code of Virginia was effective July 1, 1999. This section requires every provider contract entered into, amended, extended, or renewed by a carrier to contain specific provisions which require the carrier to adhere to and comply with the minimum fair business standards for the processing and payment of claims.

The purpose of this letter is to request that each carrier that has entered into any provider contracts on or after July 1, 1999 forward a sample contract to the Bureau of Insurance. This sample contract should be clearly marked to demonstrate compliance with each of the nine subsections of § 38.2-3407.15 B of the Code of Virginia. The language in the contract that ensures that the contract is in compliance with the specific subsection(s) should be highlighted and a notation next to the highlighted language should indicate which of the subsection(s) is brought into compliance with that language. The sample contract should also be completed in "John Doe" fashion.

The sample contract should be the type of contract most commonly entered into, amended, extended, or renewed by the carrier on or after July 1, 1999. A certification signed by an officer of the carrier should be sent to the Bureau of Insurance with the sample contract. The certification must certify that the carrier has reviewed all other provider contracts entered into, amended, extended, or renewed after July 1, 1999 and certify that these contracts are in compliance with § 38.2-3407.15 of the Code of Virginia.

Within 30 days from the date of this letter, the completed contract and certification should be sent to:

Peggy Dozier, ALHC, AIE, FLMI
Senior Market Conduct Examiner
Life and Health Division
Bureau of Insurance
P. O. Box 1157
Richmond, VA 23218

Any questions regarding this letter may also be addressed to Peggy Dozier.

/s/ Alfred W. Gross
Commissioner of Insurance

BOARD OF CORRECTIONS

Notice of Periodic Review

Pursuant to Executive Order Number 25 (98), the Virginia Board of Corrections will review the following regulations to determine whether the regulations 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 or Regulations.

The board and the department seek public comment on the review of these regulations regarding any pertinent issues relating to the standards, including whether:

1. The regulation is effective in achieving its goals.
2. The regulation is essential to protect the health, safety or welfare of the citizens.
3. There are less burdensome and less intrusive alternatives for achieving the purpose of the regulation.
4. The regulation is clearly written and easily understandable by affected persons

Regulation Title: **6 VAC 15-10-10 et seq. Public Participation Guidelines.**

Subject: Public Participation Guidelines provide consistent, written procedures that ensure input from interested parties during the development, review and final stages of the regulatory process. A full 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 until 5 p.m. on March 30, 2001. Address all comments to Jan Dow, Agency Regulatory Coordinator, 6900 Atmore Drive, Richmond, VA 23225, (804) 674-3119, FAX (804) 674-3509, e-mail address: dowjt@vadoc.state.va.us.

Regulation Title: **6 VAC 15-26-10 et seq. Regulations for Human Subject Research.**

Subject: Regulations for Human Subject Research apply to any individual, group, or agency conducting research and using human participants within the Department of Corrections, including any facility, program or organization owned, operated, funded, or licensed by the department. A full 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 until 5 p.m. on March 30, 2001. Address all comments to John Britton, Director, Research and Management Services, 6900 Atmore Drive, Richmond, VA 23225, (804) 674-3268, FAX (804) 674-3590, e-mail brittonjt@vadoc.state.va.us.

General Notices/Errata

DEPARTMENT OF ENVIRONMENTAL QUALITY

Notices of Periodic Review

Pursuant to Executive Order Number 25 (98), the Department of Environmental Quality will review its **Guidelines for the Preparation of Environmental Impact Assessments for Oil or Gas Well Drilling Operations in Tidewater Virginia (9 VAC 15-20-10 et seq.)**. The purpose of the review is to determine whether the regulations should be terminated, amended or retained in their current form. The review of the regulations will be guided by the principles listed in Executive Order Number 25 (98).

The purpose of these regulations is to protect public health and/or welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth, and to establish criteria and procedures for preparing and evaluating environmental impact assessments for oil or gas well drilling operations and related production and transportation activities proposed to occur in Tidewater Virginia to protect waters of the Chesapeake Bay from discharges of oil and gas resulting from operations/activities.

The department and the board are seeking public comment on the review of any issue relating to these regulations, including whether:

1. The regulations are effective in achieving their goals.
2. The regulations are essential to protect the health, safety of welfare of citizens or for the economical performance of important governmental functions.
3. There are less burdensome and less intrusive alternatives for achieving the purpose of the regulations.
4. The regulations are clearly written and easily understandable by the affected persons.

Comments on the above are welcome and will be accepted until March 19, 2001. Send comments to Ellie Irons, Department of Environmental Quality, P.O. Box 10009, 629 East Main Street, Richmond, Virginia 23240-0009, (804) 698-4325 or e-mail elirons@deq.state.va.us. (Note: Please include your full name and mailing address in the e-mail.)

* * * * *

Pursuant to Executive Order Number 25 (98), the Department of Environmental Quality, on behalf of the State Air Pollution Control Board, State Water Control Board and Virginia Waste Management Board will review the **Public Participation Guidelines (9 VAC 5-170-90 through 9 VAC 5-170-110; 9 VAC 15-10-10 et seq., 9 VAC 20-10-10 et seq. and 9 VAC 25-10-10 et seq.)**. The purpose of the review is to determine whether the regulations should be terminated, amended or retained in their current form. The review of the regulations will be guided by the principles listed in Executive Order Number 25 (98).

The purpose of these regulations is to protect public health and/or welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth and to establish procedures for soliciting citizen participation in all

phases of the regulatory process for the adoption of new regulations or the amendment or repeal of existing regulations.

The department and the board are seeking public comment on the review of any issue relating to these regulations including whether (i) the regulations are effective in achieving their goals; (ii) the regulations are essential to protect the health, safety or welfare of citizens or for the economical performance of important governmental functions; (iii) there are less burdensome and less intrusive alternatives for achieving the purpose of the regulations; and (iv) the regulations are clearly written and easily understandable by the affected persons.

Comments on the above are welcome and will be accepted until March 19, 2001. Send comments to Cindy M. Berndt, Department of Environmental Quality, P.O. Box 10009, 629 East Main Street, Richmond, Virginia 23240-0009, (804) 698-4378, FAX (804) 698-4327 or e-mail cmberndt@deq.state.va.us. (Note: Please include your full name and mailing address in the e-mail.)

DEPARTMENT OF REHABILITATIVE SERVICES

Commonwealth Neurotrauma Initiative

The Department of Rehabilitative Services intends to issue Request for Proposal (RFP) #01-264 on March 1, 2001, to solicit applications from Virginia-based organizations, institutions and researchers for grants of moneys from the Commonwealth Neurotrauma Initiative Trust Fund. The purpose of this RFP is to establish contracts for research on the mechanisms and treatment of neurotrauma (identified as Option A) and for community-based rehabilitative programs for individuals experiencing traumatic spinal cord or brain injuries (identified as Option B). Proposals must be received at 8004 Franklin Farms Drive, Richmond, Virginia, by 5 p.m. on June 1, 2001. An optional preproposal conference will be held on March 12, 2001, from 1-3 p.m. at DRS Central Office in Richmond. For additional information, or to obtain a copy of the RFP, contact Sandy Prince via e-mail at princesw@drs.state.va.us or call 804/662-7021 or 800/552-5019.

DEPARTMENT OF TRANSPORTATION

Notices of Periodic Review

Pursuant to Executive Order Number 25 (98), the Virginia Department of Transportation has scheduled the regulations listed below for review. VDOT will conduct this review to determine whether the regulations should be terminated, amended, or retained as written. If any changes are deemed necessary, VDOT will file the appropriate documentation as required to comply with applicable statute or other directives.

VDOT seeks public comment to determine whether the following regulations (i) protect the public's health, safety, and welfare with the least possible intrusiveness to the citizens

and businesses of the Commonwealth and (ii) are clearly written and understandable.

24 VAC 30-470-10 et seq. Criteria for Transferring Secondary Roads to the Primary System

This regulation establishes the criteria that recommendations must be based upon prior to being submitted to the Commonwealth Transportation Board when considering additions to the State Primary System from the State Secondary System.

APA Exemption: § 9-6.14:4.1 B 3

24 VAC 30-480-10 et seq. Arterial Networks

This regulation establishes the criteria that recommendations must be based upon prior to being submitted to the Commonwealth Transportation Board when considering additions to the State Primary System from the State Secondary System.

APA Exemption: § 9-6.14:4.1 B 3

24 VAC 30-490-10 et seq. Roads in the Grounds of State Institutions

This regulation establishes the minimum design standards that roads within the grounds of state institutions must meet to be included in the Primary System.

APA Exemption: § 9-6.14:4.1 B 3

24 VAC 30-500-10 et seq. Roads in the Grounds of State Parks

This regulation establishes the policy under which State Secondary System routes located completely within state parks, government parks, reservations, and recreational areas may be closed or turned over for maintenance and construction to the various authorities in charge of such parks, areas, etc., if they so request.

24 VAC 30-510-10 et seq. Frontage Roads

This regulation establishes the policy VDOT will follow in deciding where to construct frontage or service roads, when VDOT will provide assistance to others in constructing such roads, including minimum standards, land use conditions, and maintenance of the roads after construction.

APA Exemption: § 9-6.14:4.1 B 3

Comments may be submitted through April 21, 2001, to Carl F. Sheets, Transportation Engineer, Virginia Department of Transportation, Traffic Engineering Division, 1401 E. Broad St., 11th Floor, Richmond, VA 23219, telephone (804) 786-2811, FAX (804) 225-3761, e-mail sheets_cf@vdot.state.va.us.

VDOT seeks public comment to determine whether the following regulations (i) protect the public's health, safety, and welfare with the least possible intrusiveness to the citizens and businesses of the Commonwealth and (ii) are clearly written and understandable.

24 VAC 30-520-10 et seq. Classifying and Marking State Highways

This regulation establishes the rules that the Commonwealth Transportation Commissioner, as authorized by the Commonwealth Transportation Board will follow in matters relating to classifying, designating, and marking state highways, and the posting of signs and markings.

APA Exemption: §§ 9-6.14:4.1 B 3 and B 11

Comments may be submitted through April 21, 2001, to Mansour Mahbanoozadeh, Transportation Engineer Program Supervisor, Virginia Department of Transportation, Traffic Engineering Division, 1401 E. Broad St., 11th Floor, Richmond, VA 23219, telephone (804) 786-7983, FAX (804) 786-2888, e-mail mahban_me@vdot.state.va.us.

24 VAC 30-530-10 et seq. Roadway and Structure Lighting

This regulation establishes the policies and rules that VDOT will follow in matters relating to roadway lighting, including conditions under which VDOT will pay for the construction and maintenance of roadway lighting, and when these costs should be borne by others.

Comments may be submitted through April 21, 2001, to Mark T. Hodges, Transportation Engineer Program Supervisor, Virginia Department of Transportation, Traffic Engineering, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-2868, FAX (804) 225-4978, e-mail hodges_mt@vdot.state.va.us.

24 VAC 30-540-10 et seq. Conveyance of Lands and Disposal of Improvements

This regulation establishes the policies and procedures that VDOT will follow in matters relating to the conveyance of lands and disposal of improvements, including classifications of surplus land, exceptions to policy, and powers delegated to the Commonwealth Transportation Commissioner by the Commonwealth Transportation Board to implement its policies on the subject.

APA Exemption: § 9-6.14:4.1 B 3

Comments may be submitted through April 21, 2001, to Arthur H. Taylor, III, Property Management, Virginia Department of Transportation, Right of Way and Utilities Division, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-7529, FAX (804) 786-1706, e-mail taylor_ah@vdot.state.va.us.

24 VAC 30-15-10 et seq. Delegation of Duties

VDOT seeks public comment to determine whether the following regulation (i) protects the public's health, safety, and welfare with the least possible intrusiveness to the citizens and businesses of the Commonwealth; (ii) designates appropriate responsibilities from the Commissioner to VDOT employees; and (iii) is clearly written and understandable.

General Notices/Errata

The regulation establishes duties of VDOT employees as delegated by the Commonwealth Transportation Commissioner.

APA Exemption: § 9-6.14:4.1 C 2

24 VAC 30-370-10 et seq. Copyright Dates of VDOT Properties

VDOT seeks public comment to determine whether the following regulation (i) protects the Commonwealth's interest in state-owned properties; (ii) protects the public's health, safety, and welfare with the least possible intrusiveness to the citizens and businesses of the Commonwealth; and (iii) is clearly written and understandable.

This regulation establishes the rules for designating materials or other property created or produced using state-owned resources during work hours or within the scope of employment, as copyrighted by the Commonwealth of Virginia.

APA Exemption: 9-6.14:4.1 B 4

Comments may be submitted through April 21, 2001, to David L. Roberts, Policy and Planning Specialist II, Virginia Department of Transportation, Management and Services Division, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-3620, FAX (804) 371-0074, e-mail roberts_dl@vdot.state.va.us.

* * *

VDOT seeks public comment to determine whether the following regulations (i) protect the public's health, safety, and welfare with the least possible intrusiveness to the citizens and businesses of the Commonwealth; (ii) ensure maximum utility of facilities to users; and (iii) are clearly written and understandable.

24 VAC 30-50-10 et seq. Rules and Regulations for the Administration of Waysides and Rest Areas

The regulation establishes overall policies, procedures, and conditions under which waysides and rest areas may be used.

APA Exemption: None

24 VAC 30-100-10 et seq. Rules and Regulations for the Administration of Parking Lots and Environs

The regulation establishes overall policies, procedures, and conditions under which waysides and rest areas may be used.

APA Exemption: None

Comments may be submitted through April 21, 2001, to Cynthia L. Ward, Special Operations Manager, Virginia Department of Transportation, Maintenance Division, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 692-0390, FAX (804) 692-0810, e-mail ward_cl@vdot.state.va.us.

VIRGINIA WASTE MANAGEMENT BOARD

Notices of Periodic Review

Pursuant to Executive Order Number 25 (98), the Department of Environmental Quality on behalf of the Virginia Waste Management Board, will review the following regulations. The review of the regulations will be guided by the principles listed in Executive Order Number 25 (98). The purpose of the review is to determine whether the regulations should be terminated, amended or retained in their current form.

The department and the board are seeking public comment on the review of any issue relating to these regulations including whether:

1. The regulations are effective in achieving their goals.
2. The regulations are essential to protect the health, safety of welfare of citizens or for the economical performance of important governmental functions.
3. There are less burdensome and less intrusive alternatives for achieving the purpose of the regulations.
4. The regulations are clearly written and easily understandable by the affected persons.

The regulations being reviewed and the contact person are:

1. Regulation Governing Management of Coal Combustion By-Products (9 VAC 20-85-10 et seq.). The purpose of these regulations is to protect the public health and/or welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth and to establish appropriate management practices for facilities that manage only coal combustion residues. Comments on the above are welcome and will be accepted until March 19, 2001. Comments should be sent to Michael J. Dieter, Department of Environmental Quality, P.O. Box 10009, 629 East Main Street, Richmond, Virginia 23240-0009, (804) 698-4146, fax (804) 698-4327, or e-mail mjdieter@deq.state.va.us. (Note: Please include your full name and mailing address in the e-mail.)
2. Regulation Governing the Transportation of Hazardous Materials (9 VAC 20-110-10 et seq.). The purpose of these regulations is to protect the public health and/or welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth, to ensure protection of public safety and welfare through monitoring of shipments of hazardous radioactive materials being transported in the Commonwealth, and to protect the public by enabling enforcement of applicable federal regulations for the transportation of hazardous materials by the state and local police. Comments on the above are welcome and will be accepted until March 19, 2001. Comments should be sent to Melissa Porterfield, Department of Environmental Quality, P.O. Box 10009, 629 East Main Street, Richmond, Virginia 23240-4238, fax (804) 698-4327, (804) 698-4249, or e-mail mporterfi@deq.state.va.us. (Note: Please include your full name and mailing address in the e-mail.)

3. Waste Tire End User Reimbursement Regulation (9 VAC 20-150-10 et seq.). The purpose of these regulations is to protect public health and/or welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth and to promote the use of waste tires by establishing necessary criteria and procedures for partial reimbursement of the cost to the end user of waste tires. Comments on the above are welcome and will be accepted until March 19, 2001. Comments should be sent to Allan Lassiter, Department of Environmental Quality, P.O. Box 10009, 629 East Main Street, Richmond, Virginia 23240-0009, (804) 698-4215, or e-mail arlassiter@deq.state.va.us. (Note: Please include your full name and mailing address in the e-mail.)

STATE WATER CONTROL BOARD

Notices of Periodic Review

Pursuant to Executive Order Number 25 (98), the Department of Environmental Quality on behalf of the State Water Control Board, will review the following regulations. The purpose of the review is to determine whether the regulations should be terminated, amended or retained in their current form. The review of the regulations will be guided by the principles listed in Executive Order Number 25 (98).

1. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges from Petroleum Contaminated Sites (9 VAC 25-120-10 et seq.). The purpose of these regulations is to protect public health and/or welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth and to establish consistent procedures and requirements for the issuance of VPDES permits to discharge pollutants from petroleum contaminated sites in order to effectuate the proper and comprehensive protection of state waters.

2. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Concentrated Aquatic Animal Production Facilities (9 VAC 25-195-10 et seq.). The purpose of these regulations is to protect public health and/or welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth and to establish consistent procedures and requirements for the issuance of VPDES permits to discharge pollutants from concentrated aquatic animal production facilities in order to effectuate the proper and comprehensive protection of state waters.

3. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Cooling Water Discharges (9 VAC 25-196-10 et seq.). The purpose of these regulations is to protect public health and/or welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth and to establish consistent procedures and requirements for the issuance of VPDES permits to discharge pollutants from cooling water sources in order to effectuate the proper and comprehensive protection of state waters.

The department and the board are seeking public comment on the review of any issue relating to these regulations including whether:

1. The regulations are effective in achieving their goals.
2. The regulations are essential to protect the health, safety of welfare of citizens or for the economical performance of important governmental functions.
3. There are less burdensome and less intrusive alternatives for achieving the purpose of the regulations.
4. The regulations are clearly written and easily understandable by the affected persons.

Comments on the above are welcome and will be accepted until March 19, 2001. Comments should be sent to Richard W. Ayers, Department of Environmental Quality, P.O. Box 10009, 629 East Main Street, Richmond, Virginia 23240-0009, (804) 698-4075, or e-mail rwayers@deq.state.va.us. (Note: Please include your full name and mailing address in the e-mail.)

In addition, the Department of Environmental Quality on behalf of the State Water Control Board, will review the Tank Vessel Oil Discharge Contingency Plan and Financial Responsibility Requirements Regulation (9 VAC 25-101-10 et seq.). The purpose of this regulation is to protect public health and/or welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth. In addition, this regulation protects the environment from discharges of oil from vessels by establishing procedures and requirements for operators to respond to the threat of an oil discharge and to contain, clean up and mitigate a discharge within the shortest feasible time, as well as demonstrate adequate financial responsibility to cover the costs of clean up and the liabilities for damages specified in the law.

Comments on the Tank Vessel Oil Discharge Contingency Plan and Financial Responsibility Requirements Regulation should be sent to David T. Ormes, Department of Environmental Quality, P.O. Box 10009, 629 East Main Street, Richmond, Virginia 23240-0009, (804) 698-44263, FAX (804) 698-4327 or e-mail dtormes@deq.state.va.us.

Proposed Consent Special Order Town of Damascus Sewage Treatment Plant

The State Water Control Board proposes to take an enforcement action against the above listed facility. Under the terms of the proposed special order, the owner of this facility has agreed to be bound by the terms and conditions of a schedule of compliance contained in the appendix of the order. The requirements contained in the order bring the facility into compliance with state law and protects water quality.

On behalf of the State Water Control Board, the Department of Environmental Quality will receive comments relating to the special order until March 27, 2001. Comments should be addressed to Dallas Sizemore, Department of Environmental Quality, Southwest Regional Office, P.O. Box 1688, Abingdon, Virginia 24212 and should refer to the consent special order amendment. Comments can also be sent by

General Notices/Errata

e-mail to drsizemore@deq.state.va.us. Anyone wishing to comment must include their name, address and phone number and all comments must be received before the end of the comment period.

The proposed order may be examined at the Department of Environmental Quality, 355 Deadmore Street, Abingdon, Virginia. A copy of the order may be obtained in person or by mail from the above office.

Publication: 17:11 VA.R. 1625 February 12, 2001.

Correction to the Notice of Intended Regulatory Action:

Change public comment deadline to March 14, 2001.

VIRGINIA CODE COMMISSION

Notices of Public Comment

Beginning in this issue of the *Virginia Register*, the "Public Comment Periods - Proposed Regulations" section is being discontinued. However, notices of public comment periods regarding state agency proposed regulations will continue to be published in the Calendar of Events section of the *Virginia Register*.

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

ERRATA

STATE BOARD OF HEALTH

Title of Regulation: 12 VAC 5-90-10 et seq. Regulations for Disease Reporting and Control.

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

Richmond, VA 23219, telephone (804) 786-3538, FAX (804) 371-2945, e-mail jknight@vdacs.state.va.us.

VIRGINIA AGRICULTURAL COUNCIL

March 26, 2001 - 9 a.m. -- Open Meeting

March 27, 2001 - 9 a.m. -- Open Meeting

Holiday Inn Monticello, 1200 Fifth Street, Charlottesville, Virginia.  (Interpreter for the deaf provided upon request)

A two-day meeting to hear and act upon agricultural project proposals for financial assistance through the Virginia Agricultural Council. The council 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 Thomas Yates at least five days before the meeting date so that suitable arrangements can be made.

Contact: Thomas R. Yates, Assistant Secretary, Department of Agriculture and Consumer Services, 1100 Bank Street, 5th Floor, Room 509, Richmond, VA, telephone (804) 786-6060, FAX (804) 371-8372, (800) 828-1120/TTY 

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

March 15, 2001 - 9 a.m. -- Open Meeting

Washington Building, 1100 Bank Street, 2nd Floor, Board Room, Richmond, Virginia. 

A meeting to discuss issues related to Virginia agriculture and consumer services. The board may discuss any regulation under its authority. 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's secretary at least five days before the meeting date so that suitable arrangements can be made.

Contact: Roy Seward, Board Secretary, Board of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St.,

Virginia State Apple Board

† March 13, 2001 - 9 a.m. -- Open Meeting

Rowe's Restaurant, Route 4, Staunton, Virginia. 

The board will review finances. The board will also entertain grants from the industry for fiscal year 2002. Other issues to be discussed are approval of board minutes and a financial review. 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 Nancy Israel at least five days before the meeting date so that suitable arrangements can be made.

Contact: Nancy L. Israel, Executive Director, Virginia State Apple Board, 1100 Bank St., Suite 1012, Richmond, VA 23219, telephone (804) 371-6104, FAX (804) 371-7786.

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.

Calendar of Events

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 Sheep Industry Board

February 26, 2001 - 10 a.m. -- Open Meeting
Virginia Horse Center, 487 Maury River Road, Lexington, Virginia. ☎

The board will hear reports on the following: State Fair Carcass Lamb Show, Virginia Junior Show Lamb Association, VA-NC Shepherd's Symposium. The board will receive all project proposals and act on requests for the 2001-2002 fiscal year. A 2001-2002 budget will be adopted. 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: Mike Carpenter, Program Director, Department of Agriculture and Consumer Services, Livestock Marketing Services, VDACS, 116 Reservoir Street, Harrisonburg, VA, telephone (540) 434-0779, FAX (540) 434-5607.

Virginia Soybean Board

† **March 7, 2001 - 8 a.m.** -- Open Meeting
Fort Magruder Hotel and Conference Center, 6945 Pocahontas Trail, Williamsburg, Virginia. ☎

The board will discuss checkoff revenues resulting from the sales of the 2000 soybean crop and approve, if appropriate, previous meeting minutes. The board will hear project reports for FY 2000-2001 and project proposals for FY 2001-2002. Funding decisions will be made for the fiscal year beginning July 1, 2001. 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: Philip T. Hickman, Program Director, Virginia Soybean Board, 1100 Bank St., Room 1005, Richmond, VA 23219, telephone (804) 371-6157, FAX (804) 371-7786.

STATE AIR POLLUTION CONTROL BOARD

† **March 29, 2001 - 9 a.m.** -- Open Meeting
Department of Environmental Quality, 629 East Main Street, 1st Floor, Richmond, Virginia. ☎

A public meeting to receive comments and discuss the notice of intended regulatory action to develop a regulation that controls emissions from commercial/industrial solid waste incinerators and small municipal waste combustors as required by §§ 111(d) and 129 of the federal Clean Air Act.

Contact: Karen G. Sabasteanski, State Air Pollution Control Board, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, FAX (804) 698-4510, (804) 698-4021/TTY ☎, e-mail kgsabastea@deq.state.va.us.

May 3, 2001 - 10 a.m. -- Public Hearing
Main Street Centre, 600 East Main Street, Lower Level, Conference Room, Richmond, Virginia.

June 12, 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 State Air Pollution Control Board intends to amend regulations entitled: **9 VAC 5-40-10 et seq. Existing Stationary Sources (Rev. A99)**. Article 4 provides a legal mechanism whereby the board is required to make source specific Reasonable Available Control Technology (RACT) determinations for all currently known major sources subject to source specific NO_x RACT requirements under the federal Clean Air Act. Amendments are being proposed to delete the provisions that address seasonal applicability, certain exemptions and the emission allocation system.

Article 8 establishes emission limits along with compliance testing, monitoring, recordkeeping and reporting requirements for fuel burning equipment. Amendments are being proposed to establish an emissions rate limit for nitrogen oxides for electric generating units and nonelectric generating units and create a compliance averaging plan to provide flexibility for the sources subject to the regulation.

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

Public comments may be submitted until June 12, 2001, to Director, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240.

Contact: Mary E. Major, Environmental Program Manager, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4423, FAX (804) 698-4510, toll-free 1-800-592-5482 or (804) 698-4021/TTY ☎

ALCOHOLIC BEVERAGE CONTROL BOARD

† **March 13, 2001 - 9:30 a.m.** -- Open Meeting
Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia. ☎

An executive staff meeting for receipt and discussion of reports and activities from staff members and other matters not yet determined.

Contact: W. Curtis Coleburn, Secretary to the Board, Alcoholic Beverage Control Board, 2901 Hermitage Rd., Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4442.

ALZHEIMER'S DISEASE AND RELATED DISORDERS COMMISSION

† **March 21, 2001 - 10 a.m.** -- Open Meeting
Manor House Assisted Living Center, 491 Crestwood Drive, Charlottesville, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting.

Contact: Janet L. Honeycutt, Director of Grant Operations, Department for the Aging, 1600 Forest Ave., Richmond, VA 23229, telephone (804) 662-9341, FAX (804) 662-9354, toll-free (800) 552-3402, e-mail jlhoneycutt@vdh.state.va.us.

BOARD OF ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

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.

March 16, 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 discuss changes to the board's regulations regarding photogrammetrists and 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

March 2, 2001 - 10 a.m. - Open Meeting
April 6, 2001 - 10 a.m. -- Open Meeting
May 4, 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 

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
April 25, 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)

An agenda will be 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 OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

† **March 24, 2001 - 10 a.m.** -- Public Hearing
Holiday Inn Select, Fredericksburg, Virginia.

April 27, 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 Audiology and Speech-Language Pathology intends to amend regulations entitled: **18 VAC 30-10-10 et seq. Public Participation Guidelines.** The purpose of the proposed amendments is to update the guidelines for public participation in the regulatory process of the board, specifically to be consistent with electronic notifications and submissions.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2400 of the Code of Virginia.

Contact: Elizabeth Young Tisdale, Executive Director, Board of Audiology and Speech-Language Pathology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9111.

BOARD FOR BARBERS AND COSMETOLOGY

March 5, 2001 - 8:30 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 person desiring to attend the meeting and requiring special accommodations or interpretative services should contact the department at (804) 367-8590 or (804) 367-9753/TTY at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY, e-mail barbercosmo@dpor.state.va.us.

DEPARTMENT FOR THE BLIND AND VISION IMPAIRED

April 17, 2001 - 1 p.m. -- Open Meeting
Department for the Blind and Vision Impaired, 397 Azalea Avenue, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to 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 23227-3600, telephone (804) 371-3145, FAX (804) 371-3157, toll-free (800) 622-2155, (804) 371-3140/TTY, e-mail proffikk@dbvi.state.va.us.

Statewide Rehabilitation Council for the Blind

March 3, 2001 - 10 a.m. -- Open Meeting
Department for the Blind and Vision Impaired, 397 Azalea Avenue, Richmond, Virginia. (Interpreter for the deaf provided upon request)

Council meets quarterly to advise the Department for the Blind and Vision Impaired on matters related to vocational rehabilitation services for the blind and visually impaired citizens of the Commonwealth.

Contact: James G. Taylor, VR Program Director, Department for the Blind and Vision Impaired, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3111, FAX (804) 371-3351, toll-free (800) 622-2155, (804) 371-3140/TTY, e-mail taylorjg@dbvi.state.va.us.

CHARITABLE GAMING COMMISSION

March 1, 2001 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular commission meeting.

Contact: Frances C. Jones, Administrative Staff Assistant, Charitable Gaming Commission, 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 786-3914, FAX (804) 786-1079, e-mail jones@cgc.state.va.us.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

† March 19, 2001 - 10 a.m. -- Open Meeting
James Monroe Bldg., 101 North 14th Street, Conference Room C, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct general business including review of local Chesapeake Bay Preservation Area programs. Public comment will be taken during the meeting. A tentative agenda will be available on March 1, 2001 from the Chesapeake Bay Local Assistance Department.

Contact: Carolyn J. Elliott, Administrative Assistant, Chesapeake Bay Local Assistance Department, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 371-7505, FAX (804) 225-3447, toll-free (800) 243-7229, (800) 243-7229/TTY, e-mail celliott@cblad.state.va.us.

CHILD DAY-CARE COUNCIL

† March 8, 2001 - 9 a.m. -- Open Meeting
Department of Social Services, 730 East Broad Street, Lower Level 1, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The child day-care council will meet to discuss issues and concerns that impact child day centers, camps, school age programs and preschools/nursery schools. Public comment

period will begin at noon. Please call ahead for possible changes in meeting time.

Contact: Arlene Kasper, Program Development Consultant, Child Day-Care Council, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1791, FAX (804) 692-2370.

COMPENSATION BOARD

February 27, 2001 - 11 a.m. -- Open Meeting
Ninth Street Office Building, 202 North 9th Street, 10th Floor, Richmond, Virginia. 

A monthly board meeting.

Contact: Cindy P. 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

Virginia Cave Board Education Committee

† **March 24, 2001 - 1 p.m.** -- Open Meeting
Department of Conservation and Recreation, Division of Natural Heritage, 217 Governor Street, Conference Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A committee meeting to discuss education issues.

Contact: Larry Smith, Natural Area Program Manager, Department of Conservation and Recreation, 203 Governor St., Richmond, VA 23219, telephone (804) 371-6205, e-mail lsmith@dcr.state.va.us.

Board on Conservation and Development of Public Beaches

March 13, 2001 - 10 a.m. -- Open Meeting
Yorktown, 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.

Virginia Soil and Water Conservation Board

March 15, 2001 - 9 a.m. -- Open Meeting
Department of Forestry, Charlottesville, 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.

BOARD FOR CONTRACTORS

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

† **March 13, 2001 - 10 a.m.** -- Open Meeting
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. 

A meeting of the Liaison Committee to discuss criminal justice matters that may be presented 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.

† **March 13, 2001 - 1 p.m.** -- Open Meeting
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. 

A meeting 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.

† **March 14, 2001 - 8:30 a.m.** -- Open Meeting
Department of Corrections, 6900 Atmore Drive, Room 3065, Richmond, Virginia. 

A meeting to discuss administrative matters for possible presentation to the full board.

Calendar of Events

Contact: Barbara Reyes, Executive Secretary, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23227, telephone (804) 674-3288, (804) 674-3509/TTY ☎, e-mail reyesbb@vadoc.state.va.us.

† **March 14, 2001 - 10 a.m.** -- Open Meeting
Department 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, (804) 674-3509/TTY ☎, e-mail reyesbb@vadoc.state.va.us.

BOARD OF COUNSELING

† **March 2, 2001 - 9:45 a.m.** -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

April 27, 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 Counseling intends to amend regulations entitled: **18 VAC 115-10-10 et seq. Public Participation Guidelines.** The purpose of the proposed amendments is to update the guidelines for public participation in the regulatory process of the board, specifically to be consistent with electronic notifications and submissions.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2400 of the Code of Virginia.

Contact: Evelyn B. Brown, Executive Director, Board of Counseling, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9912.

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March 30, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 that the Board of Counseling intends to amend regulations entitled: **18 VAC 115-60-10 et seq. Regulations Governing the Licensure of Substance Abuse Treatment Practitioners.** The purpose of the proposed action is to amend fees in accordance with statutory requirements for the board to collect sufficient revenue to cover the expenditures of administering the regulatory program.

Statutory Authority: § 54.1-2400 and Chapter 35 (§ 54.1-3500 et seq.) of Title 54.1 of the Code of Virginia.

Contact: Evelyn Brown, Executive Director, Board of Counseling, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9967, FAX (804) 662-9943, or (804) 662-7197/TTY ☎

CRIMINAL JUSTICE SERVICES BOARD

† **March 8, 2001 - 9 a.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia.📍

A regular meeting of the Committee on Training.

Contact: George Gotschalk, Department of Criminal Justice Services, Standards and Training Section Chief, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-8001, FAX (804) 371-8981, e-mail ggotschalk@dcjs.state.va.us.

† **March 8, 2001 - 11 a.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia.📍

This is the first meeting in the year 2001. Regular business will be discussed, as well as consideration of grant applications.

Contact: Christine Wiedemer, Administrative Staff Assistant to the Director, Criminal Justice Services Board, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-8718, FAX (804) 371-8981, e-mail cwiedemer@dcjs.state.va.us.

† **March 20, 2001 - 10 a.m.** -- Open Meeting
Hotel Roanoke, 110 Shenandoah Avenue, N.E., Roanoke, Virginia.

A meeting of the Private Security Services Advisory Board. Public comment will be accepted.

Contact: Judith Kirkendall, Regulatory Coordinator, Department of Criminal Justice Services, Eighth St. Office Bldg., 805 E. Broad St., 10th Floor, Richmond, VA 23219, telephone (804) 786-8003, FAX (804) 786-0410, e-mail jkirkendall@dcjs.state.va.us.

DEPARTMENT FOR THE DEAF AND HARD-OF-HEARING

March 2, 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 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

† **March 9, 2001 - 10 a.m.** -- Public Hearing
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room, Richmond, Virginia.

April 27, 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 Dentistry intends to amend regulations entitled: **18 VAC 60-10-10 et seq. Public Participation Guidelines.** The purpose of the proposed amendments is to update the guidelines for public participation in the regulatory process of the board, specifically to be consistent with electronic notifications and submissions.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2400 of the Code of Virginia.

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

DESIGN-BUILD/CONSTRUCTION MANAGEMENT REVIEW BOARD

February 26, 2001 - 11 a.m. -- Open Meeting

March 19, 2001 - 11 a.m. -- Open Meeting

April 16, 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., Room 101, Richmond, VA 23219, telephone (804) 786-3263, FAX (804) 371-7934, (804) 786-6152/TTY , e-mail fadcock@dgs.state.va.us.

VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP

† **March 6, 2001 - 10 a.m.** -- Open Meeting
Department of Economic Development Partnership, Riverfront Plaza, 901 East Byrd Street, West Tower, 19th Floor, Presentation Center, Richmond, Virginia. 

A meeting of the Personnel Committee to review personnel issues related to the Virginia Economic Development Partnership.

Contact: Kimberly M. Ellett, Administrative Assistant, Virginia Economic Development Partnership, P.O. Box 798, Richmond, VA 23218-0798, telephone (804) 371-8108, FAX (804) 371-8112.

† **March 6, 2001 - 11 a.m.** -- Open Meeting
Department of Economic Development Partnership, Riverfront Plaza, 901 East Byrd Street, West Tower, 19th Floor, Richmond, Virginia. 

A meeting of the Board of Directors to discuss issues pertaining to the Virginia Economic Development Partnership.

Contact: Kimberly M. Ellett, Administrative Assistant, Virginia Economic Development Partnership, P.O. Box 798, Richmond, VA 23218-0798, telephone (804) 371-8108, FAX (804) 371-8112.

BOARD OF EDUCATION

† **March 19, 2001 - 9:30 a.m.** -- Open Meeting
Longwood College, Farmville, Virginia.  (Interpreter for the deaf provided upon request)

† **April 23, 2001 - 9 a.m.** -- Open Meeting
Location to be announced.

A meeting of the Advisory Board on Teacher Education and Licensure. Persons requesting services of an interpreter for the deaf should do so in advance. This is a working session, and public comment will not be received.

Contact: Dr. Margaret N. Roberts, Office of Policy, Board of Education, P. O. Box 2120, 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail mroberts@mail.vak12ed.edu.

† **March 21, 2001 - 9:30 a.m.** -- Open Meeting

† **April 4, 2001 - 9:30 a.m.** -- Open Meeting
Location to be announced.  (Interpreter for the deaf provided upon request)

A meeting of the Joint Task Force on the K-12 Teaching Profession in Virginia. Persons requesting services of an interpreter for the deaf should do so in advance. This is a working session, and public comment will not be received.

Contact: Dr. Margaret N. Roberts, Office of Policy, Board of Education, P. O. Box 2120, 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail mroberts@mail.vak12ed.edu.

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.

† **March 30, 2001 - 9:30 a.m.** -- Open Meeting
Henrico School Board Office, 3820 Nine Mile Road, Richmond, Virginia.

Calendar of Events

A meeting of the Accountability Advisory Committee. Unless otherwise notified in advance, sessions will be working sessions and public comment will not be received. Persons requesting the services of an interpreter for the deaf should do so in advance.

Contact: Ms. Cam Harris, Department of Education, 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2102, FAX (804) 225-2524.

† **April 18, 2001 - 9:30 a.m.** -- Open Meeting
Crowne Plaza Hotel, Richmond  (Interpreter for the deaf provided upon request)

A meeting of the Uniform Performance Standards Evaluation Committee. Persons requesting services of an interpreter for the deaf should do so in advance. This is a working session, and public comment will not be received.

Contact: Dr. Margaret N. Roberts, Office of Policy, Board of Education, P. O. Box 2120, 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail mroberts@mail.vak12ed.edu.

† **April 25, 2001 - 9:30 a.m.** -- Open Meeting
† **April 26, 2001 - 9 a.m.** -- Open Meeting
† **April 27, 2001 - 9 a.m.** -- Open Meeting
TBA  (Interpreter for the deaf provided upon request)

An annual planning session. Persons requesting services of an interpreter for the deaf should do so in advance. This is a working session, and public comment will not be received.

Contact: Dr. Margaret N. Roberts, Office of Policy, Board of Education, P.O. Box 2120, 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail mroberts@mail.vak12ed.edu, homepage <http://www.pen.k12.va.us>.

DEPARTMENT OF ENVIRONMENTAL QUALITY

† **March 5, 2001 - 7 p.m.** -- Public Hearing
District Court Room, 116 South Court Street, Suite B, Luray, Virginia  (Interpreter for the deaf provided upon request)

A public hearing to receive comments on the technical merits of the permit amendment for the Battle Creek Sanitary Landfill located in Page County as they pertain to the solid waste management facility design, operation and closure.

Contact: E. Paul Farrell, Jr., Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4214, (804) 698-4021/TTY , e-mail eparrell@deq.state.va.us.

Ground Water Protection Steering Committee

† **March 20, 2001 - 9 a.m.** -- Open Meeting
Department of Environmental Quality, 629 East Main Street, 1st Floor, Conference Room, Richmond, Virginia 

A regular meeting of the ground water protection steering committee. Anyone interested in ground water protection issues is welcome to attend.

Contact: Mary Ann Massie, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4042, FAX (804) 698-4032, (804) 698-4021/TTY , e-mail mamassie@deq.state.va.us.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

NOTE: CHANGE IN MEETING DATE

† **February 27, 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.

February 28, 2001 - 3 p.m. -- Open Meeting
Marriott Hotel, 235 East Main Street, Hampton Ballroom, Norfolk, Virginia 

The Special Conference Committee will 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.

March 7, 2001 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia 

A meeting to consider reports from the Legislative and Regulatory Committees and other items as may be placed on the agenda.

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.

March 7, 2001 - 1 p.m. -- Open Meeting

March 8, 2001 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia 

A meeting to hold formal 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.

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† **March 7, 2001 - 9 a.m.** -- Public Hearing

Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia.

April 27, 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 Funeral Directors and Embalmers intends to amend regulations entitled: **18 VAC 30-65-10 et seq. Public Participation Guidelines**. The purpose of the proposed amendments is to update the guidelines for public participation in the regulatory process of the board, specifically to be consistent with electronic notifications and submissions.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2400 of the Code of Virginia.

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

BOARD OF GAME AND INLAND FISHERIES

† **March 1, 2001 - 9 a.m.** -- Open Meeting

Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The board will meet and intends to propose changes in regulations for game wildlife, hunting and trapping. This is the regular biennial review for these regulations, and an Executive Order 25 (98) periodic review for all except four of these regulations. The Board of Game and Inland Fisheries is exempted from the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia) in promulgating wildlife management regulations. It is required by § 9-6.14:22 to publish all proposed and final regulations.

Under board procedures, regulatory actions occur over two sequential board meetings. At the March 1 meeting, Department of Game and Inland Fisheries' staff will present recommendations for regulatory amendments, the board will solicit and hear comments from the public in a public hearing, and the board then intends to propose regulations or regulation amendments. Any proposed regulatory actions (or informative summaries) will then be published in the *Virginia Register*, posted on the Internet at www.dgjf.state.va.us, and advertised in newspapers. Adoption of any regulations or regulation amendments as final will take place at the subsequent board meeting, to be held May 3, 2001. The May 3 meeting will be held in Richmond; the time and address will be announced in a later notice. Additional information on this review of regulations, including a list of the specific regulations subject to review and additional details on opportunities for

public involvement, is available in a separate announcement submitted under General Notices.

General and administrative issues may be discussed by the board at the March 1 meeting. The board may hold a closed session beginning at 9 a.m. on March 1. If the board does not complete its entire agenda on March 1, it may convene for a second day beginning at 9 a.m. on March 2, 2001.

Contact: Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 W. Broad St., Richmond, VA, telephone (804) 367-1341 or FAX (804) 367-0488.

DEPARTMENT OF HEALTH

† **March 14, 2001 - 10 a.m.** -- Open Meeting

Virginia Hospital and Healthcare Association, 4200 Innslake Drive, Glen Allen, Virginia. (Interpreter for the deaf provided upon request)

This will be a meeting of interested persons to discuss upcoming amendments to the Regulations for the Certification of Quality Assurance of Managed Care Health Insurance Plan (MCHIP) Licensees.

Contact: Rene Cabral-Daniels, Senior Policy Analyst, Department of Health, 3600 W. Broad St., Suite 216, Richmond, VA 23230, telephone (804) 367-2128, FAX (804) 367-2149, (800) 828-1120/TTY, e-mail rdaniels@vdh.state.va.us.

BOARD OF HEALTH PROFESSIONS

† **April 17, 2001 - 9 a.m.** -- Public Hearing

Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia.

April 27, 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 Health Professions intends to amend regulations entitled: **18 VAC 75-10-10 et seq. Public Participation Guidelines**. The purpose of the proposed amendments is to update the guidelines for public participation in the regulatory process of the board, specifically to be consistent with electronic notifications and submissions.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2400 of the Code of Virginia.

Contact: Elizabeth A. Carter, Executive Director, Board of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

† **March 20, 2001 - 8:30 a.m.** -- Open Meeting

Virginia Tech, Blacksburg, Virginia.

Calendar of Events

Agenda materials will be available on the Web site approximately one week prior to the meeting at www.schev.edu.

Contact: Lee Ann Rung, Assistant to the Executive Director, State Council of Higher Education for Virginia, James Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2602, FAX (804) 371-7911, e-mail lrung@schev.edu.

DEPARTMENT OF HISTORIC RESOURCES

State Review Board and Historic Resources Board

† **March 14, 2001 - 10 a.m.** -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Auditorium, Richmond, Virginia. 

A quarterly meeting to consider (i) nominations to the National Register of Historic Places and the Virginia Landmarks Register, (ii) preliminary information applications, and (iii) highway markers and easements.

Contact: Marc Wagner, Register Manager, Department of Historic Resources, 2801 Kensington Ave., Richmond, VA 23221, telephone (804) 367-2323, FAX (804) 367-2391, (804) 367-2386/TTY 

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

February 28, 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, approve the minutes from the prior monthly meeting; will consider for approval and ratification mortgage loan commitments under its various programs; will consider the approval amendments to the Authority's Rules and Regulations for Allocation of Low-Income Housing Tax Credits and the amendments to the authority's Rules and Regulations for Multi-Family Housing Developments; will review the Authority's operations for the prior month; and 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 S. Belvidere St., Richmond, Virginia 23220, telephone (804) 343-5540, FAX (804) 783-6701, toll-free (800) 968-7837, (804) 783-6705/TTY 

March 6, 2001 - 1 p.m. -- Open Meeting
James Madison University, Taylor Hall, Harrisonburg, Virginia. 

March 9, 2001 - 1 p.m. -- Open Meeting

Linden House Inn, 11770 Tidewater Trail, U.S. Route 17 South, Champlain, Virginia. 

March 13, 2001 - 1 p.m. -- Open Meeting
Martha Washington Inn, 150 West Main Street, Abingdon, Virginia. 

March 14, 2001 - 1 p.m. -- Open Meeting
Clarion Airport Hotel, 2727 Ferndale Drive, N.W., Roanoke, Virginia. 

March 22, 2001 - 1 p.m. -- Open Meeting
Best Western Hotel, 911 East Atlantic Street, U.S. Route 58 at I-85, South Hill, Virginia. 

March 28, 2001 - 1 p.m. -- Open Meeting
Crown Plaza Hotel, 555 East Canal Street, Richmond, Virginia. 

March 29, 2001 - 1 p.m. -- Open Meeting
Best Western Battlefield Inn, 10820 Balls Ford Road, I-66 and Sudley Road, Manassas, Virginia. 

April 3, 2001 - 1 p.m. -- Open Meeting
Marriott Waterside Hotel, 235 East Main Street, Norfolk, Virginia.

April 4, 2001 - 1 p.m. -- Open Meeting
ESO Center, 15293 King Street, Belle Haven, Virginia.

The Board of Commissioners and staff of the Virginia Housing Development Authority (VHDA) and the Virginia Department of Housing and Community Development (DHCD) will hold a series of nine regional forums in locations across the state. These forums will provide opportunities for broad public input into an assessment of housing needs in the Commonwealth and the variation in those needs in different regions. Public comments will be received throughout the scheduled times of the forums. The needs assessment is being undertaken by VHDA and DHCD at the direction of Virginia Secretary of Commerce and Trade. A needs assessment report is to be completed in late spring 2001.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 South Belvidere St., Richmond, VA 23220, telephone (804) 343-5540, FAX (804) 783-6701, toll-free (800) 968-7837, (804) 783-6705/TTY 

DEPARTMENT OF LABOR AND INDUSTRY

Virginia Apprenticeship Council

March 15, 2001 - 10 a.m. -- Open Meeting
New Horizons Regional Education Center, 520 Butler Farm Road, Hampton, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting.

Contact: Beverly Donati, Assistant Program Manager, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2382,

FAX (804) 786-8418, (804) 786-2376/TTY ☎, e-mail bgd@doli.state.va.us.

(804) 786-6508, FAX (804) 371-7999, (800) 828-1120/TTY ☎, e-mail bbingham@clg.state.va.us.

Safety and Health Codes Board

† **April 23, 2001 - 10 a.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting.

Contact: Regina P. Cobb, Agency Management Analyst Senior, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-0610, FAX (804) 786-8418, (804) 786-2376/TTY ☎, e-mail rpc@doli.state.va.us.

LIBRARY BOARD

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.

COMMISSION ON LOCAL GOVERNMENT

March 12, 2001 - 10 a.m. -- Open Meeting
Pocahontas Building, 900 East Main Street, Suite 103, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting to consider matters as presented.

Contact: Barbara Bingham, Administrative Assistant, Commission on Local Government, Pocahontas Bldg., 900 E. Main St., Suite 103, Richmond, VA 23219-3513, telephone

LONGWOOD COLLEGE

† **March 23, 2001 - 7:30 a.m.** -- Open Meeting
Longwood College, Dining Hall Tea Room, 201 High Street, Farmville, Virginia. ♿

A meeting of the Executive Committee to conduct committee business.

Contact: Jeanne Hayden, Administrative Staff Assistant, Longwood College, 201 High St., Farmville, VA 23909, telephone (804) 395-2004, e-mail jhayden@longwood.lwc.edu.

† **March 23, 2001 - 9 a.m.** -- Open Meeting
Longwood College, Lancaster 215, 201 High Street, Farmville, Virginia. ♿

A meeting to conduct routine committee business of the following committees:

Academic and Student Affairs Committee - 9 a.m.

Administration, Finance and Facilities Committee - 1 p.m.

Audit Committee - 11:30 a.m.

Institutional Advancement Committee - 2:45 p.m.

Contact: Jeanne Hayden, Administrative Staff Assistant, Longwood College, 201 High St., Farmville, VA 23909, telephone (804) 395-2004, e-mail jhayden@longwood.lwc.edu.

† **March 24, 2001 - 9 a.m.** -- Open Meeting
Longwood College, Lancaster 215, 201 High St., Farmville, Virginia. ♿

A meeting to conduct routine business of the Board of Visitors.

Contact: Jeanne Hayden, Administrative Staff Assistant, Longwood College, 201 High St., Farmville, VA 23909, telephone (804) 395-2004, e-mail jhayden@longwood.lwc.edu.

MARINE RESOURCES COMMISSION

February 27, 2001- 9:30 a.m. -- Open Meeting

NOTE: CHANGE IN MEETING DATE

† **March 20, 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@src.state.va.us.

Calendar of Events

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

March 30, 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 Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-50-10 et seq., Amount, Duration and Scope of Medical and Remedial Care Services, 12 VAC 30-80-10 et seq., Methods and Standards for Establishing Payment Rates--Other Types of Care, and 12 VAC 30-120-10 et seq. Waivered Services (Individual and Family Developmental Disability Support Waiver)**. The purpose of the proposed amendments is to establish the program and provider requirements, service limitations and coverage, and recipient eligibility standards for the new DMAS program entitled Individual and Family Developmental Disability Support Waiver.

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

Public comments may be submitted until March 30, 2001, to Karen Lawson, Analyst, Division of Long-Term Care, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959 or FAX (804) 786-1680.

March 30, 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 Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-90-10 et seq. Methods and Standards for Establishing Payment Rates--Long-Term Care (2000 Nursing Home Payment System)**. The purpose of the proposed amendments is to implement increased payments for operating costs and implement a new capital payment methodology (Fair Rental Value), both of which are authorized by the 2000 Appropriation Act.

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

Public comments may be submitted until March 30, 2001, to Stan Fields, Director, Cost Settlement and Audit Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959 or FAX (804) 786-1680.

† **April 27, 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 Medical Assistance Services intends to adopt and amend regulations entitled:

12 VAC 30-10-10 et seq. State Plan Under Title XIX of the Social Security Act Medical Assistance Program; General Provisions.

12 VAC 30-20-10 et seq. Administration of Medical Assistance Services.

12 VAC 30-70-10 et seq. Methods and Standards for Establishing Payment Rates; Inpatient Hospital Care.

12 VAC 30-90-10 et seq. Methods and Standards for Establishing Payment Rates for Long-Term Care.

These proposed amendments establish the time frames necessary for the implementation of the statutory deadlines for the completion of both informal and formal appeals as required by HB 892 (2000).

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

Public comments may be submitted until April 27, 2001, to Martha Smith, Director, Appeals Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8854 or FAX (804) 371-4981.

BOARD OF MEDICINE

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 ☎

† **April 6, 2001 - 9 a.m.** -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia.

April 27, 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 85-10-10 et seq. Public Participation Guidelines.** The purpose of the proposed amendments is to update the guidelines for public participation in the regulatory process of the board, specifically to be consistent with electronic notifications and submissions.

Statutory Authority: §§ 9-6.14:7.1 and 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.

Informal Conference Committee

March 15, 2001 - 10 a.m. -- Open Meeting
Wyndham Hotel, 2801 Hershberger Road, Roanoke, Virginia.

March 1, 2001 - 9 a.m. -- Open Meeting
April 5, 2001 - 9 a.m. -- Open Meeting
Holiday Inn Select, 2801 Plank Road, Fredericksburg, Virginia.

March 9, 2001 - 9 a.m. -- Open Meeting
Ramada Inn Hotel, 4641 Kenmore Avenue, Alexandria, Virginia.

March 22, 2001 - 9 a.m. -- Open Meeting
Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, Virginia.

April 6, 2001 - 1 p.m. -- Open Meeting
April 11, 2001 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia.

April 25, 2001 - 10 a.m. -- Open Meeting
Martha Washington Inn, 150 West Main Street, Abingdon, 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 Dixson, 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 MILK COMMISSION

February 28, 2001 - 10 a.m. -- Public Hearing
Department of Forestry, 900 Natural Resources Drive, Room 3301, Charlottesville, Virginia.

February 26, 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 Milk Commission intends to amend regulations entitled: **2 VAC 15-20-10 et seq. Regulation for the Control and Supervision of the Virginia Milk Industry.** The purpose of the proposed amendment is to amend the date of final producer payment.

Statutory Authority: § 3.1-430 of the Code of Virginia.

Contact: Edward C. Wilson, Jr., Deputy Administrator, State Milk Commission, 200 N. 9th St., Suite 915, Richmond, VA 23219, telephone (804) 786-2013, FAX (804) 786-3779, (804) 786-2013/TTY ☎, e-mail ewilson@smc.state.va.us.

February 28, 2001 - 10 a.m. -- Public Hearing
Department of Forestry, 900 Natural Resources Drive, Room 3301, Charlottesville, Virginia.

February 26, 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 Milk Commission intends to amend regulations entitled: **2 VAC 15-20-10 et seq. Regulation for the Control and Supervision of the Virginia Milk Industry.** The purpose of the proposed amendment is to expand the annual three-month producer base establishment period to a four-month period by adding the month of December to September, October and November. The amendment also alters the dates associated with the addition of new producers.

Statutory Authority: § 3.1-430 of the Code of Virginia.

Contact: Edward C. Wilson, Jr., Deputy Administrator, State Milk Commission, 200 N. 9th St., Suite 915, Richmond, VA 23219, telephone (804) 786-2013, FAX (804) 786-3779, (804) 786-2013/TTY ☎, e-mail ewilson@smc.state.va.us.

February 28, 2001 - 11 a.m. -- Open Meeting
Department of Forestry, 900 Natural Resources Drive, Room 3301, Charlottesville, Virginia. ♿

A regular meeting to (i) consider industry issues, distributor licensing, base transfers, fiscal matters, and reports from staff; and (ii) review evidence and testimony relative to amendments to 2 VAC 15-20-40 B1 and B2.

Contact: Edward C. Wilson, Jr., Deputy Administrator, State Milk Commission, Ninth St. Office Bldg., 202 N. Ninth St., Room 915, Richmond, VA 23219, telephone (804) 786-2013, FAX (804) 786-3779, (804) 786-2013/TTY ☎, e-mail ewilson@smc.state.va.us.

MOTOR VEHICLE DEALER BOARD

March 12, 2001 - 9 a.m. -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

Committees will meet as follows:

Calendar of Events

Dealer Practices Committee - 9 a.m.
Franchise Law Committee - 10 a.m.
Licensing Committee - 10:45 a.m.
Transaction Recovery Fund Committee - 1:30 p.m.
Advertising Committee - 2:15 p.m.
Personnel Committee - 3 p.m.

Meetings may begin later, but not earlier than scheduled. Meeting end times are approximate. Any person who needs any accommodation in order to participate in the meeting should contact the board at least 10 days before the meeting so that suitable arrangements can be made.

Contact: Alice R. Weedon, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100, FAX (804) 367-1053, toll-free (877) 270-0203, e-mail dboard@mvb.state.va.us.

March 13, 2001 - 8:30 a.m. -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the Finance Committee at 8:30 a.m. The full board will meet at 9:30 a.m. Meetings may begin later, but not earlier than scheduled. Meeting end times are approximate. Any person who needs any accommodation in order to participate in the meeting should contact the board at least 10 days before the meeting so that suitable arrangements can be made.

Contact: Alice R. Weedon, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100, FAX (804) 367-1053, toll-free (877) 270-0203, e-mail dboard@mvb.state.va.us.

VIRGINIA MUSEUM OF FINE ARTS

Executive Committee

March 6, 2001 - 8 a.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Main Lobby Conference Room, Richmond, Virginia.

A monthly meeting for the staff to update the Executive 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.

BOARD OF NURSING

March 7, 2001 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia

The committee will consider items that are placed on the agenda involving the regulation and discipline of nurse practitioners.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY, e-mail ndurrett@dhp.state.va.us.

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.

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† March 20, 2001 - 3 p.m. -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia.

April 27, 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 Nursing intends to amend regulations entitled: **18 VAC 90-10-10 et seq. Public Participation Guidelines.** The purpose of the proposed amendments is to update the guidelines for public participation in the regulatory process of the board, specifically to be consistent with electronic notifications and submissions.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2400 of the Code of Virginia.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909.

March 20, 2001 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia.

The board will conduct a general business meeting including items related to the regulation and discipline of nurses and massage therapists and other matters as may be presented on the agenda.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY, e-mail ndurrett@dhp.state.va.us.

† May 21, 2001 - 8:30 a.m. -- Open Meeting
† May 23, 2001 - 8:30 a.m. -- Open Meeting

† **May 24, 2001 - 8:30 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 2, 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 West 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

April 5, 2001 - 8:30 a.m. -- Open Meeting

April 17, 2001 - 9:30 a.m. -- Open Meeting

April 18, 2001 - 9:30 a.m. -- Open Meeting

April 19, 2001 - 9:30 a.m. -- Open Meeting

April 23, 2001 - 9:30 a.m. -- Open Meeting

April 24, 2001 - 9:30 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.

BOARD OF NURSING HOME ADMINISTRATORS

† **April 11, 2001 - 10:30 a.m.** -- Public Hearing
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 4, Richmond, Virginia.

April 27, 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 Nursing Home Administrators intends to amend regulations entitled: **18 VAC 95-10-10 et seq. Public Participation Guidelines.** The purpose of the proposed amendments is to update the guidelines for public participation in the regulatory process of the board, specifically to be consistent with electronic notifications and submissions.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2400 of the Code of Virginia.

Contact: Marcia J. Miller, Executive Director, Board of Nursing Home Administrators, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7457.

OLD DOMINION UNIVERSITY

March 19, 2001 - 3 p.m. -- Open Meeting

† **May 14, 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 OF OPTOMETRY

† **March 9, 2001 - 8:15 a.m.** -- Public Hearing
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 1, Richmond, Virginia.

April 27, 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 Optometry intends to amend regulations entitled: **18 VAC 105-10-10 et seq. Public Participation Guidelines.** The purpose of the proposed amendments is to update the guidelines for public participation in the regulatory process of the board, specifically to be consistent with electronic notifications and submissions.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2400 of the Code of Virginia.

Contact: Elizabeth A. Carter, Executive Director, Board of Optometry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910.

March 9, 2001 - 8:30 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 1, Richmond, Virginia. 

Informal conference hearings. This is a public meeting; however, public comment will not be received.

Contact: Carol Stamey, Administrative Assistant, Board of Optometry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9910, FAX (804) 662-7098, (804) 662-7197/TTY , e-mail cstamey@dhp.state.va.us.

March 9, 2001 - 3 p.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 1, Richmond, Virginia. 

Calendar of Events

Formal hearings. This is a public meeting; however, public comment will not be received.

Contact: Carol Stamey, Administrative Assistant, Board of Optometry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9910, FAX (804) 662-7098, (804) 662-7197/TTY ☎, e-mail cstamey@dhp.state.va.us.

BOARD OF PHARMACY

† **February 27, 2001 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia 23230 ♿

A Special Conference Committee will meet to discuss disciplinary matters. Public comments will not be received.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9911, FAX (804) 662-9313, e-mail pharmbd@dhp.state.va.us.

† **March 6, 2001 - 8:45 a.m.** -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia.

April 27, 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 Pharmacy intends to amend regulations entitled: **18 VAC 110-10-10 et seq. Public Participation Guidelines**. The purpose of the proposed amendments is to update the guidelines for public participation in the regulatory process of the board, specifically to be consistent with electronic notifications and submissions.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2400 of the Code of Virginia.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9911.

BOARD OF PHYSICAL THERAPY

March 9, 2001 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia ♿

A meeting to consider regulatory and disciplinary matters including the adoption of proposed regulations for public participation and any other items as may be placed on the agenda.

Contact: Elizabeth Young Tisdale, Executive Director, Board of Physical Therapy, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9924, FAX (804) 662-9523, (804) 662-7197/TTY ☎, e-mail etisdale@dhp.state.va.us.

POLYGRAPH EXAMINERS ADVISORY BOARD

† **March 14, 2001 - 9:30 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad St., Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to conduct any board business. Persons desiring to participate in 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 for an appropriate accommodation. 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 polygraph@dpor.state.va.us.

BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION

March 12, 2001 - 10 a.m. -- Open Meeting
Department of Profession and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A general board meeting.

Contact: Judith A. Spiller, Executive Secretary, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8519, FAX (804) 367-9537.

BOARD OF PSYCHOLOGY

March 30, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 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 action is to establish continuing education requirements for licensure renewal and an inactive status for licensed individuals who are not actively practicing psychology in Virginia.

Statutory Authority: §§ 54.1-2400 and 54.1-3606.1 of the Code of Virginia.

Contact: Evelyn Brown, Executive Director, Board of Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9967, FAX (804) 662-9943, or (804) 662-7197/TTY ☎

NOTE: CHANGE IN MEETING DATE

† **April 24, 2001 - 10 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia ♿

The board will conduct a general business meeting including items related to the regulation and discipline of psychologists.

Contact: Evelyn B. Brown, Executive Director, Board of Psychology, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9913, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail ebrown@dhp.state.va.us.

VIRGINIA RESOURCES AUTHORITY

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.

SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD

February 28, 2001 - 10 a.m. -- Open Meeting
Henrico County Human Services, 8600 Dixon Powers Road, Board Room, 2nd Floor, Richmond, Virginia. ♿

† **April 11, 2001 - 10 a.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate Room B, Richmond, Virginia. ♿

A meeting to hear appeals of health department 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 ADVISORY BOARD

† **March 2, 2001 - 10 a.m.** -- Open Meeting
Department of Business Assistance, 707 East Main Street, Suite 300, Richmond, Virginia. ♿

A meeting to advise, counsel and confer with the Virginia Small Business Development Center Network on matters pertaining to the operations of the Virginia Small Business Development Center.

Contact: Anne Godfrey, Administrative Assistant, Department of Business Assistance, 707 E. Main St., Suite 300, Richmond, VA 23219, telephone (804) 371-8253, FAX (804) 225-3384.

VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

February 27, 2001 - 10 a.m. -- Open Meeting
Department of Business Assistance, 707 E. Main Street, 3rd Floor, Board Room, Richmond, Virginia. ♿

A meeting to review applications for loans submitted to the authority for approval and to conduct general business of the board. Meeting 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

† **March 3, 2001 - 10 a.m.** -- Open Meeting
Berkley Hotel 1200 East Cary Street, Richmond, Virginia. ♿
(interpreter for the deaf provided upon request)

A meeting to orient newly appointed board members.

Contact: Nan Mckenney, Executive Director, State Board of Social Services, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1823, FAX (804) 692-1869.

BOARD OF SOCIAL WORK

March 2, 2001 - 10 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. ♿

A meeting to adopt final regulations for continuing education and consider other business as may be presented on the agenda.

Contact: Evelyn B. Brown, Executive Director, Board of Social Work, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9914, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail ebrown@dhp.state.va.us.

Calendar of Events

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† **March 2, 2001 - 10 a.m.** -- Public Hearing
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 1, Richmond, Virginia.

April 27, 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 Social Work intends to amend regulations entitled: **18 VAC 140-10-10 et seq. Public Participation Guidelines.** The purpose of the proposed amendments is to update the guidelines for public participation in the regulatory process of the board, specifically to be consistent with electronic notifications and submissions.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2400 of the Code of Virginia.

Contact: Evelyn B. Brown, Executive Director, Board of Social Work, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9914.

March 9, 2001 - 10 a.m. -- Open Meeting
Department of Health Professions, 6606 West Board Street,
5th Floor, Conference Room 2, Richmond, Virginia.📍

The Special Conference Committee will convene for an informal conference to hear possible violations of the laws and regulations governing the practice of social work. Public comment will not be heard.

Contact: Rai Minor, Administrative Assistant, Board of Social Work, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9914, FAX (804) 662-7250, (804) 662-7197/TTY 📞, e-mail bsw@dhp.state.va.us.

COUNCIL ON TECHNOLOGY SERVICES

March 8, 2001 - 9 a.m. -- Open Meeting
Department of Transportation, 1221 East Broad Street,
Auditorium, Richmond, Virginia.

May 17, 2001 - 9 a.m. -- Open Meeting
Mary Washington College, Fredericksburg, Virginia.

A regular meeting.

Contact: Janice Akers, Department of Technology Planning, 1100 Bank St., Room 901, Richmond, VA 23219, telephone (804) 786-1434, FAX (804) 371-7952, e-mail jakers@egov.state.va.us.

COMMONWEALTH TRANSPORTATION BOARD

† **March 14, 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.

† **March 15, 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

† **March 1, 2001 - 9 a.m.** -- Public Hearing
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 4, Richmond, Virginia.

April 27, 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 Veterinary Medicine intends to amend regulations entitled: **18 VAC 150-10-10 et seq. Public Participation Guidelines.** The purpose of the proposed amendments is to update the guidelines for public participation in the regulatory process of the board, specifically to be consistent with electronic notifications and submissions.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2400 of the Code of Virginia.

Contact: Elizabeth A. Carter, Executive Director, Board of Veterinary Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9915.

VIRGINIA VOLUNTARY FORMULARY BOARD

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

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.

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.

STATE WATER CONTROL BOARD

† **February 26, 2001 - 7 p.m.** -- Public Hearing
Caroline County High School, 19155 Rogers Clark Boulevard, Milford, Virginia  (Interpreter for the deaf provided upon request)

A public hearing to receive comments on the proposed denial of a VPDES permit to the Hill Mobile Home Park/New Yorker Restaurant sewage treatment plant located in Caroline County.

Contact: Thomas A. Faha, Department of Environmental Quality, 13901 Crown Court Woodbridge, VA 22193, telephone (703) 583-3846, FAX (703) 583-3801, (804) 698-4021/TTY , e-mail tafaha@deq.state.va.us.

February 28, 2001 - 7 p.m. -- Public Hearing
Department of Environmental Quality, 4411 Early Road, Harrisonburg, Virginia.  (Interpreter for the deaf provided upon request)

A public hearing to receive comments on the proposed discharge permit for the North River wastewater treatment facility located on State Route 867 in Mount Crawford.

Contact: Valerie Rourke, Department of Environmental Quality, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7839, FAX (540) 574-7878, (804) 698-4021/TTY , e-mail varourke@deq.state.va.us.

March 1, 2001 - 2 p.m. -- Open Meeting
Virginia War Memorial, Auditorium, 621 South Belvidere Street, Auditorium, Richmond, Virginia. 

March 5, 2001 - 2 p.m. -- Open Meeting
Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, Virginia. 

A public meeting to receive comments on the State Water Control Board's notice of intent of the triennial review of the water quality standards.

Contact: Eleanore Daub, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4111, FAX (804) 698-4522, e-mail emdaub@deq.state.va.us.

NOTE: CHANGE IN PUBLIC HEARING DATE

March 7, 2001 - 1 p.m. -- Public Hearing
Chase City Municipal Building, 319 North Main Street, Council Chambers, Chase City, Virginia.

A public meeting to receive comments on the proposed amendments to the Roanoke River Basin Water Quality Management Plan for the Town of Chase City.

Contact: Curtis Linderman, Department of Environmental Quality, 4949-A Cox Road, Richmond, VA 23260, telephone (804) 527-5038, FAX (804) 527-5106, e-mail cjlingerma@deq.state.va.us.

April 13, 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 Water Control Board intends to amend regulations entitled: **9 VAC 25-430-10 et seq. Roanoke River Basin Water Quality Management Plan.** The proposed amendments increase the BOD₅ allocations in the plan for the Chase City Municipal Sewage Treatment Plant.

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

Contact: Kyle Winter, Department of Environmental Quality, 4949-A Cox Rd., Glen Allen, VA 23060, telephone (804) 527-5048, FAX (804) 527-5106 or (804) 698-4021/TTY 

† **March 29, 2001 - 4 p.m.** -- Public Hearing
Staunton City Council Chambers, 116 West Beverley Street, Staunton, Virginia.

† **April 2, 2001 - 6 p.m.** -- Public Hearing

Calendar of Events

General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia.

† **April 3, 2001 - 6 p.m.** -- Public Hearing
Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, Virginia.

† **April 5, 2001 - 6 p.m.** -- Public Hearing
Chesapeake City Council Chambers, 306 Cedar Road, Chesapeake, Virginia.

April 27, 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 Water Control Board intends to amend regulations entitled: **9 VAC 25-210-10 et seq. Virginia Water Protection Permit Program Regulation.** The proposed amendments incorporate changes to the Code of Virginia passed by the 2000 General Assembly relating to wetlands.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **9 VAC 25-660-10 et seq. Virginia Water Protection General Permit for Impacts of Less than One-Half Acre of an Acre.** The proposed regulation establishes general permit requirements for activities resulting in impacts to wetlands of less than one-half of an acre.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **9 VAC 25-670-10 et seq. Virginia Water Protection General Permit for Facilities and Activities of Utilities and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities.** The proposed regulation establishes general permit requirements for impact to wetlands resulting from the activities of utility projects.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **9 VAC 25-680-10 et seq. Virginia Water Protection General Permit for Linear Transportation Projects.** The proposed regulation establishes general permit requirements for impact to wetlands resulting from the construction and operation of linear transportation projects.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **9 VAC 25-690-10 et seq. Virginia Water Protection General Permit for Impacts from Development Activities.** The proposed regulation establishes general permit requirements for impacts to wetlands from development activities.

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia.

Contact: Ellen Gilinsky, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone

(804) 698-4375, FAX (804) 698-4032 or (804) 698-4021/TTY ☎

VIRGINIA WORKFORCE COUNCIL

† **March 14, 2001 - 10 a.m.** -- Open Meeting
Lewis Ginter Botanical Gardens, 1800 Lakeside Avenue, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting of the council to discuss the revised WIA five-year strategic state plan, the Governor's 30% discretionary youth/adult allocations, FY 2002 hold harmless allocation, the Workforce Training Access Program and Fund, and economic/social policy issues.

Contact: Gail Robinson, Council Liaison, Virginia Employment Commission, P.O. Box 1358, Richmond, VA 23218-1358, telephone (804) 225-3070, FAX (804) 225-2190.

INDEPENDENT

VIRGINIA RETIREMENT SYSTEM

March 14, 2001 - 3 p.m. -- Open Meeting
† **May 16, 2001 - 3 p.m.** -- Open Meeting
Virginia Retirement System Headquarters, 1200 East Main Street, Richmond, Virginia. ♿

A regular meeting of the following committees:
Audit and Compliance Committee - 3 p.m.
Benefits and Actuarial Committee - 3 p.m.
Investment Advisory Committee - 3 p.m.

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.

March 15, 2001 - 9 a.m. -- Open Meeting
† **May 17, 2001 - 9 a.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.

† **May 17, 2001 - 8 a.m.** -- Open Meeting
Virginia Retirement System Headquarters, 1200 East Main Street, Richmond, Virginia. ♿

The regular meeting of the Virginia Retirement System's Administration and Personnel 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 dkestner@vrs.state.va.us.

LEGISLATIVE

ADMINISTRATIVE LAW ADVISORY COMMITTEE

† **March 14, 2001 - 10:30 a.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, 6th Floor,
Speaker's Conference Room, Richmond, Virginia. ♿

A meeting of the subcommittee studying the hearing officer system as it relates to appeals of special education decisions.

Contact: Bess Hodges, Program Coordinator, Division of Legislative Services, 910 Capitol Street, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 692-0625, e-mail bhodges@leg.state.va.us.

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.

CHRONOLOGICAL LIST

OPEN MEETINGS

February 26

Agriculture and Consumer Services, Department of
- Virginia Sheep Industry Board
Design-Building/Construction Management Review Board

February 27

Compensation Board
† Funeral Directors and Embalmers, Board of
- Legislative Committee
Marine Resources Commission
† Pharmacy, Board of
Small Business Financing Authority, Virginia

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
- Special Conference Committee
Housing, Development Authority, Virginia
Milk Commission, State
Sewage Handling and Disposal Appeal Review Board
† Water Control Board, State

March 1

Charitable Gaming Commission
Game and Inland Fisheries, Board of
Medicine, Board of
- Informal Conference Committee
Voluntary Formulary Board, Virginia
Water Control Board, State

March 2

Art and Architectural Review Board
† Small Business Advisory Board, Virginia
Social Work, Board of

March 3

Blind and Vision Impaired, Board for the
- Statewide Rehabilitation Council for the Blind
† Social Services, State Board of

March 5

Barbers and Cosmetology, Board for
Water Control Board, State

March 6

† Economic Development Partnership, Virginia
Housing Development Authority, Virginia
Museum of Fine Arts, Virginia
- Executive Committee

March 7

† Agriculture and Consumer Services, Department of
- Virginia Soybean Board
Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for
Funeral Directors and Embalmers, Board of
Nursing, Board of
Waste Management Board, Virginia

March 8

Agriculture and Consumer Services, Department of
- Virginia Cotton Board
† Child Day-Care Council
† Criminal Justice Services Board
- Committee on Training
Funeral Directors and Embalmers, Board of
Technology Services, Council on

March 9

Housing Development Authority, Virginia
Medicine, Board of
- Informal Conference Committee
Optometry, Board of
Physical Therapy, Board of
Social Work, Board of
- Special Conference Committee

March 12

Local Government, Commission on
Motor Vehicle Dealer Board
- Advertising Committee
- Dealer Practices Committee
- Franchise Law Committee
- Licensing Committee
- Personnel Committee

Calendar of Events

- Transaction Recovery Fund Committee
Professional and Occupational Regulation, Board for

March 13

† Agriculture and Consumer Services, Department of
- Virginia State Apple Board
† Alcoholic Beverage Control Board
Conservation and Recreation, Department of
- Board of Conservation and Development of Public
Beaches
† Corrections, Board of
- Correctional Services/Policy and Regulations
Committee
- Liaison Committee
Housing Development Authority, Virginia
Motor Vehicle Dealer Board
- Finance Committee
Psychology, Board of
Resources Authority, Virginia

March 14

† Administrative Law Advisory Committee
- Subcommittee Studying Hearing Officer System
† Corrections, Board of
- Administration Committee
Freedom of Information Advisory Council, Virginia
† Health, Department of
- MCHIP Advisory Board
† Historic Resources, Department of
- State Review Board and Historic Resources Board
Housing Development Authority, Virginia
† Polygraph Examiners Advisory Board
Retirement System, Virginia
† Transportation Board, Commonwealth
† Workforce Council, Virginia

March 15

Agriculture and Consumer Services, Department of
Conservation and Recreation, Department of
- Soil and Water Conservation Board
Labor and Industry, Department of
- Virginia Apprenticeship Council
Medicine, Board of
- Informal Conference Committee
Retirement System, Virginia
† Transportation Board, Commonwealth

March 16

Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for

March 19

† Chesapeake Bay Local Assistance Board
Design-Building/Construction Management Review
Board
† Education, Board of
- Advisory Board of Teacher Education and Licensure
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 20

† Criminal Justice Services Board
- Private Security Services Board
† Environmental Quality, Department of
- Ground Water Protection Steering Committee
Higher Education for Virginia, State Council of
† Marine Resources Commission
Nursing, Board of

March 21

† Alzheimer's Disease and Related Disorders
Commission
† Education, Board of
- Joint Task Force on the K-12 Teaching Profession in
Virginia
Nursing, Board of

March 22

Education, Board of
Housing Development Authority, Virginia
Medicine, Board of
- Informal Conference Committee
Nursing, Board of

March 23

† Longwood College
- Academic and Student Affairs Committee
- Administration, Finance and Facilities Committee
- Audit Committee
- Executive Committee
- Institutional Advancement Committee

March 24

† Conservation and Recreation, Department of
- Virginia Cave Board
† Longwood College
- Board of Visitors

March 26

Agricultural Council, Virginia

March 27

Agricultural Council, Virginia

March 28

At-Risk Youth and Families, Comprehensive Services for
- State Executive Council
Housing Development Authority, Virginia

March 29

† Air Pollution Control Board, State
† Department of Environmental Quality
Housing Development Authority, Virginia

March 30

† Education, Board of
- Accountability Advisory Committee

April 3

Housing Development Authority, Virginia

April 4

† Education, Board of
- Joint Task Force on the K-12 Teaching Profession in
Virginia
Housing Development Authority, Virginia

April 5

Medicine, Board of
- Informal Conference Committee
Nursing, Board of
- Special Conference Committee

April 6

Art and Architectural Review Board
Medicine, Board of
- Informal Conference Committee

April 11

Medicine, Board of
- Informal Conference Committee
† Sewage Handling and Disposal Appeal Review Board

April 12

Old Dominion University

April 16

Design-Build/Construction Management Review Board

April 17

Blind and Vision Impaired, Department for the
Nursing, Board of
- Special Conference Committee

April 18

† Education, Board of
- Uniform Performance Standards Evaluation
Committee
Nursing, Board of
- Special Conference Committee

April 19

Nursing, Board of
- Special Conference Committee

April 23

† Education, Board of
- Advisory Board on Teacher Education and Licensure
† Labor and Industry, Department of
- Safety and Health Codes Board
† Nursing, Board of
- Special Conference Committee

April 24

† Nursing, Board of
- Special Conference Committee
† Psychology, Board of

April 25

At-Risk Youth and Families, Comprehensive Services for
- State Executive Council
† Education, Board of
† Medicine, Board of
- Informal Conference Committee

April 26

† Education, Board of

April 27

† Education, Board of

May 4

Art and Architectural Review Board

May 14

† Old Dominion University
- Executive Committee

May 16

† Retirement System, Virginia
- Audit and Compliance Committee
- Benefits and Actuarial Committee
- Investment Advisory Committee

May 17

† Retirement System, Virginia
† Technology Services, Council on

May 21

Nursing, Board of

May 23

Nursing, Board of

May 24

Nursing, Board of

PUBLIC HEARINGS

February 26

† Water Control Board, State

February 28

Milk Commission, State
Water Control Board, State

March 1

† Veterinary Medicine, Board of

March 2

† Counseling, Board of
† Social Work, Board of

March 5

† Environmental Quality, Department of

March 6

† Pharmacy, Board of

March 7

† Funeral Directors and Embalmers, Board of
Water Control Board, State

March 9

† Dentistry, Board of
Optometry, Board of

March 20

† Audiology and Speech-Language Pathology, Board of
Nursing, Board of

March 29

† Water Control Board, State

April 2

† Water Control Board, State

April 3

† Water Control Board, State

April 5

† Water Control Board, State

April 6

† Medicine, Board of

April 11

† Nursing Home Administrators, Board of

April 17

† Health Professions, Board of

May 3

Air Pollution Control Board, State