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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printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Spring 2004 VAC Supplement includes final regulations published through *Virginia Register* Volume 20, Issue 11, dated February 9, 2004). Emergency regulations, if any, are listed, followed by the designation "emer," and errata pertaining to final regulations are listed. Proposed regulations are not listed here. The table lists the sections in numerical order and shows action taken, the volume, issue and page number where the section appeared, and the effective date of the section.

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
Title 1. Administration			
1 VAC 55-20-10	Repealed	20:20 VA.R. 2159	7/16/04
1 VAC 55-20-20	Amended	20:20 VA.R. 2159	7/16/04
1 VAC 55-20-30	Amended	20:20 VA.R. 2159	7/16/04
1 VAC 55-20-40	Amended	20:20 VA.R. 2159	7/16/04
1 VAC 55-20-50	Repealed	20:20 VA.R. 2159	7/16/04
1 VAC 55-20-60 through 1 VAC 55-20-90	Amended	20:20 VA.R. 2159-2161	7/16/04
1 VAC 55-20-110	Amended	20:20 VA.R. 2161	7/16/04
1 VAC 55-20-120	Repealed	20:20 VA.R. 2161	7/16/04
1 VAC 55-20-130	Amended	20:20 VA.R. 2161	7/16/04
1 VAC 55-20-160	Amended	20:20 VA.R. 2161	7/16/04
1 VAC 55-20-210	Amended	20:20 VA.R. 2161	7/16/04
1 VAC 55-20-230 through 1 VAC 55-20-260	Amended	20:20 VA.R. 2161-2162	7/16/04
1 VAC 55-20-280	Amended	20:20 VA.R. 2162	7/16/04
1 VAC 55-20-290	Amended	20:20 VA.R. 2162	7/16/04
1 VAC 55-20-300	Amended	20:20 VA.R. 2162	7/16/04
1 VAC 55-20-320 through 1 VAC 55-20-410	Amended	20:20 VA.R. 2162-2164	7/16/04
1 VAC 55-20-420	Repealed	20:20 VA.R. 2164	7/16/04
1 VAC 55-20-430	Amended	20:20 VA.R. 2164	7/16/04
1 VAC 55-20-450	Amended	20:20 VA.R. 2164	7/16/04
1 VAC 55-20-460	Amended	20:20 VA.R. 2164	7/16/04
1 VAC 55-20 (Forms)	Amended	20:20 VA.R. 2164	--
Title 2. Agriculture			
2 VAC 5-440-10 through 2 VAC 5-440-60	Amended	20:12 VA.R. 1471-1474	3/25/04
2 VAC 5-440-80	Repealed	20:12 VA.R. 1474	3/25/04
2 VAC 5-440-90	Repealed	20:12 VA.R. 1474	3/25/04
2 VAC 5-440 (Forms)	Amended	20:12 VA.R. 1474	--
Title 4. Conservation and Natural Resources			
4 VAC 5-36-20	Amended	20:13 VA.R. 1604	4/7/04
4 VAC 5-36-50 through 4 VAC 5-36-150	Amended	20:13 VA.R. 1604-1621	4/7/04
4 VAC 5-36-170 through 4 VAC 5-36-210	Amended	20:13 VA.R. 1621-1632	4/7/04
4 VAC 5-36-220	Added	20:13 VA.R. 1632	4/7/04
4 VAC 20-20-50	Amended	20:14 VA.R. 1709	3/1/04
4 VAC 20-270-20	Amended	20:19 VA.R. 2058	5/1/04
4 VAC 20-270-30	Amended	20:19 VA.R. 2058	5/1/04
4 VAC 20-490-10 emer	Amended	20:18 VA.R. 2024	5/1/04-5/30/04
4 VAC 20-490-20 emer	Amended	20:18 VA.R. 2024	5/1/04-5/30/04
4 VAC 20-490-35 emer	Repealed	20:18 VA.R. 2024	5/1/04-5/30/04
4 VAC 20-490-35	Repealed	20:21 VA.R. 2230	6/1/04
4 VAC 20-490-40 emer	Amended	20:18 VA.R. 2024	5/1/04-5/30/04
4 VAC 20-490-40	Amended	20:21 VA.R. 2230	6/1/04
4 VAC 20-490-45 emer	Repealed	20:18 VA.R. 2025	5/1/04-5/30/04
4 VAC 20-490-45	Repealed	20:21 VA.R. 2230	6/1/04
4 VAC 20-620-50	Amended	20:16 VA.R. 1863	3/26/04

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-620-60	Amended	20:16 VA.R. 1863	3/26/04
4 VAC 20-720-20	Amended	20:14 VA.R. 1710	3/1/04
4 VAC 20-720-40	Amended	20:14 VA.R. 1710	3/1/04
4 VAC 20-720-48 emer	Added	20:14 VA.R. 1714	3/1/04-3/31/04
4 VAC 20-720-50	Amended	20:14 VA.R. 1711	3/1/04
4 VAC 20-720-60	Amended	20:14 VA.R. 1711	3/1/04
4 VAC 20-720-80	Amended	20:14 VA.R. 1712	3/1/04
4 VAC 20-750-10	Amended	20:19 VA.R. 2058	5/1/04
4 VAC 20-750-20	Repealed	20:19 VA.R. 2059	5/1/04
4 VAC 20-750-30	Amended	20:19 VA.R. 2059	5/1/04
4 VAC 20-750-40	Amended	20:19 VA.R. 2059	5/1/04
4 VAC 20-910-45	Amended	20:16 VA.R. 1864	4/1/04
4 VAC 20-920-20	Amended	20:15 VA.R. 1778	3/5/04
4 VAC 20-920-40	Amended	20:15 VA.R. 1778	3/5/04
4 VAC 20-950-45	Amended	20:16 VA.R. 1864	4/1/04
4 VAC 20-1040-20	Amended	20:19 VA.R. 2060	5/1/04
4 VAC 25-31 (Forms)	Amended	20:15 VA.R. 1784-1792	--
4 VAC 25-130 (Forms)	Amended	20:19 VA.R. 2081-2083	--
Title 9. Environment			
9 VAC 5-20-21	Amended	20:12 VA.R. 1476	3/24/04
9 VAC 5-20-206 (Rev. G02)	Amended	20:12 VA.R. 1498	3/24/04
9 VAC 5-20-206 (Rev. C03)	Amended	20:12 VA.R. 1498	3/24/04
9 VAC 5-40-240	Amended	20:12 VA.R. 1499	3/24/04
9 VAC 5-40-310	Erratum	20:15 VA.R. 1809	--
9 VAC 5-40-310	Amended	20:12 VA.R. 1499	3/24/04
9 VAC 5-40-3260	Amended	20:12 VA.R. 1479	3/24/04
9 VAC 5-40-5200	Amended	20:12 VA.R. 1500	3/24/04
9 VAC 5-40-5220	Amended	20:12 VA.R. 1501	3/24/04
9 VAC 5-40-5700 through 9 VAC 5-40-5770	Added	20:12 VA.R. 1480	3/24/04
9 VAC 5-40-6820 through 9 VAC 5-40-7230	Added	20:12 VA.R. 1480-1497	3/24/04
9 VAC 5-40-6840	Erratum	20:18 VA.R. 2027	--
9 VAC 5-50-400	Amended	20:16 VA.R. 1865	6/1/04
9 VAC 5-50-405	Added	20:16 VA.R. 1865	6/1/04
9 VAC 5-50-410	Amended	20:16 VA.R. 1865	6/1/04
9 VAC 5-60-60	Amended	20:16 VA.R. 1871	6/1/04
9 VAC 5-60-65	Added	20:16 VA.R. 1871	6/1/04
9 VAC 5-60-90	Amended	20:16 VA.R. 1871	6/1/04
9 VAC 5-60-95	Added	20:16 VA.R. 1871	6/1/04
9 VAC 5-60-100	Amended	20:16 VA.R. 1872	6/1/04
9 VAC 5-60-120 through 9 VAC 5-60-180	Amended	20:16 VA.R. 1877-1889	7/1/04
9 VAC 5-91-20 emer	Amended	20:12 VA.R. 1507	1/28/04-1/27/05
9 VAC 5-91-160 emer	Amended	20:12 VA.R. 1513	1/28/04-1/27/05
9 VAC 5-91-180 emer	Amended	20:12 VA.R. 1513	1/28/04-1/27/05
9 VAC 5-91-750 emer	Amended	20:12 VA.R. 1515	1/28/04-1/27/05
9 VAC 5-91-760 emer	Amended	20:12 VA.R. 1515	1/28/04-1/27/05
9 VAC 5-140-550	Amended	20:12 VA.R. 1504	3/24/04
9 VAC 25-151-10	Amended	20:16 VA.R. 1889	7/1/04
9 VAC 25-151-40 through 9 VAC 25-151-370	Amended	20:16 VA.R. 1889-1890	7/1/04
9 VAC 25-151-65	Added	20:16 VA.R. 1889	7/1/04
9 VAC 25-180-10	Amended	20:16 VA.R. 1891	7/1/04
9 VAC 25-180-20	Amended	20:16 VA.R. 1891	7/1/04
9 VAC 25-180-40	Amended	20:16 VA.R. 1891	7/1/04
9 VAC 25-180-50	Amended	20:16 VA.R. 1891	7/1/04
9 VAC 25-180-55	Amended	20:16 VA.R. 1892	7/1/04
9 VAC 25-180-60	Amended	20:16 VA.R. 1892	7/1/04
9 VAC 25-180-65	Added	20:16 VA.R. 1893	7/1/04

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-180-70	Amended	20:16 VA.R. 1894	7/1/04
9 VAC 25-180 (Forms)	Amended	20:16 VA.R. 1906	--
9 VAC 25-190-10	Amended	20:16 VA.R. 1906	7/1/04
9 VAC 25-190-20	Amended	20:16 VA.R. 1906	7/1/04
9 VAC 25-190-50	Amended	20:16 VA.R. 1906	7/1/04
9 VAC 25-190-60	Amended	20:16 VA.R. 1906	7/1/04
9 VAC 25-190-70	Amended	20:16 VA.R. 1906	7/1/04
9 VAC 25-580-10	Amended	20:12 VA.R. 1505	3/24/04
9 VAC 25-580-50	Amended	20:12 VA.R. 1505	3/24/04
9 VAC 25-580-130	Amended	20:12 VA.R. 1505	3/24/04
9 VAC 25-580-270	Amended	20:12 VA.R. 1505	3/24/04
9 VAC 25-580-290	Repealed	20:12 VA.R. 1505	3/24/04
9 VAC 25-580-320	Amended	20:12 VA.R. 1505	3/24/04
9 VAC 25-590-60	Erratum	20:17 VA.R. 1984	--
9 VAC 25-790	Erratum	20:12 VA.R. 1526	--
Title 10. Finance and Financial Institutions			
10 VAC 5-40-40	Added	20:14 VA.R. 1713	3/1/04
Title 12. Health			
12 VAC 5-90-10	Amended	20:21 VA.R. 2231	7/28/04
12 VAC 5-90-40	Amended	20:21 VA.R. 2231	7/28/04
12 VAC 5-90-80	Amended	20:21 VA.R. 2231	7/28/04
12 VAC 5-90-90	Amended	20:21 VA.R. 2234	7/28/04
12 VAC 5-90-100	Amended	20:21 VA.R. 2237	7/28/04
12 VAC 5-90-110	Amended	20:21 VA.R. 2237	7/28/04
12 VAC 5-90-160	Amended	20:21 VA.R. 2237	7/28/04
12 VAC 5-90-180	Amended	20:21 VA.R. 2237	7/28/04
12 VAC 5-90-225	Added	20:21 VA.R. 2237	7/28/04
12 VAC 5-90-280 through 12 VAC 5-90-360	Added	20:21 VA.R. 2238	7/28/04
12 VAC 5-125-10 through 12 VAC 5-125-120 emer	Added	20:21 VA.R. 2252-2264	6/1/04-5/31/05
12 VAC 30-40-235	Added	20:19 VA.R. 2060	8/1/04
12 VAC 30-50-140	Amended	20:19 VA.R. 2062	7/1/04
12 VAC 30-50-150	Amended	20:19 VA.R. 2063	7/1/04
12 VAC 30-50-180	Amended	20:19 VA.R. 2064	7/1/04
12 VAC 30-50-210 emer	Amended	20:19 VA.R. 2075	5/11/04-1/3/05
12 VAC 30-60-40	Amended	20:19 VA.R. 2067	7/1/04
12 VAC 30-60-320	Amended	20:19 VA.R. 2067	7/1/04
12 VAC 30-70-271	Amended	20:19 VA.R. 2068	7/1/04
12 VAC 30-80-20	Amended	20:19 VA.R. 2068	7/1/04
12 VAC 30-80-30	Amended	20:19 VA.R. 2064	7/1/04
12 VAC 30-80-200	Added	20:19 VA.R. 2071	7/1/04
12 VAC 30-90-264	Amended	20:19 VA.R. 2067	7/1/04
12 VAC 30-90-271	Amended	20:19 VA.R. 2067	7/1/04
12 VAC 30-130-620	Amended	20:19 VA.R. 2061	8/1/04
12 VAC 30-130-1000 emer	Amended	20:19 VA.R. 2077	5/11/04-1/3/05
12 VAC 30-141-500 emer	Amended	20:17 VA.R. 1974	6/1/04-5/31/05
Title 14. Insurance			
14 VAC 5-90-30	Erratum	20:17 VA.R. 1984	--
14 VAC 5-90-60	Erratum	20:17 VA.R. 1984	--
14 VAC 5-90-70	Erratum	20:17 VA.R. 1984	--
14 VAC 5-90-130	Erratum	20:17 VA.R. 1984	--
14 VAC 5-90-170	Erratum	20:17 VA.R. 1984	--
14 VAC 5-321-10 through 14 VAC 5-321-60	Added	20:16 VA.R. 1906-1909	7/1/04
14 VAC 5-335-10 through 14 VAC 5-335-60	Added	20:21 VA.R. 2240-2242	1/1/05
Title 16. Labor and Employment			
16 VAC 25-85-1910.139	Repealed	20:19 VA.R. 2071	7/1/04

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
16 VAC 25-90-1910.401	Amended	20:19 VA.R. 2073	7/1/04
16 VAC 25-90-1910.402	Amended	20:19 VA.R. 2073	7/1/04
16 VAC 25-145-10 through 16 VAC 25-145-50	Added	20:12 VA.R. 1505-1506	4/1/04
16 VAC 25-90-1910, Appendix C of Subpart T of Part 1910	Added	20:19 VA.R. 2073	7/1/04
Title 18. Professional and Occupational Licensing			
18 VAC 41-40-10 through 18 VAC 41-40-260	Added	20:19 VA. R. 2074	7/1/04
18 VAC 62-20-10 through 18 VAC 62-20-180	Added	20:12 VA.R. 1515-1518	2/2/04-2/1/05
18 VAC 65-30-50	Amended	20:21 VA.R. 2242	7/28/04
18 VAC 76-40-10	Added	20:21 VA.R. 2243	7/28/04
18 VAC 76-40-20	Added	20:21 VA.R. 2243	7/28/04
18 VAC 76-40-30	Added	20:21 VA.R. 2243	7/28/04
18 VAC 76-40 (Forms)	Amended	20:21 VA.R. 2243	7/28/04
18 VAC 85-20-22	Amended	20:20 VA.R. 2165	7/14/04
18 VAC 85-20 (Forms)	Amended	20:20 VA.R. 2165	--
18 VAC 90-20-30	Amended	20:20 VA.R. 2166	7/14/04
18 VAC 110-20-720	Amended	20:18 VA.R. 2021	7/1/04
18 VAC 120-10-100	Erratum	20:13 VA.R. 1644	--
18 VAC 145-30-10 through 18 VAC 145-30-160	Added	20:20 VA.R. 2167-2170	7/14/04
18 VAC 145-30 (Forms)	Amended	20:20 VA.R. 2170	--
Title 20. Public Utilities and Telecommunications			
20 VAC 5-309-15	Amended	20:15 VA.R. 1781	3/12/04
20 VAC 5-309-20	Amended	20:15 VA.R. 1781	3/12/04
20 VAC 5-309-40	Amended	20:15 VA.R. 1781	3/12/04
20 VAC 5-309-70	Amended	20:15 VA.R. 1782	3/12/04
20 VAC 5-309-110	Amended	20:15 VA.R. 1782	3/12/04
20 VAC 5-309-140	Amended	20:15 VA.R. 1783	3/12/04
Title 22. Social Services			
22 VAC 30-50-30	Amended	20:18 VA.R. 2022	6/18/04
22 VAC 40-180 (Forms)	Amended	20:21 VA.R. 2265-2268	--
22 VAC 40-190	Erratum	20:12 VA.R. 1526	--
22 VAC 40-191	Erratum	20:12 VA.R. 1526	--
22 VAC 40-293-10	Added	20:21 VA.R. 2245	7/28/04
22 VAC 40-293-20	Added	20:21 VA.R. 2245	7/28/04
22 VAC 40-740-10 through 22 VAC 40-740-60	Amended	20:20 VA.R. 2175-2178	8/1/04
22 VAC 40-740 (Forms)	Amended	20:20 VA.R. 2178	--
Title 24. Transportation and Motor Vehicles			
24 VAC 20-100-10	Amended	20:21 VA.R. 2246	7/1/04
24 VAC 20-100-130	Amended	20:21 VA.R. 2247	7/1/04
24 VAC 20-100-160	Amended	20:21 VA.R. 2247	7/1/04
24 VAC 20-100-190 through 24 VAC 20-100-220	Amended	20:21 VA.R. 2247-2248	7/1/04
24 VAC 20-100-290 through 24 VAC 20-100-330	Amended	20:21 VA.R. 2248-2249	7/1/04
24 VAC 20-100-350	Amended	20:21 VA.R. 2249	7/1/04
24 VAC 20-100-370 through 24 VAC 20-100-460	Amended	20:21 VA.R. 2249-2250	7/1/04
24 VAC 20-100-490 through 24 VAC 20-100-540	Amended	20:21 VA.R. 2250-2251	7/1/04
24 VAC 20-100-550	Added	20:21 VA.R. 2251	7/1/04
24 VAC 20-100 (Forms)	Amended	20:21 VA.R. 2251	7/1/04
24 VAC 30-380-10	Amended	20:13 VA.R. 1633	2/12/04

NOTICES OF INTENDED REGULATORY ACTION

Symbol Key

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

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Air Pollution Control Board intends to consider amending regulations entitled **9 VAC 5-80, Permits for Stationary Sources**. The purpose of the proposed action is to amend the regulations that govern permitting for new major stationary sources and major modifications in order to meet the new source reform requirements of 40 CFR Part 51.

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

Statutory Authority: § 10.1-1308 of the Code of Virginia, federal Clean Air Act (§§ 110, 112, 165, 173, 182, and Title V) and 40 CFR Parts 51, 61, 63, 70 and 72.

Public comments may be submitted until 5 p.m. on September 8, 2004.

Contact: Karen G. Sabasteanski, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, FAX (804) 698-4510 or e-mail kgsabastea@deq.virginia.gov.

VA.R. Doc. No. R04-189; Filed June 23, 2004, 7:59 a.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Health intends to consider promulgating regulations entitled **12 VAC 5-125, Regulations for Bedding and Upholstered Furniture Inspection Program**. The purpose of the proposed action is to carry out the provisions of Chapter 1003 of the 2003 Acts of Assembly (HB 2810) by implementing policies and procedures for the inspection of bedding and upholstered furniture.

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

Statutory Authority: § 32.1-12 of the Code of Virginia and Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia.

Public comments may be submitted until July 28, 2004.

Contact: Richard Niedermayer, Administrator, Office of Epidemiology, Department of Health, 1500 E. Main St., Richmond, VA 23219, telephone (804) 786-6029, FAX (804) 786-1076 or e-mail richard.niedermayer@vdh.virginia.gov.

VA.R. Doc. No. R04-166; Filed June 1, 2004, 2:08 p.m.

TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending regulations entitled **13 VAC 5-21, Virginia Certification Standards**. The purpose of the proposed action is to update the regulation to correlate with the department's building and fire regulations, which are being updated to reference the latest editions of nationally recognized codes and standards. Since the national codes are so comprehensive in their scope, the agency will accept comment on all provisions of the regulation to ensure its compatibility with the national codes.

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

Statutory Authority: § 36-137 of the Code of Virginia.

Public comments may be submitted until July 28, 2004.

Contact: Steve Calhoun, Regulatory Coordinator, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7015, FAX (804) 371-7090 or e-mail steve.calhoun@dhcd.virginia.gov.

VA.R. Doc. No. R04-167; Filed June 2, 2004, 11:49 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending regulations entitled **13 VAC 5-31, Virginia Amusement Device Regulations**. The purpose of the proposed action is to update the regulation to incorporate the latest editions of nationally recognized amusement device standards. Since the national standards are so comprehensive in their scope, the agency will accept comment on all provisions of the regulation to ensure its compatibility with the national standards.

Notices of Intended Regulatory Action

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

Statutory Authority: § 36-98.3 of the Code of Virginia.

Public comments may be submitted until July 28, 2004.

Contact: Steve Calhoun, Regulatory Coordinator, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7015, FAX (804) 371-7090 or e-mail steve.calhoun@dhcd.virginia.gov.

VA.R. Doc. No. R04-168; Filed June 2, 2004, 11:49 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending regulations entitled **13 VAC 5-51, Virginia Statewide Fire Prevention Code**. The purpose of the proposed action is to update the regulation to incorporate the latest edition of the nationally recognized model fire code. Since the national standards are so comprehensive in their scope, the agency will accept comment on all provisions of the regulation to ensure its compatibility with the model code.

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

Statutory Authority: § 27-97 of the Code of Virginia.

Public comments may be submitted until July 28, 2004.

Contact: Steve Calhoun, Regulatory Coordinator, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7015, FAX (804) 371-7090 or e-mail steve.calhoun@dhcd.virginia.gov.

VA.R. Doc. No. R04-169; Filed June 2, 2004, 11:49 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Housing and Community Development intends to consider repealing regulations entitled **13 VAC 5-62, Virginia Uniform Statewide Building Code**, and promulgating regulations entitled **13 VAC 5-63, Virginia Uniform Statewide Building Code**. The purpose of the proposed action is to update the regulation by repealing 13 VAC 5-62, Virginia Statewide Building Code and promulgating 13 VAC 5-63, Virginia Uniform Statewide Building Code to incorporate the latest editions of nationally recognized model building codes and standards produced by the International Code Council (ICC). As the ICC has now produced a rehabilitation code, it is necessary to reformat the existing regulation (13 VAC 5-62) extensively to incorporate the new rehabilitation code format. Therefore, the existing regulation is being repealed and the reformatted regulation is a newly promulgated regulation. However, the only purpose of the proposed action is to incorporate the latest editions of the ICC codes.

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

Statutory Authority: § 36-98 of the Code of Virginia.

Public comments may be submitted until July 28, 2004.

Contact: Steve Calhoun, Regulatory Coordinator, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7015, FAX (804) 371-7090 or e-mail steve.calhoun@dhcd.virginia.gov.

VA.R. Doc. No. R04-170 and R04-171; Filed June 2, 2004, 11:49 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending regulations entitled **13 VAC 5-91, Virginia Industrialized Building Safety Regulations**. The purpose of the proposed action is to update the regulation to incorporate the latest editions of nationally recognized model building codes and standards. Since the national standards are so comprehensive in their scope, the agency will accept comment on all provisions of the regulation to ensure its compatibility with the latest model codes.

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

Statutory Authority: § 36-73 of the Code of Virginia.

Public comments may be submitted until July 28, 2004.

Contact: Steve Calhoun, Regulatory Coordinator, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7015, FAX (804) 371-7090 or e-mail steve.calhoun@dhcd.virginia.gov.

VA.R. Doc. No. R04-172; Filed June 2, 2004, 11:49 a.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Commonwealth Transportation Board intends to consider promulgating regulations entitled **24 VAC 30-121, Roadside Management Program Regulations**. The purpose of the proposed action is to comply with the provisions of Chapter 679 of the 2004 Acts of Assembly (§ 33.1-223.2:9 of the Code of Virginia, effective July 1, 2004). The proposed regulation establishes a comprehensive roadside management program. This program will include, but not be limited to, opportunities for participation by individuals, communities, and local governments and shall address items to include safety, landscape materials, services, funding, recognition, and appropriate signing. During the development of the regulation, VDOT may also address new program initiatives, as well as current programs

Notices of Intended Regulatory Action

or items not currently addressed in law, such as program participation by businesses, civic groups, or others.

Following the conclusion of the NOIRA stage, VDOT plans to promulgate this regulation by using the fast-track rulemaking process pursuant to § 2.2-4012.1 of the Administrative Process Act. Using this method, a proposed regulation may become effective about 75 days after its publication in the Virginia Register, unless objected to by 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules. If objected to, VDOT intends to proceed with this rulemaking under the normal APA (Article 2) promulgation process.

Although not required by the fast-track process, VDOT will hold a public hearing on Monday, July 26, 2004, in the Old Highway Building auditorium at 1221 East Broad Street in Richmond from 1 p.m. to 4 p.m. to collect additional comment prior to completing the proposed regulation. VDOT will also collect input from stakeholders (including an advisory committee comprised of individuals knowledgeable about tourism, landscaping, as well as local government issues) during the preparation of the regulation and will evaluate any issues raised prior to adoption of the final regulation. These issues could be related to the technical points listed above, or other unanticipated issues could arise during the promulgation process.

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

Statutory Authority: §§ 33.1-12 and 33.1-223.2:9 (effective July 1, 2004) of the Code of Virginia.

Public comments may be submitted until July 28, 2004.

Contact: James R. Barrett, Program Administrator Specialist, Department of Transportation, Asset Management Division, 1401 E. Broad St., 19th Floor, Richmond, VA 23219, telephone (804) 371-6801, FAX (804) 786-7987 or e-mail James.Barrett@VirginiaDOT.org.

VA.R. Doc. No. R04-174; Filed June 8, 2004, 2:57 p.m.



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 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Title of Regulation: **6 VAC 20-180. Crime Prevention Specialists (amending 6 VAC 20-180-10 through 6 VAC 20-180-50, adding 6 VAC 20-180-60).**

Statutory Authority: §§ 9.1-102 and 9.1-161 of the Code of Virginia.

Public Hearing Date: September 9, 2004 - 9 a.m.

Public comments may be submitted until September 10, 2004.

(See Calendar of Events section for additional information)

Agency Contact: Tami Wyrick, Program Analyst and Grants Coordinator, Department of Criminal Justice Services, 805 East Broad Street, Richmond, VA 23219, telephone (804) 786-5664, FAX (804) 692-0948, or e-mail twyrick@dcjs.state.va.us.

Basis: Section 9.1-161 of the Code of Virginia provides the authority to the Criminal Justice Services Board to adopt and promulgate regulations related to the certification of crime prevention specialists.

Purpose: The Crime Prevention Specialist program was established in 1994. At that time crime prevention was almost exclusively the responsibility of law enforcement. Since that time, however, there are many nonlaw-enforcement professionals who may be involved in providing crime prevention services that should be provided the opportunity for certification. This includes individuals involved in school security, public housing security, crime prevention practitioners at Virginia's military bases, and state agencies such as the Department of Criminal Justice Services (DCJS), the Attorney General's Office, the Department of Juvenile Justice, the Department of Transportation, the Capitol Police and others. This program expansion is supported and in large part sponsored by Virginia's crime prevention and law-enforcement community. The purpose of the changes to this regulation is to now provide the opportunity for certification of nonlaw-enforcement professionals involved in providing crime prevention services. The expansion of certification assures a minimum level of competency in public safety crime prevention efforts.

Substance: Amended language expands the program to allow the chief executive of any local, state or federal government agency to designate staff who serve in a law-enforcement, crime prevention or criminal justice capacity to become certified as crime prevention specialists.

Training topics are updated to include current issues such as homeland security, and requirements are expanded to require addressing four topics on the list in the regulation rather than two topics.

Training requirements for recertification are expanded from one to two topics on the list noted in the regulation.

All nonlaw-enforcement applicants are required to obtain permission from the law-enforcement agency having jurisdiction where the crime prevention specialist shall serve.

A decertification section has been added in cases of misrepresentation or conviction of a crime.

Issues: The Department of Criminal Justice Services recognized that many crime prevention practitioners have reached a new level of professional development. In response to legislation and with assistance from crime prevention practitioners across the state, DCJS created a program to certify specialists in the field of crime prevention. This program is now being expanded to include nonlaw-enforcement professionals who provide crime prevention services.

This regulation outlines the duties of a crime prevention specialist, eligibility for this certification, and training requirements for certification and recertification, and identifies circumstances under which a crime prevention specialist may be decertified.

The advantages to the public and the Commonwealth are the expansion of the numbers of professionals who may be certified in crime prevention as a specialty and the assurance of a minimum level of competency through this certification. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H 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. Section 9.1-161 of the Code of Virginia mandates that the Criminal Justice Services Board establish minimum standards for certification of crime prevention specialists.

The proposed regulation (i) expands the crime prevention specialist program to allow the chief executive of any local, state, or federal government agency to designate staff serving in a law-enforcement, crime prevention, or criminal justice capacity to become certified as a crime prevention specialist; (ii) updates the topics in which training is required in order to be certified or recertified as a crime prevention specialist; (iii) requires that individuals applying for certification receive additional training in at least four of the topics listed in the regulation and individuals applying for recertification receive additional training in at least two of the topics listed in the regulation; and (iv) adds a section to the existing regulation allowing the Department of Criminal Justice Services (DCJS) to revoke certification under certain circumstances.

The proposed regulation also includes changes that clarify the intent and various other aspects of the regulation.

Estimated economic impact. (1) The proposed regulation expands the crime prevention specialist program to allow the chief executive of any local, state, or federal government agency to designate staff serving in a law-enforcement, crime prevention, or criminal justice capacity to become certified as a crime prevention specialist. Under the existing regulation, only chief executives of local or state law-enforcement agencies could designate one of their employees to become trained and certified as a crime prevention specialist. The proposed change is mandated by Chapter 209 of the 2002 Acts of Assembly.

The proposed change could result in more individuals working at local, state, and federal agencies in the areas of law enforcement, crime prevention, and criminal justice seeking and obtaining certification as a crime prevention specialist. DCJS estimates that the proposed regulation is likely to result in 40-50 additional applications per year. DCJS does not intend to charge either a certification fee or a training fee. Both services are to be provided free of charge.

The training required to be a crime prevention specialist is currently offered through DCJS to the various state and local law-enforcement agencies free of charge. The Code of Virginia mandates that the Crime Prevention Center at DCJS provide basic and advanced crime prevention training. Training costs include the cost of hiring instructors, purchasing course-related materials, providing meeting facilities and audiovisual equipment, and any administrative overhead. According to DCJS, it costs an average of \$1,000 per training day for a class of 25-30 participants. The agency currently provides the Virginia Crime Prevention Association approximately \$75,000 a year to conduct 25-30 training courses each year (approximately five basic courses and 20-25 advanced courses). DCJS believes that the variety and volume of the training program currently offered are sufficient to meet the training needs of the additional applicants. Thus, no additional training costs are likely to be incurred as a result of the proposed regulation.

DCJS also incurs administrative costs in reviewing applications and issuing certifications/recertifications. The agency currently receives approximately 80 applications for certification and recertification a year. It takes 10% of the program administration specialists' time to process these applications, amounting to approximately \$5,000 a year or

\$100 per application. With 40-50 additional applications expected per year, it could cost the agency between \$4,000 and \$5,000 a year to process these applications.

The proposed change could also produce some economic benefits. Individuals involved in school and public housing security, crime prevention personnel at military bases, and employees of state agencies such as DCJS, the Department of Juvenile Justice, the Department of Transportation, and the Department of Alcoholic Beverage Control will now be allowed to train and be certified as a crime prevention specialist free of charge. This is likely to encourage individuals involved in crime prevention and criminal justice at the local, state, or federal level to get the required training and be certified. To the extent that the required training improves crime prevention efforts at the local, state, and federal level and provides for improved public safety, the proposed change is likely to produce economic benefits.

The net economic impact of the proposed change will depend on whether the additional costs imposed by the proposed change are greater than or less than its benefits. The extent to which the training required for certification improves crime prevention efforts is not known. The proposed regulation does not prohibit or limit any local, state, or federal agency from assigning personnel not certified as crime prevention specialists to crime prevention tasks. Thus, it is likely that employees at local, state, or federal agencies are currently involved and experienced in crime prevention activities although they may not be certified as crime prevention specialists. The extent to which additional training is likely to improve their performance and effectiveness is not clear. In the absence of a precise estimate of the benefits of the proposed change, it is not possible to determine the net economic impact of the proposed change. However, given that the costs involved and the number of additional applicants expected are small, the net economic impact of the proposed change is not likely to be very large.

(2) The proposed regulation updates the topics in which training is required in order to be certified or recertified as a crime prevention specialist. The proposed regulation includes two additional topics (crime prevention through environmental design and security assessments) as part of the introductory crime prevention training required to be certified and six additional topics (such as homeland security/terrorism prevention and identity theft) as part of the additional crime prevention training required to be certified or recertified. The proposed change is intended to update training topics for crime prevention specialists to better reflect current types of crimes and threats.

While the number of hours of introductory training is held constant at 40 hours, individuals seeking to be certified as crime prevention specialists will be required to cover two additional topics. The increase in the number of topics for additional training to be certified or recertified is not likely to have a significant impact. Individuals seeking to be certified or recertified are not required to cover all the training topics listed under additional crime prevention training. Instead they are required to complete the required number of hours of training in a subset of these topics. Thus, the net economic impact of the proposed change will depend on whether the

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benefits of requiring crime prevention specialists to go through introductory training in a wider variety of topics is greater than or less than the cost of reducing the amount of time they spend training in any individual topic. A precise estimate of these benefits and costs is not available at this time.

(3) The proposed regulation requires that individuals applying for certification receive additional training in at least four of the topics listed in the regulation and individuals applying for recertification receive additional training in at least two of the topics listed in the regulation. Under the existing regulation, they are required to receive additional training in at least two topics in order to be certified and in at least one topic in order to be recertified. The proposed change is intended to increase the breadth of knowledge of individuals certified as crime prevention specialists.

While the number of hours of additional training is held constant at 80 hours for certification and 40 hours for recertification, individuals seeking to be certified or recertified as crime prevention specialists will be required to cover twice the number of topics in the same amount of time. The net economic impact of the proposed change will depend on whether the benefits of requiring crime prevention specialists to have additional training in a wider variety of topics is greater than or less than the cost of reducing the amount of time they spend on any individual topic. A precise estimate of these benefits and costs are not available at this time.

(4) The proposed regulation adds a section to the existing regulation allowing DCJS to revoke certification under certain circumstances. These include the misrepresentation of qualifications, conviction of a crime, and leaving government employment. The existing regulation did not provide for the decertification of individuals previously certified as crime prevention specialists.

The proposed change is likely to have a small positive net economic impact. To the extent that the proposed change provides for individuals deemed to no longer be qualified to serve as crime prevention specialists to be decertified, the proposed change is likely to improve public safety and produce economic benefits.

Businesses and entities affected. The proposed regulation is likely to affect all individuals seeking to be certified or recertified as crime prevention specialists. Individuals employed at various local, state, and federal agencies will now be eligible to apply for certification. Certification will require individuals to cover two additional topics during the 40-hour introductory training. Certification or recertification will require individuals to cover twice the number of topics currently covered during the 80-hour additional training for certification and the 40-hour additional training for recertification. Individuals who are discovered to have misrepresented their qualifications, been convicted of a crime, or left government employment may have their certification revoked by DCJS.

According to DCJS, there currently are approximately 450 certified crime prevention specialists operating in Virginia. The agency receives approximately 80 applications for certification and recertification per year. The proposed regulation is likely to result in an additional 40-50 applications per year.

Localities particularly affected. The proposed regulation will apply to all localities in the Commonwealth. Localities will now be able to designate staff serving in a crime prevention or criminal justice capacity to become certified as crime prevention specialists.

While the training and certification costs for these employees will be borne by DCJS, the localities will incur some economic costs associated with sending their employees for crime prevention training. The time taken to get the required training must be valued as time that would have otherwise been used for regular work-related activities. By diverting time away from regular work responsibilities, sending employees for crime prevention training is likely to result in a loss of productivity and impose some economic costs. There are also likely to be travel-related costs to be borne by localities, including costs related to traveling to and from the training center and costs related to any overnight stays. However, along with these costs, localities could also receive economic benefits in terms of improved public safety by having individuals trained and certified in crime prevention.

Projected impact on employment. The proposed regulation is not likely to have a significant impact on employment in Virginia.

Effects on the use and value of private property. To the extent that the proposed regulation increases the number of individuals qualified to serve as crime prevention specialists and the quality of their training and leads to an increase in the effectiveness of crime prevention efforts and improves public safety in Virginia, it is likely to have a positive effect on property values in the state.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Criminal Justice Services, Crime Prevention and Law Enforcement Services Section concurs with the economic impact analysis as reviewed by the Department of Planning and Budget.

Summary:

Effective July 1, 2002, the General Assembly enacted into law Chapter 209 of the 2002 Acts of Assembly amending § 9.1-162 of the Code of Virginia, which spells out eligibility requirements for crime prevention specialists. The intent of the amended language is to expand the program to allow the chief executive of any local, state or federal government agency to designate staff who serve in a law-enforcement, crime prevention or criminal justice capacity to become certified as crime prevention specialists. The current law restricts certification to staff from local and state law-enforcement agencies.

Proposed amendments update training topics to include current issues such as homeland security, and expand requirements to require addressing four topics on the list in the regulation rather than two topics. Training requirements for recertification are expanded from one to two topics on the list noted in the regulation.

All nonlaw-enforcement applicants will also be required to obtain permission from the law-enforcement agency having jurisdiction where the crime prevention specialist shall

serve, and a decertification section has been added in cases of misrepresentation or conviction of a crime.

6 VAC 20-180-10. Definitions.

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

"Agency administrator" means any chief of police, sheriff, or any agency head of a local ~~or~~, state, or federal government law-enforcement agency.

"Crime prevention services" means providing for the anticipation, recognition, and appraisal of a crime risk and the initiation of an activity to remove or reduce the opportunity for crime.

"Department" means the Department of Criminal Justice Services.

"Employee" means any sworn or civilian individual, including auxiliaries, reserve-deputies, and volunteers employed by a local ~~or~~, state law-enforcement, or federal government agency.

"General law-enforcement instructor" means an individual who has complied with all of the applicable standards for certification or recertification, whichever applies, contained in 6 VAC 20-80-10, and is eligible to instruct, teach or lecture approved or mandated training.

~~"Law-enforcement~~ "Local, state or federal government agency" means any ~~government agency political unit or identifiable subunit which an individual or body that governs, exercises its authority, performs its functions, and which has as its principal duty or duties the prevention, detection, and investigation of crime; the apprehension, detection, and prosecution of alleged offenders administration of public policy.~~

6 VAC 20-180-20. Duties of a crime prevention specialist.

The duties of a crime prevention specialist are:

1. To provide citizens within his jurisdiction information concerning personal safety and the security of property, and other matters relating to the reduction of criminal opportunity.
2. To provide business establishments within his jurisdiction information concerning business and employee security, and other matters relating to the reduction of criminal activity, including but not limited to, internal and external theft, environmental design, and computer security.
3. To provide citizens ~~and~~ or businesses within his jurisdiction assistance in forming and maintaining neighborhood ~~and~~ or business watch groups ~~and~~ or other community-based crime prevention programs.
4. To provide assistance to other units of government within his jurisdiction in developing plans and procedures related to the reduction of criminal activity ~~within~~ in government and the community.
5. To promote the reduction and prevention of crime within his jurisdiction and the Commonwealth.

6 VAC 20-180-30. Eligibility.

A. Any employee (*sworn, nonsworn, or volunteer*) of a local ~~or~~, state law-enforcement agency, or auxiliary officer or deputy, or federal government agency who serves in a law-enforcement, crime prevention, or criminal justice capacity is eligible to be trained and certified as a crime prevention specialist.

B. The agency administrator of any local ~~or~~, state law-enforcement or federal government agency may designate one or more employees in his department or office who serve in a law-enforcement, crime prevention, or criminal justice capacity to be trained and certified as a crime prevention specialist specialists. Applicants for recertification shall be recommended by the agency administrator or his designee. Application shall be made on the Crime Prevention Specialist Certification Application-Form A.

C. This chapter ~~de~~ does not limit or prohibit the chief executive of any local ~~or~~, state law-enforcement or federal government agency from assigning personnel to crime prevention tasks who are not certified as crime prevention specialists.

6 VAC 20-180-40. Crime prevention specialist certification requirements.

A. The following requirements must be met to be certified as a crime prevention specialist. The applicant shall have:

1. Been certified as a general law-enforcement instructor within the past five years, or successfully completed a comparable instructor development course approved by the department.
2. Received 40 hours of approved introductory crime prevention training. Completion of the following compulsory minimum training topics is required for designation as a crime prevention specialist:

- a. Theory and Practice of Crime Prevention
- b. Neighborhood Watch
- c. Home and Business Security
- d. Security Liability
- e. Security Hardware (locks, lighting, and alarms)
- f. Personal Safety
- g. Crime Analysis Prevention Through Environmental Design
- h. Security Assessments

3. Received 80 hours of additional crime prevention training within the past five years of the date of application. This additional training must address at least ~~two~~ four of any of the following topics:

- a. Crime Prevention Through Environmental Design
- b. Community Crime Prevention Planning -Policing
- c. ~~Advanced Data Collection and~~ Crime Analysis
- d. School Safety and Security
- e. Security Lighting

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- f. Computer Security
- g. Managing Volunteers
- h. Grant and Proposal Writing
- i. Legislation, Ordinance and Regulation Development
- j. Prevention of Youth Violence
- k. Prevention of Family Violence
- l. Drug Abuse Prevention
- m. Public Speaking
- n. Media Relations
- o. *Homeland Security/Terrorism Prevention*
- p. *White Collar Crime*
- q. *Identity Theft*
- r. *Victim Witness Services*
- s. *Crime Prevention for Seniors*
- t. *Code Enforcement/Nuisance Abatement*
- u. Other topics approved by the department

4. At least three years experience in a *law-enforcement, crime prevention, or criminal justice government agency*.

5. At least one year experience, within the past five years of the date of application, in providing crime prevention services. Such experience shall have included:

- a. Developing and maintaining Neighborhood or Business Watch groups.
- b. Conducting security assessments of homes and businesses.
- c. Making public presentations on home or business security and personal safety.
- d. Distributing crime prevention information to the public.
- e. Other experience approved by the department.

B. The department ~~retains the right to~~ *may* waive all or part of the prescribed training requirements ~~when upon review of relevant crime prevention certifications awarded by recognized criminal justice or security organizations or by other state criminal justice agencies are provided. These certifications will be reviewed on a case-by-case basis.~~

Crime prevention specialist certifications awarded by organizations or other states will be reviewed on a case-by-case basis.

6 VAC 20-180-50. Recertification.

A. Recertification is required every three years.

B. Applicants for recertification shall be recommended by the agency administrator or his designee. Application shall be made on the Crime Prevention Specialist Recertification Application-Form B.

C. Applicants for recertification must complete 40 hours of additional crime prevention training since initial designation as a crime prevention specialist. This additional training must address at least ~~one~~ *two* of the following topics:

1. Crime Prevention Through Environmental Design
2. ~~Community Crime Prevention Planning -Policing~~
3. ~~Advanced Data Collection and Crime Analysis~~
4. School Safety and Security
5. Security Lighting
6. Computer Security
7. Managing Volunteers
8. Grant and Proposal Writing
9. Legislation, Ordinance and Regulation Development
10. Prevention of Youth Violence
11. Prevention of Family Violence
12. Drug Abuse Prevention
13. Public Speaking
14. Media Relations
15. *Homeland Security/Terrorism Prevention*
16. *White Collar Crime*
17. *Identity Theft*
18. *Victim Witness Services*
19. *Crime Prevention for Seniors*
20. *Code Enforcement/Nuisance Abatement*
21. Other topics approved by the department

D. Individuals whose certification expires shall comply with the requirements set forth in 6 VAC 20-180-40 and meet any certification requirements in effect at that time.

E. The department retains the right to grant an extension of the recertification time limit and requirements under the following conditions:

1. Illness or injury
2. Military service
3. Special duty required and performed in the public interest
4. Leave without pay or suspension pending investigation or adjudication of a crime
5. Any other reason documented by the agency administrator

F. Requests for extensions of the time limit must be requested prior to certification expiration.

6 VAC 20-180-60. Decertification.

A. *The department may revoke crime prevention specialist certification at any time based on misrepresentation of qualifications or conviction of a crime.*

B. When the holder of a crime prevention specialist certification is no longer employed by a local, state, or federal government agency in a law-enforcement, crime prevention, or criminal justice capacity, the certification is no longer valid.

VA.R. Doc. No. R03-232; Filed June 22, 2004, 11:34 a.m.

◆ **TITLE 9. ENVIRONMENT** ◆

STATE WATER CONTROL BOARD

Title of Regulation: **9 VAC 25-260. Water Quality Standards - Bottom Creek (amending 9 VAC 25-260-30).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia, Clean Water Act (33 USC § 1251 et seq.), and 40 CFR Part 131.

Public Hearing Dates:

August 11, 2004 - 7 p.m. (Roanoke)
August 12, 2004 - 2 p.m. (Glen Allen)
August 16, 2004 - 7 p.m. (Suffolk)

Public comments may be submitted until 5 p.m. on September 10, 2004.

(See Calendar of Events section for additional information)

Agency Contact: Jean W. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4113, FAX (804) 698-4522, or e-mail jwgregory@deq.virginia.gov.

Basis: Section 62.1-44.15(3a) of the Code of Virginia mandates and authorizes the board to establish water quality standards and policies for any state waters consistent with the purpose and general policy of the State Water Control Law, and to modify, amend or cancel any such standards or policies established. The federal Clean Water Act at § 303(c) mandates the State Water Control Board to review and, as appropriate, modify and adopt water quality standards. The corresponding federal water quality standards regulation at 40 CFR 131.6 describes the minimum requirements for water quality standards. The minimum requirements are use designations, water quality criteria to protect the designated uses and an antidegradation policy. All of the citations mentioned describe mandates for water quality standards.

The Environmental Protection Agency (EPA) Water Quality Standards regulation (40 CFR 131.12) is the regulatory basis for the EPA requiring the states to establish within the antidegradation policy the Exceptional State Waters category and the eligibility decision criteria for these waters. EPA retains approval/disapproval oversight, but delegates to the states the election and designation of specific water bodies as Exceptional State Waters.

Purpose: This proposed amendment is a necessary revision to the state water quality standards regulation. The State Water Control Board views Exceptional State Waters nominations as citizen petitions under § 2.2-4007 of the Code of Virginia. Therefore, the board took action on this petition for proposed designation because department staff had

concluded, based on the information available at the time of the preliminary evaluation, that the proposed designation met the eligibility requirements that a water body must meet before it can be afforded the extra point source protection provided by such a designation. The Exceptional State Waters category of the Antidegradation Policy allows the board to designate waters that display exceptional environmental settings and either exceptional aquatic communities or exceptional recreational opportunities for added protection. Once designated, the Antidegradation Policy provides that no water quality degradation would be allowed in the Exceptional State Waters. The only exception would be temporary, limited impact activities. By ensuring that no water quality degradation is allowed to occur in waters with exceptional environmental settings and either exceptional recreational opportunities or exceptional aquatic communities, the board is protecting these special waters at their present quality for use and enjoyment by future generations of Virginians.

Substance: The amendment to the Antidegradation Policy (9 VAC 25-260-30), part of the state's Water Quality Standards, would designate a segment of Bottom Creek in Montgomery and Roanoke Counties for special protection as an Exceptional State Water (9 VAC 25-260-30 A 3 c).

Issues: Upon permanent regulatory designation of a water body as an Exceptional State Water, the quality of that water body will be maintained and protected by not allowing any degradation except on a very short-term basis. No new, additional or increased point source discharge of sewage, industrial wastes or other pollution would be allowed into waters designated. In addition, no new mixing zones would be allowed in the Exceptional State Water and mixing zones from upstream or tributary waters could not extend into the Exceptional State Water section.

A potential disadvantage to the public may be the prohibition of new or expanded permanent point source discharges imposed within the segment once the regulatory designation is effective that would cause riparian landowners within the designated segment to seek alternatives to discharging to the designated segment and, therefore, to have additional financial expenditures associated with wastewater or storm water treatment. The segment of Bottom Creek under consideration for designation does not currently contain any permitted point source discharges.

The primary advantage to the public is that this waterbody will be protected at its present high level of quality for the use and enjoyment of current and future generations of Virginians.

The factors to be considered in determining whether a nominated water body meets the eligibility decision criteria of exceptional environmental settings and possessing outstanding recreational opportunities and/or exceptional aquatic communities are described in the department's revised April 25, 2001, "Guidance for Exceptional Surface Waters Designations in Antidegradation Policy Section of Virginia Water Quality Standards Regulation (9 VAC 25-260-30 A 3)." Those businesses located near the designated water, as well as the localities where the water body lies, may experience financial benefits through an increase in eco-tourism to the area because of the exceptional nature of the water body that led to its designation.

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There is no disadvantage to the agency or the Commonwealth that will result from the adoption of these amendments.

Localities Particularly Affected: Counties of Montgomery and Roanoke.

Public Participation: In addition to any other comments, the board is seeking comments on the costs and benefits of the proposal and on any impacts of the regulation on farm and forestland preservation.

The board also seeks comment on whether the eligibility decision criteria for Exceptional State Water designation are met for this water and whether the upper and lower boundary designations are appropriately delineated for the water body.

Anyone wishing to submit written comments for the public comment file may do so at the public hearing or by mail, email or fax to Jean W. Gregory, Office of Water Quality Programs, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4113, by FAX to (804) 698-4522, or email jwgregory@deq.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 5 p.m. on the date established as the close of the comment period.

A public hearing will be held and notice of the public hearing 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.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H 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 General Assembly mandates in § 62.1-44.15 of the Code of Virginia that the State Water Control Board establish standards of quality and policies for any state waters consistent with the purpose and general policy of the State Water Control Law. The code also mandates that the State Water Control Board modify, amend, or cancel any such standards or policies and take all appropriate steps to prevent an alteration to water quality contrary to the public interest or contrary to established standards and policies.

The proposed regulation amends the anti-degradation section of the state's water quality standards to designate a segment of Bottom Creek in Montgomery and Roanoke Counties for special protection as exceptional state waters.

Estimated economic impact. The proposed regulation designates a segment of Bottom Creek in Montgomery and

Roanoke Counties as exceptional state waters. An exceptional water quality designation provides extra protection against water quality degradation due to point source discharges. No new or increased point source discharge of sewage, industrial waste, or other pollution are allowed into the water once it has been designated as an exceptional state water. In addition, no new mixing zones are allowed in the designated waters and mixing zones from upstream or tributary waters are not allowed to extend into these designated waters. The designation only makes an exception in the case of temporary, limited impact activities and discharges.

By designating certain sections of Bottom Creek as exceptional state waters, the proposed regulation will prohibit riparian landowners from new or expanded permanent point source discharges. Moreover, by prohibiting new mixing zones in these waters and by restricting mixing zones upstream from expanding into these waters, the proposed change could also affect discharges directly upstream or in tributary waters upstream to the designated water. Under these circumstances, the riparian landowners and affected entities upstream of the designation would have to seek alternatives (such as treating the water to a higher degree or using diffusers to reduce the size of the mixing zone) to discharging into the stream as currently allowed. Thus, the designation of Bottom Creek as an exceptional state water could have a negative impact on future economic activity in the area. However, the designation is also likely to produce some economic benefits. By designating these waters as exceptional state waters, the proposed change is likely to encourage tourism in the area. The designation is likely to increase the number of people coming to the area seeking recreational outdoor activities such as fishing, camping, hiking, and kayaking. This, in turn, is likely to boost economic activity in the area.

The net impact of the proposed change will depend on whether the negative impact of the proposed change on some types of economic activity will be greater than or less than its positive impact on other types of activity. There are no precise estimates available at this time of the net economic impact of the proposed change. According to the Department of Environmental Quality (DEQ), there are 34 riparian landowners, the Nature Conservancy and 33 private landowners. Moreover, there currently are no Virginia Pollution Discharge Elimination System permittees located on these waters or their tributaries. Thus, given the lack of industrial and residential activity in the area, the negative impact of the proposed change is likely to be limited and quite possibly outweighed by the positive impact on tourism and related economic activity in the area.

Businesses and entities affected. By prohibiting new or expanded point source discharges or mixing zones in the designated waters and restricting the size of mixing zones directly upstream or in tributary waters upstream, the proposed regulation will have a negative effect on businesses and entities in the area seeking new or expanded point source discharges into or upstream of the designated waters. These businesses and entities will be required to seek alternatives to discharging as currently allowed. The proposed change is also likely to produce economic benefits for businesses and

entities in the tourism industry. By encouraging outdoor recreational activities in the area, the proposed change will benefit these businesses.

According to DEQ, there are 34 riparian landowners, the Nature Conservancy and 33 private landowners. Moreover, neither the segment of Bottom Creek under consideration for designation nor its tributaries currently contain any permitted point source discharges.

Localities particularly affected. The proposed regulation will affect areas of Roanoke County and Montgomery County around the segment of Bottom Creek to be designated as an exceptional state water.

Projected impact on employment. The proposed regulation is likely to restrict employment growth in industries that would require discharging into or upstream of the designated waters. However, by encouraging tourism, the proposed change could lead to increased employment in industries related to tourism and outdoor recreation.

Effects on the use and value of private property. Firms seeking to discharge into the designated waters or upstream from these waters will be required to find alternative ways of discharging sewage, industrial waste, or other types of pollution. This is likely to involve additional expenditures on the part of these firms, raising their cost of operation and lowering their asset value. On the other hand, an increase in the number of people seeking outdoor recreational activities in the area is likely to increase revenues and hence the asset value of firms involved in the tourism industry.

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:

The proposed amendment designates a segment of Bottom Creek in Montgomery and Roanoke Counties for special protection as an Exceptional State Water.

9 VAC 25-260-30. Antidegradation policy.

A. All surface waters of the Commonwealth shall be provided one of the following three levels, or tiers, of antidegradation protection. This antidegradation policy shall be applied whenever any activity is proposed that has the potential to affect existing surface water quality.

1. As a minimum, existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

2. Where the quality of the waters exceed water quality standards, that quality shall be maintained and protected unless the board finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the Commonwealth's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the board shall assure water quality adequate to protect existing uses fully.

Further, the board shall assure that there shall be achieved the highest statutory and regulatory requirements applicable to all new or existing point source discharges of effluent and all cost-effective and reasonable best management practices for nonpoint source control.

3. Surface waters, or portions of these, which provide exceptional environmental settings and exceptional aquatic communities or exceptional recreational opportunities may be designated and protected as described in subdivisions 3 a, b and c of this subsection.

a. Designation procedures.

(1) Designations shall be adopted in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and the board's public participation guidelines.

(2) Upon receiving a nomination of a waterway or segment of a waterway for designation as an exceptional state water pursuant to the board's antidegradation policy, as required by 40 CFR 131.12, the board shall notify each locality in which the waterway or segment lies and shall make a good faith effort to provide notice to impacted riparian property owners. The written notice shall include, at a minimum: (i) a description of the location of the waterway or segment; (ii) the procedures and criteria for designation as well as the impact of the designation; (iii) the name of the person making the nomination; and (iv) the name of a contact person at the Department of Environmental Quality who is knowledgeable about the nomination and the waterway or segment. Notice to property owners shall be based on names and addresses taken from local tax rolls. Such names and addresses shall be provided by the Commissioners of the Revenue or the tax assessor's office of the affected jurisdiction upon request by the board. After receipt of the notice of the nomination, localities shall be provided 60 days to comment on the consistency of the nomination with the locality's comprehensive plan. The comment period established by subdivision 3 a (2) of this subsection shall in no way impact a locality's ability to comment during any additional comment periods established by the board.

b. Implementation procedures.

(1) The quality of waters designated in subdivision 3 c of this subsection shall be maintained and protected to prevent permanent or long-term degradation or impairment.

(2) No new, additional, or increased discharge of sewage, industrial wastes or other pollution into waters designated in subdivision 3 c of this subsection shall be allowed.

(3) Activities causing temporary sources of pollution may be allowed in waters designated in subdivision 3 c of this subsection even if degradation may be expected to temporarily occur provided that after a minimal period of time the waters are returned or restored to

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conditions equal to or better than those existing just prior to the temporary source of pollution.

c. Surface waters designated under this subdivision are as follows:

(1) (Reserved.)

(2) ~~(Reserved.)~~ *Bottom Creek in Montgomery and Roanoke Counties from its confluence with Big Laurel Creek downstream to its confluence with Goose Creek to form the South Fork of the Roanoke River.*

(3) (Reserved.)

(4) North Creek in Botetourt County from the first bridge above the United States Forest Service North Creek Camping Area to its headwaters.

B. Any determinations concerning thermal discharge limitations made under § 316(a) of the Clean Water Act will be considered to be in compliance with the antidegradation policy.

VA.R. Doc. No. R03-201; Filed June 23, 2004, 8:02 a.m.

Title of Regulation: 9 VAC 25-260. Water Quality Standards - Lake Drummond (amending 9 VAC 25-260-30).

Statutory Authority: § 62.1-44.15 of the Code of Virginia, Clean Water Act (33 USC 1251 et seq.) and 40 CFR Part 131.

Public Hearing Dates:

August 11, 2004 - 7 p.m. (Roanoke)

August 12, 2004 - 2 p.m. (Glen Allen)

August 16, 2004 - 7 p.m. (Suffolk)

Public comments may be submitted until 5 p.m. on September 10, 2004.

(See Calendar of Events section for additional information)

Agency Contact: Jean W. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4113, FAX (804) 698-4522, or e-mail jwgregory@deq.virginia.gov.

Basis: Section 62.1-44.15(3a) of the Code of Virginia mandates and authorizes the board to establish water quality standards and policies for any state waters consistent with the purpose and general policy of the State Water Control Law, and to modify, amend or cancel any such standards or policies established. The federal Clean Water Act at § 303(c) mandates the State Water Control Board to review and, as appropriate, modify and adopt water quality standards. The corresponding federal water quality standards regulation at 40 CFR 131.6 describes the minimum requirements for water quality standards. The minimum requirements are use designations, water quality criteria to protect the designated uses and an antidegradation policy. All of the citations mentioned describe mandates for water quality standards.

The EPA Water Quality Standards regulation (40 CFR 131.12) is the regulatory basis for the EPA requiring the states to establish within the antidegradation policy the Exceptional State Waters category and the eligibility decision criteria for

these waters. EPA retains approval/disapproval oversight, but delegates to the states the election and designation of specific water bodies as Exceptional State Waters.

Purpose: These proposed amendments are a necessary revision to the state Water Quality Standards regulation. The State Water Control Board took action on these department initiated candidates for proposed designation because department staff had concluded, based on the information available at the time of the preliminary evaluation, that the proposed designation met the eligibility requirements that a water body must meet before it can be afforded the extra point source protection provided by such a designation. The Exceptional State Waters category of the Antidegradation Policy allows the board to designate waters that display exceptional environmental settings and either exceptional aquatic communities or exceptional recreational opportunities for added protection. Once designated, the Antidegradation Policy provides that no water quality degradation would be allowed in the Exceptional State Waters. The only exception would be temporary, limited impact activities. By ensuring that no water quality degradation is allowed to occur in waters with exceptional environmental settings and either exceptional recreational opportunities or exceptional aquatic communities, the board is protecting these special waters at their present quality for use and enjoyment by future generations of Virginians.

Substance: The amendments to the Antidegradation Policy of the Water Quality Standards would designate Lake Drummond and portions of Brown Mountain Creek, Laurel Fork, North Fork of the Buffalo River, Pedlar River, Ramseys Draft, and Whitetop Laurel Creek for special protection as Exceptional State Waters (9 VAC 25-260-30 A 3 c).

Issues: Upon permanent regulatory designation of a water body as an Exceptional State Water, the quality of that water body will be maintained and protected by not allowing any degradation except on a very short-term basis. No new, additional or increased point source discharge of sewage, industrial wastes or other pollution would be allowed into waters so designated. In addition, no new mixing zones would be allowed in the Exceptional State Water and mixing zones from upstream or tributary waters could not extend into the Exceptional State Waters sections.

A potential disadvantage to the public may be the prohibition of new or expanded permanent point source discharges imposed within the segment once the regulatory designation is effective that would cause riparian landowners within the designated segment to seek alternatives to discharging to the designated segment and, therefore, to have additional financial expenditures associated with wastewater or storm water treatment. However, the only riparian landowner for each of these waters is a federal agency and none of these waters contain any permitted point source discharges nor are any anticipated by the applicable federal agencies.

The primary advantage to the public is that these waters will be protected at their present high level of quality for the use and enjoyment of current and future generations of Virginians.

The factors to be considered in determining whether a nominated water body meets the eligibility decision criteria of

exceptional environmental settings and possessing outstanding recreational opportunities and/or exceptional aquatic communities are described in the department's revised April 25, 2001, "Guidance for Exceptional Surface Waters Designations in Antidegradation Policy Section of Virginia Water Quality Standards Regulation (9 VAC 25-260-30 A 3)." Although all of these waters proposed for designation are located on public (federal) land, those localities and businesses located near the designated waters may experience financial benefits through an increase in eco-tourism to the area because of the exceptional nature of the water body that lead to its designation.

There is no disadvantage to the agency or the Commonwealth that will result from the adoption of these amendments.

Localities Particularly Affected: Counties of Amherst, Augusta, Highland and Washington, and Cities of Chesapeake and Suffolk.

Public Participation: In addition to any other comments, the board is seeking comments on the costs and benefits of the proposal and on any impacts of the regulation on farm and forestland preservation.

The board also seeks comment on whether the eligibility decision criteria for Exceptional State Water designation are met for each of these waters and whether the upper and lower boundary designations are appropriately delineated for each water body.

Anyone wishing to submit written comments for the public comment file may do so at the public hearing or by mail, email or fax to Jean W. Gregory, Office of Water Quality Programs, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4113, by FAX to (804) 698-4522, or email jwgregory@deq.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 5 p.m. on the date established as the close of the comment period.

A public hearing will be held and notice of the public hearing 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.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H 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 General Assembly mandates in § 62.1-44.15 of the Code of Virginia that the

State Water Control Board establish standards of quality and policies for any state waters consistent with the purpose and general policy of the State Water Control Law. The code also mandates that the State Water Control Board modify, amend, or cancel any such standards or policies and take all appropriate steps to prevent an alteration to water quality contrary to the public interest or contrary to established standards and policies.

The proposed regulation amends the antidegradation section of the state's Water Quality Standards to designate Lake Drummond and segments of Brown Mountain Creek, Laurel Fork, North Fork of the Buffalo River, Pedlar River, Ramseys Draft, and Whitetop Laurel Creek for special protection as Exceptional State Waters. These waters are located in the Counties of Amherst, Augusta, Highland, and Washington and the Cities of Chesapeake and Suffolk.

Estimated economic impact. The proposed regulation designates Lake Drummond and segments of Brown Mountain Creek, Laurel Fork, North Fork of the Buffalo River, Pedlar River, Ramseys Draft, and Whitetop Laurel Creek for special protection as Exceptional State Waters. An exceptional water quality designation provides extra protection against water quality degradation due to point source discharges. No new or increased point source discharge of sewage, industrial waste, or other pollution are allowed into the water once it has been designated as an exceptional state water. In addition, no new mixing zones are allowed in the designated waters and mixing zones from upstream or tributary waters are not allowed to extend into these designated waters. The designation only makes an exception in the case of temporary, limited impact activities and discharges.

By designating these waters as exceptional state waters, the proposed regulation will prohibit riparian landowners from new or expanded permanent point source discharges. Moreover, by prohibiting new mixing zones in these waters and by restricting mixing zones upstream from expanding into these waters, the proposed change could also affect discharges directly upstream or in tributary waters upstream to the designated water. Under these circumstances, the riparian landowners and affected entities upstream of the designation would have to seek alternatives (such as treating the water to a higher degree or using diffusers to reduce the size of the mixing zone) to discharging into the stream as currently allowed. Thus, the designation of these waters as exceptional state waters could have a negative impact on future economic activity in the area. According to public comments by the Virginia Land Rights Coalition following the publication of the Notice of Intended Regulatory Action, designation of Laurel Fork as an exceptional state water could limit the economic potential of the area, specifically in terms of the extraction of lumber and natural gas. However, the designation is also likely to produce some economic benefits. By designating these waters as exceptional state waters, the proposed change is likely to encourage tourism in the surrounding areas and counties. The designation is likely to increase the number of people coming to the area seeking recreational outdoor activities such as fishing, camping, hiking, and kayaking. This, in turn, is likely to boost economic activity in the area.

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The net impact of the proposed change will depend on whether the negative impact of the proposed change on some types of economic activity will be greater than or less than its positive impact on other types activity. There are no precise estimates available at this time of the net economic impact of the proposed change. According to the Department of Environmental Quality (DEQ), there are only two riparian landowners, the U.S. Forest Service and the U.S. Fish and Wildlife Service. Moreover, there currently are no Virginia Pollution Discharge Elimination System permittees located on these waters or their tributaries. Despite concerns of the Virginia Land Rights Coalition, DEQ does not believe that there is significant natural gas and lumber extraction activities going on currently or planned for the area. Moreover, according to DEQ, timber harvesting will continue to be allowed within areas where there is an exceptional state waters designation. Thus, given the lack of any significant industrial and residential activity in the area and the fact that the land adjacent to these waters is owned by the U.S. Forest Service¹ and the U.S. Fish and Wildlife Service, the negative impact of the proposed change on future economic activity in the area is likely to be limited and quite possibly outweighed by the positive impact on tourism and related economic activity.

Businesses and entities affected. By prohibiting new or expanded point source discharges or mixing zones in the designated waters and restricting the size of mixing zones directly upstream or in tributary waters upstream, the proposed regulation will have a negative effect on businesses and entities in the area seeking new or expanded point source discharges into or upstream of the designated waters. These businesses and entities will be required to seek alternatives to discharging as currently allowed. The proposed change is also likely to produce economic benefits for businesses and entities in the tourism industry. By encouraging outdoor recreational activities in the area, the proposed change will benefit these businesses.

According to DEQ, there are only two riparian landowners, the U.S. Forest Service and the U.S. Fish and Wildlife Service. Moreover, neither the waters under consideration for designation nor their tributaries currently contain any permitted point source discharges.

Localities particularly affected. The proposed regulation will affect the counties of Amherst, Augusta, Highland, and Washington and the cities of Chesapeake and Suffolk in areas surrounding the waters under consideration for designation.

Projected impact on employment. The proposed regulation is likely to restrict employment growth in industries that would require discharging into or upstream of the designated waters. However, by encouraging tourism, the proposed change could lead to increased employment in industries related to tourism and outdoor recreation.

Effects on the use and value of private property. Firms seeking to discharge into the designated waters or upstream

to these waters will be required to find alternative ways of discharging sewage, industrial waste, or other types of pollution. This is likely to involve additional expenditures on the part of these firms, raising their cost of operation and lowering their asset value. On the other hand, an increase in the number of people seeking outdoor recreational activities in the area is likely to increase revenues and hence the asset value of firms involved in the tourism industry.

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:

The proposed amendments designate Lake Drummond and portions of Brown Mountain Creek, Laurel Fork, North Fork of the Buffalo River, Peddler River, Ramseys Draft, and Whitetop Laurel Creek for special protection as exceptional state waters.

9 VAC 25-260-30. Antidegradation policy.

A. All surface waters of the Commonwealth shall be provided one of the following three levels, or tiers, of antidegradation protection. This antidegradation policy shall be applied whenever any activity is proposed that has the potential to affect existing surface water quality.

1. As a minimum, existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

2. Where the quality of the waters exceed water quality standards, that quality shall be maintained and protected unless the board finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the Commonwealth's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the board shall assure water quality adequate to protect existing uses fully. Further, the board shall assure that there shall be achieved the highest statutory and regulatory requirements applicable to all new or existing point source discharges of effluent and all cost-effective and reasonable best management practices for nonpoint source control.

3. Surface waters, or portions of these, which provide exceptional environmental settings and exceptional aquatic communities or exceptional recreational opportunities may be designated and protected as described in subdivisions 3 a, b and c of this subsection.

a. Designation procedures.

(1) Designations shall be adopted in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and the board's public participation guidelines.

(2) Upon receiving a nomination of a waterway or segment of a waterway for designation as an exceptional state water pursuant to the board's

¹ The U.S. Forest Service helped DEQ select Laurel Fork for designation as exceptional state waters and provided comments in support of the nomination of streams on their property.

antidegradation policy, as required by 40 CFR 131.12, the board shall notify each locality in which the waterway or segment lies and shall make a good faith effort to provide notice to impacted riparian property owners. The written notice shall include, at a minimum: (i) a description of the location of the waterway or segment; (ii) the procedures and criteria for designation as well as the impact of the designation; (iii) the name of the person making the nomination; and (iv) the name of a contact person at the Department of Environmental Quality who is knowledgeable about the nomination and the waterway or segment. Notice to property owners shall be based on names and addresses taken from local tax rolls. Such names and addresses shall be provided by the Commissioners of the Revenue or the tax assessor's office of the affected jurisdiction upon request by the board. After receipt of the notice of the nomination, localities shall be provided 60 days to comment on the consistency of the nomination with the locality's comprehensive plan. The comment period established by subdivision 3 a (2) of this subsection shall in no way impact a locality's ability to comment during any additional comment periods established by the board.

b. Implementation procedures.

(1) The quality of waters designated in subdivision 3 c of this subsection shall be maintained and protected to prevent permanent or long-term degradation or impairment.

(2) No new, additional, or increased discharge of sewage, industrial wastes or other pollution into waters designated in subdivision 3 c of this subsection shall be allowed.

(3) Activities causing temporary sources of pollution may be allowed in waters designated in subdivision 3 c of this subsection even if degradation may be expected to temporarily occur provided that after a minimal period of time the waters are returned or restored to conditions equal to or better than those existing just prior to the temporary source of pollution.

c. Surface waters designated under this subdivision are as follows:

(1) (Reserved.)

(2) (Reserved.)

(3) ~~(Reserved.)~~ *Lake Drummond, located on U.S. Fish and Wildlife Service property, is nominated in its entirety within the cities of Chesapeake and Suffolk excluding any ditches and/or tributaries.*

(4) North Creek in Botetourt County from the first bridge above the United States Forest Service North Creek Camping Area to its headwaters.

(5) *Brown Mountain Creek, located on U.S. Forest Service land in Amherst County, from the City of Lynchburg property boundary upstream to the first crossing with the national forest property boundary.*

(6) *Laurel Fork, located on U.S. Forest Service land in Highland County, from the national forest property boundary below Route 642 downstream to the Virginia/West Virginia state line.*

(7) *North Fork of the Buffalo River, located on U.S. Forest Service land in Amherst County, from its confluence with Rocky Branch upstream to its headwaters.*

(8) *Pedlar River, located on U.S. Forest Service land in Amherst County, from where the river crosses FR 39 upstream to the first crossing with the national forest property boundary.*

(9) *Ramseys Draft, located on U.S. Forest Service land in Augusta County, from its headwaters (which includes Right and Left Prong Ramseys Draft) downstream to the Wilderness Area boundary.*

(10) *Whitetop Laurel Creek, located on U.S. Forest Service land in Washington County, from the national forest boundary immediately upstream from the second railroad trestle crossing the creek above Taylors Valley upstream to the confluence of Green Cove Creek.*

B. Any determinations concerning thermal discharge limitations made under § 316(a) of the Clean Water Act will be considered to be in compliance with the antidegradation policy.

VA.R. Doc. No. R03-202; Filed June 23, 2004, 8:01 a.m.

* * * * *

Title of Regulation: 9 VAC 25-260. Water Quality Standards - Little Stony Creek (amending 9 VAC 25-260-30).

Statutory Authority: § 62.1-44.15 of the Code of Virginia, Clean Water Act (33 USC § 1251 et seq.), and 40 CFR Part 131.

Public Hearing Dates:

August 11, 2004 - 7 p.m. (Roanoke)

August 12, 2004 - 2 p.m. (Glen Allen)

August 16, 2004 - 7 p.m. (Suffolk)

Public comments may be submitted until 5 p.m. on September 10, 2004.

(See Calendar of Events section for additional information)

Agency Contact: Jean W. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4113, FAX (804) 698-4522, or e-mail jwgregory@deq.virginia.gov.

Basis: Section 62.1-44.15(3a) of the Code of Virginia mandates and authorizes the State Water Control Board to establish water quality standards and policies for any state waters consistent with the purpose and general policy of the State Water Control Law, and to modify, amend or cancel any such standards or policies established. The federal Clean Water Act at 303(c) mandates the State Water Control Board to review and, as appropriate, modify and adopt water quality standards. The corresponding federal water quality standards regulation at 40 CFR 131.6 describes the minimum

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requirements for water quality standards. The minimum requirements are use designations, water quality criteria to protect the designated uses and an antidegradation policy. All of the citations mentioned describe mandates for water quality standards.

The EPA Water Quality Standards regulation (40 CFR 131.12) is the regulatory basis for the EPA requiring the states to establish within the antidegradation policy the Exceptional State Waters category and the eligibility decision criteria for these waters. EPA retains approval/disapproval oversight, but delegates to the states the election and designation of specific water bodies as Exceptional State Waters.

Purpose: This proposed amendment is a necessary revision to the state water quality standards regulation. The State Water Control Board views Exceptional State Waters nominations as citizen petitions under § 2.2-4007 of the Code of Virginia. Therefore, the board took action on this petition for proposed designation because department staff had concluded, based on the information available at the time of the preliminary evaluation, that the proposed designation met the eligibility requirements that a water body must meet before it can be afforded the extra point source protection provided by such a designation. The Exceptional State Waters category of the Antidegradation Policy allows the board to designate waters that display exceptional environmental settings and either exceptional aquatic communities or exceptional recreational opportunities for added protection. Once designated, the Antidegradation Policy provides that no water quality degradation would be allowed in the Exceptional State Waters. The only exception would be temporary, limited impact activities. By ensuring that no water quality degradation is allowed to occur in waters with exceptional environmental settings and either exceptional recreational opportunities or exceptional aquatic communities, the board is protecting these special waters at their present quality for use and enjoyment by future generations of Virginians.

Substance: The proposed amendment to the Antidegradation Policy (9 VAC 25-260-30), part of the state's Water Quality Standards, would designate a portion of Little Stony Creek in Giles County for special protection as an Exceptional State Water (9 VAC 25-260-30 A 3 c).

Issues: Upon permanent regulatory designation of a water body as an Exceptional State Water, the quality of that water body will be maintained and protected by not allowing any degradation except on a very short-term basis. No new, additional or increased point source discharge of sewage, industrial wastes or other pollution would be allowed into waters so designated. In addition, no new mixing zones would be allowed in the Exceptional State Water and mixing zones from upstream or tributary waters could not extend into the Exceptional State Water section.

A potential disadvantage to the public may be the prohibition of new or expanded permanent point source discharges imposed within the segment once the regulatory designation is effective that would cause riparian landowners within the designated segment to seek alternatives to discharging to the designated segment and, therefore, to have additional financial expenditures associated with wastewater or storm water treatment. The segment of Little Stony Creek under

consideration for designation does not currently contain any permitted point sources discharges.

The primary advantage to the public is that this waterbody will be protected at its present high level of quality for the use and enjoyment of current and future generations of Virginians.

The factors to be considered in determining whether a nominated water body meets the eligibility decision criteria of exceptional environmental settings and possessing outstanding recreational opportunities and/or exceptional aquatic communities are described in the Department's revised April 25, 2001, "Guidance for Exceptional Surface Waters Designations in Antidegradation Policy Section of Virginia Water Quality Standards Regulation (9 VAC 25-260-30 A 3)." Those localities and businesses located near the designated water may experience financial benefits through an increase in eco-tourism to the area because of the exceptional nature of the water body that lead to its designation.

There is no disadvantage to the agency or the Commonwealth that will result from the adoption of this amendment.

Locality particularly affected: Giles County.

Public participation: In addition to any other comments, the board is seeking comments on the costs and benefits of the proposal and on any impacts of the regulation on farm and forestland preservation.

The board also seeks comment on whether the eligibility decision criteria for Exceptional State Water designation are met for this water and whether the upper and lower boundary designations are appropriately delineated for the water body.

Anyone wishing to submit written comments for the public comment file may do so at the public hearing or by mail, email or fax to Jean W. Gregory, Office of Water Quality Programs, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4113, by FAX to (804) 698-4522, or email jwgregory@deq.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 5 p.m. on the date established as the close of the comment period.

A public hearing will be held and notice of the public hearing 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.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H 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 General Assembly mandates in § 62.1-44.15 of the Code of Virginia that the State Water Control Board establish standards of quality and policies for any state waters consistent with the purpose and general policy of the State Water Control Law. The code also mandates that the State Water Control Board modify, amend, or cancel any such standards or policies and take all appropriate steps to prevent an alteration to water quality contrary to the public interest or contrary to established standards and policies.

The proposed regulation amends the anti-degradation section of the state's water quality standards to designate a segment of Little Stony Creek in Giles county for special protection as exceptional state waters.

Estimated economic impact. The proposed regulation designates a segment of Little Stony Creek in Giles County as exceptional state waters. An exceptional water quality designation provides extra protection against water quality degradation due to point source discharges. No new or increased point source discharge of sewage, industrial waste, or other pollution are allowed into the water once it has been designated an exceptional state water. In addition, no new mixing zones are allowed in the designated waters and mixing zones from upstream or tributary waters are not allowed to extend into these designated waters. The designation only makes an exception in the case of temporary, limited impact activities and discharges.

By designating certain sections of Little Stony Creek as exceptional state waters, the proposed regulation will prohibit riparian landowners from new or expanded permanent point source discharges. Moreover, by prohibiting new mixing zones in these waters and by restricting mixing zones upstream from expanding into these waters, the proposed change could also affect discharges directly upstream or in tributary waters upstream to the designated water. Under these circumstances, the riparian landowners and affected entities upstream of the designation would have to seek alternatives (such as treating the water to a higher degree or using diffusers to reduce the size of the mixing zone) to discharging into the stream as currently allowed. Thus, the designation of Little Stony Creek as an exceptional state water could have a negative impact on future economic activity in the area. However, the designation is also likely to produce some economic benefits. By designating these waters as exceptional state waters, the proposed change is likely to encourage tourism in the area. The designation is likely to increase the number of people coming to the area seeking recreational outdoor activities such as fishing, camping, hiking, and kayaking. This, in turn, is likely to boost economic activity in the area.

The net impact of the proposed change will depend on whether the negative impact of the proposed change on some types of economic activity will be greater than or less than its positive impact on other types activity. There are no precise estimates available at this time of the net economic impact of the proposed change. According to the Department of Environmental Quality (DEQ), there are four riparian

landowners, the U.S. Forest Service and three private landowners, all of whom support the proposed designation. Moreover, there currently are no Virginia Pollution Discharge Elimination System permittees located on these waters or their tributaries. Thus, given the lack of industrial and residential activity in the area, the negative impact of the proposed change is likely to be limited and quite possibly outweighed by the positive impact on tourism and related economic activity in the area.

Businesses and entities affected. By prohibiting new or expanded point source discharges or mixing zones in the designated waters and restricting the size of mixing zones directly upstream or in tributary waters upstream, the proposed regulation will have a negative effect on businesses and entities in the area seeking new or expanded point source discharges into or upstream of the designated waters. These businesses and entities will be required to seek alternatives to discharging as currently allowed. The proposed change is also likely to produce economic benefits for businesses and entities in the tourism industry. By encouraging outdoor recreational activities in the area, the proposed change will benefit these businesses.

According to DEQ, there are four riparian landowners, the U.S. Forest Service and three private landowners. Moreover, neither the segment of Little Stony Creek under consideration for designation nor its tributaries currently contain any permitted point source discharges.

Localities particularly affected. The proposed regulation will affect areas of Giles county around the segment of Little Stony Creek to be designated as an exceptional state water.

Projected impact on employment. The proposed regulation is likely to restrict employment growth in industries that would require discharging into or upstream of the designated waters. However, by encouraging tourism, the proposed change could lead to increased employment in industries related to tourism and outdoor recreational activities.

Effects on the use and value of private property. Firms seeking to discharge into the designated waters or upstream to these waters will be required to find alternative ways of discharging sewage, industrial waste, or other types of pollution. This is likely to involve additional expenditures on the part of these firms, raising their cost of operation and lowering their asset value. On the other hand, an increase in the number of people seeking outdoor recreational activities in the area is likely to increase revenues and hence the asset value of firms involved in the tourism industry.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The department has reviewed the economic impact analysis by the Department of Planning and Budget and has no comment.

Summary:

The proposed amendment designates a segment of Little Stony Creek in Giles County for special protection as an Exceptional State Water.

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9 VAC 25-260-30. Antidegradation policy.

A. All surface waters of the Commonwealth shall be provided one of the following three levels, or tiers, of antidegradation protection. This antidegradation policy shall be applied whenever any activity is proposed that has the potential to affect existing surface water quality.

1. As a minimum, existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

2. Where the quality of the waters exceed water quality standards, that quality shall be maintained and protected unless the board finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the Commonwealth's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the board shall assure water quality adequate to protect existing uses fully. Further, the board shall assure that there shall be achieved the highest statutory and regulatory requirements applicable to all new or existing point source discharges of effluent and all cost-effective and reasonable best management practices for nonpoint source control.

3. Surface waters, or portions of these, which provide exceptional environmental settings and exceptional aquatic communities or exceptional recreational opportunities may be designated and protected as described in subdivisions 3 a, b and c of this subsection.

a. Designation procedures.

(1) Designations shall be adopted in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and the board's public participation guidelines.

(2) Upon receiving a nomination of a waterway or segment of a waterway for designation as an exceptional state water pursuant to the board's antidegradation policy, as required by 40 CFR 131.12, the board shall notify each locality in which the waterway or segment lies and shall make a good faith effort to provide notice to impacted riparian property owners. The written notice shall include, at a minimum: (i) a description of the location of the waterway or segment; (ii) the procedures and criteria for designation as well as the impact of the designation; (iii) the name of the person making the nomination; and (iv) the name of a contact person at the Department of Environmental Quality who is knowledgeable about the nomination and the waterway or segment. Notice to property owners shall be based on names and addresses taken from local tax rolls. Such names and addresses shall be provided by the Commissioners of the Revenue or the tax assessor's office of the affected jurisdiction upon request by the board. After receipt of the notice of the nomination, localities shall be provided 60 days to comment on the consistency of the nomination with the locality's comprehensive plan. The comment period established by subdivision 3 a (2) of this

subsection shall in no way impact a locality's ability to comment during any additional comment periods established by the board.

b. Implementation procedures.

(1) The quality of waters designated in subdivision 3 c of this subsection shall be maintained and protected to prevent permanent or long-term degradation or impairment.

(2) No new, additional, or increased discharge of sewage, industrial wastes or other pollution into waters designated in subdivision 3 c of this subsection shall be allowed.

(3) Activities causing temporary sources of pollution may be allowed in waters designated in subdivision 3 c of this subsection even if degradation may be expected to temporarily occur provided that after a minimal period of time the waters are returned or restored to conditions equal to or better than those existing just prior to the temporary source of pollution.

c. Surface waters designated under this subdivision are as follows:

(1) ~~(Reserved.)~~ *Little Stony Creek in Giles County from the first footbridge above the Cascades picnic area, upstream to the 3,300-foot elevation.*

(2) (Reserved.)

(3) (Reserved.)

(4) North Creek in Botetourt County from the first bridge above the United States Forest Service North Creek Camping Area to its headwaters.

B. Any determinations concerning thermal discharge limitations made under § 316(a) of the Clean Water Act will be considered to be in compliance with the antidegradation policy.

VA.R. Doc. No. R03-200; Filed June 23, 2004, 8:02 a.m.

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Title of Regulation: 9 VAC 25-260. Water Quality Standards - Ragged Island (amending 9 VAC 25-260-30).

Statutory Authority: § 62.1-44.15 of the Code of Virginia, Clean Water Act (33 USC § 1251 et seq.), and 40 CFR Part 131.

Public Hearing Dates:

August 11, 2004 - 7 p.m. (Roanoke)
August 12, 2004 - 2 p.m. (Glen Allen)
August 16, 2004 - 7 p.m. (Suffolk)

Public comments may be submitted until 5 p.m. on September 10, 2004.

(See Calendar of Events section for additional information)

Agency Contact: Jean W. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4113, FAX (804) 698-4522, or e-mail jwgregory@deq.virginia.gov.

Basis: Section 62.1-44.15(3a) of the Code of Virginia mandates and authorizes the board to establish water quality standards and policies for any state waters consistent with the purpose and general policy of the State Water Control Law, and to modify, amend or cancel any such standards or policies established. The federal Clean Water Act at § 303(c) mandates the State Water Control Board to review and, as appropriate, modify and adopt water quality standards. The corresponding federal water quality standards regulation at 40 CFR 131.6 describes the minimum requirements for water quality standards. The minimum requirements are use designations, water quality criteria to protect the designated uses and an antidegradation policy. All of the citations mentioned describe mandates for water quality standards.

The Environmental Protection Agency (EPA) Water Quality Standards regulation (40 CFR 131.12) is the regulatory basis for the EPA requiring the states to establish within the antidegradation policy the Exceptional State Waters category and the eligibility decision criteria for these waters. EPA retains approval/disapproval oversight, but delegates to the states the election and designation of specific water bodies as Exceptional State Waters.

Purpose: This proposed amendment is a necessary revision to the state water quality standards regulation. The State Water Control Board views Exceptional State Waters nominations as citizen petitions under § 2.2-4007 of the Code of Virginia. Therefore, the board took action on this petition for proposed designation because department staff had concluded, based on the information available at the time of the preliminary evaluation, that the proposed designation met the eligibility requirements that a water body must meet before it can be afforded the extra point source protection provided by such a designation. The Exceptional State Waters category of the Antidegradation Policy allows the board to designate waters that display exceptional environmental settings and either exceptional aquatic communities or exceptional recreational opportunities for added protection. Once designated, the Antidegradation Policy provides that no water quality degradation would be allowed in the Exceptional State Waters. The only exception would be temporary, limited impact activities. By ensuring that no water quality degradation is allowed to occur in waters with exceptional environmental settings and either exceptional recreational opportunities or exceptional aquatic communities, the board is protecting these special waters at their present quality for use and enjoyment by future generations of Virginians.

Substance: The proposed amendment to the Antidegradation Policy (9 VAC 25-260-30), part of the state's Water Quality Standards, would designate a portion of the main stem of Ragged Island Creek in Isle of Wight County for special protection as an Exceptional State Water (9 VAC 25-260-30 A 3 c).

Issues: Upon permanent regulatory designation of a water body as an Exceptional State Water, the quality of that water body will be maintained and protected by not allowing any degradation except on a very short-term basis. No new, additional or increased point source discharge of sewage, industrial wastes or other pollution would be allowed into waters so designated. In addition, no new mixing zones would

be allowed in the Exceptional State Water and mixing zones from upstream or tributary waters could not extend into the Exceptional State Water section.

A potential disadvantage to the public may be the prohibition of new or expanded permanent point source discharges imposed within the segment once the regulatory designation is effective that would cause riparian landowners within the designated segment to seek alternatives to discharging to the designated segment and, therefore, to have additional financial expenditures associated with wastewater or storm water treatment.

The primary advantage to the public is that this waterbody will be protected at its present high level of quality for the use and enjoyment of current and future generations of Virginians.

The factors to be considered in determining whether a nominated water body meets the eligibility decision criteria of exceptional environmental settings and possessing outstanding recreational opportunities and/or exceptional aquatic communities are described in the department's revised April 25, 2001, "Guidance for Exceptional Surface Waters Designations in Antidegradation Policy Section of Virginia Water Quality Standards Regulations (9 VAC 25-260-30 A 3)." Those businesses located near the designated water, as well as the county in which the water body is located, may experience financial benefits through an increase in eco-tourism to the area because of the exceptional nature of the water body that lead to its designation.

There is no disadvantage to the agency or the Commonwealth that will result from the adoption of this amendment.

Locality Particularly Affected: Isle of Wight County.

Public Participation: In addition to any other comments, the board is seeking comments on the costs and benefits of the proposal and on any impacts of the regulation on farm and forestland preservation.

The board also seeks comment on whether the eligibility decision criteria for Exceptional State Water designation is met for this water and whether the upper and lower boundary designations are appropriately delineated.

Anyone wishing to submit written comments for the public comment file may do so at the public hearing or by mail, email or fax to Jean W. Gregory, Office of Water Quality Programs, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4113, by FAX to (804) 698-4522, or email jwgregory@deq.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 5 p.m. on the date established as the close of the comment period.

A public hearing will be held and notice of the public hearing 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.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process

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Act and Executive Order Number 21 (02). Section 2.2-4007 H 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 General Assembly mandates in § 62.1-44.15 of the Code of Virginia that the State Water Control Board establish standards of quality and policies for any state waters consistent with the purpose and general policy of the State Water Control Law. The code also mandates that the State Water Control Board modify, amend, or cancel any such standards or policies and take all appropriate steps to prevent an alteration to water quality contrary to the public interest or contrary to established standards and policies.

The proposed regulation amends the anti-degradation section of the state's water quality standards to designate a segment of Ragged Island Creek in Isle of Wight County for special protection as exceptional state waters.

Estimated economic impact. The proposed regulation designates a segment of Ragged Island Creek in Isle of Wight County for special protection as exceptional state waters. An exceptional water quality designation provides extra protection against water quality degradation due to point source discharges. No new or increased point source discharge of sewage, industrial waste, or other pollution are allowed into the water once it has been designated as an exceptional state water. In addition, no new mixing zones are allowed in the designated waters and mixing zones from upstream or tributary waters are not allowed to extend into these designated waters. The designation only makes an exception in the case of temporary, limited impact activities and discharges.

By designating these waters as exceptional state waters, the proposed regulation will prohibit riparian landowners from new or expanded permanent point source discharges. Moreover, by prohibiting new mixing zones in these waters and by restricting mixing zones upstream from expanding into these waters, the proposed change could also affect discharges directly upstream or in tributary waters upstream to the designated waters. Under these circumstances, the riparian landowners and affected entities upstream of the designation would have to seek alternatives (such as treating the water to a higher degree or using diffusers to reduce the size of the mixing zone) to discharging into the stream as currently allowed. Thus, the designation of these waters as exceptional state waters could have a negative impact on future economic activity in the area. However, the designation is also likely to produce some economic benefits. By designating a segment of Ragged Island Creek as exceptional state waters, the proposed change is likely to encourage tourism in the area. The designation is likely to increase the number of people coming to the area seeking recreational outdoor activities

such as fishing, camping, hiking, and kayaking. This, in turn, is likely to boost economic activity in the area.

The proposed designation of Ragged Island Creek as an exceptional state water provoked a number of public comments against the change. Most comments were from various property developers and homebuilders' associations in the area. They were concerned about the boundary descriptions for the Ragged Island Creek designation and the restrictions such a designation would place on the issuance of storm water permits. In response to these concerns, the Department of Environmental Quality (DEQ) established an ad hoc advisory committee to study the issue. DEQ revised the proposed boundaries for the designation and truncated them so as not to include wetlands or impounded areas (where storm waters discharges tend to occur) and believes that the truncated designation avoids storm water permitting issues along the Route 17 corridor. Property developers and homebuilders' associations were also concerned about any restrictions that the proposed designation might place on mixing zones for storm water. However, while the proposed change does place restrictions on mixing zones for discharges from municipal wastewater treatment plants, industrial treatment plants, and single family home package sewage plants, there are no such restrictions on mixing zones for storm water. Moreover, according to DEQ, recent amendments (independent of the proposed designation) already limit the sizing of mixing zones in estuaries, such that mixing zones from storm water discharges (from current and/or planned development) would not extend into the revised boundaries of the Ragged Island Creek under consideration for designation.

The net impact of the proposed change will depend on whether the negative impact of the proposed change on some types of economic activity will be greater than or less than its positive impact on other types of activity. There are no precise estimates of the net economic impact of the proposed change available at this time. According to DEQ, there are 23 riparian landowners, the Department of Game and Inland Fisheries and 22 private landowners (13 of the 22 private riparian landowners support the designation). There currently are no Virginia Pollution Discharge Elimination System permittees located on these waters or their tributaries. According to DEQ, the area surrounding the waters under consideration for designation is sewer, with little or no discharge of sewage, industrial waste, or other types of pollution into state waters. Moreover, the proposed change is not likely to affect the issuance of storm water permits and nor is it likely to impose any additional restrictions on the mixing zone for storm water discharges. Thus, the negative effect of the proposed designation on economic activity in the area is likely to be limited. However, it is not possible to precisely estimate the net economic impact of the proposed change at this time.

Comments from the Regulated Community:

In conversations with the Home Builders Association of Virginia the following concerns were raised: (i) the designation could restrict or prohibit the development of thousands of acres within the watershed, (ii) existing outfalls under the Isle of Wight's MS4 (municipal separate storm sewer system) permit entering Ragged Island Creek along Sugar Hill Road

would not be allowed to expand or increase their discharge, impairing development in the area, (iii) the designation could lead to additional restrictions being added to the MS4 permits issued to the Isle of Wight county and the city of Suffolk, (iv) the designation could result in intensified on-site best management practices (BMPs) for non-point sources, increasing the cost of development or, in some cases, making the development infeasible, (v) the designation could increase the cost of wastewater treatment by requiring that projects connect directly to the Hampton Roads Sanitation District rather than allowing them to develop individual and on-site treatment projects, and (vi) the designation will restrict the ability of the Virginia Department of Transportation (VDOT) to build and maintain new roads throughout the drainage basin.

The proposed designation could restrict development in the area by prohibiting any new or expanded point source discharges or mixing zones in the designated waters and by restricting the size of mixing zones upstream of the designated waters. According to DEQ, 640 acres (or one square mile) of Ragged Island Creek are being designated as exceptional state waters, affecting 5.2 miles of shoreline. Of this, 2.4 miles is owned by the Department of Game and Inland Fisheries. Of the remaining 2.8 miles, approximately 50% is marshland and not suitable for development. Thus, the designation prohibits any new or expanded point source discharges on 1.4 miles of shoreline along Ragged Island Creek that is or could be developed. Moreover, according to DEQ, much of these riparian lands have already been developed, with single-family homes on many of these properties. Thus, while there is likely to be some negative impact on development in the area, the negative effects are likely to be limited by the fact that only 1.4 miles of shoreline are directly affected by the proposed change and much of that area has already been developed. The restrictions placed by the designation on mixing zones upstream from the designated waters are also likely to be limited by the fact that the locality currently requires hook-ups to the Hampton Roads Sanitation District for the disposal of municipal, industrial, and other types of pollution, rather than allowing discharges into state waters.

DEQ believes that revision of the boundary designation has addressed the issue of new and expanded outfalls along Sugar Hill Road. There are no permitted storm water discharges into the proposed revised boundary designation. Based on a map indicating new developments in the area, the development and subsequent storm water discharges are some distance from proposed revised area for designation and are not directly into tributaries to the creek. Regarding concerns that additional restrictions will be added to MS4 permits due to the designation, DEQ does not anticipate any changes to the storm water permitting program based on the proposed designation. The agency is not aware of any plans by the federal government to make changes to the storm water permitting program. Neither does DEQ believe that the proposed designation will impose any additional best management practice (BMP) requirements for non-point sources. The Environmental Protection Agency does not require a state to establish BMPs for non-point sources where such BMP requirements do not currently exist. Only existing BMPs required under state law and regulation will be applied. Regarding the increased cost of connecting directly to the

Hampton Roads Sanitation District compared to developing individual and on-site treatment projects, according to DEQ the county planner at the advisory committee meeting stated that it was normal locality practice to require hook-ups to the Hampton Roads Sanitation District. Thus, while the proposed designation does prohibit new and expanded point source discharges and restricts the size of mixing zones, it is not likely to affect current practice with respect to wastewater disposal in the area. Finally, DEQ believes that the revised boundary designation will not restrict the ability of the VDOT to build and maintain new roads throughout the drainage basin. VDOT has found the truncated boundary designations to be acceptable and the agency's representative at the advisory committee meetings indicated that the revised boundary designations would not hinder VDOT from maintaining roads in the area.

Businesses and entities affected. By prohibiting new or expanded point source discharges or mixing zones in the designated waters and restricting the size of mixing zones directly upstream or in tributary waters upstream, the proposed regulation could have a negative effect on businesses and entities in the area seeking new or expanded point source discharges into the designated waters themselves or upstream of these waters. These businesses and entities will be required to seek alternatives to discharging as currently allowed. However, as much of the area is sewered and it is normal locality practice to require hook-ups to the Hampton Roads Sanitation District, there are not likely to be many entities seeking to discharge into or upstream of these waters. The proposed change is also likely to produce economic benefits for businesses and entities in the tourism industry. By encouraging outdoor recreational activities in the area, the proposed change will benefit these businesses.

According to DEQ, there are 23 riparian landowners, the Department of Game and Inland Fisheries and 22 private landowners. Moreover, neither the waters under consideration for designation nor their tributaries currently contain any permitted point source discharges.

Localities particularly affected. The proposed regulation will affect areas of Isle of Wight county around the segment of Ragged Island Creek to be designated as an exceptional state water.

Projected impact on employment. The proposed regulation is likely to restrict employment growth in industries that would require discharging into or upstream of the designated waters. Given that much of the area is sewered and it is normal locality practice to require hook-ups to the Hampton Roads Sanitation District, the negative impact of the proposed designation on employment is likely to be limited. Moreover, by encouraging tourism, the proposed change could lead to increased employment in industries related to tourism and outdoor recreation.

Effects on the use and value of private property. Firms seeking to discharge into the designated waters or upstream to these waters will be required to find alternative ways of discharging sewage, industrial waste, or other types of pollution. This could involve additional expenditures on the part of these firms, raising their cost of operation and lowering their asset value. However, given that much of the area

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around the waters under consideration for designation is sewerage and it is normal locality practice to require hook-ups to the Hampton Roads Sanitation District, the negative impact of the proposed designation on businesses and other entities in the area is likely to be limited. On the other hand, an increase in the number of people seeking outdoor recreational activities in the area is likely to increase revenues and hence the asset value of firms involved in the tourism industry.

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:

The proposed amendment designates a portion of the main stem of Ragged Island Creek in Isle of Wight County for special protection as an Exceptional State Water.

9 VAC 25-260-30. Antidegradation policy.

A. All surface waters of the Commonwealth shall be provided one of the following three levels, or tiers, of antidegradation protection. This antidegradation policy shall be applied whenever any activity is proposed that has the potential to affect existing surface water quality.

1. As a minimum, existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

2. Where the quality of the waters exceed water quality standards, that quality shall be maintained and protected unless the board finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the Commonwealth's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the board shall assure water quality adequate to protect existing uses fully. Further, the board shall assure that there shall be achieved the highest statutory and regulatory requirements applicable to all new or existing point source discharges of effluent and all cost-effective and reasonable best management practices for nonpoint source control.

3. Surface waters, or portions of these, which provide exceptional environmental settings and exceptional aquatic communities or exceptional recreational opportunities may be designated and protected as described in subdivisions 3 a, b and c of this subsection.

a. Designation procedures.

(1) Designations shall be adopted in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and the board's public participation guidelines.

(2) Upon receiving a nomination of a waterway or segment of a waterway for designation as an exceptional state water pursuant to the board's antidegradation policy, as required by 40 CFR 131.12, the board shall notify each locality in which the

waterway or segment lies and shall make a good faith effort to provide notice to impacted riparian property owners. The written notice shall include, at a minimum: (i) a description of the location of the waterway or segment; (ii) the procedures and criteria for designation as well as the impact of the designation; (iii) the name of the person making the nomination; and (iv) the name of a contact person at the Department of Environmental Quality who is knowledgeable about the nomination and the waterway or segment. Notice to property owners shall be based on names and addresses taken from local tax rolls. Such names and addresses shall be provided by the Commissioners of the Revenue or the tax assessor's office of the affected jurisdiction upon request by the board. After receipt of the notice of the nomination, localities shall be provided 60 days to comment on the consistency of the nomination with the locality's comprehensive plan. The comment period established by subdivision 3 a (2) of this subsection shall in no way impact a locality's ability to comment during any additional comment periods established by the board.

b. Implementation procedures.

(1) The quality of waters designated in subdivision 3 c of this subsection shall be maintained and protected to prevent permanent or long-term degradation or impairment.

(2) No new, additional, or increased discharge of sewage, industrial wastes or other pollution into waters designated in subdivision 3 c of this subsection shall be allowed.

(3) Activities causing temporary sources of pollution may be allowed in waters designated in subdivision 3 c of this subsection even if degradation may be expected to temporarily occur provided that after a minimal period of time the waters are returned or restored to conditions equal to or better than those existing just prior to the temporary source of pollution.

c. Surface waters designated under this subdivision are as follows:

(1) (Reserved.)

(2) (Reserved.)

(3) (Reserved.)

(4) North Creek in Botetourt County from the first bridge above the United States Forest Service North Creek Camping Area to its headwaters.

(5) (Reserved.)

(6) (Reserved.)

(7) (Reserved.)

(8) (Reserved.)

(9) (Reserved.)

(10) (Reserved.)

(11) Ragged Island Creek in Isle of Wight County from its confluence with the James River at a line drawn across the creek mouth at N36°56.306'/W76°29.136' to N36°55.469'/W76°29.802' upstream to a line drawn across the main stem of the creek at N36°57.094'/W76°30.473' to N36°57.113'/W76°30.434', excluding wetlands and impounded areas and including only those tributaries completely contained within the Ragged Island Creek Wildlife Management Area on the northeastern side of the creek.

B. Any determinations concerning thermal discharge limitations made under § 316(a) of the Clean Water Act will be considered to be in compliance with the antidegradation policy.

VA.R. Doc. No. R03-199; Filed June 23, 2004, 8:02 a.m.

* * * * *

REGISTRAR'S NOTICE: The following regulations filed by the State Water Control Board are exempt from the Administrative Process Act in accordance with § 2.2-4006 A 9 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.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007 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 § 2.2-4007 F, and (iv) conducts at least one public hearing on the proposed general permit.

Title of Regulation: 9 VAC 25-660. Virginia Water Protection General Permit for Impacts Less Than One-Half of an Acre (amending 9 VAC 25-660-10 through 9 VAC 25-660-100).

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 and § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Public Hearing Date: August 26, 2004 - 3 p.m.
Public comments may be submitted until 5 p.m. on September 10, 2004.
(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, FAX (804) 698-4032, or e-mail egilinsky@deq.virginia.gov.

Summary:

The amendments correct several administrative procedures, clarify application and permitting requirements, and allow for a more efficient application review process. Since implementation of this regulation in October 2001, it has become evident that these minor corrections are needed to improve applications for coverage, timeframes for issuance of authorizations, and coordination with the U.S. Army

Corps of Engineers State Program General Permit (SPGP-01). No change to the upper thresholds of coverage under this regulation or to the 2:1 compensation ratio for wetland impacts is being proposed.

9 VAC 25-660-10. 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-~~et seq.~~) unless the context clearly indicates otherwise or unless otherwise indicated below.

"Bank protection" means measures 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.

"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.

"Conversion" means changing one type of surface water to another type of surface water, either permanently or temporarily. The permanent conversion of a forested wetland to an emergent wetland is considered to be a permanent impact for the purposes of this regulation.

"Cross-sectional drawing" 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 the 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 the United States Department of Agriculture's Natural Resources Conservation Service.

"Impacts" means results caused by human-induced activities conducted in surface waters as specified in § 62.1-44.15:5 D of the Code of Virginia.

"Independent utility" means a test to determine what constitutes a single and complete project. 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.

Proposed Regulations

"Less than one-half of an acre" means 0.00 to 0.49 acre, rounded to the second decimal place (0 to 21,779 square feet).

"Perennial stream" means a stream well-defined channel that has flowing contains water year round in during a typical year of normal rainfall. 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. Generally, the water table is located above the streambed for most of the year and groundwater is the primary source for stream flow. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

"Permanent impacts" are those impacts to surface waters, including wetlands, that cause a permanent alteration of the physical, chemical, or biological properties of the surface waters, or of the functions and values of a wetland.

"Person" means an individual, corporation, partnership, association, government body, municipal corporation, or any other legal entity.

"Single and complete project" means the total project proposed or accomplished by one a person and which has independent utility. For linear projects, the "single and complete project" (i.e., a single and complete crossing) will may but does not always apply to each crossing of a separate surface water (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. Phases of a project that have independent public and economic utility may each be considered single and complete.

"State programmatic general permit" means a general permit issued by the Department of the Army in accordance with 33 CFR Part 32S that is founded on a state program and is designed to avoid duplication between the federal and state programs.

"Temporary impacts" are those impacts to surface waters, including wetlands, that do not cause a permanent alteration of the physical, chemical, or biological properties of the surface water, or of the functions and values of a wetland. Temporary impacts include activities in which the ground is restored to its preconstruction contours and elevations, such that previous functions and values are restored.

"Up to 125 linear feet of perennial stream channel" means 0.00 to 125.00 linear feet of perennial stream, rounded to the second decimal place, as measured along the center of the main channel of the stream segment.

"Up to 300 linear feet of stream channel" means 0.00 to 300.00 linear feet of any stream, rounded to the second decimal place, as measured along the center of the main channel of the stream segment.

"Up to 1500 linear feet of nonperennial stream channel" means 0.00 to 1500.00 linear feet of nonperennial stream, rounded to the second decimal place, as measured along the center of the main channel of the stream segment.

"Up to one acre" means 0.00 to 1.00 acre (0 to 43,560 square feet).

"Up to one-tenth of an acre" means 0.00 to 0.10 acre, rounded to the second decimal place. (0 to 4,356 square feet).

"Up to two acres" means 0.00 to 2.00 acres (0 to 87,120 square feet).

"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 that drain a surface water 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 25-660-20. Purpose; delegation of authority; effective date of VWP general permit.

A. The purpose of this chapter regulation is to establish VWP General Permit Number WP1 under the VWP permit program regulation to govern impacts to less than one-half of an acre of nontidal surface waters including up to 125 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial 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 his designee, 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. This VWP general permit regulation will become effective on October 1, 2001, and will expire on October 1, 2006.

D. Authorization to impact surface waters under this VWP general permit is effective upon compliance with all the provisions of 9 VAC 25-660-30. Notwithstanding the expiration date of this general permit regulation, authorization to impact surface waters under this VWP general permit will continue for a maximum of three years.

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 up to 125 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial 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 25-20-40 ~~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 25-210-40 ~~et seq.~~) for the proposed project impacts. The applicant, at his discretion, may seek a VWP individual permit, or coverage under another applicable VWP general permit, in lieu of coverage under this VWP general permit.
2. Impacts result from a single and complete project, including all attendant features both temporary and permanent.

a. 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 a VWP individual permit.

b. 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. The stream impact criterion applies to all components of the project, including any structures and stream channel manipulations. ~~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. ~~Compensatory mitigation~~ *Compensation* 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.

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. Any person claiming this waiver bears the burden to demonstrate that he qualifies for the waiver.

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. In issuing this VWP general permit, the board has not taken into consideration the structural stability of the proposed structure or structures.

F. Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of Engineers (USACE), and for which the board has issued § 401 certification existing as of October 1, 2001, shall constitute coverage under this VWP general permit unless a state programmatic general permit is approved for the covered activity or impact. Notwithstanding any other provision, activities authorized under a nationwide or regional permit promulgated by the USACE and certified by the board in accordance with 9 VAC 25-210-130 do not need to obtain coverage under this VWP general permit unless a state programmatic general permit is approved for the covered activity or impact.

9 VAC 25-660-40. Exceptions to coverage.

A. Authorization for coverage under this VWP general permit will not apply in the following areas:

1. Wetlands 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 shall be based on either basal area or percent areal cover *in the area of impact*.

2. Wetlands 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~~ *where the proposed activity will impact* federal or state listed or proposed threatened or endangered species or proposed or designated critical habitat.

B. Authorization for coverage under this VWP general permit cannot be used in combination with authorizations for coverage under other VWP general permits *in order* to impact greater than one-half of an acre of nontidal surface waters, up to 125 linear feet of perennial stream channel, or up to 1,500 linear feet of nonperennial stream channel. More than one authorization for coverage under this VWP general permit for a single and complete project is prohibited, except when the cumulative impact to surface waters does not exceed the limits specified ~~in this subsection~~ *here*.

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

D. The board shall deny coverage under this VWP general permit to any applicant for activities that 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 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 does not authorize activities that cause more than minimal changes to the peak hydraulic flow characteristics, *that significantly* increase flooding, or *that* cause more than minimal degradation of the water quality of any stream.

F. 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. 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 or the work is performed in the dry;

6. Dredging or maintenance dredging;

7. Return flow discharges from dredge disposal sites;

8. The construction of new ski areas or oil and gas wells;

9. The taking of threatened or endangered species in accordance with the following:

Proposed Regulations

a. Pursuant to § 29.1-564 of the Code of Virginia: "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 United States 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. An application for authorization for proposed permanent wetland impacts greater than one-tenth of an acre of surface waters or for proposed permanent stream channel impacts greater than 300 linear feet shall be submitted via a registration statement an application that includes all information pursuant to 9 VAC 25-660-60.

2. Proposed, permanent surface water impacts up to one-tenth of an acre, which may include up to 300 linear feet of stream channel, shall be reported via a registration statement an application that includes only the following information: subdivisions 1 through 8, 13, 15 and 20 of 9 VAC 25-660-60 B.

B. A Joint Permit Application (JPA) or Virginia Department of Transportation Interagency Coordination Meeting Joint Permit Application (VDOT IACM JPA) may shall serve as the registration statement provided that all information required pursuant to 9 VAC 25-660-60 is included and that the first page of the form is clearly marked indicating the intent to have the form serve as the registration statement for this VWP general permit an application under this regulation.

C. The board will determine whether the proposed activity requires coordination with the United States Fish and Wildlife Service, the Virginia Department of Conservation and Recreation, the Virginia Department of Agriculture and Consumer Services and the Virginia Department of Game and Inland Fisheries regarding the presence of any federal or state proposed or listed threatened and endangered species or proposed or designated critical habitat. Based upon consultation with these agencies, the board may deny coverage under this general permit.

9 VAC 25-660-60. Registration statement Application.

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

1. The applicant shall file a complete registration statement application as described in 9 VAC 25-660-50 for a VWP General Permit WP1 for impacts to surface waters of less than one-half of an acre, including up to 125 linear feet of perennial stream channel and up to 1,500 linear feet of

nonperennial stream channel, 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 is advised to 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. The VDOT may use its monthly IACM process for submitting registration statements applications.

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

1. The applicant's name, mailing address, and telephone number and, if applicable, fax number;

2. The authorized agent's (if applicable) name, mailing address, telephone number and, if applicable, fax number and electronic mail address;

3. The existing VWP permit number (if applicable);

4. The name of the project, narrative description of project purpose of project, and a description of the proposed activity in surface waters;

5. The name of the water body or water bodies 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, including the project boundary. The map should shall be of sufficient detail such that the site may be easily located for site inspection;

10. The appropriate appendices from the JPA (Reserved);

11. The project plan view. All plan view sketches should shall include, at a minimum, north arrow, scale, existing structures, existing contours, proposed contours (if available), limit of surface water areas, direction of flow, ordinary high water, impact limits, and location and dimension of all proposed structures in impact areas. Cross-sectional drawings or profile sketches, as appropriate, with the information in this subdivision, may shall be required for certain projects as appropriate to demonstrate minimization of impacts;

12. (Reserved-);

13. Surface water impact information (wetlands, streams, or open water) for both permanent and temporary impacts, including a description of the impact, and the areal extent, location (by latitude and longitude) and type of impact (area of wetland in square feet, linear feet or acres; area of stream, length of stream, and average width). Wetland impacts should shall be quantified according to their Cowardin classification or similar terminology;

14. (Reserved-);

15. A description of the *specific on-site* measures *considered or* 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 25-210-445-A;~~

16. A ~~description of~~ *conceptual plan* for the intended compensation for unavoidable impacts, including:

a. Any ~~applicant proposing~~ *compensation plan proposing to include involving* contributions to an in-lieu fee fund shall ~~include proof state such as their conceptual compensation plan. Written documentation of the willingness of the entity to accept the donation and documentation of how the amount of the contribution was calculated shall be submitted prior to issuance of this VWP general permit authorization;~~ and

b. Any ~~applicant proposing~~ *compensation plan proposing involving* the purchase or use of mitigation banking credits shall include *as their conceptual compensation plan:*

- (1) The name of the proposed mitigation bank *and the HUC in which it is located;*
- (2) The number of credits proposed to be purchased or used; and
- (3) Certification from the bank owner of the availability of credits;

17. A delineation map 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~~ *shall* be noted according to their Cowardin classification or similar terminology. A copy of the USACE delineation confirmation, or other correspondence from the USACE indicating their approval of the wetland boundary, 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. The delineation map ~~should~~ *shall* also include the location of ~~all impacted and non-impacted~~ streams, open water and other surface waters on the site. The approximate limits of any Chesapeake Bay Resource Protection Areas (RPAs) ~~should~~ *shall* be shown on the map, as other 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. The appropriate application processing fee for a VWP general permit (9 VAC 25-20-40 ~~et seq.~~); and

20. 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~~ *application* 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 an application by the appropriate DEQ office, the board has 15 days to review the application and either determine that the information requested in subsection B of this section is complete or inform the applicant that additional information is required to make the application complete.~~ Coverage under this VWP general permit shall be approved, approved with conditions, or denied within 45 days *of receipt of a complete application*. If the board fails to act within 45 days *on a complete application*, coverage under this VWP general permit shall be deemed approved.

1. In evaluating the ~~registration statement application~~, 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 authorization under this VWP general permit. However, these conditions must be consistent with the VWP permit program 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 application~~. Where a ~~registration statement an application~~ is incomplete, the board may require the submission of additional information and ~~may~~ *shall* suspend processing *the application* until such time as the applicant has supplied the missing or deficient information and the ~~registration statement application~~ is complete. Further, where the applicant becomes aware that he omitted one or more relevant facts from a ~~registration statement an application~~, or submitted incorrect information in a ~~registration statement an application~~ or in any report to the board, he shall immediately submit such facts or the correct information. *Such application with new information shall be deemed a new application.*

9 VAC 25-660-70. Mitigation Compensation.

A. For the purposes of this VWP general permit, the board shall assume that the purchase or use of mitigation bank credits or a contribution to an in-lieu fee fund is ecologically preferable to practicable on-site or *other* off-site ~~individual compensatory mitigation~~ *compensation* options, and no further demonstration is necessary.

B. ~~Compensatory mitigation~~ *Compensation* for unavoidable wetland impacts is *shall be* provided at a 2:1 replacement to ~~loss~~ *impact* ratio.

Proposed Regulations

~~C. Compensatory mitigation~~ Compensation for unavoidable stream impacts is ~~shall be provided at a 1:1 replacement to loss ratio~~ through the purchase of stream mitigation bank credits or contribution to an in-lieu fee fund that includes watershed enhancements. The amount of required compensation will be determined based on an analysis of stream impacts utilizing a scientifically based stream impact assessment methodology approved by the board.

D. Compensation for open water impacts may be required, as appropriate, ~~at a 1:1 replacement to impact ratio~~ to protect state waters and fish and wildlife resources from significant impairment.

~~E. Compensation for conversion impacts shall be required at a 1:1 replacement to impact ratio, when such conversion results in a permanent alteration of the functions and values of the surface water.~~

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

~~F. G. The use of mitigation banks for compensating project impacts shall be deemed appropriate if~~ In order for purchase of bank credits to be an acceptable form of compensation, the bank ~~is~~ shall be 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 F.~~ The applicant ~~provides verification~~ shall provide proof of purchase or debit to the board of purchase or debiting of the required amount of credits ~~DEQ.~~

9 VAC 25-660-80. Notice of planned changes.

A. Authorization under this VWP general permit may be modified subsequent to issuance if the permittee determines that additional *permanent* wetland ~~and~~ or stream impacts are necessary, provided that the cumulative increase in acreage of wetland impacts is not greater than 1/4 acre and the cumulative increase in stream impacts is not greater than 50 linear feet, and provided that the additional impacts are fully mitigated. *In no case can this authorization be modified to exceed the general permit threshold for use.*

B. Authorization under this VWP general permit may be modified after issuance if the project results in less wetland or stream impacts. Compensation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial authorization compensation goals.

C. Authorization under this VWP general permit may be modified after issuance for a change in project plans that does not result in a change in project impacts.

D. Authorization under the VWP general permit may be modified for a change to the mitigation bank at which credits are purchased, provided that the same amount of credits are purchased and all criteria for use in 9 VAC 25-210-115 are met.

E. Authorization under the VWP general permit may be modified after issuance for typographical errors.

~~F. A Notice of Planned Change is not required after authorization issuance for additional temporary impacts to surface waters, provided that DEQ is notified in writing regarding additional temporary impacts, and they are restored to preexisting conditions in accordance with Part I C 11 of this general permit. In no case can the additional temporary impacts exceed the general permit threshold for use.~~

~~B- G.~~ The permittee shall notify the board in advance of the planned change, and the ~~modification~~ *planned change* request shall be reviewed according to all provisions of this regulation.

9 VAC 25-660-90. Notice of Termination of authorization by consent.

When all permitted activities requiring notification under 9 VAC 25-660-50 A 1 have been completed, ~~or if the authorized impacts will not occur,~~ the permittee shall submit a ~~notice of request for termination~~ within 30 days of ~~final project completion or project cancellation.~~ The director may accept this termination of authorization on behalf of the board. The ~~notice~~ permittee shall ~~contain~~ submit the following information:

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

a. For project completion:

"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 surface waters in accordance with the VWP general permit, and that performing activities in surface waters 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 authorization."

b. For project cancellation:

"I certify under penalty of law that the activities authorized by this VWP general permit will not occur. I understand that by submitting this notice of termination, that I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters 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 authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."

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

Any applicant whose ~~registration statement~~ application has been accepted by the board shall be subject to the following requirements:

VWP General Permit No. WP1

Authorization effective date:

Authorization expiration date:

Authorization Note(s):

VWP GENERAL PERMIT FOR IMPACTS 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.

Subject to the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, the permittee is authorized to impact less than one-half of an acre of nontidal surface waters including up to 125 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel.

Permittee:

Address:

Activity Location:

Activity Description:

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

Director, Department of Environmental Quality Date

Part I. Special Conditions.

A. Authorized activities.

1. This permit authorizes impacts to less than one-half of an acre of nontidal surface waters, including up to 125 linear feet of perennial stream channel, and up to 1,500 linear feet of nonperennial stream channel, according to the information provided in the ~~applicant's approved registration statement application~~.

2. Any ~~additional~~ changes to the authorized permanent impacts to surface waters associated with this project shall require either a notice of planned change in accordance with 9 VAC 25-660-80, or another VWP permit application.

3. Any changes to the authorized temporary impacts to surface waters associated with this project shall require written notification to DEQ and restoration to preexisting

conditions in accordance with the conditions of this permit authorization.

4. Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs, provided that the adjusted compensation meets the initial authorization compensation goals.

~~3-~~ 5. The activities authorized by this VWP general permit must commence and be completed within three years of the date of this authorization.

B. *Continuation of coverage.* 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.~~ The request for continuation of coverage must be made no less than 60 days prior to the expiration date of this VWP general permit authorization, at which time the board will determine if continuation of the VWP general permit authorization is necessary.

C. Overall project conditions.

1. The ~~construction or work~~ activities 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, including those species that normally migrate through the area, unless the primary purpose of the activity is to impound water. Culverts placed in streams must be installed to maintain low flow conditions. 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. *Excess or waste concrete shall not be disposed of in surface waters or washed out into surface waters.*

4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.

5. Erosion and sedimentation controls shall be designed in accordance with the Virginia 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~~ is stabilized and shall then be removed.

6. Any exposed slopes and streambanks ~~must shall~~ be stabilized immediately upon completion of ~~the project at work in each water body permitted impact area~~. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

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7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with this project shall be accomplished in a manner that minimizes construction 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 surface~~ waters, unless authorized by this VWP general permit.

9. Heavy equipment in temporarily impacted ~~wetland areas~~ surface waters shall be placed on mats, geotextile fabric, or other suitable ~~measures material~~ to minimize soil disturbance to the maximum extent practicable. *Equipment and materials shall be removed immediately upon completion of work.*

10. All nonimpacted surface waters within *50 feet of any permitted activities and within the project or right-of-way limits that are within 50 feet of any clearing, grading, or filling activities* shall be clearly flagged or marked for the life of the construction activity ~~within~~ *at that area location to preclude any unauthorized disturbances to these surface waters during construction.* The permittee shall notify all contractors that these marked areas are surface waters where no activities are to occur.

11. Temporary disturbances to ~~wetlands~~ surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preconstruction conditions *within 30 days of completing work, which shall include reestablishing preconstruction contours, and planted planting or seeded seeding* with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested). The permittee shall take all appropriate measures to promote *and maintain* revegetation of temporarily disturbed wetland areas with wetland vegetation ~~by through~~ the second year post-disturbance. All ~~temporary fills temporarily impacted streams~~ shall be ~~removed~~ *restored to their entirety and the affected area returned to pre-existing contours original elevation within 30 days following the construction at that stream segment, and the banks seeded or planted with native vegetation, and supplemented by erosion control grasses (crown vetch, orchard grass, or weeping lovegrass) when stabilizing steep slopes.*

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~~ *restored* within 30 days following removal of the stockpile, and ~~restored to the original vegetated state with native vegetation or a seed mix comprised of native vegetation and erosion control grasses (crown vetch, orchard grass, or weeping lovegrass) when stabilizing steep slopes.~~

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

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

15. The permittee shall conduct his activities in accordance with any time-of-year restrictions recommended by the Department of Game and Inland Fisheries or the Virginia Marine Resources Commission, *and shall ensure that all contractors are aware of any time-of-year restrictions imposed.*

16. ~~Immediately downstream of the construction area,~~ Water quality standards shall not be violated as a result of the construction activities, *unless allowed by this permit authorization.*

17. Untreated stormwater runoff shall be prohibited from directly discharging into any surface waters, *unless allowed by this permit authorization.* Appropriate best management practices shall be deemed suitable treatment prior to discharge into state waters.

18. *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 stream channel can begin.*

D. Road crossings.

1. Access roads *and associated bridges or culverts* shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable ~~and to follow as near as possible 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 *to maintain* a low flow channel. *For multiple-celled culverts, only those cells situated within the limits of ordinary high water shall be countersunk.* Countersinking ~~is~~ shall not be required for existing pipes or culverts that are being maintained or extended.

3. Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or other similar structures.

~~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 a manner that minimizes disturbance, and the area must be returned to its original contours and ~~stabilized restored within 30 days of completing work in the area~~, unless otherwise authorized by this VWP general permit.

2. Material resulting from trench excavation may be temporarily sidecast into wetlands not to exceed a total of 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.

3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect). *For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.*

F. ~~Bank stabilization~~ Stream modification and stream bank protection.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

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

4. All *stream* bank ~~erosion~~ *protection* control structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

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

6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

7. ~~All~~ No material removed from the stream ~~substrate bottom~~ shall be disposed of in an ~~approved upland area surface waters~~.

G. Stormwater management facilities.

1. Stormwater management facilities shall be ~~designed installed~~ 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~~ *Compensation* for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.

3. ~~Maintenance excavation activities within stormwater management facilities~~ shall not ~~require additional permit authorization, or compensation, provided that the maintenance activities do not exceed the original contours of the facility, as approved and constructed, and are accomplished in designated maintenance areas as indicated in the facility maintenance or design plan.~~

~~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 Compensation*, Monitoring, and Reporting.

A. ~~Compensatory mitigation~~ *Compensation*.

1. The permittee shall provide appropriate and practicable ~~compensatory mitigation compensation~~ for all impacts meeting the conditions outlined in this VWP general permit.

2. The types of ~~compensatory mitigation compensation~~ options that may be considered under this VWP general permit include:

~~4.~~ a. Purchases of credits from approved mitigation banks meeting the requirements of 9 VAC 25-210-115 F in accordance with 9 VAC 25-660-70 and provided that all impacts are compensated at a 2:1 ratio; or

~~2.~~ b. Contributions to an in lieu fee fund approved in accordance with 9 VAC 25-210-115 E 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.

3. *A written statement that conveys the applicant's proposal to use a mitigation bank or in-lieu fee fund for compensation shall be submitted with the application and shall constitute the compensation plan for the approved project. A site change will require a modification to the authorization.*

~~B.~~ 4. The permittee shall ~~submit not initiate work in permitted impact areas until documentation within 60 days of VWP general permit issuance that the USACE has~~

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~~debited the required mitigation credits from the mitigation bank ledger of the mitigation bank credit purchase or that the fund contribution has been submitted to and received by DEQ.~~

5. The compensation plan shall be approved by the board prior to any construction activity in permitted impact areas. The board shall review and provide written comments on the plan within 30 days of receipt or it shall be deemed approved. The final compensation plan as approved by the board shall be an enforceable requirement of this VWP general permit authorization. Any deviations from the approved plan must be submitted and approved in advance by the board.

~~C.~~ B. Construction monitoring.

~~1. Photo stations shall be established to document the Construction aspects of project activities within impact areas as authorized by this permit that are within impact areas shall be monitored through photographic documentation. Photographs should The photographic monitoring shall document the preconstruction conditions, activities during construction, and post-construction conditions within one week after completion of construction. Photographic monitoring shall consist of one of the following options:~~

~~a. Photographs shall be taken during construction at the end of the first, second and ~~twelfth~~ third months of construction and then annually semi-annually for the remainder of the construction project. Photographs are not necessary, except during periods of no activity within impact areas; ; or~~

~~b. An ortho-rectified photograph shall be taken prior to construction, and annually thereafter until all impacts are taken, and shall clearly show the delineated surface waters and authorized impact areas.~~

~~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.~~

2. As part of construction monitoring, photographs taken at the photo stations shall document site activities and conditions, which may include installation and maintenance of erosion and sediment controls; condition of adjacent nonimpact surface waters; flagged nonimpact surface waters; construction access and staging areas; filling, excavation, and dredging activities; culvert installation; dredge disposal; and site stabilization, grading, and associated restoration activities. With the exception of the preconstruction photographs, photographs at an individual impact site shall not be required until construction activities are initiated at that site. With the exception of the post-construction photographs, photographs at an individual impact site shall not be required once the site is stabilized following completion of construction at that site.

~~3. Stream bottom elevations at road crossings shall be measured at the inlet and outlet of the proposed structure 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. Each photograph shall be labeled to include the following information: permit number, impact area and photo station number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.~~

~~4. Monitoring of water quality parameters shall be conducted during rerouting of the live permanent relocation of perennial 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 30 minutes for at least three readings two hours at each station prior to opening the new channels; and immediately before opening new channels.~~

~~c. After opening the new channel, Temperature, pH and D.O. readings shall be taken once after opening the channels and every half-hour 30 minutes for at least three readings hours at each station within 24 hours of opening the new channel.~~

5. The permittee shall report violations of water quality standards to DEQ in accordance with the procedures in Part II E. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.

~~D.~~ C. Reporting.

~~1. Written communications required by this VWP general permit shall be submitted to the appropriate Department of Environmental Quality (DEQ) office. The VWP general permit authorization number shall be included on all correspondence.~~

~~2. The board DEQ shall be notified in writing by certified letter at least 10 days prior to the start of construction activities at the first permitted site authorized by this VWP general permit authorization so that inspections of the project can be planned, if deemed necessary by DEQ. The notification shall include identification of the impact area at which work will occur and a projected schedule for completing initiation and completion of work at each permitted impact area.~~

~~3. After construction begins, Construction monitoring reports shall be submitted to the board within 30 days of each DEQ no later than the 10th day of the month following the month in which the monitoring event specified in Part II B takes place. The reports shall include, at a minimum, the following, as appropriate:~~

~~a. For each permitted impact area, a written statement regarding when narrative stating whether work started in the identified impact area, where work was performed, what during the monitoring period. If work was performed, a description of the work performed, when the work was~~

initiated, and what work was completed expected date of completion.

b. Properly labeled photographs (to include date and time, name of the person taking the photograph, a brief description, 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.). *The post-construction photographs shall be submitted within 30 days of documenting post-construction conditions. The first construction monitoring report shall include the photographs taken at each impact site prior to initiation of construction in any permitted impact area. Written notification and photographs demonstrating that all temporarily disturbed wetland and stream areas have been restored in compliance with the permit conditions shall be submitted within 30 days of restoration.*

c. *Summary of activities conducted to comply with the permit conditions.*

d. *Summary of permit noncompliance events or problems encountered, subsequent notifications, and corrective actions.*

e. *Summary of anticipated work to be completed during the next monitoring period, and an estimated date of construction completion at all impact areas.*

f. *Labeled site map depicting all impact areas and photo stations.*

4. ~~The permittee shall submit a notice of termination DEQ shall be notified in writing within 30 days of final completion in accordance with 9 VAC 25-660-90 following the completion of all activities in all permitted impact areas authorized under this permit.~~

5. The permittee shall notify ~~the board~~ DEQ in writing when unusual or potentially complex conditions are encountered that require debris removal or involve a 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 ~~the board~~ DEQ.

6. 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, the appropriate DEQ regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

7. Violations of state water quality standards shall be reported within 24 hours to the appropriate DEQ office.

8. 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 General Permits.

A. Duty to comply. The permittee shall comply with all conditions of the VWP general 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 general permit noncompliance is a violation of the Clean Water Act and State Water Control Law, and is grounds for enforcement action, VWP general permit authorization termination *for cause*, VWP general permit authorization revocation, or denial of a ~~renewal application~~ continuation of coverage request.

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 authorization may be reopened to modify its conditions when the circumstances on which the previous VWP general permit authorization 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 general permit authorization was issued and thereby constitute cause for VWP general permit authorization 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 authorization are severable.

G. Right of entry. The permittee shall allow the board or its agents, 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;

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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 general permit authorization. This VWP general permit authorization 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 new permittee containing a specific date of transfer of VWP general permit authorization responsibility, coverage and liability to the new permittee, or that the existing permittee 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 new permittee of its intent to modify or revoke and reissue the VWP general permit authorization ~~within the 30-day time period~~ 15 days.

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

I. Notice of planned change. Authorization under this VWP general permit may be modified subsequent to issuance if: (i) the permittee determines that additional *permanent* wetland ~~and~~ or stream impacts are necessary, provided that the cumulative increase in acreage of wetland impacts is not greater than 1/4 acre and the cumulative increase in stream impacts is not greater than 50 linear feet, and provided that the additional impacts are fully ~~mitigated~~ compensated; (ii) the project results in less wetland or stream impacts, in which case compensation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial authorization compensation goals; (iii) there is a change in the project plans that does not result in a change in project impacts; (iv) there is a change in the mitigation bank at which credits are purchased, provided that the same amount of credits are purchased and all criteria for use are met, as detailed in 9 VAC 25-210-115; or (v) typographical errors need to be corrected. A notice of planned change is not required if the project results in additional temporary impacts to surface waters, provided that DEQ is notified in writing, the additional temporary impacts are restored to preexisting conditions in accordance with Part I C 11 of this general permit, and the additional temporary impacts do not exceed the general permit threshold for use. The permittee shall notify the board

in advance of the planned change, and the ~~modification~~ *planned change* request will be reviewed according to all provisions of this regulation.

J. VWP general permit authorization termination *for cause*. This VWP general permit authorization is subject to termination *for cause by the board after public notice and opportunity for a hearing*. ~~Causes~~ Reasons for termination *for cause* are as follows:

1. Noncompliance by the permittee with any condition of the VWP general permit *authorization*;

2. The permittee's failure in the application or during the VWP general permit authorization 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 a VWP general permit authorization ~~modification~~ *planned change* or termination *for cause*.

K. VWP general permit authorization termination by consent. *This VWP general permit authorization may be terminated by consent when all permitted activities requiring notification under 9 VAC 25-690-50 A 1 have been completed, when the authorized impacts do not occur, or when a planned change occurs that involves substituting a specified, approved mitigation bank or banks with another specified, approved mitigation bank. The permittee shall submit a request for termination by consent within 30 days of project completion or project cancellation. The director may accept this termination of authorization on behalf of the board. The request for termination by consent shall contain the following information:*

1. Name, mailing address and telephone number of the permittee;

2. Name and location of the activity;

3. The VWP permit authorization number; and

4. One of the following certifications:

a. For project completion:

"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 surface waters in accordance with the VWP general permit, and that performing activities in surface waters 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 authorization."

b. For project cancellation:

"I certify under penalty of law that the activities authorized by this VWP general permit will not occur. I understand that by submitting this notice of termination, that I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that

performing activities in surface waters 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 authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."

~~K~~. L. 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~~. M. 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~~. N. 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.

~~N~~. O. Duty to provide information.

1. The permittee shall furnish to the board 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.

~~Q~~. P. 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. 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, as appropriate:

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 and time 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;

f. The results of such analyses; and

g. Chain of custody documentation.

~~P~~. Q. 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.

NOTICE: The forms used in administering 9 VAC 25-660, the Virginia Water Protection General Permit for Impacts Less Than One-Half of an Acre, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Department of Environmental Quality Water Division Permit Application Fee *Form* (eff. ~~8/04~~ 7/04).

Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (eff. ~~8/04~~ 4/04).

~~Virginia Water Protection General Permit Registration Statement (eff. 10/02).~~

~~Quarterly Reporting of Impacts Less than One-Tenth Acre (insert reporting period) Statewide (eff. 4/03).~~

Virginia Department of Transportation Inter-Agency Coordination Meeting Joint Permit Application (eff. 10/02).

Proposed Regulations

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Title of Regulation: 9 VAC 25-670. 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 (amending 9 VAC 25-670-10 through 9 VAC 25-670-100).

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia and § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Public Hearing Date: August 26, 2004 - 3 p.m.

Public comments may be submitted until 5 p.m. on September 10, 2004.

(See Calendar of Events section for additional information)

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Summary:

The proposed amendments revise this general permit regulation to correct several administrative procedures, clarify application and permitting requirements and allow for a more efficient application review process. Since implementation of this regulation in October 2001, it has become evident that these minor corrections are needed to improve applications for coverage, timeframes for issuance of authorizations, and coordination with the U.S. Army Corps of Engineers State Program General Permit (SPGP-01). No change to the upper thresholds of coverage under this regulation is being proposed.

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 otherwise indicated below.

"Bank protection" means measures 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 toes stabilization, anti-scouring devices, and submerged sills.

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

"Conversion" means changing one type of surface water to another type of surface water, either permanently or temporarily. The permanent conversion of a forested wetland to an emergent wetland is considered to be a permanent impact for the purposes of this regulation.

"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 are 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, as specified in § 62.1-44.15:5 D of the Code of Virginia.

"Independent utility" means a test to determine what constitutes a single and complete project. 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.

"Less than one-half of an acre" means 0.00 to 0.49 acre (0 to 21,779 square feet).

"Perennial stream" means a ~~stream~~ well-defined channel that ~~has flowing~~ contains water year round in during a typical year of normal rainfall. ~~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. Generally, the water table is located above the streambed for most of the year and groundwater is the primary source for stream flow. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.~~

"Permanent impacts" are those impacts to surface waters, including wetlands, that cause a permanent alteration of the physical, chemical, or biological properties of the surface waters, or of the functions and values of a wetland.

"Person" means an individual, corporation, partnership, association, government body, municipal corporation, or any other legal entity.

"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~~ a person and which has independent utility. For linear projects, the "single and complete project" (i.e., a single and complete crossing) ~~will~~

~~may but does not always apply to each crossing of a separate surface water (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. Phases of a project that have independent public and economic utility may each be considered single and complete.~~

"State programmatic general permit" means a general permit issued by the Department of the Army in accordance with 33 CFR Part 32S that is founded on a state program and is designed to avoid duplication between the federal and state programs.

~~"Temporary impact impacts" means an impact caused by activities in are those impacts to surface waters, including wetlands, that do not cause a permanent alteration of the physical, chemical, or biological properties of the surface waters water, including wetlands, in which the ground is restored to its preconstruction contours and elevations, without significantly affecting wetland or of the functions and values of a wetland. Temporary impacts include activities in which the ground is restored to its preconstruction contours and elevations, such that previous functions and values are restored.~~

"Up to 300 linear feet of stream channel" means 0.00 to 300.00 linear feet of any stream, rounded to the second decimal place, as measured along the center of the main channel of the stream segment.

"Up to 500 linear feet of perennial stream channel" means 0.00 to 500.00 linear feet of perennial stream, rounded to the second decimal place, as measured along the center of the main channel of the stream segment.

"Up to 1500 linear feet of nonperennial stream channel" means 0.00 to 1500.00 linear feet of nonperennial stream, rounded to the second decimal place, as measured along the center of the main channel of the stream segment.

"Up to one-tenth of an acre" means 0.00 to 0.10 acre, ~~rounded to the second decimal place (0 to 4,356 square feet).~~

"Up to one acre" means 0.00 to 1.00 acre, ~~rounded to the second decimal place (0 to 43,560 square feet).~~

"Up to two acres" means 0.00 to 2.00 acres (0 to 87,120 square feet).

"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 surface water 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~~ regulation is to establish VWP General Permit Number WP2 under the VWP permit program

regulation to govern impacts related to the construction and maintenance 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 his designee, 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. This VWP general permit regulation will become effective on October 1, 2001, and will expire on October 1, 2006.

D. Authorization to impact surface waters under this VWP general permit is effective upon compliance with all the provisions of 9 VAC 25-670-30. Notwithstanding the expiration date of this general permit regulation, authorization to impact surface waters under this VWP general permit will continue for a maximum of three years.

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 nontidal surface waters, including up to 500 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel, 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 25-20-40 ~~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 25-210-40 ~~et seq.~~) for the proposed project impacts. The applicant, at his discretion, may seek a VWP individual permit or coverage under another applicable VWP general permit in lieu of this VWP general permit.
2. Impacts result from a single and complete project, including all attendant features both temporary and permanent.
 - a. 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 a VWP individual permit for the project.
 - b. Where an access 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 a VWP individual permit.

3. ~~Compensatory mitigation~~ *Compensation* 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. *For wetlands* compensation may incorporate preservation of wetlands, or preservation or restoration of upland buffers adjacent to state waters, when utilized in conjunction with creation, restoration or mitigation bank credits. *For other surface waters, compensation may*

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incorporate preservation and enhancement of stream channels, or preservation or restoration and enhancement of adjacent riparian buffers.

4. The stream impact criterion applies to all components of the project, including any structures and stream channel manipulations. ~~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.~~

5. 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 compensation~~ 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 compensation.~~

B. Activities that may be authorized under this VWP general permit include the following:

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; and

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.

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. Any person claiming this waiver bears the burden to demonstrate that he qualifies for the waiver.

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. In issuing this VWP general permit, the board has not taken into consideration the structural stability of the proposed structure or structures.

F. Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of Engineers (USACE), and for which the board has issued § 401 certification existing as of October 1, 2001, shall constitute coverage under this VWP general permit unless a state programmatic general permit is approved for the covered activity or impact. Notwithstanding any other provision, activities authorized under a nationwide or regional permit promulgated by the

USACE and certified by the board in accordance with 9 VAC 25-210-130 do not need to obtain coverage under this VWP general permit unless a state programmatic general permit is approved for the covered activity or impact.

9 VAC 25-670-40. Exceptions to coverage.

A. Authorization for coverage under this VWP general permit will not apply in the following areas:

1. Wetlands 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 shall be based upon either basal area, or percent areal cover *in the area of impact*.

2. Surface waters ~~with where the proposed activity will impact~~ federal or state listed or proposed threatened or endangered species or proposed or designated critical habitat.

B. Authorization for coverage under this VWP general permit cannot be used in combination with authorizations for coverage under other VWP *general* permits *in order* to impact greater than one acre of nontidal surface waters, or more than 500 linear feet of perennial stream channel or more than 1,500 linear feet of nonperennial stream channel. More than one authorization for coverage under this VWP general permit for a single and complete project is prohibited, except when the cumulative impact to surface waters does not exceed the ~~above mentioned~~ limits *specified here*.

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

D. The board shall deny coverage under this VWP general permit to any applicant for activities that 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 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 does not authorize activities that cause more than minimal changes to the peak hydraulic flow characteristics, *that significantly* increase flooding, or *that* cause more than minimal degradation of the water quality of any stream.

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

1. Any stormwater management facility;

2. Any water withdrawal activity;

3. 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 or the work is performed in the dry;

4. Dredging or maintenance dredging;

5. The taking of threatened or endangered species in accordance with the following:

a. Pursuant to § 29.1-564 of the Code of Virginia: "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 United States 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 25-670-50. Notification.

A. Notification to the board is not required for utility line activities that have only temporary impacts provided they do not involve mechanized land clearing of forested wetlands.

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

1. An application for proposed permanent impacts greater than one-tenth of an acre of surface waters, *or greater than 300 linear feet of stream channel*, shall be submitted via ~~a registration statement~~ *an application* that includes all information pursuant to 9 VAC 25-670-60 B.
2. Proposed, permanent *surface water* impacts up to one-tenth of an acre, *which may include up to 300 linear feet of stream channel*, shall be reported via ~~a registration statement~~ *an application* that includes only the following information: subdivisions 1 through 8, 13, 15 and 20 of 9 VAC 25-670-60 B.

C. A Joint Permit Application (JPA) or Virginia Department of Transportation Interagency Coordination Meeting Joint Permit Application (VDOT IACM JPA) ~~may~~ *shall* serve as the ~~registration statement provided that all information required pursuant to 9 VAC 25-670-60 is included and that the first page of the form is clearly marked indicating the intent to have the form serve as the registration statement for this VWP general permit~~ *an application under this regulation*.

D. The board will determine whether the proposed activity requires coordination with the United States Fish and Wildlife Service, the Virginia Department of Conservation and Recreation, the Virginia Department of Agriculture and Consumer Services and the Virginia Department of Game and Inland Fisheries regarding the presence of any federal or state proposed or listed threatened and endangered species or proposed or designated critical habitat. Based upon consultation with these agencies, the board may deny coverage under this general permit.

9 VAC 25-670-60. Registration statement Application.

A. ~~Registration statements~~ *Applications* shall be filed with the board, as follows:

1. The applicant shall file a complete ~~registration statement~~ *application* as described in 9 VAC 25-670-50 for a VWP

General Permit WP2 for impacts to surface waters resulting from activities of utilities, 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 is advised to 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. The VDOT may use its monthly IACM process for submitting registration statements applications.~~

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

1. The applicant's name, mailing address, *and* telephone number ~~and fax number (if applicable);~~
2. The authorized agent's (if applicable) name, mailing address, telephone number *and, if applicable, fax number* (~~if applicable~~) *and electronic mail address;*
3. The existing VWP permit number (if applicable);
4. The name of the project, *narrative description of project purpose of project*, and a description of the *proposed activity in surface waters;*
5. The name of the water body or water bodies *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, *including the project boundary*. The map ~~should~~ *shall* be of sufficient detail such that the site may be easily located for site inspection;
10. ~~The appropriate appendices from the JPA (Reserved);~~
11. Project plan view. All plan view sketches ~~should~~ *shall* include, at a minimum, north arrow, scale, existing structures, existing and proposed contours (if available), limit of surface water areas, direction of flow, ordinary high water, impact limits, and location and dimension of all proposed structures in impact areas. Cross-sectional *or profile* sketches, *as appropriate*, with the above information, ~~may~~ *shall* be required ~~for certain projects as appropriate~~ to demonstrate minimization of impacts;
12. (Reserved.)
13. Surface water impact information (wetlands, streams, or open water) for both permanent and temporary impacts, including a description of the impact, and the *areal extent, location (by latitude and longitude) and type of impact (area (of wetland in square feet, linear feet or acres; area of stream, length of stream, and average width)*. Wetland impacts ~~should~~ *shall* be quantified according to their Cowardin classification or similar terminology;

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14. Functional values assessment for impacts to wetlands greater than one acre. ~~The functional assessment, which shall consist of a narrative description-summary of field observations of the existing wetland functions and values and an assessment of the impact that the project will have on these functions and values. The following parameters/functions shall be directly addressed: surrounding land uses and cover types; nutrient, sediment, and pollutant trapping; flood control and flood storage capacity; erosion control and shoreline stabilization; groundwater recharge and discharge; aquatic and wildlife habitat; and unique or critical habitats;~~

15. A description of the *specific on-site* measures considered or 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 25-240-115 A;~~

16. A ~~description of conceptual plan for the intended compensation for unavoidable impacts, including:~~

a. ~~For wetlands, the conceptual compensatory mitigation-compensation 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 detailed location map (e.g., a United States Geologic Survey topographic quadrangle map), including latitude and longitude (to the nearest second) at the center of the site; a description of the surrounding land use; a hydrologic analysis, including a draft water budget based on expected monthly inputs and outputs which will project water level elevations for a typical year, a dry year, and a wet year; groundwater elevation data, if available, or the proposed location of groundwater monitoring wells to collect these data; wetland delineation sheets, maps a map for existing wetland-surface water areas on the proposed site or sites, including a wetland delineation confirmation for any existing wetlands; a conceptual grading plan; a conceptual planting scheme, including suggested plant species, and zonation and acreage of each vegetation type proposed; and a proposed soil preparation and amendment plan addressing both description of existing soils, including general information on topsoil and subsoil conditions; and a draft design of any water control structures, permeability, and the need for soil amendments.~~

b. ~~For streams, the conceptual compensation plan shall include: the goals and objectives in terms of water quality benefits and replacement of stream functions; a detailed location map (e.g., a United States Geologic Survey topographic quadrangle map), including the latitude and longitude and the hydrologic unit code (HUC) 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 proposed restoration measures to be employed, including channel measurements, proposed design flows and types of instream structures; and reference stream data, if available.~~

b-c. Applicants proposing to compensate off-site, including purchase or use of mitigation bank credits, or

contribution to an in-lieu fee fund shall ~~first discuss submit an evaluation of the feasibility of on-site compensatory mitigation compensation.~~ If on-site compensatory mitigation compensation is practicable, applicants ~~must shall~~ provide documentation as to why the proposed off-site compensatory mitigation compensation is ecologically preferable. The evaluation ~~should shall~~ include, but not be limited to, the following assessment criteria: water quality benefits, hydrologic source, hydrologic regime, watershed, surface water functions and values, vegetation type, soils, impact acreage, distance from impacts, timing of compensation versus impacts, acquisition, constructability, and cost.

c. ~~Any applicant proposing compensation 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 applicant proposing compensation plan proposing to include involving contributions to an in-lieu fee fund shall include proof state such as the conceptual compensation plan. Written documentation of the willingness of the entity to accept the donation and documentation of how the amount of the contribution was calculated shall be submitted prior to issuance of this general permit authorization.~~

e. ~~Any compensation-plan applicant proposing compensation involving the purchase or use of mitigation banking credits shall include as their conceptual compensation plan:~~

(1) The name of the proposed mitigation bank and the HUC in which it is located;

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

(3) Certification from the bank owner of the availability of credits-;

f. ~~The final compensatory mitigation plan must include complete information on all components of the conceptual compensatory mitigation plan detailed in subdivision 16-a of this subsection, 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 or sites 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 boundary.~~

17. 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~~ shall be noted according to their Cowardin classification or similar terminology. A copy of the USACE delineation confirmation, or other correspondence from the USACE indicating their approval of the wetland boundary, 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. The delineation map ~~should~~ shall also include the location of ~~all impacted and non-impacted~~ streams, open water and other surface waters on the site. The approximate limits of any Chesapeake Bay Resource Protection Areas (RPAs) ~~should~~ shall be shown on the map, as other 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. The appropriate application processing fee for a VWP general permit (9 VAC 25-20-40 ~~et seq.~~); ~~and~~

20. 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~~ application 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,~~ an application by the appropriate DEQ office, the board has 15 days to review the application and either determine the information requested in subsection B of this section is complete or inform the applicant that additional information is required to make the application complete. Coverage under the VWP general permit shall be approved, approved with conditions, or denied within 45 days of receipt of a complete application. If the board fails to act within 45 days on a complete application, coverage under the VWP general permit shall be deemed approved.

1. In evaluating the ~~registration statement~~ application, 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 authorization under this VWP general permit. However, these conditions must be consistent with the VWP permit regulation ~~and may not conflict with the existing conditions of this VWP general permit related to impacts and compensatory mitigation.~~

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

9 VAC 25-670-70. Mitigation Compensation.

A. For the purposes of this VWP general permit, the board may 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 in-lieu fee fund. ~~Compensation may incorporate~~ Preservation of wetlands or streams, or preservation or restoration of upland buffers adjacent to state waters, *may only be applied toward wetland compensation when utilized in conjunction with creation, restoration or mitigation bank credits one or more of the above-mentioned compensation options. Preservation or enhancement of stream channels, or preservation, restoration, or enhancement of adjacent riparian buffers, may be applied toward stream compensation as appropriate.*

B. ~~Compensatory mitigation~~ Compensation for unavoidable permanent 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.
3. Impacts to emergent wetlands shall be mitigated at 1:1.

C. ~~Compensatory mitigation~~ Compensation for unavoidable impacts to streams shall be provided ~~at a 1:1 replacement to loss ratio via~~ and shall include, as practicable and appropriate, stream relocation, restoration, riparian buffer establishment, restoration or enhancement, or preservation or enhancement of stream corridors. The purchase of stream mitigation bank credits or contribution to an in-lieu fee fund that includes ~~stream restoration, when feasible~~ watershed enhancements is also acceptable. *The amount of required compensation will be determined based on an analysis of stream impacts utilizing a scientifically based stream impact assessment methodology approved by the board.*

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D. Compensation for open water impacts may be required at a 1:1 replacement to impact ratio, as appropriate, to protect state waters and fish and wildlife resources from significant impairment.

E. Compensation for conversion impacts shall be required at a 1:1 replacement to impact ratio when such conversion results in a permanent alteration of the functions and values of the surface water.

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

~~F.~~ The use of mitigation banks for compensating project impacts shall be deemed appropriate if G. In order for purchase of bank credits to be an acceptable form of compensation, the bank is shall be 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 F. The applicant provides verification shall provide proof of purchase or debt to the board of purchase or debiting of the required amount of credits DEQ.

9 VAC 25-670-80. Notice of planned changes.

A. Authorization under this VWP general permit may be modified subsequent to issuance if the permittee determines that additional permanent wetland and/or stream impacts are necessary, provided that the cumulative increase in acreage of wetland impacts is not greater than 1/4 acre and the cumulative increase in stream impacts is not great than 50 linear feet, and provided that the additional impacts are fully mitigated. *In no case can this authorization be modified to exceed the general permit threshold for use.*

B. Authorization under this VWP general permit may be modified after issuance if the project results in less wetland or stream impacts. Compensation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial authorization compensation goals.

C. Authorization under this VWP general permit may be modified after issuance for a change in project plans that does not result in a change in project impacts.

D. Authorization under the VWP general permit may be modified for a change to the mitigation bank at which credits are purchased, provided that the same amount of credits are purchased and all criteria for use in 9 VAC 25-210-115 are met.

E. Authorization under the VWP general permit may be modified after issuance for typographical errors.

F. A Notice of Planned Change is not required after authorization issuance for additional temporary impacts to surface waters, provided that DEQ is notified in writing regarding additional temporary impacts, and they are restored to preexisting conditions in accordance with Part I C 11 of this general permit. *In no case can the additional temporary impacts exceed the general permit threshold for use.*

B-G. The permittee shall notify the board in advance of the planned change, and the ~~modification-planned change~~ request will be reviewed according to all provisions of this regulation.

9 VAC 25-670-90. Notice of Termination.

When all permitted activities requiring notification under 9 VAC 25-670-50 B 1 have been completed, or if the authorized impacts will not occur, the applicant shall submit a ~~notice of request for termination~~ within 30 days of final project completion or project cancellation. *The director may accept this termination of authorization on behalf of the board.* The ~~notice~~ permittee shall ~~contain~~ submit the following information:

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

a. For project completion:

"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 surface waters in accordance with the VWP general permit, and that performing activities in surface waters 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 authorization."

b. For project cancellation:

"I certify under penalty of law that the activities authorized by this VWP general permit will not occur. I understand that by submitting this notice of termination, that I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters 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 authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."

9 VAC 25-670-100. VWP general permit.

Any applicant whose ~~registration statement~~ application has been accepted by the board shall be subject to the following requirements:

VWP General Permit No. WP2

Authorization effective date:

Authorization expiration date:

Authorization Note(s):

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.

Subject to the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, the permittee is authorized to impact up to one acre of nontidal surface waters, including up to 500 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel.

Permittee:

Address:

Activity Location:

Activity Description:

The authorized activity shall be in accordance with this cover page, Part I-Special Conditions, Part II-Mitigation Compensation, 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. This permit authorizes impacts of up to one acre of nontidal surface waters, including up to 500 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel according to the information provided in the applicant's approved registration statement application.
2. Any ~~additional~~ changes to the authorized permanent impacts to surface waters associated with this project shall require either a notice of planned change in accordance with 9 VAC 25-670-80 or another VWP permit application.
3. Any changes to the authorized temporary impacts to surface waters associated with this project shall require written notification to DEQ and restoration to preexisting conditions in accordance with the conditions of this permit authorization.
4. Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs, provided that the adjusted compensation meets the initial authorization compensation goals.

3-5. The activities authorized for coverage under this VWP general permit must commence and be completed within three years of the date of this authorization.

B. ~~Reapplication~~ Continuation of coverage. Application ~~Reapplication~~ 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 compensation) has not been completed within three 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. *The request for continuation of coverage must be made no less than 60 days prior to the expiration date of this VWP general permit authorization, at which time the board will determine if continuation of the VWP general permit authorization is necessary.*

C. Overall project conditions.

1. The ~~construction or work~~ activities 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, including those species which normally migrate through the area, unless the primary purpose of the activity is to impound water. Culverts placed in streams must be installed to maintain low flow conditions. 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. *Excess or waste concrete shall not be disposed of in surface waters or washed out into surface waters.*
4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.
5. Erosion and sedimentation controls shall be designed in accordance with the Virginia 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~~ is stabilized and shall then be removed.
6. Any exposed slopes and streambanks ~~must~~ shall be stabilized immediately upon completion of ~~the utility line crossing of work~~ in each water body permitted area. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.
7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities

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associated with this project shall be accomplished in such a manner that minimizes construction 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 surface~~ waters, unless authorized by this VWP general permit.

9. Heavy equipment in temporarily impacted ~~wetland areas~~ surface waters shall be placed on mats, geotextile fabric, or other suitable ~~measures material~~, to minimize soil disturbance to the maximum extent practicable. *Equipment and materials shall be removed immediately upon completion of work.*

10. All nonimpacted surface waters within *50 feet of any permitted activities and within the project or right-of-way limits that are within 50 feet of any clearing, grading, or filling activities* shall be clearly flagged or marked for the life of the construction activity ~~within~~ *at that area location to preclude any unauthorized disturbances to these surface waters during construction.* The permittee shall notify all contractors that these marked areas are surface waters where no activities are to occur.

11. Temporary disturbances to ~~wetlands~~ surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preconstruction conditions *within 30 days of completing work, which include reestablishing preconstruction contours, and planted planting or seeded seeding* with appropriate wetland vegetation according to cover type (emergent, scrub-shrub or forested). The permittee shall take all appropriate measures to promote *and maintain* revegetation of temporarily disturbed wetland areas with wetland vegetation ~~by through~~ the second year post-disturbance. All ~~temporary fills must temporarily impacted streams shall be removed in restored to their entirety and the affected area returned to preexisting contours~~ *original elevation within 30 days following the construction at that stream segment, and the banks seeded or planted with native vegetation, and supplemented by erosion control grasses (crown vetch, orchard grass, or weeping lovegrass) when stabilizing steep slopes.*

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~~ *restored* within 30 days following removal of the stockpile, and ~~restored to the original vegetated state with native vegetation or a seed mix comprised of native vegetation and erosion control grasses (crown vetch, orchard grass, or weeping lovegrass) when stabilizing steep slopes.~~

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

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

15. The permittee shall conduct his activities in accordance with any time-of-year restrictions recommended by the Department of Game and Inland Fisheries or the Virginia Marine Resources Commission, *and shall ensure that all contractors are aware of any time-of-year restrictions imposed.*

16. ~~Immediately downstream of the construction area,~~ Water quality standards shall not be violated as a result of the construction activities *unless allowed by this permit authorization.*

17. Untreated stormwater runoff shall be prohibited from directly discharging into any surface waters *unless allowed by this permit authorization.* Appropriate best management practices shall be deemed suitable treatment prior to discharge into state waters.

18. *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 steam flow must be fully established before construction activities in the old stream channel can begin.*

D. Road crossings.

1. Access roads *and associated bridges or culverts* shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable ~~and to follow as near as possible 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 *to maintain a low flow channel. For multiple-celled culverts, only those cells situated within the limits of ordinary high water shall be countersunk.* Countersinking ~~is~~ shall not be required for existing pipes or culverts that are being maintained or extended.

3. Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or similar structures.

~~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 a manner that minimizes disturbance, and the area must be returned to its original contours and ~~stabilized restored within 30 days of completing work in the area~~, unless otherwise authorized by this VWP general permit.

2. Material resulting from trench excavation may be temporarily sidecast into wetlands, not to exceed 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.

3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect.). *For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.*

F. ~~Bank stabilization~~ Stream modification and stream bank protection.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

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

4. All *stream* bank ~~erosion control~~ *protection* structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

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

6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

7. All No material removed from the stream ~~substrate bottom~~ shall be disposed of in an ~~approved upland area~~ *surface waters*.

Part II. Mitigation Compensation, Monitoring, and Reporting.

A. ~~Compensatory mitigation~~ *Compensation*.

1. The permittee shall provide appropriate and practicable ~~compensatory mitigation~~ *compensation* for all impacts meeting the conditions outlined in this VWP general permit.

2. The types of ~~compensatory mitigation~~ *compensation* 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.

3. *For wetlands*, compensation may incorporate preservation of wetlands or ~~streams or~~ preservation or restoration of upland buffers adjacent to state waters when utilized in conjunction with creation, restoration or mitigation bank credits. *For other surface waters, compensation may incorporate preservation or enhancement of stream channels, or preservation, restoration or enhancement of adjacent riparian buffers.*

~~4-~~ 4. The site or sites depicted in the conceptual ~~compensatory mitigation~~ *compensation* plan submitted with the ~~registration statement, application~~ shall constitute the ~~compensatory mitigation~~ *compensation* plan for the approved project. *A site change will require a modification to the authorization.*

~~2-~~ 5. For compensation involving the purchase or use of mitigation bank credits, the permittee shall ~~submit not initiate work in permitted impact areas until~~ documentation ~~within 60 days of VWP general permit authorization that the USACE has debited the required mitigation credits from the mitigation bank ledger of the mitigation bank credit purchase has been submitted to and received by DEQ.~~

6. For projects proposing a contribution to an in-lieu fee fund, the permittee shall ~~submit not initiate work in permitted impact areas until~~ documentation ~~within 60 days of VWP general permit authorization that the fund contribution has been received of the in-lieu fee fund contribution has been submitted to and received by DEQ.~~

~~3-~~ 7. All aspects of the ~~compensatory mitigation~~ *compensation* plan shall be finalized, submitted and approved by the board prior to any construction activity in permitted impact areas. The board shall review and provide written comments on the plan within 30 days of receipt or it shall be deemed approved. The final ~~compensatory mitigation~~ *compensation* plan as approved by the board shall be an enforceable requirement of this VWP general permit *authorization*. Any deviations from the approved plan must be submitted and approved in advance by the board.

~~a-~~ 8. The final ~~compensatory mitigation~~ *wetlands compensation* plan shall include: ~~narrative description of the plan including~~

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- ~~a. The goals and objectives, site of the plan in terms of replacement of wetland acreage and functions, by wetland type;~~
- ~~b. Location, map, including latitude and longitude (to the nearest second) at the center of the site;~~
- ~~c. Summary of the type and acreage of the existing wetland impacts anticipated during the construction of the compensation site and proposed compensation for these impacts;~~
- ~~d. Grading plan with existing and proposed grade, elevations at one-foot or less contours;~~
- ~~e. Schedule for compensatory mitigation compensation site construction, including sequence of events with estimated dates;~~
- ~~source of hydrology and f. Hydrologic analysis, including a water budget based on expected monthly inputs and outputs that will project water level elevations for a typical year, a dry year, and a wet year; ;~~
- ~~plant species, g. Groundwater elevation data for the site, or the proposed location of groundwater monitoring wells to collect these data, and groundwater data for reference wetlands, if applicable;~~
- ~~h. Design of water control structures;~~
- ~~i. Planting scheme and schedule, indicating expected plant species, zonation, planting schedule, and acreage of each vegetation type proposed;~~
- ~~j. An abatement and control plan for undesirable plant species, including, at a minimum, the species listed on DCR's Invasive Alien Plant Species of Virginia list, and including procedures to notify DEQ of any undesirable plant species occurrences, methods of removal, and successful control;~~
- ~~k. Erosion and sedimentation control plan;~~
- ~~l. A soil amendments, preparation and amendment plan addressing both topsoil and subsoil conditions;~~
- ~~all m. A discussion of any structures and features considered necessary for the success of the plan, site; and number and~~
- ~~n. A monitoring plan, including proposed success criteria, monitoring goals and methodologies, monitoring and reporting schedule, and the locations of photographic stations and ground water, monitoring wells. 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 within approximately 200 miles from the project site. , any sampling points, and reference wetlands;~~
- ~~o. Site access plan;~~
- ~~p. The location and composition of any buffers; and~~
- ~~q. The mechanism for protection of the compensation areas.~~

- 9. The final stream compensation plan shall include:
 - a. The goals and objectives of the compensation plan in terms of replacement of stream functions and values, and linear feet and acreage of surface waters;
 - b. A location map, including latitude and longitude (to the nearest second) at the center of the site;
 - c. An evaluation and discussion of existing conditions on the proposed compensation stream, including the identification of functional and physical deficiencies for which the restorative measures are proposed, and summary of geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth ratio, sinuosity, slope, substrate, etc.);
 - d. The identification of existing stream type being impacted and proposed stream type for compensation purposes;
 - e. Detailed design information for the proposed restorative measures, including geomorphological measurements, and reference reach information as appropriate;
 - f. Riparian buffer plantings, including planting scheme, species, buffer width;
 - g. Livestock access limiting measures;
 - h. A site access plan;
 - i. An erosion and sedimentation control plan, if appropriate;
 - j. A monitoring and control plan for undesirable plant species, if appropriate, including, at a minimum, the species listed on DCR's Invasive Alien Plant Species of Virginia list, and including procedures to notify DEQ of any undesirable plant species occurrences, methods for removal and successful control, and report the success of the removal efforts;
 - k. A schedule for compensation site construction including projected start date, sequence of events with projected dates, and projected completion date;
 - l. A monitoring plan, including a monitoring and reporting schedule; monitoring design and methodologies to evaluate the success of the proposed compensation measures, allowing comparison from year to year; proposed success criteria for appropriate compensation measures; proposed monitoring photo points; monitoring and reporting schedule; location of all monitoring stations including photo stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams;
 - m. The mechanism for protection of the compensation area.
- 10. For final wetland or stream compensation plans, rooted seedlings or cuttings shall be from areas within the same or adjacent USDA Plant Hardiness Zone or NRCS Land Resource Region as that of the project site.

11. For final wetland or stream compensation plans, any vegetation used shall be native species common to the area, shall be suitable for growth in local wetland conditions, and shall be from areas within the same or adjacent USDA Plant Hardiness Zone or NRCS Land Resource Region as that of the project site.

~~b. 12. The final compensatory mitigation wetland or stream compensation plan(s) shall include a mechanism for protection in perpetuity of the compensation site(s) to include all state waters (including compensatory mitigation areas and nonimpact state waters) within the project compensation site boundary in perpetuity. These areas or boundaries. Such protections shall be surveyed or platted in place 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 compensation area or nonimpact state water, with the exception of maintenance or corrective action measures authorized by the board. Unless specifically authorized by the board through the issuance of a VWP individual or general 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, or any equivalent instrument for government-owned lands. 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 or sites 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.~~

13. An as-built survey of the site, including spot elevations, shall be submitted to DEQ within 60 days of completion of grading, and shall be certified by a licensed land surveyor or a professional engineer.

~~5. 14. All work in permitted impact areas shall cease if compensatory mitigation compensation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by the board.~~

~~6. A site stabilization plan shall be provided for compensation sites involving land disturbance.~~

15. DEQ shall be notified in writing at least 10 days prior to the initiation of construction activities at the compensation site(s).

~~7. 16. Planting of woody plants shall occur when vegetation is normally dormant unless otherwise approved in the final mitigation plan wetland or stream compensation plan(s).~~

8- 17. Point sources of stormwater runoff shall be prohibited from entering any wetland ~~compensatory mitigation compensation~~ 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 or forebays.

~~9- 18. The success of the compensatory mitigation compensation 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 meeting the success criteria established in the approved final compensation plan.~~

40- 19. Wetland hydrology shall be considered established if depths to the seasonal high water table are equal to or less than 12 inches below ground surface for at least 12.5% of the region's killing frost-free growing season, as defined in the United States Department of Agriculture soil survey for the locality of the compensation site in all monitoring years or the NRCS WETS table, measured in consecutive days under normal rainfall typical precipitation conditions, and as defined in the water budget of the final mitigation compensation plan. For the purpose of this regulation, the growing season is defined as the period in which temperatures are expected to be above 28 degrees Fahrenheit in five out of 10 years, or the period during which the soil temperature in a wetland compensation site is greater than biological zero (five degrees Celsius) at a depth of 50 centimeters (19.6 inches), if such data is available.

44- 20. The wetland plant community shall be considered established according to the performance criteria specified in the final mitigation compensation plan and approved by the board. The proposed vegetation success criteria in the final compensation plan shall include the following:

a. Species composition shall reflect the desired plant community types stated in the final mitigation wetlands compensation plan by the end of the first growing season and shall be maintained through the last monitoring year of the VWP permit.

b. Species composition shall consist of greater than 50% facultative (FAC) or wetter (FACW or OBL) vegetation, as expressed by plant stem density or areal cover, by the end of the first growing season and shall be maintained through the last monitoring year .

~~12- 21. Noxious weeds Undesirable plant species shall be identified and controlled as described in the noxious weed undesirable plant species 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 board of any invasive species occurrences DEQ when undesirable plant species comprise greater than 5.0% of the vegetation by aerial coverage on wetland or stream compensation sites, including the methods of removal, and whether the methods are successful control.~~

13- 22. If the compensatory mitigation wetland or stream compensation area(s) fails fail to be established as viable

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wetlands meet the specified success criteria in a monitoring year (with the exception of the final monitoring year), the reasons for this failure shall be determined and a corrective action plan, (including proposed actions, a schedule, and monitoring plan shall be submitted to the board DEQ for approval prior to or with the next required or before that year's monitoring report. All problems shall be corrected by the permittee. The approved corrective action plan shall be implemented by the permittee in accordance with the approved schedule. Should significant changes be necessary to establish wetlands ensure success, the required monitoring plan cycle shall begin again, with monitoring year one being the year that the changes are complete, as confirmed by DEQ.

23. If all success criteria have not been met in the final monitoring year, or if the wetland or stream compensation site(s) have not met the stated restoration goals, monitoring shall be required for each consecutive year until two sequential, annual reports indicate that all criteria have been successfully satisfied and the site(s) have met the overall restoration goals (i.e., that corrective actions were successful). The reasons for this failure shall be determined and a corrective action plan (including proposed actions, a schedule, and a monitoring plan) shall be submitted with the monitoring report to DEQ for approval and implemented by the permittee in accordance with the approved schedule.

24. The surveyed wetland boundary for the compensatory mitigation compensation 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 at the end of the monitoring cycle. Data shall be submitted by November 30 of the final monitoring year.

25. Herbicides or algicides shall not be used in or immediately adjacent to the compensatory mitigation compensation site or sites without prior authorization by the board. All vegetation removal shall be done by manual means, unless authorized by the board DEQ in advance.

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 or extension must be made no less than 60 days prior to the expiration date of this VWP general permit authorization, at which time the board will determine if renewal of the VWP general permit authorization is necessary.

B. ~~Compensatory mitigation~~ Wetland compensation site monitoring.

1. ~~A post-grading~~ An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, including spot elevations, of shall be conducted for the entire compensation site or sites for wetland compensatory mitigation may including invert elevations for all water elevation control structures and spot elevations throughout the site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. Either type of survey shall be required depending upon the type

and size of the compensation site, and shall be conducted certified by a licensed land surveyor or by a registered professional engineer to conform to the design plans. The survey shall be submitted within 90 days of completing compensation site construction. Any changes or deviations in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

2. Photographs shall be taken at the compensatory mitigation compensation site or sites from the permanent markers identified in the final mitigation compensation plan, and established to ensure that the same locations and view directions at the site or sites are monitored in each monitoring period. These photographs shall be taken after the initial planting and in August or September at a time specified in the final compensation plan during every monitoring year.

3. ~~Compensatory mitigation~~ Compensation site monitoring for hydrology, soils, and hydrophytic vegetation shall begin at the first complete growing season (monitoring year one 1) following compensatory mitigation after wetland compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years 1, 2, and 3, and 5, unless otherwise approved by DEQ. In all cases, if all success criteria have not been met in the third fifth monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

4. The establishment of wetland hydrology shall be measured during the growing season. with the location and number of monitoring wells, and frequency of monitoring for each site, set forth in the final monitoring plan. All hydrology monitoring well data shall be accompanied by precipitation data, including rainfall amounts, either from on site, or from the closest weather station. 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 following DEQ approval. After a period of three monitoring years, the permittee may request that hydrology monitoring be discontinued, providing that adequate hydrology has been established and maintained. Hydrology monitoring shall not be discontinued without written approval from DEQ.

5. The presence of hydric soils or soils under hydric conditions shall be evaluated in accordance with the final mitigation compensation plan.

6. The establishment of wetland vegetation shall be in accordance with the final mitigation compensation plan. Monitoring shall take place in August or , September, or October during the growing season of each monitoring year, unless authorized in the monitoring plan.

7. The presence of noxious undesirable plant species shall be documented.

8. All wetland compensation monitoring reports shall be submitted by November 30 of the monitoring year. The reports shall include, as applicable, the following:

a. General description of the site including a site location map identifying photo stations, vegetative and soil monitoring stations, monitoring wells, and wetland zones.

b. Summary of activities completed during the monitoring year.

c. Description of monitoring methods.

d. Analysis of all hydrology information, including monitoring well data, precipitation data, and gauging data from streams or other open water areas, as set forth in the final compensation plan.

e. Evaluation of hydric soils or soils under hydric conditions, as appropriate.

f. Analysis of all vegetative community information, including woody and herbaceous species, both planted and volunteers, as set forth in the final compensation plan.

g. Photographs labeled with the permit number, the name of the compensation site, the photo station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. This information shall be provided as a separate attachment to each photograph, if necessary. Photographs taken after the initial planting shall be included in the first monitoring report after planting is complete.

h. Discussion of wildlife or signs of wildlife observed at the compensation site.

i. Comparison of site conditions from the previous monitoring year and reference site, if applicable.

j. Discussion of corrective measures or maintenance activities to control undesirable species, to repair any damaged water control device, or to replace any damaged planted vegetation.

k. Corrective action plan, which includes proposed actions, a schedule, and monitoring plan.

C. Stream ~~mitigation~~ compensation, restoration and monitoring.

1. ~~Stream mitigation~~ Any riparian buffer restoration activities shall be performed detailed in accordance with the final ~~mitigation~~ compensation plan and subsequent ~~submittals~~, as approved by the board shall include, as appropriate, the planting of a variety of native species currently growing in the site area, including appropriate seed mixtures and woody species that are bare root, balled, or burlapped. A minimum buffer width of 50 feet, measured from the top of the stream bank at bankfull elevation landward on both sides of the stream, shall be required where practical.

2. The installation of root wads, vanes, and other instream structures, shaping of the stream bank slopes, banks, and channel relocation shall be stabilized to reduce stream bank erosion, where completed in the dry whenever practicable.

3. Livestock access to the stream and designated riparian buffer shall be limited to the greatest extent practicable.

4. Heavy equipment is authorized for use within the stream channel during restoration activities when site conditions prohibit access from the streambank. These activities shall be conducted in the dry or during low flow conditions, when practicable.

5. Photographs shall be taken at the compensation site from the vicinity of the permanent photo stations identified in the final compensation plan. The photograph orientation shall remain constant during all monitoring events. At a minimum, photographs shall be taken from the center of the stream, facing downstream, with a sufficient number of photographs to view the entire length of the restoration site. Photographs shall document the completed restoration conditions. Photographs shall be taken prior to site activities, during instream and riparian compensation construction activities, within one week of completion of activities, and during at least one day of each monitoring year to depict restored conditions.

6. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. The survey shall be certified by the licensed surveyor or by a registered, professional engineer to conform to the design plans. The survey shall be submitted within 90 days of completing compensation site construction. Any changes or deviations in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

~~3- 7. All stream mitigation compensation monitoring reports shall be conducted in accordance with the final mitigation plan approved by the board. All monitoring reports shall be submitted by November 30 of the monitoring year. Monitoring~~ The reports shall include, as applicable, the following:

a. General description of the site including a site location map identifying photo stations and monitoring stations.

b. Summary of activities completed during the monitoring year.

c. Description of monitoring methods.

d. An evaluation and discussion of the monitoring results in relation to the success criteria and overall goals of compensation.

~~a- e. Photographs sufficient to document installation of specific structures and vegetative plantings or where the stream channel banks are reshaped. Permanent markers shall be established to ensure that the same locations and view directions at the site are photographed in each monitoring period labeled with the permit number, the name of the compensation site, the photo station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. Photographs taken prior to compensation site construction activities, during instream and riparian restoration activities, and within one week of completion of activities shall be included in the first monitoring report.~~

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~~b. Discussion of the establishment of vegetation, if applicable.~~

~~e. Any~~ *f. A discussion of alterations, maintenance, or major storm events resulting in significant change in stream profile or cross section, and corrective actions conducted at the stream mitigation compensation site.*

g. Documentation of undesirable plant species and summary of abatement and control measures.

h. A summary of wildlife or signs of wildlife observed at the compensation site.

i. Comparison of site conditions from the previous monitoring year and reference site, if applicable.

j. A corrective action plan, which includes proposed actions, a schedule and monitoring plan.

D. Construction monitoring.

~~1. Photo stations shall be established to document the Construction aspects of project activities within impact areas as authorized by this permit that are within impact areas shall be monitored through photographic documentation. Photographs should~~ *The photographic monitoring shall document the preconstruction conditions, activities during construction, and post-construction conditions within one week after completion of construction. Photographic monitoring shall consist of one of the following options:*

a. Photographs shall be taken during construction at the end of the first, second and ~~twelfth~~ third months of construction, and then semi-annually for the remainder of the construction project. ~~Photographs are not necessary, except during periods of no activity within impact areas; or~~

b. An ortho-rectified photograph shall be taken prior to construction, and annually thereafter until all impacts are taken, and shall clearly show the delineated surface waters and authorized impact areas.

~~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. As part of construction monitoring, photographs taken at the photo stations shall document site activities and conditions, which may include installation and maintenance of erosion and sediment controls; condition of adjacent nonimpact surface waters; flagged nonimpact surface waters; construction access and staging areas; filling, excavation, and dredging activities; culvert installation; dredge disposal; and site stabilization, grading, and associated restoration activities. With the exception of the preconstruction photographs, photographs at an individual impact site shall not be required until construction activities are initiated at that site. With the exception of the post-construction photographs, photographs at an individual impact site shall not be required once the site is stabilized following completion of construction at that site.~~

~~3. Stream bottom elevations at road crossings shall be measured at the inlet and outlet of the proposed structure 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. Each photograph shall be labeled to include the following information: permit number, impact area and photo station number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.~~

4. Monitoring of water quality parameters shall be conducted during ~~rerouting of the live~~ permanent relocation of perennial 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 30 minutes for at least three readings two hours at each station prior to opening the new channels; and immediately before opening new channels.

~~c. After opening the new channel,~~ Temperature, pH and D.O. readings shall be taken ~~once~~ after opening the channels and every half hour 30 minutes for at least three readings hours at each station within 24 hours of opening the new channel.

5. *The permittee shall report violations of water quality standards to DEQ in accordance with the procedures in Part II E. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.*

E. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate Department of Environmental Quality (DEQ) office. The VWP general permit authorization number shall be included on all correspondence.

~~2. The board~~ DEQ shall be notified in writing by certified letter at least 10 days prior to the start of construction activities at the first permitted site authorized by this VWP general permit authorization so that inspections of the project can be planned, if deemed necessary by DEQ. The notification shall include ~~identification of the impact area at which work will occur and a~~ projected schedule for ~~completing initiation and completion of work at each permitted impact area.~~

3. ~~After construction begins,~~ Construction monitoring reports shall be submitted to the board within 30 days of each DEQ not later than the 10th day of the month following the month in which the monitoring event specified in Part II D takes place. The reports shall include, at a minimum, the following, as appropriate:

a. For each permitted impact area, a written statement regarding when narrative stating whether work started in

~~the identified impact area, where work was performed, what during the monitoring period. If work was performed, a description of the work performed, when the work was initiated, and what work was completed the expected date of completion.~~

b. Properly labeled photographs (to include date and time, name of the person taking the photograph, a brief description, 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.). *The post-construction photographs shall be submitted within 30 days of documenting post-construction conditions. The first construction monitoring report shall include the photographs taken at each impact site prior to initiation of construction in any permitted impact area. Written notification and photographs demonstrating that all temporarily disturbed wetland and stream areas have been restored in compliance with the permit conditions shall be submitted within 30 days of restoration.*

c. *Summary of activities conducted to comply with the permit conditions.*

d. *Summary of permit noncompliance events or problems encountered, subsequent notifications, and corrective actions.*

e. *Summary of anticipated work to be completed during the next monitoring period, and an estimated date of construction completion at all impact areas.*

f. *Labeled site map depicting all impact areas and photo stations.*

4. *DEQ shall be notified in writing within 30 days following the completion of all activities in all permitted impact areas authorized under this permit.*

5. *DEQ shall be notified in writing at least 10 days prior to the initiation of activities at the compensation site. The notification shall include a projected schedule of activities and construction completion.*

4-6. All ~~compensatory mitigation compensation~~ monitoring reports shall be submitted annually by November 30, with the exception of the last year of authorization, in which case the report shall be submitted at least 60 days prior to expiration of authorization under the general permit. Any alterations and maintenance conducted on the ~~compensatory mitigation compensation~~ sites shall be reported. *Invasive Undesirable plant* species occurrences and control of these occurrences shall also be reported to the board DEQ.

~~5. The permittee shall submit a notice of termination within 30 days of final completion in accordance with 9 VAC 25-670-90.~~

6-7. The permittee shall notify the board 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 the board DEQ.

7-8. 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, the appropriate DEQ regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

8-9. Violations of state water quality standards shall be reported within 24 hours to the appropriate DEQ office.

9-10. 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 General Permits.

A. Duty to comply. The permittee shall comply with all conditions of the VWP general 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 general permit noncompliance is a violation of the Clean Water Act and State Water Control Law, and is grounds for enforcement action, VWP general permit authorization termination, *for cause, VWP general permit authorization revocation, or denial of a renewal application continuation of coverage request.*

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 authorization may be reopened to modify its conditions when the circumstances on which the previous VWP general permit authorization 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 general permit authorization was issued and, thereby, constitute cause for VWP general permit authorization 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

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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 authorization are severable.

G. Right of entry. The permittee shall allow the board or its agents, 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 general permit authorization. This VWP general permit authorization 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 new permittee containing a specific date of transfer of VWP general permit authorization responsibility, coverage and liability to the new permittee, or that the existing permittee 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 new permittee of its intent to modify or revoke and reissue the VWP general permit authorization ~~within the 30-day time period~~ 15 days.

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

I. Notice of planned change. Authorization under this VWP general permit may be modified subsequent to issuance if: (i) the permittee determines that additional *permanent* wetland ~~and~~ or stream impacts are necessary, provided that the cumulative increase in acreage of wetland impacts is not greater than 1/4 acre and the cumulative increase in stream

impacts is not greater than 50 linear feet, and provided that the additional impacts are fully ~~mitigated~~ compensated; (ii) the project results in less wetland or stream impacts, in which case, compensation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial authorization compensation goals; (iii) there is a change in the project plans that does not result in a change in project impacts; (iv) there is a change in the mitigation bank at which credits are purchased, provided that the same amount of credits are purchased and all criteria for use are met, as detailed in 9 VAC 25-210-115; or (v) ~~typographical errors need to be corrected~~. A notice of planned change is not required if the project results in additional temporary impacts to surface waters, provided that DEQ is notified in writing, the additional temporary impacts are restored to preexisting conditions in accordance with Part I C 11 of this general permit, and the additional temporary impacts do not exceed the general permit threshold for use. The permittee shall notify the board in advance of the planned change, and the ~~modification~~ planned change request will be reviewed according to all provisions of this regulation.

J. VWP general permit authorization termination *for cause*. This VWP general permit authorization is subject to termination *for cause* by the board after public notice and opportunity for a hearing. ~~Causes~~ Reasons for termination *for cause* are as follows:

1. Noncompliance by the permittee with any condition of the VWP general permit *authorization*;
2. The permittee's failure in the application or during the VWP general permit authorization 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 authorization ~~modification~~ planned change or termination *for cause*.

K. VWP general permit authorization termination by consent. This VWP general permit authorization may be terminated by consent when all permitted activities requiring notification under 9 VAC 25-690-50 A 1 have been completed, when the authorized impacts do not occur, or when a planned change occurs that involves substituting a specified, approved mitigation bank or banks with another specified, approved mitigation bank. The permittee shall submit a request for termination by consent within 30 days of project completion or project cancellation. The director may accept this termination of authorization on behalf of the board. The request for termination by consent shall contain the following information:

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

a. For project completion:

"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 surface waters in accordance with the VWP general permit, and that performing activities in surface waters 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 authorization."

b. For project cancellation:

"I certify under penalty of law that the activities authorized by this VWP general permit will not occur. I understand that by submitting this notice of termination, that I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters 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 authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."

~~K~~-L. 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~~-M. 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~~-N. 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.

~~N~~-O. Duty to provide information.

1. The permittee shall furnish to the board 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.

~~O~~-P. 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. 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, as appropriate:

- 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 and time 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;
- f. The results of such analyses; and
- g. Chain of custody documentation.

~~P~~-Q. 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.

NOTICE: The forms used in administering 9 VAC 25-670, 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

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Corporation Commission and Other Utility Line Activities, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Department of Environmental Quality Water Division Permit Application Fee (eff. ~~8/04~~ 7/04).

Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (rev. ~~10/02~~ 4/04).

~~Virginia Water Protection General Permit Registration Statement (eff. 8/01).~~

Virginia Department of Transportation Inter-Agency Coordination Meeting Joint Permit Application (eff. 10/02).

VA.R. Doc. No. R04-101; Filed June 23, 2004, 8:00 a.m.

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Title of Regulation: 9 VAC 25-680. **Virginia Water Protection General Permit for Linear Transportation Projects (amending 9 VAC 25-680-10 through 9 VAC 25-680-100).**

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia and § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Public Hearing Date: August 26, 2004 - 3 p.m.

Public comments may be submitted until 5 p.m. on September 10, 2004.

(See Calendar of Events section for additional information)

Agency Contact: Ellen Gilinsky, Virginia Water Protection Permit Program Manager, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4375, FAX (804) 698-4032, or e-mail egilinsky@deq.virginia.gov.

Summary:

The proposed amendments correct several administrative procedures, clarify application and permitting requirements, and allow for a more efficient application review process. Since implementation of this regulation in October 2001, it has become evident that these minor corrections are needed to improve applications for coverage, timeframes for issuance of authorizations, and coordination with the U.S. Army Corps of Engineers State Program General Permit (SPGP-01). No change to the upper thresholds of coverage under this regulation is being proposed.

9 VAC 25-680-10. 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 otherwise indicated below.

"Bank protection" means measures 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.

"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.

"Conversion" means changing one type of surface water to another type of surface water, either permanently or temporarily. The permanent conversion of a forested wetland to an emergent wetland is considered to be a permanent impact for the purposes of this regulation.

"Cross-sectional drawing" 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.

"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 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, as specified in § 62.1-44.15:5 D of the Code of Virginia.

"Independent utility" means a test to determine what constitutes a single and complete project. 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.

"Linear transportation project" means a project for 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.

"Less than one-half of an acre" means 0.00 to 0.49 acre (0 to 21,779 square feet).

"Perennial stream" means a ~~stream~~ well-defined channel that ~~has flowing~~ contains water year round in ~~in~~ during a typical year of normal rainfall. ~~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. Generally, the water table is located above the streambed for most of the year and groundwater is the primary source for stream flow. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.~~

"Permanent impacts" are those impacts to surface waters, including wetlands, that cause a permanent alteration of the physical, chemical, or biological properties of the surface waters, or of the functions and values of a wetland.

"Person" means an individual, corporation, partnership, association, government body, municipal corporation, or any other legal entity.

"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~~ a person and which has independent utility. For linear projects, the "single and complete project" (i.e., a single and complete crossing) ~~will~~ may but does not always apply to each crossing of a separate surface water (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. Phases of a project that have independent public and economic utility may each be considered single and complete.~~

"State programmatic general permit" means a general permit issued by the Department of the Army in accordance with 33 CFR Part 32S that is founded on a state program and is designed to avoid duplication between the federal and state programs.

~~"Temporary impact impacts" means an are those impact caused by activities in impacts to surface waters, including wetlands, that do not cause a permanent alteration of the physical, chemical, or biological properties of the surface waters water, including wetlands, in which the ground is restored to its preconstruction contours and elevations, without significantly affecting wetland or of the functions and values of a wetland. Temporary impacts include activities in~~

which the ground is restored to its preconstruction contours and elevations, such that previous functions and values are restored.

"Up to 300 linear feet of stream channel" means 0.00 to 300.00 linear feet of any stream, rounded to the second decimal place, as measured along the center of the main channel of the stream segment.

"Up to 500 linear feet of perennial stream channel" means 0.00 to 500.00 linear feet of perennial stream, rounded to the second decimal place, as measured along the center of the main channel of the stream segment.

"Up to 1500 linear feet of nonperennial stream channel" means 0.00 to 1500.00 linear feet of nonperennial stream, rounded to the second decimal place, as measured along the center of the main channel of the stream segment.

"Up to one acre" means 0.00 to 1.00 acre (0 to 43,560 square feet).

~~"Up to one-tenth of an acre" means 0.00 to 0.10 acre, rounded to the second decimal place (0 to 4,356 square feet).~~

~~"Up to two acres" means 0.00 to 2.00 acres, rounded to the second decimal place (0 to 87,120 square feet).~~

"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 surface water 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 VWP General Permit Number WP3 under the VWP permit *program* regulation to govern impacts related to the construction and maintenance of Virginia Department of Transportation (VDOT) 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 his designee 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. This VWP general permit regulation will become effective on October 1, 2001, and will expire on October 1, 2006, for general linear transportation projects and will become effective August 1, 2001, and will expire August 1, 2006, for linear transportation projects of the Virginia Department of Transportation.

D. Authorization to impact surface waters under this VWP general permit is effective upon compliance with all the provisions of 9 VAC 25-680-30. Notwithstanding the expiration date of this general permit regulation, authorization to impact surface waters under this VWP general permit will continue for a maximum of five years.

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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 nontidal surface waters including up to 500 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel, 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 25-20-40 ~~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 25-210-40 ~~et seq.~~) for the proposed project impacts. The applicant, at his discretion, may seek a VWP individual permit, or coverage under another applicable VWP general permit, in lieu of coverage under this VWP general permit.

2. Impacts result from a single and complete project, including all attendant features, both temporary and permanent.

a. 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 single and complete projects), the board may at its discretion require a VWP individual permit.

b. 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. The stream impact criterion applies to all components of the project, including any structures and stream channel manipulations. ~~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.

5. ~~Compensatory mitigation~~ *Compensation* 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. *For wetlands* compensation may incorporate preservation of wetlands, or preservation or restoration of upland buffers adjacent to surface waters, when utilized in conjunction with creation, restoration or mitigation bank credits. *For other surface waters, compensation may incorporate preservation and enhancement of stream channels, or preservation or restoration and enhancement of adjacent riparian buffers.*

B. Activities that may be authorized under this VWP general permit include the construction, expansion, modification or improvement of linear transportation crossings (e.g., highways, railways, trails, bicycle and pedestrian paths, and airport runways and taxiways, including all attendant features both temporary and permanent).

C. 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. Any

person claiming this waiver bears the burden to demonstrate that he qualifies for the waiver.

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. In issuing this VWP general permit, the board has not taken into consideration the structural stability of the proposed structure or structures.

F. Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of Engineers (USACE), and for which the board has issued § 401 certification existing as of the effective date of this regulation, shall constitute coverage under this VWP general permit unless a state programmatic general permit is approved for the covered activity or impact. Notwithstanding any other provision, activities authorized under a nationwide or regional permit promulgated by the USACE and certified by the board in accordance with 9 VAC 25-210-130 do not need to obtain coverage under this VWP general permit unless a state programmatic general permit is approved for the covered activity or impact.

9 VAC 25-680-40. Exceptions to coverage.

A. Authorization for coverage under this VWP general permit will not apply in the following areas:

1. Wetlands 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 shall be based upon either basal area or percent areal cover *in the area of impact*.

2. Surface waters ~~with~~ *where the proposed activity will impact* federal or state listed or proposed threatened or endangered species or proposed or designated critical habitat.

B. Authorization for coverage under this VWP general permit cannot be used in combination with authorizations for coverage under other VWP *general* permits *in order* to impact greater than two acres of nontidal surface waters ~~including~~ , more than 500 linear feet of perennial stream channel, or more than 1,500 linear feet of nonperennial stream channel. More than one authorization for coverage under this VWP general permit for a single and complete project is prohibited, except when the cumulative impact to surface waters does not exceed the ~~above mentioned~~ *limits specified here*.

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 or regulations, nor shall it contravene applicable Water Quality Standards (9 VAC 25-260-5 ~~et seq.~~).

E. The board shall deny coverage under this VWP general permit to any applicant conducting activities that 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 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, *that significantly* increase flooding, or *that* 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. 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 or the work is performed in the dry;
6. Return flow discharges from dredge disposal sites;
7. Overboard disposal of dredge materials;
8. Dredging in marinas;
9. Dredging of shellfish areas, submerged aquatic vegetation beds and other highly productive areas;
10. Federal navigation projects;
11. The taking of threatened or endangered species in accordance with the following:
 - a. Pursuant to § 29.1-564 of the Code of Virginia: "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 United States 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 25-680-50. Notification.

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

1. An application for *authorization for proposed permanent wetland* impacts greater than one-tenth of an acre ~~of surface waters~~ or for *proposed permanent stream channel* impacts greater than 300 linear feet shall be submitted via a ~~registration statement~~ *an application* that includes all information pursuant to 9 VAC 25-680-60 B.

2. Proposed, *permanent surface water* impacts up to one-tenth of an acre, *which may include up to 300 linear feet of stream channel*, shall be reported via a ~~registration statement~~ *an application* that includes only the following information: subdivisions 1 through 8, 13, 15 and 20 of 9 VAC 25-680-60 B.

B. A Joint Permit Application (JPA) or Virginia Department of Transportation Interagency Coordination Meeting Joint Permit Application (VDOT IACM JPA) ~~may~~ *shall* serve as the ~~registration statement provided that all information required pursuant to 9 VAC 25-680-60 is included and that the first page of the form is clearly marked indicating the intent to have the form serve as the registration statement for this VWP general permit~~ *an application under this regulation*.

C. The board will determine whether the proposed activity requires coordination with the United States Fish and Wildlife Service, the Virginia Department of Conservation and Recreation, the Virginia Department of Agriculture and Consumer Services and the Virginia Department of Game and Inland Fisheries regarding the presence of any federal or state proposed or listed threatened and endangered species or proposed or designated critical habitat. Based upon consultation with these agencies, the board may deny coverage under this general permit.

9 VAC 25-680-60. Registration statement Application.

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

1. The applicant shall file a complete ~~registration statement application~~, as described in 9 VAC 25-680-50, for a VWP General Permit Number WP3 for impacts to surface waters from linear transportation projects, 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 is advised to 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.~~ The VDOT may use its monthly IACM process for submitting ~~registration statements~~ *applications*.

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

1. The applicant's name, mailing address, *and* telephone number and, if applicable, fax number;
2. The authorized agent's (if applicable) name, mailing address, telephone number and, if applicable, fax number *and electronic mail address*;
3. The existing VWP permit number (if applicable);
4. The name of the project, *narrative description of project purpose of project*, and a description of the *proposed activity in surface waters*;

Proposed Regulations

5. The name of the water body or water bodies 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, *including the project boundary*. The map ~~should~~ *shall* be of sufficient detail such that the site may be easily located for site inspection;
10. ~~The appropriate appendices from the JPA (Reserved);~~
11. Project plan view. All plan view sketches ~~should~~ *shall* include, at a minimum, north arrow, scale, existing structures, existing and proposed contours (if available), limit of surface water areas, direction of flow, ordinary high water mark, impact limits, location and dimension of all proposed structures in impact areas. Cross-sectional or *profile* sketches, *as appropriate*, with the above information, ~~may~~ *shall* be required for certain projects as appropriate to demonstrate minimization of impacts;
12. Dredge material management plan (for dredging projects only) including plan and cross-section view drawings of the disposal or dewatering area, the dimensions and design of the proposed berm and spillway, and the capacity of the proposed disposal or dewatering site;
13. Surface water impact information (wetlands, streams, or open water) for both permanent and temporary impacts, including a description of the impact, and the *areal extent, location (by latitude and longitude) and type of the impact (area of wetland in square feet, linear feet, or acres; area of stream, length of stream, and average width)*. Wetland impacts ~~should~~ *shall* be quantified according to their Cowardin classification or similar terminology;
14. Functional values assessment for impacts to wetlands greater than one acre. ~~The functional assessment~~, *which shall consist of a narrative description summary of field observations of the existing wetland functions and values and an assessment of the impact that the project will have on these functions and values. The following parameters/functions shall be directly addressed: surrounding land uses and cover types; nutrient, sediment, and pollutant trapping; flood control and flood storage capacity; erosion control and shoreline stabilization; groundwater recharge and discharge; aquatic and wildlife habitat; and unique or critical habitats;*
15. A description of the *specific on-site* measures considered or 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 25-240-115-A;~~
16. A ~~description of conceptual plan for the intended compensation for unavoidable impacts, including:~~

a. A— ~~For wetlands, the conceptual compensatory mitigation compensation 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 detailed location map (e.g., a United States Geologic Survey topographic quadrangle map), including latitude and longitude (to the nearest second) at the center of the site; a description of the surrounding land use; a hydrologic analysis, including a draft water budget based on expected monthly inputs and outputs which will project water level elevations for a typical year, a dry year, and a wet year; groundwater elevation data, if available, or the proposed location of groundwater monitoring wells to collect these data; wetland delineation confirmation, data sheets, and maps a map for existing wetland surface water areas on the proposed site or sites, including a wetland delineation confirmation for any existing wetlands; a conceptual grading plan; a conceptual planting scheme, including suggested plant species, and zonation and acreage of each vegetation type proposed; and a proposed soil preparation and amendment plan addressing both description of existing soils, including general information on topsoil and subsoil conditions; and a draft design of any water control structures, permeability, and the need for soil amendments.~~

b. ~~For streams, the conceptual compensation plan shall include: the goals and objectives in terms of water quality benefits and replacement of stream functions; a detailed location map (e.g., a United States Geologic Survey topographic quadrangle map), including the latitude and longitude and the hydrologic unit code (HUC) 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 proposed restoration measures to be employed, including channel measurements, proposed design flows and types of instream structures; and reference stream data, if available.~~

~~b-~~ c. Applicants proposing to compensate off-site, including purchase or use of mitigation bank credits, or contribution to an in-lieu fee fund shall ~~first discuss~~ *submit an evaluation of the feasibility of on-site compensatory mitigation compensation*. If on-site ~~compensatory mitigation compensation~~ *compensation* is practicable, applicants ~~must~~ *shall* provide documentation as to why the proposed off-site ~~compensatory mitigation compensation~~ *compensation* is ecologically preferable. The evaluation ~~should~~ *shall* include, but not be limited to, the following assessment criteria: water quality benefits, hydrologic source, hydrologic regime, watershed, surface water functions and values, vegetation type, soils, impact acreage, distance from impacts, timing of compensation versus impacts, acquisition, constructability, and cost.

e. ~~Any applicant proposing compensation 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 applicant proposing compensation plan proposing to include involving contributions to an in-lieu fee fund shall include proof state such as their conceptual compensation plan. Written documentation of the willingness of the entity to accept the donation and documentation of how the amount of the contribution was calculated shall be submitted prior to issuance of this general permit authorization.~~

e. ~~Any applicant proposing compensation plan proposing involving the purchase or use of mitigation banking credits shall include as their conceptual compensation plan:~~

- (1) ~~The name of the proposed mitigation bank and the HUC in which it is located;~~
- (2) ~~The number of credits proposed to be purchased or used; and~~
- (3) ~~Certification from the bank owner of the availability of credits;~~

f. ~~The final compensatory mitigation plan must include complete information on all components of the conceptual compensatory mitigation plan detailed in subdivision 16-a of this subsection, 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 or sites 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 boundary;~~

17. 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~~ shall be noted according to their Cowardin classification or similar terminology. A copy of the USACE delineation confirmation, or other correspondence from the USACE indicating their approval of the wetland boundary, 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. The delineation map ~~should~~ shall also include the location of ~~all impacted and nonimpacted~~ streams, open water and other surface waters on the site. The approximate limits of any Chesapeake Bay Resource Protection Areas (RPAs) ~~should~~ shall be shown on the map, as other 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. The appropriate application processing fee for a VWP permit (9 VAC 25-20-10 et seq.); and

20. 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 application 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 an application by the appropriate DEQ office, the board has 15 days to review the application and either determine the information requested in subsection B of this section is complete or inform the applicant that additional information is required to make the application complete. Coverage under this VWP general permit shall be approved, approved with conditions, or denied within 45 days of receipt of a complete application. If the board fails to act within 45 days on a complete application, coverage under this VWP general permit shall be deemed approved.~~

1. In evaluating the ~~registration statement application~~, 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 authorization under this VWP general permit. However, these conditions must be consistent with the VWP permit regulation ~~and may not override or contradict the existing conditions of this VWP general permit related to impacts and mitigation.~~

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

Proposed Regulations

Such application with new information shall be deemed a new application.

9 VAC 25-680-70. Mitigation Compensation.

A. For the purposes of this VWP general permit, the board may 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. ~~Compensation may incorporate Preservation of wetlands or streams, or preservation or restoration of upland buffers adjacent to state waters, may only be applied toward wetland compensation when utilized in conjunction with creation, restoration or mitigation bank credits one or more of the above-mentioned compensation options. Preservation or enhancement of stream channels, or preservation, restoration, or enhancement of adjacent riparian buffers, may be applied toward stream compensation as appropriate.~~

B. ~~Compensatory mitigation~~ Compensation 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.
3. Impacts to emergent wetlands shall be mitigated at 1:1.

C. ~~Compensatory mitigation~~ Compensation for unavoidable impacts to streams shall be provided at a 1:1 replacement to loss ratio via and shall include, as practicable and appropriate, stream relocation, restoration, riparian buffer establishment, or restoration or enhancement, or preservation or enhancement of stream corridors. The purchase of stream mitigation bank credits or contribution to an in-lieu fee fund that includes stream restoration, when feasible watershed enhancements is also acceptable. The amount of required compensation will be determined based on an analysis of stream impacts utilizing a scientifically based stream impact assessment methodology approved by the board.

D. Compensation for open water impacts may be required at a 1:1 replacement to impact ratio, as appropriate, to protect state waters and fish and wildlife resources from significant impairment.

E. Compensation for conversion impacts shall be required at a 1:1 replacement to impact ratio when such conversion results in a permanent alteration of the functions and values of the surface water.

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

~~F. G.~~ G. The use of mitigation banks for compensating project impacts shall be deemed appropriate if ~~In order for the purchase of bank credits to be an acceptable form of compensation, the bank is shall be operating in accordance with the provisions of § 62.1- 44.15:5 E of the Code of Virginia and 9 VAC 25-210-115 F, and. The applicant provides verification shall provide proof of purchase or debit to the~~

~~board of purchase or debiting of the required amount of credits DEQ.~~

9 VAC 25-680-80. Notice of planned changes.

A. Authorization under this VWP general permit may be modified subsequent to issuance if the permittee determines that additional *permanent* wetland and or stream impacts are necessary, provided that the cumulative increase in acreage of wetland impacts is not greater than 1/4 acre and the cumulative increase in stream impacts is not greater than 50 linear feet, and provided that the additional impacts are fully mitigated. *In no case can this authorization be modified to exceed the general permit threshold for use.*

B. Authorization under this VWP general permit may be modified after issuance if the project results in less wetland or stream impacts. Compensation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial authorization compensation goals.

C. Authorization under this VWP general permit may be modified after issuance for a change in project plans that does not result in a change in project impacts.

D. Authorization under the VWP general permit may be modified for a change to the mitigation bank at which credits are purchased, provided that the same amount of credits are purchased and all criteria for use in 9 VAC 25-210-115 are met.

E. Authorization under the VWP general permit may be modified after issuance for typographical errors.

F. A Notice of Planned Change is not required after authorization issuance for additional temporary impacts to surface waters, provided that DEQ is notified in writing regarding additional temporary impacts, and they are restored to preexisting conditions in accordance with Part I C 11 of this general permit. *In no case can the additional temporary impacts exceed the general permit threshold for use.*

~~B. G.~~ G. The permittee shall notify the board in advance of the planned change, and the ~~modification~~ planned change request will be reviewed according to all provisions of this regulation.

9 VAC 25-680-90. Notice of Termination of authorization by consent.

When all permitted activities requiring notification under 9 VAC 25-680-50 A 1 have been completed, or if the authorized impacts will not occur, the permittee shall submit a notice of request for termination within 30 days of final project completion or project cancellation. The director may accept this termination of authorization on behalf of the board. The notice permittee shall contain submit the following information:

1. Name, mailing address and telephone number of the permittee;
2. Name and location of the activity;
3. The VWP permit authorization number; and
4. One of the following certification certifications:
 - a. For project completion:

"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 surface waters in accordance with the VWP general permit, and that performing activities in surface waters 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 *authorization*."

b. For project cancellation:

"I certify under penalty of law that the activities authorized by this VWP general permit will not occur. I understand that by submitting this notice of termination, that I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters 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 authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."

9 VAC 25-680-100. VWP general permit.

Any applicant whose ~~registration statement~~ application has been accepted by the board shall be subject to the following requirements:

VWP General Permit No. WP3

Authorization Effective date:

Authorization Expiration date:

Authorization Notes(s):

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 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.

Subject to the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, the permittee is authorized to impact up to two acres of nontidal surface waters including up to 500 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel.

Permittee:

Address:

Activity Location:

Activity Description:

The authorized activity shall be in accordance with this cover page, Part I-Special Conditions, Part II-Mitigation Compensation, 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. This permit authorizes impacts of up to two acres of nontidal surface waters including up to 500 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel according to the information provided in the ~~applicant's approved registration statement~~ application.

2. Any ~~additional~~ changes to the authorized permanent impacts to surface waters associated with this project shall require either a notice of planned change in accordance with 9 VAC 25-680-80 or another VWP permit application.

3. Any changes to the authorized temporary impacts to surface waters associated with this project shall require written notification to DEQ and restoration to preexisting conditions in accordance with the conditions of this permit authorization.

4. Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs, provided that the adjusted compensation meets the initial authorization compensation goals.

~~3-~~ 5. The activities authorized for coverage under this VWP general permit must commence and be completed within five years of the date of this authorization.

B. ~~Reapplication~~ Continuation of Coverage. Application Reapplication 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 compensation) 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. *The request for continuation of coverage must be made no less than 60 days prior to the expiration date of this VWP general permit authorization, at which time the board will determine if continuation of the VWP general permit authorization is necessary.*

C. Overall project conditions.

Proposed Regulations

1. ~~The construction or work activities~~ 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, including those species which normally migrate through the area, unless the primary purpose of the activity is to impound water. Culverts placed in streams must be installed to maintain low flow conditions. 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. *Excess or waste concrete shall not be disposed of in surface waters or washed out into surface waters.*

4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.

5. Erosion and sedimentation controls shall be designed in accordance with the Virginia 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~~ *is stabilized and shall then be removed.*

6. Any exposed slopes and streambanks ~~must~~ *shall* be stabilized immediately upon completion of ~~the project at work in each water body permitted impact area.~~ All denuded areas shall be properly stabilized in accordance with the Virginia 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 a manner that minimizes construction 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~~ *surface* waters, unless authorized by this VWP general permit.

9. Heavy equipment in temporarily impacted ~~wetland areas~~ *surface waters* shall be placed on mats, geotextile fabric, or other suitable ~~measures~~ *material*, to minimize soil disturbance to the maximum extent practicable. *Equipment and materials shall be removed immediately upon completion of work.*

10. All nonimpacted surface waters within *50 feet of any permitted activities and within* the project or right-of-way limits ~~that are within 50 feet of any clearing, grading, or filling activities~~ shall be clearly flagged or marked for the life of the construction activity ~~within~~ *at that area location* to preclude any unauthorized disturbances to these surface waters during construction. The permittee shall notify all contractors that these marked areas are surface waters where no activities are to occur.

11. Temporary disturbances to ~~wetlands~~ *surface waters* during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preconstruction conditions *within 30 days of completing work, which shall include reestablishing preconstruction contours, and ~~planted~~ planting or ~~seeded~~ seeding* with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested). The permittee shall take all appropriate measures to promote *and maintain* revegetation of temporarily disturbed wetland areas with wetland vegetation ~~by through~~ the second year post-disturbance. All ~~temporary fills must temporarily impacted streams shall be removed in~~ *restored to their entirety and the affected areas returned to the pre-existing contours original elevation within 30 days following the construction at that stream segment, and the banks seeded or planted with native vegetation, and supplemented by erosion control grasses (crown vetch, orchard grass, or weeping lovegrass) when stabilizing steep slopes.*

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~~ *restored* within 30 days following removal of the stockpile, and restored ~~to the original vegetated state with native vegetation or a seed mix comprised of native vegetation and erosion control grasses (crown vetch, orchard grass, or weeping lovegrass) when stabilizing steep slopes.~~

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

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

15. The permittee shall conduct his activities in accordance with any time-of-year restrictions recommended by the Department of Game and Inland Fisheries or the Virginia Marine Resources Commission, *and shall ensure that all contractors are aware of any time-of-year restrictions imposed.*

16. ~~Immediately downstream of the construction area,~~ Water quality standards shall not be violated as a result of the construction activities, *unless allowed by this permit authorization.*

17. Untreated stormwater runoff shall be prohibited from directly discharging into any surface waters, *unless allowed by this permit authorization.* Appropriate best management practices shall be deemed suitable treatment prior to discharge into state waters.

18. *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 stream channel can begin.

D. Road crossings.

1. Access roads and associated bridges or culverts shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable and to follow as near as possible 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 to maintain a low flow channel. For multiple-celled culverts, only those cells situated within the limits of ordinary high water shall be countersunk. Countersinking is shall not be required for existing pipes or culverts that are being maintained or extended.

3. Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or other similar structures.

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 a manner that minimizes disturbance, and the area must be returned to its original contours and stabilized restored

within 30 days of completing work in the area, unless otherwise authorized by this VWP general permit.

2. Material resulting from trench excavation may be temporarily sidecast into wetlands not to exceed a total of 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.

3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect). For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.

F. ~~Bank stabilization~~ Stream modification and stream bank protection.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

2. Riprap aprons for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

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

4. All stream bank erosion control protection structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

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

6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

7. All No material removed from the stream substrate bottom shall be disposed of in an approved upland area surface waters.

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 a manner that minimizes disturbance of the bottom and minimizes turbidity levels in the water column.

3. If evidence of impaired water quality, such as a fish kill, is observed during the dredging, dredging operations shall cease and the Department of Environmental Quality (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.

6. For navigation channels the following shall apply:

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~~a. 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.~~

~~b. a. A buffer of four times the depth of the dredge cut shall be maintained between the top bottom edge of the dredge cut design channel and the channelward limit of wetlands or mean low water, or a buffer of 15 feet shall be maintained from the dredged cut and the channelward edge of wetlands or mean low water, whichever is greater. This landward limit of buffer shall be flagged and inspected prior to construction.~~

~~e. b. 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.~~

7. A dredged material management plan for the designated upland disposal site shall be submitted and approved 30 days prior to initial dredging activity.

8. 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.

9. 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.

10. The dredge material dewatering area shall utilize an earthen berm 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.

11. Overtopping of the dredge material containment berms with dredge materials shall be strictly prohibited.

H. Stormwater management facilities.

1. Stormwater management facilities shall be ~~designed~~ installed 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 Compensation~~ for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.

3. Maintenance ~~excavation~~ activities within stormwater management facilities shall not require additional permit authorization, or compensation, provided that the maintenance activities do not exceed the original contours of the facility, as approved and constructed, and is accomplished in designated maintenance areas as indicated in the facility maintenance or design plan.

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

Part II. ~~Mitigation Compensation~~, Monitoring and Reporting.

A. ~~Compensatory mitigation Compensation~~:

1. The permittee shall provide appropriate and practicable ~~compensatory mitigation compensation~~ for all impacts meeting the conditions outlined in this VWP general permit.

2. The types of ~~compensatory mitigation compensation~~ 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.

3. ~~For wetlands~~ compensation may incorporate preservation of wetlands or ~~streams~~ or preservation or restoration of upland buffers adjacent to state waters when utilized in conjunction with creation, restoration, or mitigation bank credits. ~~For other surface waters, compensation may incorporate preservation or enhancement of stream channels, or preservation, restoration or enhancement of adjacent riparian buffers.~~

~~4. The site or sites depicted in the conceptual compensatory mitigation compensation plan submitted with the registration statement, application shall constitute the compensatory mitigation compensation plan for the approved project. A site change will require a modification to the authorization.~~

~~5. For compensation involving the purchase or use of mitigation bank credits, the permittee shall submit not initiate work in permitted impact areas until documentation within 60 days of VWP general permit authorization that the USACE has debited the required mitigation credits from the Mitigation Bank ledger of the mitigation bank credit purchase has been submitted to and received by DEQ.~~

~~6. For projects proposing a contribution to an in-lieu fee fund, the permittee shall submit not initiate work in permitted impact areas until documentation within 60 days of VWP general permit authorization that the fund contribution has been received of the in-lieu fee fund contribution has been submitted to and received by DEQ.~~

~~7. All aspects of the compensatory mitigation compensation plan shall be finalized, submitted and approved by the board prior to any construction activity in permitted impact areas. The board shall review and provide written comments on the plan within 30 days of receipt or it shall be deemed approved. The final compensatory mitigation compensation plan as approved by the board shall be an enforceable requirement of this VWP general permit authorization. Any deviations from the approved plan must be submitted and approved in advance by the board.~~

~~a. 8. The final compensatory mitigation wetlands compensation plan shall include: narrative description of the plan including~~

a. ~~The goals and objectives, site of the plan in terms of replacement of wetland acreage and functions, by wetland type;~~

b. ~~Location, map, including latitude and longitude (to the nearest second) at the center of the site;~~

c. ~~Summary of the type and acreage of existing wetland impacts anticipated during the construction of the compensation site and proposed compensation for these impacts;~~

d. ~~Grading plan with existing and proposed grade, elevations at one-foot or less contours;~~

e. ~~Schedule for compensatory mitigation compensation site construction, including sequence of events with estimated dates;~~

~~source of hydrology and~~ f. ~~Hydrologic analysis, including a water budget based on expected monthly inputs and outputs that will project water level elevations for a typical year, a dry year, and a wet year;~~

~~plant species,~~ g. ~~Groundwater elevation data for the site, or the proposed location of groundwater monitoring wells to collect these data, and groundwater data for reference wetlands, if applicable;~~

h. ~~Design of water control structures;~~

i. ~~Planting scheme and schedule, indicating expected plant species zonation, planting schedule, and acreage of each vegetation type proposed;~~

j. ~~An abatement and control plan for undesirable plant species, including, at a minimum, the species listed on DCR's Invasive Alien Plant Species of Virginia list, and including procedures to notify DEQ of any undesirable plant species occurrences, methods of removal, and successful control;~~

k. ~~Erosion and sedimentation control plan;~~

l. ~~A soil preparation and amendments, amendment plan addressing both topsoil and subsoil conditions;~~

~~all~~ m. ~~A discussion of any structures and features considered necessary for the success of the plan, and number and ;~~

n. ~~A monitoring plan, including proposed success criteria, monitoring goals and methodologies, monitoring and reporting schedule, and the locations of photographic stations, and ground water monitoring wells. 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 within approximately 200 miles from the project site, any sampling points, and reference wetlands;~~

o. ~~Site access plan;~~

p. ~~The location and composition of any buffers; and~~

q. ~~The mechanism for protection of the compensation areas.~~

9. ~~The final stream compensation plan shall include:~~

a. ~~The goals and objectives of the compensation plan in terms of replacement of stream functions and values, and linear feet and acreage of surface waters;~~

b. ~~A location map, including latitude and longitude (to the nearest second) at the center of the site;~~

c. ~~An evaluation and discussion of existing conditions on the proposed compensation stream, including the identification of functional and physical deficiencies for which the restorative measures are proposed, and summary of geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth ratio, sinuosity, slope, substrate, etc.);~~

d. ~~The identification of existing stream type being impacted and proposed stream type for compensation purposes;~~

e. ~~Detailed design information for the proposed restorative measures, including geomorphological measurements, and reference reach information as appropriate;~~

f. ~~Riparian buffer plantings, including planting scheme, species, buffer width;~~

g. ~~Livestock access limiting measures;~~

h. ~~A site access plan;~~

i. ~~An erosion and sedimentation control plan, if appropriate;~~

j. ~~A monitoring and control plan for undesirable plant species, if appropriate, including, at a minimum, the species listed on DCR's Invasive Alien Plant Species of Virginia list, and including procedures to notify DEQ of any undesirable plant species occurrences, methods for removal and successful control, and report the success of the removal efforts;~~

k. ~~A schedule for compensation site construction including projected start date, sequence of events with projected dates, and projected completion date;~~

l. ~~A monitoring plan, including a monitoring and reporting schedule; monitoring design and methodologies to evaluate the success of the proposed compensation measures, allowing comparison from year to year; proposed success criteria for appropriate compensation measures; proposed monitoring photo points; monitoring and reporting schedule; location of all monitoring stations including photo stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams; and~~

m. ~~The mechanism for protection of the compensation area.~~

10. ~~For final wetland or stream compensation plans, rooted seedlings or cuttings shall be from areas within the same or adjacent USDA Plant Hardiness Zone or NRCS Land Resource Region as that of the project site.~~

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11. For final wetland or stream compensation plans, any vegetation used shall be native species common to the area, shall be suitable for growth in local wetland conditions, and shall be from areas within the same or adjacent USDA Plant Hardiness Zone or NRCS Land Resource Region as that of the project site.

~~b.~~ 12. The final ~~compensatory mitigation wetland or stream compensation plan or plans~~ shall include a mechanism for protection in perpetuity of the compensation sites to include all state waters (including ~~compensatory mitigation areas and nonimpact state waters~~) within the project compensation site boundary in perpetuity. ~~These areas or boundaries. Such protections shall be surveyed or platted in place 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 compensation area or nonimpact state water~~, with the exception of maintenance or corrective action measures authorized by the board. Unless specifically authorized by the board through the issuance of a VWP individual or general 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, or an equivalent instrument for government-owned lands. 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 or sites 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.~~

13. An as-built survey of the site, including spot elevations, shall be submitted to DEQ within 60 days of completion of grading, and shall be certified by a licensed land surveyor or a professional engineer.

~~5.~~ 14. All work in permitted impact areas shall cease if ~~compensatory mitigation compensation site~~ construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by the board.

~~6. A site stabilization plan shall be provided for compensation sites involving land disturbance.~~

15. DEQ shall be notified in writing at least 10 days prior to the initiation of construction activities at the compensation sites.

~~7.~~ 16. Planting of woody plants shall occur when vegetation is normally dormant unless otherwise approved in the final ~~mitigation plan wetlands or stream compensation plan(s).~~

~~8.~~ 17. Point sources of stormwater runoff shall be prohibited from entering any wetland ~~compensatory mitigation compensation 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 or forebays.

~~9.~~ 18. The success of the ~~compensatory mitigation compensation~~ 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 meeting the success criteria established in the approved final compensation plan.~~

~~10.~~ 19. Wetland hydrology shall be considered established if depths to the seasonal high water table are equal to or less than 12 inches below ground surface for at least 12.5% of the ~~region's killing frost-free~~ growing season, as defined in the ~~United States Department of Agriculture soil survey for the locality of the compensation site in all monitoring years or the NRCS WETS table, measured in consecutive days under normal rainfall typical precipitation conditions, and as defined in the water budget of the final mitigation compensation plan. For the purpose of this regulation, the growing season is defined as the period in which temperatures are expected to be above 28 degrees Fahrenheit in five out of 10 years, or the period during which the soil temperature in a wetland compensation site is greater than biological zero (five degrees Celsius) at a depth of 50 centimeters (19.6 inches), if such data is available.~~

~~14.~~ 20. The wetland plant community shall be considered established according to the performance criteria specified in the final ~~mitigation compensation~~ plan and approved by the board. *The proposed vegetation success criteria in the final compensation plan shall include the following:*

a. Species composition shall reflect the desired plant community types stated in the final ~~mitigation wetlands compensation~~ plan by the end of the first growing season and shall be maintained through the last *monitoring year* of the VWP permit.

b. Species composition shall consist of greater than 50% facultative (FAC) or wetter (FACW or OBL) vegetation, as expressed by plant stem density or areal cover, *by the end of the first growing season and shall be maintained through the last monitoring year.*

~~12. Noxious weeds~~ 21. *Undesirable plant species* shall be identified and controlled as described in the ~~noxious weed undesirable plant species 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 board of any ~~invasive species occurrences~~ *DEQ when undesirable plant species comprise greater than 5.0% of the vegetation by aerial coverage on wetland or stream compensation sites, including the methods of removal, and whether the methods are successful control.*

~~13.~~ 22. If the ~~compensatory mitigation area wetland or stream compensation area(s)~~ fails fail to be established as

~~viable wetlands meet the specified success criteria in a monitoring year (with the exception of the final monitoring year), the reasons for this failure shall be determined and a corrective action plan, (including proposed actions, a schedule, and a monitoring plan shall be submitted to the board DEQ for approval prior to or with the next required or before that year's monitoring report. All problems shall be corrected by the permittee. The approved corrective action plan shall be implemented by the permittee in accordance with the approved schedule. Should significant changes be necessary to establish wetlands ensure success, the required monitoring plan cycle shall begin again, with monitoring year one being the year that the changes are complete as confirmed by DEQ.~~

~~23. If all success criteria have not been met in the final monitoring year, or if the wetland or stream compensation site or sites have not met the stated restoration goals, monitoring shall be required for each consecutive year until two sequential, annual reports indicate that all criteria have been successfully satisfied and the sites have met the overall restoration goals (i.e., that corrective actions were successful). The reasons for this failure shall be determined and a corrective action plan (including proposed actions, a schedule, and a monitoring plan) shall be submitted with the monitoring report to DEQ for approval and implemented by the permittee in accordance with the approved schedule.~~

~~14- 24. The surveyed wetland boundary for the compensatory mitigation compensation 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 at the end of the monitoring cycle. Data shall be submitted by November 30 of the final monitoring year.~~

~~15- 25. Herbicides or algicides shall not be used in or immediately adjacent to the compensatory mitigation compensation site or sites without prior authorization by the board. All vegetation removal shall be done by manual means only, unless authorized by the board DEQ in advance.~~

~~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 or extension must be made no less than 60 days prior to the expiration date of this VWP general permit authorization, at which time the board will determine if renewal of the VWP general permit authorization is necessary.~~

~~B. Compensatory mitigation Wetland compensation site monitoring.~~

~~1. A post-grading An as-built ground survey, including spot elevations, of or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites for wetland compensatory mitigation may be required depending upon the type and size of the compensation site, and shall be conducted, including invert elevations for all water elevation control structures and spot elevations throughout the site or sites.~~

~~Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. Either type of survey shall be certified by a licensed land surveyor or by a registered professional engineer to conform to the design plans. The survey shall be submitted within 90 days of completing compensation site construction. Any changes or deviations in the as-built survey or aerial survey shall be shown on the survey and explained in writing.~~

~~2. Photographs shall be taken at the compensatory mitigation compensation site or sites from the permanent markers identified in the final mitigation compensation plan, and established to ensure that the same locations and view directions at the site or sites are monitored in each monitoring period. These photographs shall be taken after the initial planting and in August or September at a time specified in the final compensation plan during every monitoring year.~~

~~3. Compensatory mitigation Compensation site monitoring for hydrology, soils, and hydrophytic vegetation shall begin at the first complete growing season (monitoring year 1) following compensatory mitigation after wetland compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years 1, 2, 3, and 5, unless otherwise approved by DEQ. In all cases, if all success criteria have not been met in the fifth final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.~~

~~4. The establishment of wetland hydrology shall be measured weekly during the growing season, with the location and number of monitoring wells, and frequency of monitoring for each site, set forth in the final monitoring plan. All hydrology monitoring well data shall be accompanied by precipitation data, including rainfall amounts, either from on site or from the closest weather station. Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, monitoring may be discontinued for the remainder of that monitoring year following DEQ approval. After a period of three monitoring years, the permittee may request that hydrology monitoring be discontinued, providing that adequate hydrology has been established and maintained. Hydrology monitoring shall not be discontinued without written approval from DEQ.~~

~~5. The presence of hydric soils or soils under hydric conditions shall be evaluated in accordance with the final mitigation compensation plan.~~

~~6. The establishment of wetland vegetation shall be in accordance with the final mitigation compensation plan. Monitoring shall take place in August or, September, or October during the growing season of each monitoring year, unless otherwise authorized in the monitoring plan.~~

~~7. The presence of noxious undesirable plant species shall be documented.~~

~~8. All wetland compensation monitoring reports shall be submitted by November 30 of the monitoring year. The reports shall include, as applicable, the following:~~

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a. General description of the site including a site location map identifying photo stations, vegetative and soil monitoring stations, monitoring wells, and wetland zones.

b. Summary of activities completed during the monitoring year.

c. Description of monitoring methods.

d. Analysis of all hydrology information, including monitoring well data, precipitation data, and gauging data from streams or other open water areas, as set forth in the final compensation plan.

e. Evaluation of hydric soils or soils under hydric conditions, as appropriate.

f. Analysis of all vegetative community information, including woody and herbaceous species, both planted and volunteers, as set forth in the final compensation plan.

g. Photographs labeled with the permit number, the name of the compensation site, the photo station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. This information shall be provided as a separate attachment to each photograph, if necessary. Photographs taken after the initial planting shall be included in the first monitoring report after planting is complete.

h. Discussion of wildlife or signs of wildlife observed at the compensation site.

i. Comparison of site conditions from the previous monitoring year and reference site, if applicable.

j. Discussion of corrective measures or maintenance activities to control undesirable species, to repair any damaged water control device, or to replace any damaged planted vegetation.

k. Corrective action plan, which includes proposed actions, a schedule, and monitoring plan.

C. Stream ~~mitigation~~ compensation, restoration, and monitoring (if applicable).

1. ~~Stream mitigation~~ Any riparian buffer restoration activities shall be performed detailed in accordance with the final mitigation compensation plan and subsequent submittals, as approved by the board shall include, as appropriate, the planting of a variety of native species currently growing in the site area, including appropriate seed mixtures and woody species that are bare root, balled, or burlapped. A minimum buffer width of 50 feet, measured from the top of the stream bank at bankfull elevation landward on both sides of the stream, shall be required where practical.

2. The installation of root wads, vanes, and other instream structures, shaping of the stream bank slopes banks and channel relocation shall be stabilized to reduce stream bank erosion, where completed in the dry whenever practicable.

3. Livestock access to the stream and designated riparian buffer shall be limited to the greatest extent practicable.

4. Heavy equipment is authorized for use within the stream channel during restoration activities when site conditions prohibit access from the streambank. These activities shall be conducted in the dry or during low flow conditions, when practicable.

5. Photographs shall be taken at the compensation site from the vicinity of the permanent photo stations identified in the final compensation plan. The photograph orientation shall remain constant during all monitoring events. At a minimum, photographs shall be taken from the center of the stream, facing downstream, with a sufficient number of photographs to view the entire length of the restoration site. Photographs shall document the completed restoration conditions. Photographs shall be taken prior to site activities, during instream and riparian compensation construction activities, within one week of completion of activities, and during at least one day of each monitoring year to depict restored conditions.

6. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. The survey shall be certified by the licensed surveyor or by a registered, professional engineer to conform to the design plans. The survey shall be submitted within 90 days of completing compensation site construction. Any changes or deviations in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

~~3-~~ 7. All stream ~~mitigation~~ compensation monitoring reports shall be conducted in the manner prescribed in the final mitigation plan approved by the board. All monitoring reports shall be submitted by November 30 of the monitoring year. ~~Monitoring~~ The reports shall include, as applicable, the following:

a. General description of the site including a site location map identifying photo stations and monitoring stations.

b. Summary of activities completed during the monitoring year.

c. Description of monitoring methods.

d. An evaluation and discussion of the monitoring results in relation to the success criteria and overall goals of compensation.

a- e. Photographs sufficient to document installation of specific structures and vegetative plantings or where the stream channel banks are reshaped. Permanent markers shall be established to ensure that the same locations and view directions at the site are photographed in each monitoring period labeled with the permit number, the name of the compensation site, the photo station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. Photographs taken prior to compensation site construction activities, during instream and riparian restoration activities, and within one week of completion of activities shall be included in the first monitoring report.

~~b. Discussion of the establishment of vegetation, if applicable.~~

~~e. Any~~ f. A discussion of alterations, maintenance, or major storm events resulting in significant change in stream profile or cross section, and corrective actions conducted at the stream mitigation compensation site.

g. Documentation of undesirable plant species and summary of abatement and control measures.

h. A summary of wildlife or signs of wildlife observed at the compensation site.

i. Comparison of site conditions from the previous monitoring year and reference site, if applicable.

j. A corrective action plan, which includes proposed actions, a schedule and monitoring plan.

D. Construction monitoring.

~~1. Photo stations shall be established to document the Construction aspects of project activities within impact areas as authorized by this permit that are within impact areas shall be monitored through photographic documentation. Photographs should~~ The photographic monitoring shall document the preconstruction conditions, activities during construction, and post-construction conditions within one week after completion of construction. Photographic monitoring shall consist of one of the following options:

a. Photographs shall be taken during construction at the end of the first, second and ~~twelfth~~ third months of construction, and then annually semi-annually for the remainder of the construction project. ~~Photographs are not necessary, except during periods of no activity within impact areas;~~ or

b. An ortho-rectified photograph shall be taken prior to construction, and annually thereafter until all impacts are taken, and shall clearly show the delineated surface waters and authorized impact areas.

~~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 authorities~~As part of construction monitoring, photographs taken at the photo stations shall document site activities and conditions, which may include installation and maintenance of erosion and sediment controls; condition of adjacent nonimpact surface waters; flagged nonimpact surface waters; construction access and staging areas; filling, excavation, and dredging activities; culvert installation; dredge disposal; and site stabilization, grading, and associated restoration activities. With the exception of the preconstruction photographs, photographs at an individual impact site shall not be required until construction activities are initiated at that site. With the exception of the post-construction photographs, photographs at an individual impact site shall not be required once the site is stabilized following completion of construction at that site.

~~3. Stream bottom elevations at road crossings shall be measured at the inlet and outlet of the proposed structure 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. Each photograph shall be labeled to include the following information: permit number, impact area and photo station number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.~~

4. Monitoring of water quality parameters shall be conducted during rerouting of the live permanent relocation of perennial 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 30 minutes for at least three readings two hours at each station prior to opening the new channels and immediately before opening new channels.

c. ~~After opening the new channel,~~ Temperature, pH and D.O. readings shall be taken once after opening the channels and every half hour 30 minutes for at least three readings hours at each station within 24 hours of opening the new channel.

5. The permittee shall report violations of water quality standards to DEQ in accordance with the procedures in Part II E. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.

E. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate DEQ office. The VWP general permit authorization number shall be included on all correspondence.

~~2. The board~~ DEQ shall be notified in writing by certified letter at least 10 days prior to the start of construction activities at the first permitted site authorized by this VWP general permit authorization so that inspections of the project can be planned, if deemed necessary by DEQ. The notification shall include identification of the impact area at which work will occur and a projected schedule for completing initiation and completion of work at each permitted impact area.

3. ~~After construction begins,~~ Construction monitoring reports shall be submitted to the board within 30 days of each DEQ not later than the 10th day of the month following the month in which the monitoring event specified in Part II D takes place. The reports shall include, at a minimum, the following, as appropriate:

a. For each permitted impact area, a written statement regarding when narrative stating whether work started in the identified impact area, where work was performed;

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~~what during the monitoring period. If work was performed, a description of the work performed, when the work was initiated, and what work was completed the expected date of completion.~~

b. Properly labeled photographs (to include date and time, name of the person taking the photograph, a brief description, 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.). *The post-construction photographs shall be submitted within 30 days of documenting post-construction conditions. The first construction monitoring report shall include the photographs taken at each impact site prior to initiation of construction in any permitted impact area. Written notification and photographs demonstrating that all temporarily disturbed wetland and stream areas have been restored in compliance with the permit conditions shall be submitted within 30 days of restoration.*

c. Summary of activities conducted to comply with the permit conditions.

d. Summary of permit noncompliance events or problems encountered, subsequent notifications, and corrective actions.

e. Summary of anticipated work to be completed during the next monitoring period, and an estimated date of construction completion at all impact areas.

f. Labeled site map depicting all impact areas and photo stations.

4. DEQ shall be notified in writing within 30 days following the completion of all activities in all permitted impact areas authorized under this permit.

5. DEQ shall be notified in writing at least 10 days prior to the initiation of activities at the compensation site. The notification shall include a projected schedule of activities and construction completion.

4. 6. All ~~compensatory mitigation~~ compensation monitoring reports shall be submitted annually by November 30, with the exception of the last year of authorization, in which case the report shall be submitted at least 60 days prior to expiration of authorization under the general permit. Any alterations and maintenance conducted on the ~~compensatory mitigation~~ compensation sites shall be reported. ~~Invasive Undesirable plant~~ species occurrences and control of these occurrences shall also be reported to the board DEQ.

~~5. The permittee shall submit a notice of termination within 30 days of final completion in accordance with 9 VAC 25-680-90.~~

6. 7. The permittee shall notify the board 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 the board DEQ.

7. 8. 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, the appropriate DEQ regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

8. 9. Violations of state water quality standards shall be reported within 24 hours to the appropriate DEQ office.

9. 10. 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 General Permits.

A. Duty to comply. The permittee shall comply with all conditions of the VWP general 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 general permit noncompliance is a violation of the Clean Water Act and State Water Control Law, and is grounds for enforcement action, VWP general permit authorization, termination for cause, VWP general permit authorization, revocation, or denial of a ~~renewal application~~ continuation of coverage request.

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 authorization may be reopened to modify its conditions when the circumstances on which the previous VWP general permit authorization 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 general permit authorization was issued and thereby constitute cause for VWP general permit authorization 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 authorization are severable.

G. Right of entry. The permittee shall allow the board or its agents, 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 general permit authorization. This VWP general permit authorization 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 new permittee containing a specific date of transfer of VWP general permit authorization responsibility, coverage and liability to the new permittee, or that the existing permittee 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 new permittee of its intent to modify or revoke and reissue the VWP general permit authorization ~~within the 30-day time period~~ 15 days.

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

I. Notice of planned change. Authorization under this VWP general permit may be modified subsequent to issuance if: (i) the permittee determines that additional *permanent* wetland ~~and~~ or stream impacts are necessary, provided that the cumulative increase in acreage of wetland impacts is not greater than 1/4 acre and the cumulative increase in stream impacts is not greater than 50 linear feet, and provided that the additional impacts are fully ~~mitigated~~ compensated: (ii) *the project results in less wetland or stream impacts, in which case compensation requirements may be modified in relation*

*to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial authorization compensation goals; (iii) there is a change in the project plans that does not result in a change in project impacts; (iv) there is a change in the mitigation bank at which credits are purchased, provided that the same amount of credits are purchased and all criteria for use are met, as detailed in 9 VAC 25-210-115; or (v) typographical errors need to be corrected. A notice of planned change is not required if the project results in additional temporary impacts to surface waters, provided that DEQ is notified in writing, the additional temporary impacts are restored to preexisting conditions in accordance with Part I C 11 of this general permit, and the additional temporary impacts do not exceed the general permit threshold for use. The permittee shall notify the board in advance of the planned change, and the ~~modification~~ *planned change* request will be reviewed according to all provisions of this regulation.*

J. VWP general permit authorization termination *for cause*. This VWP general permit authorization is subject to termination *for cause by the board after public notice and opportunity for a hearing. Causes* Reasons for termination *for cause* are as follows:

1. Noncompliance by the permittee with any condition of the VWP general permit *authorization*;
2. The permittee's failure in the application or during the VWP general permit authorization 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 a VWP general permit authorization ~~modification~~ *planned change* or termination *for cause*.

K. VWP general permit authorization termination by consent. *This VWP general permit authorization may be terminated by consent when all permitted activities requiring notification under 9 VAC 25-690-50 A 1 have been completed, when the authorized impacts do not occur, or when a planned change occurs that involves substituting a specified, approved mitigation bank or banks with another specified, approved mitigation bank. The permittee shall submit a request for termination by consent within 30 days of project completion or project cancellation. The director may accept this termination of authorization on behalf of the board. The request for termination by consent shall contain the following information:*

1. Name, mailing address and telephone number of the permittee;
2. Name and location of the activity;
3. The VWP permit authorization number; and
4. One of the following certifications:
 - a. For project completion:

"I certify under penalty of law that all activities authorized by a VWP general permit have been completed. I understand

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that by submitting this notice of termination, that I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters 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 authorization."

b. For project cancellation:

"I certify under penalty of law that the activities authorized by this VWP general permit will not occur. I understand that by submitting this notice of termination, that I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters 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 authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."

~~K.~~ L. 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.~~ M. 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.~~ N. 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.

~~N.~~ O. Duty to provide information.

1. The permittee shall furnish to the board 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.

~~O.~~ P. 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. 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, as appropriate:

- 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 and time 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;
- f. The results of such analyses; and
- g. Chain of custody documentation.

~~P.~~ Q. 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 August 1, 2001, for linear transportation projects of the Virginia Department of Transportation, or on and after October 1, 2001 for all other projects, 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.

NOTICE: The forms used in administering 9 VAC 25-680, the Virginia Water Protection General Permit for Linear Transportation Projects, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, or at the office of

the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Department of Environmental Quality Water Division Permit Application Fee (eff. 8/04 7/04).

Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (eff. 8/04 4/04).

Virginia Water Protection General Permit Registration Statement (eff. 8/01).

Quarterly Reporting of Impacts Less than One Tenth Acre (insert reporting period) Statewide (eff. 4/03).

Virginia Department of Transportation Inter-Agency Coordination Meeting Joint Permit Application (rev. 10/02).

VA.R. Doc. No. R04-102; Filed June 23, 2004, 8:00 a.m.

Title of Regulation: 9 VAC 25-690. Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities (amending 9 VAC 25-690-10 through 9 VAC 25-690-100).

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia and § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Public Hearing Date: August 26, 2004 - 3 p.m. Public comments may be submitted until 5 p.m. on September 10, 2004. (See Calendar of Events section for additional information)

Agency Contact: Ellen Gilinsky, Virginia Water Protection Permit Program Manager, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4375, FAX (804) 698-4032, or e-mail egilinsky@deq.virginia.gov.

Summary: The proposed regulatory action corrects several administrative procedures, clarifies application and permitting requirements and allows for a more efficient application review process. Since implementation of this regulation in October 2001, it has become evident that these minor corrections are needed to improve applications for coverage, timeframes for issuance of authorizations, and coordination with the U.S. Army Corps of Engineers State Program General Permit (SPGP-01). No change to the upper thresholds of coverage under this regulation is being proposed.

CHAPTER 690.

VIRGINIA WATER PROTECTION GENERAL PERMIT FOR IMPACTS FROM DEVELOPMENT AND CERTAIN MINING ACTIVITIES.

9 VAC 25-690-10. Definitions.

The words and terms used in this regulation 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 otherwise indicated below.

"Bank protection" means measures 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, march toe stabilization, anti-scouring devices, and submerged sills.

"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.

"Conversion" means changing one type of surface water to another type of surface water, either permanently or temporarily. The permanent conversion of a forested wetland to an emergent wetland is considered to be a permanent impact for the purposes of this regulation.

"Cross-sectional drawing" 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.

"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 United States Department of Agriculture Natural Resources Conservation Service.

"Impacts" means results caused by human-induced activities conducted in surface waters, as specified in § 62.1-44.15:5 D of the Code of Virginia.

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"Independent utility" means a test to determine what constitutes a single and complete project. 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 complete projects with independent utility.

"Less than one-half of an acre" means 0.00 to 0.49 acre (0 to 21,779 square feet).

"Perennial stream" means a ~~stream well-defined channel that has flowing~~ *contains* water year round ~~in during a typical year of normal rainfall. 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. Generally, the water table is located above the streambed for most of the year and groundwater is the primary source for stream flow. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.~~

"Permanent impacts" are those impacts to surface waters, including wetlands, that cause a permanent alteration of the physical, chemical, or biological properties of the surface waters, or of the functions and values of a wetland.

"Person" means an individual, corporation, partnership, association, government body, municipal corporation, or any other legal entity.

"Real estate subdivision" means ~~a tract of land subdivided after October 5, 1984, 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 a facility that is integrated into the natural landscape and does not substantially change preconstruction grades or deviate from natural landscape contours.

"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.

"Single and complete project" means the total project proposed or accomplished by ~~one~~ a person and which has independent utility. For linear projects, the "single and complete project" (i.e., a single and complete crossing) ~~will~~ *may but does not always* apply to each crossing of a separate surface water (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. Phases of a~~

project that have independent public and economic utility may each be considered single and complete.

"State programmatic general permit" means a general permit issued by the Department of the Army in accordance with 33 CFR Part 32S that is founded on a state program and is designed to avoid duplication between the federal and state programs.

~~"Temporary impact impacts" means an impact caused by activities in are those impacts to surface waters, including wetlands, that do not cause a permanent alteration of the physical, chemical, or biological properties of the surface waters, including wetlands, in which the ground is restored to its preconstruction contours and elevations, without significantly affecting wetland or of the functions and values of a wetland. Temporary impacts include activities in which the ground is restored to its preconstruction contours and elevations, such that previous functions and values are restored.~~

"Up to 300 linear feet of stream channel" means 0.00 to 300.00 linear feet of any stream, rounded to the second decimal place, as measured along the center of the main channel of the stream segment.

"Up to 500 linear feet of stream perennial channel" means 0.00 to 500.00 linear feet of perennial stream, rounded to the second decimal place, as measured along the center of the main channel of the stream segment.

"Up to 1500 linear feet of nonperennial stream channel" means 0.00 to 1500.00 linear feet of nonperennial stream, rounded to the second decimal place, as measured along the center of the main channel of the stream segment.

"Up to one acre" means 0.00 to 1.00 acre (0 to 43,560 square feet).

"Up to one-tenth of an acre" means 0.00 to 0.10 acre, rounded to the second decimal place (0 to 4,356 square feet).

"Up to two acres" means 0.00 to 2.00 acres, rounded to the second decimal place (0 to 87,120 square feet).

"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 surface water 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 regulation is to establish VWP General Permit Number WP4 under the VWP permit *program* regulation to govern impacts related to the construction and maintenance of development activities, *and activities directly associated with aggregate mining (i.e., sand, gravel, and crushed or broken stone); hard rock/mineral mining (i.e., metalliferous ores); and surface coal, natural gas, and coalbed methane gas mining, as authorized by the Virginia*

Department of Mines, Minerals and Energy. 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 his designee 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. This VWP general permit regulation will become effective on October 1, 2001, and will expire on October 1, 2006.

D. Authorization to impact surface waters under this VWP general permit is effective upon compliance with all the provisions of 9 VAC 25-690-30. Notwithstanding the expiration date of this general permit regulation, authorization to impact surface waters under this VWP general permit will continue for a maximum of five years.

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 nontidal surface waters, including up to 500 linear feet of perennial stream channel and up to 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 program 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 applicable VWP general permit, in lieu of coverage under this VWP general permit.

2. Impacts result from a single and complete project including all attendant features, both temporary and permanent.

a. 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 a VWP individual permit.

b. 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. The stream impact criterion applies to all components of the project, including any structures and stream channel manipulations. ~~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.

5. ~~Compensatory mitigation~~ *Compensation* 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. *For wetlands*, compensation may incorporate

preservation of wetlands or preservation or restoration of upland buffers adjacent to state waters when utilized in conjunction with creation, restoration or mitigation bank credits. *For other surface waters, compensation may incorporate preservation and enhancement of stream channels, or preservation, restoration, or enhancement of adjacent riparian buffers.*

B. Activities that may be authorized under this VWP general permit include the following:

1. Residential, commercial, institutional. The construction or expansion of building foundations, building pads and attendant features for residential, commercial and institutional development activities.

a. Residential developments include both single and multiple units.

b. Commercial developments include, but are not limited to, retail stores, industrial facilities, restaurants, business parks, office buildings and shopping centers.

c. Institutional developments include, but are not limited to, schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship.

d. 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.

2. Recreational facilities. The construction or expansion of recreational facilities and small support facilities.

a. 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.

b. Recreational facilities do not include as a primary function the use of motor vehicles, buildings or impervious surfaces.

c. 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.

d. 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.

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e. 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.

f. The recreational facility must have an adequate water quality management plan, such as a stormwater management plan, to ensure that the recreational facility results in no substantial adverse effects to water quality.

3. Stormwater management facilities. 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.

a. Stormwater management facilities include stormwater ponds and facilities, detention basins, retention basins, and other facilities designed to reduce pollutants in stormwater runoff.

b. The stormwater management facility must:

(1) To the maximum extent practicable, be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity and flow rates);

(2) Not permanently restrict or impede the passage of normal or expected high flows, unless the primary purpose of the facility is to impound waters;

(3) Withstand expected high flows;

(4) 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;

(5) 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

(6) 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.

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

4. Mining facilities. *The construction or expansion of mining facilities and attendant features for a single and complete project.*

a. *Mining facilities include activities directly associated with aggregate mining (i.e., sand, gravel, and crushed or broken stone); hard rock/mineral mining (i.e., metalliferous ores); and surface coal, natural gas, and coalbed methane gas mining, as authorized by the Virginia Department of Mines, Minerals, and Energy.*

b. *Attendant features are authorized provided they are directly related to the mining facility, and include, but are not limited to, access road construction, parking lots, offices, maintenance shops, garages, and stormwater management facilities.*

c. *Both direct impacts (i.e., footprints of all fill areas, road crossings, sediment ponds, and stormwater management facilities; mining through state waters; stockpile of overburden, and excavation) and indirect impacts (i.e., diversion of water and reach of state waters affected by sediment pond pool and sediment transport) shall be considered when issuing an authorization under this general permit.*

d. *This general permit may not be used to authorize impacts from mining facilities, except for those impacts from attendant features to the mining facilities, that occur in the following areas:*

(1) *Where federal and state listed endangered and threatened species or their critical habitat are present within one mile of the project site, as determined by the Division of Natural Heritage or the Department of Game and Inland Fisheries;*

(2) *State waters within one mile of the project site that are designated by the Department of Game and Inland Fisheries as natural or stockable trout waters; and*

(3) *State waters within one mile of the project site that are designated by the Department of Game and Inland Fisheries or the National Marine Fisheries Service as having anadromous fish.*

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. Any person claiming this waiver bears the burden to demonstrate that he qualifies for the waiver.

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

F. Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of Engineers (USACE), and for which the board has issued § 401 certification existing as of October 1, 2001, shall constitute coverage under this VWP general permit unless a state programmatic general permit is approved for the covered activity or impact. Notwithstanding any other provision, activities authorized under a nationwide or regional permit promulgated by the USACE and certified by the board in accordance with 9 VAC 25-210-130 do not need to obtain coverage under this VWP general permit unless a state programmatic general permit is approved for the covered activity or impact.

9 VAC 25-690-40. Exceptions to coverage.

A. Authorization for coverage under this VWP general permit will not apply in the following areas:

1. Wetlands 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 shall be based upon either basal area or percent areal cover *in the area of impact*.
2. Wetlands underlain by histosols.
3. Surface waters ~~with~~ *where the proposed activity will impact* federal or state listed or proposed threatened or endangered species or proposed or designated critical habitat.

B. Authorization for coverage under this VWP general permit cannot be used in combination with authorization for coverage under other VWP *general permits in order to* impact greater than two acres of nontidal surface waters, more than 500 linear feet of perennial stream channel, or more than 1,500 linear feet of nonperennial stream channel. More than one authorization for coverage under this VWP general permit for a single and complete project is prohibited, except when the cumulative impact to surface waters does not exceed the ~~above-mentioned~~ *limits specified here*.

C. This VWP general permit cannot be used for any activity in ~~any real estate subdivision~~ *a phased development* which would cause the aggregate total loss of nontidal surface waters in the subdivision to exceed two acres, or more than 500 linear feet of perennial stream channel, or more than 1,500 linear feet of nonperennial stream channel.

D. The activity to impact surface waters shall not have been prohibited by state law or regulations, nor shall it contravene applicable Water Quality Standards (9 VAC 25-260-5 ~~et seq.~~).

E. The board shall deny coverage under this VWP general permit to any applicant for activities that 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 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, *that significantly* increase flooding, or *that* 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. 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;
6. Return flow discharges from dredge disposal sites;
7. Overboard disposal of dredge materials;
8. Dredging in marinas;
9. Dredging of shellfish areas, submerged aquatic vegetation beds or other highly productive areas;
10. Federal navigation projects;
11. The construction of new ski areas or oil and gas wells; and
12. The taking of threatened or endangered species in accordance with the following:

- a. Pursuant to § 29.1-564 of the Code of Virginia 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 United States 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 of the Code of Virginia.
- 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. Notification.

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

1. An application for *authorization for proposed permanent wetland impacts greater than one-tenth of an acre of surface waters or for proposed permanent stream channel impacts greater than 300 linear feet* shall be submitted via a ~~registration statement~~ *an application* that includes all information pursuant to 9 VAC 25-690-60.
2. Proposed, *permanent surface water impacts up to one-tenth of an acre, which may include up to 300 linear feet of stream channel*, shall be reported via a ~~registration statement~~ *an application* that includes only the following information: subdivisions 1 through 8, 13, 15 and 20 of 9 VAC 25-690-60 B.

B. A Joint Permit Application (JPA) or Virginia Department of Transportation Interagency Coordination Meeting Joint Permit Application (VDOT IACM JPA) ~~may shall~~ *serve as the registration statement provided that all information required pursuant to 9 VAC 25-690-60 is included and that the first page of the form is clearly marked indicating the intent to have*

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~~the form serve as the registration statement for this VWP general permit an application under this regulation.~~

C. The board will determine whether the proposed activity requires coordination with the United States Fish and Wildlife Service, the Virginia Department of Conservation and Recreation, the Virginia Department of Agriculture and Consumer Services and the Virginia Department of Game and Inland Fisheries regarding the presence of any federal or state proposed or listed threatened and endangered species or proposed or designated critical habitat. Based upon consultation with these agencies, the board may deny coverage under this general permit.

9 VAC 25-690-60. ~~Registration statement Application.~~

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

1. The applicant shall file a complete ~~registration statement application~~, as described in 9 VAC 25-690-50 for a VWP general permit number WP4 for impacts to surface waters 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 is advised to 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. The VDOT may use its monthly IACM process for submitting registration statements applications.~~

B. The required ~~registration statement application~~ 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 and *electronic mail address*;

3. The existing VWP permit number (if applicable);

4. The name of the project, *narrative description of project purpose of project*, and a description of the *proposed activity in surface waters*;

5. The name of the water body or water bodies 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, *including the project boundary*. The map ~~should~~ *shall* be of sufficient detail such that the site may be easily located for site inspection;

10. ~~The appropriate appendices from the JPA (Reserved);~~

11. Project plan view. All plan view sketches ~~should~~ *shall* include, at a minimum, north arrow, scale, existing

structures, existing contours, proposed contours (if available), limit of surface water areas, direction of flow, ordinary high water, impact limits, and location and dimension of all proposed structures in impact areas. Cross-sectional *or profile* sketches, *as appropriate*, with the above information, ~~may~~ *shall* be required ~~for certain projects as appropriate~~ to demonstrate minimization of impacts;

12. Dredge material management plan (for dredging projects only) including plan and cross-section view drawings of the disposal or dewatering area, the dimensions and design of the proposed berm and spillway, and the capacity of the proposed disposal or dewatering site;

13. Surface water impact information (wetlands, streams, or open water) for both permanent and temporary impacts, including a description of the impact, and the *areal extent, location (by latitude and longitude) and type of the impact (area (of wetland in square feet, linear feet or acres; area of stream, length of stream, and average width))*. Wetland impacts ~~should~~ *shall* be quantified according to their Cowardin classification or similar terminology;

14. Functional values assessment for impacts to wetlands greater than one acre. ~~The functional assessment~~, *which shall consist of a narrative description summary of field observations of the existing wetland functions and values and an assessment of the impact that the project will have on these functions and values. The following parameters/functions shall be directly addressed: surrounding land uses and cover types; nutrient, sediment, and pollutant trapping; flood control and flood storage capacity; erosion control and shoreline stabilization; groundwater recharge and discharge; aquatic and wildlife habitat; and unique or critical habitats*;

15. A description of the *specific on-site* measures *considered or 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 conceptual plan~~ for the intended compensation for unavoidable impacts, including:

a. ~~A For wetlands, the conceptual compensatory mitigation compensation 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 detailed location map (e.g., a United States Geologic Survey topographic quadrangle map), including latitude and longitude (to the nearest second) at the center of the site; *a description of the surrounding land use*; a hydrologic analysis, including a draft water budget based on expected monthly inputs and outputs which will project water level elevations for a typical year, a dry year, and a wet year; groundwater elevation data, if available, or the proposed location of groundwater monitoring wells to collect these data; ~~wetland delineation confirmation and data sheets, and maps a map~~ for existing ~~wetland surface water~~ areas on the proposed site or sites, *including a wetland delineation confirmation for any existing wetlands*; a conceptual grading plan; a conceptual planting scheme, including suggested plant

species; and zonation and acreage of each vegetation type proposed; and a proposed soil preparation and amendment plan addressing both description of existing soils including general information on topsoil and subsoil conditions; and a draft design of any water control structures, permeability, and the need for soil amendments.

b. For streams, the conceptual compensation plan shall include: the goals and objectives in terms of water quality benefits and replacement of stream functions; a detailed location map (e.g., a United States Geologic Survey topographic quadrangle map), including the latitude and longitude and the hydrologic unit code (HUC) 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 proposed restoration measures to be employed, including channel measurements, proposed design flows and types of instream structures; and reference stream data, if available.

~~b.~~ c. Applicants proposing to compensate off-site, including purchase or use of mitigation bank credits, or contribution to an in-lieu fee fund shall first discuss submit an evaluation of the feasibility of on-site compensatory mitigation compensation. If on-site compensatory mitigation compensation is practicable, applicants must shall provide documentation as to why the proposed off-site compensatory mitigation compensation is ecologically preferable. The evaluation should shall include, but not be limited to, the following assessment criteria: water quality benefits, hydrologic source, hydrologic regime, watershed, surface water functions and values, vegetation type, soils, impact acreage, distance from impacts, timing of compensation versus impacts, acquisition, constructability, and cost.

~~e.~~ Any applicant proposing compensation 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 applicant proposing compensation plan proposing to include involving contributions to in-lieu fee programs shall include proof state such as their conceptual compensation plan. Written documentation of the willingness of the entity to accept the donation and documentation of how the amount of the contribution was calculated shall be submitted prior to issuance of this general permit authorization.

e. Any applicant proposing compensation plan proposing involving the purchase or use of mitigation banking credits shall include as their conceptual compensation plan:

(1) The name of the proposed mitigation bank and the HUC in which it is located;

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

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

~~f.~~ The final compensatory mitigation plan must include complete information on all components of the conceptual compensatory mitigation plan detailed in subdivision 16 a of this subsection, 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 or sites 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 boundary;

17. 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 shall be noted according to their Cowardin classification or similar terminology. A copy of the USACE delineation confirmation, or other correspondence from the USACE indicating their approval of the wetland boundary, 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. The delineation map should shall also include the location of all impacted and nonimpacted streams, open water and other surface waters on the site. The approximate limits of any Chesapeake Bay Resource Protection Areas (RPAs) should shall be shown on the map, as other 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. The appropriate application processing fee for a VWP general permit (9 VAC 25-20-40 et seq.); and

20. 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."

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C. ~~The registration statement application 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 an application by the appropriate DEQ office, the board has 15 days to review the application and either determine the information requested in subsection B of this section is complete or inform the applicant that additional information is required to make the application complete.~~ Coverage under this VWP general permit shall be approved, approved with conditions, or denied within 45 days of receipt of a complete application. If the board fails to act within 45 days on a complete application, coverage under this VWP permit general permit shall be deemed approved.

1. In evaluating the ~~registration statement application~~, 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 authorization under this VWP general permit. However, these conditions must be consistent with the VWP permit regulation ~~and may not override or contradict the existing conditions of this VWP general permit related to impacts and mitigation.~~

E. ~~Incomplete registration statement application.~~ Where a ~~registration statement an application~~ is incomplete, the board shall require the submission of additional information and ~~may~~ shall suspend processing the application until such time as the applicant has supplied the missing or deficient information and the ~~registration statement application~~ is complete. Further, where the applicant becomes aware that he omitted one or more relevant facts from a ~~registration statement an application~~, or submitted incorrect information in a ~~registration statement an application~~ or in any report to the board, ~~he~~ the applicant shall immediately submit such facts or the correct information. ~~Such application with new information shall be deemed a new application.~~

9 VAC 25-690-70. ~~Mitigation Compensation.~~

A. For the purposes of this VWP general permit, the board may 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. ~~Compensation may incorporate~~ Preservation of wetlands or streams, or preservation or restoration of upland buffers adjacent to state waters, ~~may only be applied toward wetland compensation when utilized in conjunction with creation, restoration or mitigation bank credits one or more of the above-mentioned compensation options.~~ Preservation or enhancement of stream channels, or preservation, restoration, or enhancement of adjacent riparian buffers, may be applied toward stream compensation as appropriate.

B. ~~Compensatory mitigation Compensation~~ 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.
3. Impacts to emergent wetlands shall be mitigated at 1:1.

C. ~~Compensatory mitigation Compensation~~ for unavoidable impacts to streams shall be provided ~~at a 1:1 replacement to less ratio via~~ and shall include, as practicable and appropriate, stream relocation, restoration, riparian buffer establishment restoration or enhancement, or preservation or enhancement of stream corridors. The purchase of stream mitigation bank credits or contribution to an in-lieu fee fund that includes stream restoration, ~~when feasible watershed enhancements is also acceptable.~~ The amount of required compensation will be determined based on an analysis of stream impacts utilizing a scientifically based stream impact assessment methodology approved by the board.

D. Compensation for open water impacts may be required at a 1:1 replacement to impact ratio, as appropriate, to protect state waters and fish and wildlife resources from significant impairment.

E. ~~Compensation for conversion impacts shall be required at a 1:1 replacement to impact ratio when such conversion results in a permanent alteration of the functions and values of the surface water.~~

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

~~F. G.~~ The use of mitigation banks for compensating project impacts shall be deemed appropriate if ~~In order for purchase of bank credits to be an acceptable form of compensation, the bank is~~ shall be 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 F. The applicant provides verification shall provide proof of purchase or debit to the board of purchase or debiting of the required amount of credits DEQ.~~

9 VAC 25-690-80. Notice of planned changes.

A. Authorization under this VWP general permit may be modified subsequent to issuance if the permittee determines that additional permanent wetland and or stream impacts are necessary, provided that the cumulative increase in acreage of wetland impacts is not greater than 1/4 acre and the cumulative increase in stream impacts is not greater than 50 linear feet, and provided that the additional impacts are fully mitigated. *In no case can this authorization be modified to exceed the general permit threshold for use.*

B. Authorization under this VWP general permit may be modified after issuance if the project results in less wetland or stream impacts. Compensation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial authorization compensation goals.

C. Authorization under this VWP general permit may be modified after issuance for a change in project plans that does not result in a change in project impacts.

D. Authorization under the VWP general permit may be modified for a change to the mitigation bank at which credits are purchased, provided that the same amount of credits are purchased and all criteria for use in 9 VAC 25-210-115 are met.

E. Authorization under the VWP general permit may be modified after issuance for typographical errors.

F. A Notice of Planned Change is not required after authorization issuance for additional temporary impacts to surface waters, provided that DEQ is notified in writing regarding additional temporary impacts, and they are restored to preexisting conditions in accordance with Part I C 11 of this general permit. In no case can the additional temporary impacts exceed the general permit threshold for use.

~~B-~~ G. The permittee shall notify the board in advance of the planned change, and the ~~modification~~ planned change request will be reviewed according to all provisions of this regulation.

9 VAC 25-690-90. ~~Notice of Termination of authorization by consent.~~

When all permitted activities requiring notification under 9 VAC 25-690-50 A 1 have been completed, *or if the authorized impacts will not occur*, the permittee shall submit a ~~notice of request for termination~~ within 30 days of ~~final project completion or project cancellation~~. The director may accept this termination of authorization on behalf of the board. The ~~notice~~ permittee shall ~~contain~~ submit the following information:

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

a. For project completion:

"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 surface waters in accordance with the VWP general permit, and that performing activities in surface waters 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 authorization."

b. For project cancellation:

"I certify under penalty of law that the activities authorized by this VWP general permit will not occur. I understand that by submitting this notice of termination, that I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters 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 authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."

9 VAC 25-690-100. VWP general permit.

Any applicant whose ~~registration statement~~ application has been accepted by the board shall be subject to the following requirements:

VWP General Permit No. WP4

Authorization effective date:

Authorization expiration date:

Authorization Notes(s):

VWP GENERAL PERMIT FOR IMPACTS FROM DEVELOPMENT AND CERTAIN MINING 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.

Subject to the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, the permittee is authorized to impact up to two acres of nontidal surface waters, including up to 500 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel.

Permittee:

Address:

Activity Location:

Activity Description:

The authorized activity shall be in accordance with this cover page, Part I--Special Conditions, Part II--~~Mitigation Compensation~~, 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. This permit authorizes impacts of up to two acres of nontidal surface waters including up to 500 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel according to the information

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provided in the ~~applicant's approved registration statement application~~.

2. Any ~~additional changes to the authorized permanent~~ impacts to surface waters associated with this project shall require either a notice of planned change in accordance with 9 VAC 25-690-80, or another VWP permit application.

3. Any ~~changes to the authorized temporary impacts to surface waters associated with this project shall require written notification to DEQ and restoration to preexisting conditions in accordance with the conditions of this permit authorization.~~

4. ~~Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs, provided that the adjusted compensation meets the initial authorization compensation goals.~~

~~3.~~ 5. The activities authorized for coverage under this VWP general permit must commence and be completed within five years of the date of this authorization.

B. ~~Reapplication~~ Continuation of coverage. ~~Application~~ Reapplication 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 compensation~~) 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. *The request for continuation of coverage must be made no less than 60 days prior to the expiration date of this VWP general permit authorization, at which time the board will determine if continuation of the VWP general permit authorization is necessary.*

C. Overall project conditions.

1. The ~~construction or work~~ activities 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, including those species which normally migrate through the area, unless the primary purpose of the activity is to impound water. Culverts placed in streams must be installed to maintain low flow conditions. 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. *Excess or waste concrete shall not be disposed of in surface waters or washed out into surface waters.*

4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.

5. Erosion and sedimentation controls shall be designed in accordance with the Virginia 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~~ *is stabilized and shall then be removed.*

6. Any exposed slopes and streambanks ~~must shall~~ be stabilized immediately upon completion of ~~the project at work in each water body permitted impact area.~~ All denuded areas shall be properly stabilized in accordance with the Virginia 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 a manner that minimizes construction 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 surface~~ waters, unless authorized by this VWP general permit.

9. Heavy equipment in temporarily-impacted ~~wetland areas~~ *surface waters* shall be placed on mats, geotextile fabric, or other suitable ~~measures,~~ *material* to minimize soil disturbance to the maximum extent practicable. *Equipment and materials shall be removed immediately upon completion of work.*

10. All nonimpacted surface waters within *50 feet of any permitted activities and within the project or right-of-way limits that are within 50 feet of any clearing, grading, or filling activities* shall be clearly flagged or marked for the life of the construction activity ~~within~~ *at that area location to preclude any unauthorized disturbances to these surface waters during construction.* The permittee shall notify all contractors that these marked areas are surface waters where no activities are to occur.

11. Temporary disturbances to ~~wetlands~~ *surface waters* during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preconstruction conditions *within 30 days of completing work, which shall include reestablishing preconstruction contours, and planted planting or seeded seeding* with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested). The permittee shall take all appropriate measures to promote *and maintain* revegetation of temporarily disturbed wetland areas with wetland vegetation ~~by through~~ *the second year post-disturbance. All temporary fills temporarily impacted streams shall be removed in restored to their entirety and the affected area returned to the preexisting contours original elevation within 30 days following the construction at that stream segment, and the banks seeded or planted with native vegetation, and supplemented by erosion control grasses (crown vetch,*

orchard grass, or weeping lovegrass) when stabilizing steep slopes.

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~~ restored within 30 days following removal of the stockpile, and restored ~~to the original vegetated state with native vegetation or a seed mix comprised of native vegetation and erosion control grasses (crown vetch, orchard grass, or weeping lovegrass) when stabilizing steep slopes.~~

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

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

15. The permittee shall conduct his activities in accordance with any time-of-year restrictions recommended by the Department of Game and Inland Fisheries or the Virginia Marine Resources Commission, *and shall ensure that all contractors are aware of any time-of-year restrictions imposed.*

16. ~~Immediately downstream of the construction area,~~ Water quality standards shall not be violated as a result of the construction activities, *unless allowed by this permit authorization.*

17. Untreated stormwater runoff shall be prohibited from directly discharging into any surface waters, *unless allowed by this permit authorization.* Appropriate best management practices shall be deemed suitable treatment prior to discharge into state waters.

18. *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 stream channel can begin.*

D. Road crossings.

1. Access roads *and associated bridges or culverts* shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable ~~and to follow as near as possible 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 *to maintain* a low flow channel. *For multiple-celled culverts, only those cells situated within the limits of ordinary high water shall be countersunk.* Countersinking ~~is~~ shall not be required for existing pipes or culverts that are being maintained or extended.

3. Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or similar structures.

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 a manner that minimizes disturbance, and the area must be returned to its original contours and ~~stabilized~~ restored within 30 days of completing work in the area, unless otherwise authorized by this VWP general permit.

2. Material resulting from trench excavation may be temporarily sidecast into wetlands not to exceed a total of 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.

3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect.). *For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.*

F. ~~Bank stabilization~~ Stream modification and stream bank protection.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

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2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.
 3. For *stream* bank protection activities, the structure and backfill shall be placed as close to the ~~shoreline~~ *stream bank* as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.
 4. All *stream* bank ~~erosion protection~~ structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.
 5. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.
 6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.
 7. ~~All~~ No material removed from the stream ~~substrate bottom~~ shall be disposed of in ~~an approved upland area surface waters~~.
- 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 a manner that minimizes disturbance of the bottom and minimizes turbidity levels in the water column.
 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.
 6. For navigation channels the following shall apply:
 - ~~a. 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.~~
 - ~~b. a. A buffer of four times the depth of the dredge cut shall be maintained between the top bottom edge of the dredge cut design channel and the channelward limit of wetlands or mean low water, or a buffer of 15 feet shall be maintained from the dredged cut and the channelward edge of wetlands or mean low water, whichever is greater. This landward limit of buffer shall be flagged and inspected prior to construction.~~
 - ~~b. 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.~~
 7. A dredged material management plan for the designated upland disposal site shall be submitted and approved 30 days prior to initial dredging activity.
 8. 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.
 9. 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.
 10. The dredge material dewatering area shall utilize an earthen berm 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.
 11. Overtopping of the dredge material containment berms with dredge materials shall be strictly prohibited.
- H. Stormwater management facilities.
1. Stormwater management facilities shall be ~~designed installed~~ 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~~ *Compensation* for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.
 3. Maintenance ~~excavation activities within stormwater management facilities~~ shall not require additional permit authorization or compensation provided that the maintenance activities do not exceed the original contours of the facility, as approved and constructed, and is accomplished in designated maintenance areas as indicated in the facility maintenance or design plan.
 4. ~~Maintenance within stormwater management facilities will not require mitigation provided that the maintenance is accomplished in designated maintenance areas as indicated in the facility maintenance plan.~~
- Part II. ~~Mitigation~~ *Compensation*, Monitoring, and Reporting.
- A. ~~Compensatory mitigation~~ *Compensation*.
1. The permittee shall provide appropriate and practicable ~~compensatory mitigation compensation~~ for all impacts meeting the conditions outlined in this VWP general permit.
 2. The types of ~~compensatory mitigation compensation~~ 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.
 3. *For wetlands* compensation may incorporate preservation of wetlands or ~~streams or~~ preservation or restoration of upland buffers adjacent to state waters when utilized in conjunction with creation, restoration, or mitigation bank

credits. For other surface waters, compensation may incorporate preservation or enhancement of stream channels, or preservation, restoration or enhancement of adjacent riparian buffers.

4. 4. The site or sites depicted in the conceptual ~~compensatory mitigation~~ compensation plan submitted with the ~~registration statement~~, application shall constitute the ~~compensatory mitigation~~ compensation plan for the approved project. A site change will require a modification to the authorization.

2. 5. For compensation involving the purchase or use of mitigation bank credits, the permittee shall ~~submit not initiate work in permitted impact areas until~~ documentation within 60 days of VWP general permit authorization that the USACE has debited the required mitigation credits from the ~~Mitigation Bank ledger of the mitigation bank credit purchase has been submitted to and received by DEQ.~~

6. For projects proposing a contribution to an in-lieu fee fund, the permittee shall ~~submit not initiate work in permitted impact areas until~~ documentation within 60 days of VWP general permit authorization that the fund contribution has been received of the in-lieu fee fund contribution has been submitted to and received by DEQ.

3. 7. All aspects of the ~~compensatory mitigation~~ compensation plan shall be finalized, submitted and approved by the board prior to any construction activity in permitted impact areas. The board shall review and provide written comments on the plan within 30 days of receipt or it shall be deemed approved. The final ~~compensatory mitigation~~ compensation plan as approved by the board shall be an enforceable requirement of this VWP general permit authorization. Any deviations from the approved plan must be submitted and approved in advance by the board.

a. 8. The final ~~compensatory mitigation~~ wetlands compensation plan shall include: ~~narrative description of the plan including~~

a. The goals and objectives, of the plan in terms of replacement of wetland acreage and functions, by wetland type;

site b. Location, map, including latitude and longitude (to the nearest second) at the center of the site;

c. Summary of the type and acreage of existing wetland impacts anticipated during the construction of the compensation site and proposed compensation for these impacts;

d. Grading plan with existing and proposed grade, elevations at one-foot or less contours;

e. Schedule for ~~compensatory mitigation~~ compensation site construction, including sequence of events with estimated dates;

source of hydrology and f. Hydrologic analysis, including a water budget based on expected monthly inputs and outputs that will project water level elevations for a typical year, a wet year, and a dry year;

~~plant species~~, g. Groundwater elevation data for the site, or the proposed location of groundwater monitoring wells to collect these data, and groundwater data for reference wetlands, if applicable;

h. Design of water control structures;

i. Planting scheme and schedule, indicating ~~expected plant species~~, zonation, ~~planting schedule~~, and acreage of each vegetation type proposed;

j. An abatement and control plan for undesirable plant species, including, at a minimum, the species listed on DCR's Invasive Alien Plant Species of Virginia list, and including procedures to notify DEQ of any undesirable plant species occurrences, methods of removal, and successful control;

k. Erosion and sedimentation control plan;

l. A soil ~~amendments~~, all preparation and amendments plan addressing both topsoil and subsoil conditions;

m. A discussion of any structures and features considered necessary for the success of the ~~plan~~, site;

~~and number and~~ n. A monitoring plan, including proposed success criteria, monitoring goals and methodologies, monitoring and reporting schedule, and the locations of photographic stations, and groundwater monitoring wells. 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 within approximately 200 miles from the project site. , any sampling points, and reference wetlands;

o. Site access plan;

p. The location and composition of any buffers; and

q. The mechanism for protection of the compensation area(s).

9. The final stream compensation plan shall include:

a. The goals and objectives of the compensation plan in terms of replacement of stream functions and values, and linear feet and acreage of surface waters;

b. A location map, including latitude and longitude (to the nearest second) at the center of the site;

c. An evaluation and discussion of existing conditions on the proposed compensation stream, including the identification of functional and physical deficiencies for which the restorative measures are proposed, and summary of geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth ratio, sinuosity, slope, substrate, etc.);

d. The identification of existing stream type being impacted and proposed stream type for compensation purposes;

e. Detailed design information for the proposed restorative measures, including geomorphological

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measurements, and reference reach information as appropriate;

f. Riparian buffer plantings, including planting scheme, species, buffer width;

g. Livestock access limiting measures;

h. A site access plan;

i. An erosion and sedimentation control plan, if appropriate;

j. A monitoring and control plan for undesirable plant species, if appropriate, including, at a minimum, the species listed on DCR's Invasive Alien Plant Species of Virginia list, and including procedures to notify DEQ of any undesirable plant species occurrences, methods for removal and successful control, and report the success of the removal efforts;

k. A schedule for compensation site construction including projected start date, sequence of events with projected dates, and projected completion date;

l. A monitoring plan, including a monitoring and reporting schedule; monitoring design and methodologies to evaluate the success of the proposed compensation measures, allowing comparison from year to year; proposed success criteria for appropriate compensation measures; proposed monitoring photo points; monitoring and reporting schedule; location of all monitoring stations including photo stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams; and

m. The mechanism for protection of the compensation area.

10. For final wetland or stream compensation plans, rooted seedlings or cuttings shall be from areas within the same or adjacent USDA Plant Hardiness Zone or NRCS Land Resource Region as that of the project site.

11. For final wetland or stream compensation plans, any vegetation used shall be native species common to the area, shall be suitable for growth in local wetland conditions, and shall be from areas within the same or adjacent USDA Plant Hardiness Zone or NRCS Land Resource Region as that of the project site.

b. 12. The final ~~compensatory mitigation plan~~ wetland or stream compensation plan(s) shall include a mechanism for protection in perpetuity of the compensation sites(s) to include all state waters (including ~~compensatory mitigation areas and nonimpact state waters~~) within the project compensation site boundary in perpetuity. ~~These areas or boundaries. Such protections shall be surveyed or platted in place 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~~ compensation area or ~~nonimpact state water~~, with the exception of maintenance or corrective action measures authorized by

the board. Unless specifically authorized by the board through the issuance of a VWP individual or *general* 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, *or an equivalent instrument for government-owned lands*. 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 or sites 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.~~

13. An as-built survey of the site, including spot elevations, shall be submitted to DEQ within 60 days of completion of grading and shall be certified by a licensed land surveyor or a professional engineer.

~~5.~~ 14. All work in impact areas shall cease if ~~compensatory mitigation~~ compensation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by the board.

~~6. A site stabilization plan shall be provided for compensation sites involving land disturbance.~~

15. DEQ shall be notified in writing at least 10 days prior to the initiation of construction activities at the compensation site(s).

~~7.~~ 16. Planting of woody plants shall occur when vegetation is normally dormant unless otherwise approved in the final ~~mitigation plan~~ wetlands or stream compensation plan(s).

~~8.~~ 17. Point sources of stormwater runoff shall be prohibited from entering any wetland ~~compensatory mitigation~~ compensation 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 or forebays.

~~9.~~ 18. The success of the ~~compensatory mitigation~~ compensation 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 meeting the success criteria established in the approved final compensation plan.

~~10.~~ 19. Wetland hydrology shall be considered established if depths to the seasonal high water table are equal to or less than 12 inches below ground surface for at least 12.5% of the *region's killing frost-free* growing season, as defined in the ~~United States Department of Agriculture~~ soil survey for the locality of the compensation site in all monitoring years or the NRCS WETS table, measured in consecutive days under normal rainfall typical precipitation conditions, and as defined in the water budget of the final ~~mitigation~~ compensation plan. For the purpose of this regulation, the

growing season is defined as the period in which temperatures are expected to be above 28 degrees Fahrenheit in five out of 10 years, or the period during which the soil temperature in a wetland compensation site is greater than biological zero (five degrees Celsius) at a depth of 50 centimeters (19.6 inches), if such data is available.

14- 20. The wetland plant community shall be considered established according to the performance criteria specified in the final ~~mitigation~~ compensation plan and approved by the board. *The proposed vegetation success criteria in the final compensation plan shall include the following:*

a. Species composition shall reflect the desired plant community types stated in the final ~~mitigation wetlands~~ compensation plan by the end of the first growing season and shall be maintained through the last monitoring year of the VWP permit.

b. Species composition shall consist of greater than 50% facultative (FAC) or wetter (FACW or OBL) vegetation, as expressed by plant stem density or areal cover, by the end of the first growing season and shall be maintained through the last monitoring year.

~~12. Noxious weeds~~ 21. *Undesirable plant species* shall be identified and controlled as described in the ~~noxious weed undesirable plant species~~ 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 board of any invasive species occurrences DEQ when undesirable plant species comprise greater than 5.0% of the vegetation by aerial coverage on wetland or stream compensation sites, including the methods of removal; and whether the methods are successful control.

13- 22. If the ~~compensatory mitigation area~~ wetland or stream compensation area(s) fails fail to be established as viable wetlands meet the specified success criteria in a monitoring year (with the exception of the final monitoring year), the reasons for this failure shall be determined and a corrective action plan, (including proposed actions, a schedule, and a monitoring plan) shall be submitted to the board DEQ for approval prior to or with the next required or before that year's monitoring report. All problems shall be corrected by the permittee. *The approved corrective action plan shall be implemented by the permittee in accordance with the approved schedule.* Should significant changes be necessary to establish wetlands ensure success, the required monitoring plan cycle shall begin again, with monitoring year one being the year that the changes are complete, as confirmed by DEQ.

23. *If all success criteria have not been met in the final monitoring year, or if the wetland or stream compensation site(s) have not met the stated restoration goals, monitoring shall be required for each consecutive year until two sequential, annual reports indicate that all criteria have been successfully satisfied and the site(s) have met the overall restoration goals (i.e., that corrective actions were successful). The reasons for this failure shall be determined and a corrective action plan (including proposed*

actions, a schedule, and a monitoring plan) shall be submitted with the monitoring report to DEQ for approval and implemented by the permittee in accordance with the approved schedule.

14- 24. The surveyed wetland boundary for the ~~compensatory mitigation~~ wetlands compensation 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 at the end of the monitoring cycle. *Data shall be submitted by November 30 of the final monitoring year.*

15- 25. Herbicides or algicides shall not be used in or immediately adjacent to the ~~compensatory mitigation wetlands or stream compensation~~ site or sites without prior authorization by the board. All vegetation removal shall be done by manual means, unless authorized by the board DEQ in advance.

~~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 or extension must be made no less than 60 days prior to the expiration date of this VWP general permit authorization, at which time the board will determine if renewal of the VWP general permit authorization is necessary.~~

B. ~~Compensatory mitigation~~ Wetland compensation site monitoring.

1. ~~A post-grading~~ An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, including spot elevations, of shall be conducted for the entire compensation site or sites for wetland compensatory mitigation may including invert elevations for all water elevation control structures and spot elevations throughout the site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. Either type of survey shall be required depending upon the type and size of the compensation site, and shall be conducted certified by a licensed land surveyor or by a registered professional engineer to conform to the design plans. The survey shall be submitted within 90 days of completing compensation site construction. Any changes or deviations in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

2. Photographs shall be taken at the ~~compensatory mitigation~~ compensation site or sites from the permanent markers identified in the final ~~mitigation~~ compensation plan, and established to ensure that the same locations and view directions at the site or sites are monitored in each monitoring period. These photographs shall be taken after the initial planting and in August or September at a time specified in the final compensation plan during every monitoring year.

3. ~~Compensatory mitigation~~ Compensation site monitoring for hydrology, soils, and hydrophytic vegetation shall begin at the first complete growing season (monitoring year 1) following ~~compensatory mitigation~~ after wetland compensation site construction activities, including planting,

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have been completed. Monitoring shall be required for monitoring years 1, 2, 3, and 5, unless otherwise approved by DEQ. In all cases if all success criteria have not been met in the ~~first~~ final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

4. The establishment of wetland hydrology shall be measured during the growing season, with the location and number of monitoring wells, and frequency of monitoring for each site, set forth in the final monitoring plan. All hydrology monitoring well data shall be accompanied by precipitation data, including rainfall amounts either from on site or from the closest weather station. Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, monitoring may be discontinued for the remainder of that monitoring year following DEQ approval. After a period of three monitoring years, the permittee may request that hydrology monitoring be discontinued, providing that adequate hydrology has been established and maintained. Hydrology monitoring shall not be discontinued without written approval from DEQ.

5. The presence of hydric soils or soils under hydric conditions shall be evaluated in accordance with the final mitigation compensation plan.

6. The establishment of wetland vegetation shall be in accordance with the final mitigation compensation plan. Monitoring shall take place in August or, September, or October during the growing season of each monitoring year, unless otherwise authorized in the monitoring plan:

7. The presence of noxious undesirable plant species shall be documented.

8. All wetland compensation monitoring reports shall be submitted by November 30 of the monitoring year. The reports shall include, as applicable, the following:

a. General description of the site including a site location map identifying photo stations, vegetative and soil monitoring stations, monitoring wells, and wetland zones;

b. Summary of activities completed during the monitoring year;

c. Description of monitoring methods;

d. Analysis of all hydrology information, including monitoring well data, precipitation data, and gauging data from streams or other open water areas, as set forth in the final compensation plan;

e. Evaluation of hydric soils or soils under hydric conditions, as appropriate;

f. Analysis of all vegetative community information, including woody and herbaceous species, both planted and volunteers, as set forth in the final compensation plan;

g. Photographs labeled with the permit number, the name of the compensation site, the photo station number, the photograph orientation, the date and time of the photograph, the name of the person taking the

photograph, and a brief description of the photograph subject. This information shall be provided as a separate attachment to each photograph, if necessary. Photographs taken after the initial planting shall be included in the first monitoring report after planting is complete;

h. Discussion of wildlife or signs of wildlife observed at the compensation site;

i. Comparison of site conditions from the previous monitoring year and reference site, if applicable;

j. Discussion of corrective measures or maintenance activities to control undesirable species, to repair any damaged water control device, or to replace any damaged planted vegetation; and

k. Corrective action plan, which includes proposed actions, a schedule, and monitoring plan.

C. Stream mitigation compensation, restoration and monitoring.

1. ~~Stream mitigation~~ Any riparian buffer restoration activities shall be performed detailed in accordance with the final mitigation compensation plan and subsequent submittals, as approved by the board shall include, as appropriate, the planting of a variety of native species currently growing in the site area, including appropriate seed mixtures and woody species that are bare root, balled, or burlapped. A minimum buffer width of 50 feet, measured from the top of the stream bank at bankfull elevation landward on both sides of the stream, shall be required where practical.

2. The installation of root wads, vanes, and other instream structures, shaping of the stream bank slopes banks, and channel relocation shall be stabilized to reduce stream bank erosion, where completed in the dry whenever practicable.

3. Livestock access to the stream and designated riparian buffer shall be limited to the greatest extent practicable.

4. Heavy equipment is authorized for use within the stream channel during restoration activities when site conditions prohibit access from the streambank. These activities shall be conducted in the dry or during low flow conditions, when practicable.

5. Photographs shall be taken at the compensation site from the vicinity of the permanent photo stations identified in the final compensation plan. The photograph orientation shall remain constant during all monitoring events. At a minimum, photographs shall be taken from the center of the stream, facing downstream, with a sufficient number of photographs to view the entire length of the restoration site. Photographs shall document the completed restoration conditions. Photographs shall be taken prior to site activities, during instream and riparian compensation construction activities, within one week of completion of activities, and during at least one day of each monitoring year to depict restored conditions.

6. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites. Aerial surveys

shall include the variation from actual ground conditions, such as +/- 0.2 feet. The survey shall be certified by the licensed surveyor or by a registered, professional engineer to conform to the design plans. The survey shall be submitted within 90 days of completing compensation site construction. Any changes or deviations in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

~~3- 7. All stream mitigation compensation monitoring reports shall be conducted in the manner proscribed in the final mitigation plan approved by the board. All monitoring reports shall be submitted by November 30 of the monitoring year. Monitoring~~ The reports shall include, as applicable, the following:

a. General description of the site including a site location map identifying photo stations and monitoring stations.

b. Summary of activities completed during the monitoring year.

c. Description of monitoring methods.

d. An evaluation and discussion of the monitoring results in relation to the success criteria and overall goals of compensation.

~~a- e. Photographs sufficient to document installation of specific structures and vegetative plantings or where the stream channel banks are reshaped. Permanent markers shall be established to ensure that the same locations and view directions at the site are photographed in each monitoring period labeled with the permit number, the name of the compensation site, the photo station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. Photographs taken prior to compensation site construction activities, during instream and riparian restoration activities, and within one week of completion of activities shall be included in the first monitoring report.~~

~~b. Discussion of the establishment of vegetation, if applicable.~~

~~e- Any f. A discussion of alterations, maintenance, or major storm events resulting in significant change in stream profile or cross section, and corrective actions conducted at the stream mitigation compensation site.~~

g. Documentation of undesirable plant species and summary of abatement and control measures.

h. A summary of wildlife or signs of wildlife observed at the compensation site.

i. Comparison of site conditions from the previous monitoring year and reference site, if applicable.

j. A corrective action plan, which includes proposed actions, a schedule and monitoring plan.

D. Construction monitoring.

1. ~~Photo stations shall be established to document the Construction aspects of project activities within impact areas as authorized by this permit that are within impact~~

~~areas shall be monitored through photographic documentation. Photographs should~~ The photographic monitoring shall document the pre-construction conditions, activities during construction, and post-construction conditions ~~within one week after completion of construction.~~ Photographic monitoring shall consist of one of the following options:

a. Photographs shall be taken during construction at the end of the first, second, and ~~twelfth~~ *third* months of construction, and then ~~annually~~ *semi-annually* for the remainder of the construction project. ~~Photographs are not necessary~~, except during periods of no activity within impact areas; or

b. An ortho-rectified photograph shall be taken prior to construction, and annually thereafter until all impacts are taken, and shall clearly show the delineated surface waters and authorized impact areas.

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. As part of construction monitoring, photographs taken at the photo stations shall document site activities and conditions, which may include installation and maintenance of erosion and sediment controls; condition of adjacent nonimpact surface waters; flagged nonimpact surface waters; construction access and staging areas; filling, excavation, and dredging activities; culvert installation; dredge disposal; and site stabilization, grading, and associated restoration activities. With the exception of the preconstruction photographs, photographs at an individual impact site shall not be required until construction activities are initiated at that site. With the exception of the post-construction photographs, photographs at an individual impact site shall not be required once the site is stabilized following completion of construction at that site.~~

3. ~~Stream bottom elevations at road crossings shall be measured at the inlet and outlet of the proposed structure 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. Each photograph shall be labeled to include the following information: permit number, impact area and photo station number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.~~

4. Monitoring of water quality parameters shall be conducted during ~~rerouting of the live~~ *permanent relocation* of perennial 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~~ *30 minutes* for at least three readings ~~two hours~~ at each station prior to opening the new channels; and immediately before opening new channels.

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~~c. After opening the new channel, Temperature, pH and D.O. readings shall be taken ~~one~~ after opening the channels and every half hour 30 minutes for at least three readings hours at each station within 24 hours of opening the new channel.~~

5. The permittee shall report violations of water quality standards to DEQ in accordance with the procedures in Part II E. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.

E. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate DEQ office. The VWP general permit authorization number shall be included on all correspondence.

~~2. The board DEQ shall be notified in writing by certified letter at least 10 days prior to the start of construction activities at the first permitted site authorized by this VWP general permit authorization so that inspections of the project can be planned, if deemed necessary by DEQ. The notification shall include identification of the impact area at which work will occur and a projected schedule for completing initiation and completion of work at each permitted impact area.~~

~~3. After construction begins, Construction monitoring reports shall be submitted to the board within 30 days of each DEQ not later than the 10th day of the month following the month in which the monitoring event specified in Part II D takes place. The reports shall include, at a minimum, the following, as appropriate:~~

~~a. For each permitted impact area, a written statement regarding when narrative stating whether work started in the identified impact area, where work was performed, what during the monitoring period. If work was performed, a description of the work performed, when the work was initiated, and what work was completed the expected date of completion.~~

b. Properly labeled photographs (to include date and time, name of the person taking the photograph, a brief description 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.). *The post-construction photographs shall be submitted within 30 days of documenting post-construction conditions. The first construction monitoring report shall include the photographs taken at each impact site prior to initiation of construction in any permitted impact area. Written notification and photographs demonstrating that all temporarily disturbed wetland and stream areas have been restored in compliance with the permit conditions shall be submitted within 30 days of restoration.*

c. Summary of activities conducted to comply with the permit conditions.

d. Summary of permit noncompliance events or problems encountered, subsequent notifications, and corrective actions.

e. Summary of anticipated work to be completed during the next monitoring period, and an estimated date of construction completion at all impact areas.

f. Labeled site map depicting all impact areas and photo stations.

4. DEQ shall be notified in writing within 30 days following the completion of all activities in all permitted impact areas authorized under this permit.

5. DEQ shall be notified in writing at least 10 days prior to the initiation of activities at the compensation site. The notification shall include a projected schedule of activities and construction completion.

~~4. 6. All compensatory mitigation compensation monitoring reports shall be submitted annually by November 30, with the exception of the last year of authorization, in which case the report shall be submitted at least 60 days prior to expiration of authorization under the general permit. Any alterations and maintenance conducted on the compensatory mitigation compensation sites shall be reported. Invasive Undesirable plant species occurrences and control of these occurrences shall also be reported to the board DEQ.~~

~~5. The permittee shall submit a notice of termination within 30 days of final completion in accordance with 9 VAC 25-600-90.~~

~~6. 7. The permittee shall notify the board 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 the board DEQ.~~

~~7. 8. 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, the appropriate DEQ regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.~~

~~8. 9. Violations of state water quality standards shall be reported within 24 hours to the appropriate DEQ office.~~

~~9. 10. 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 General Permits.

A. Duty to comply. The permittee shall comply with all conditions of the VWP general 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 general permit noncompliance is a violation of the Clean Water Act and State Water Control Law, and is grounds for enforcement action, VWP general permit authorization termination *for cause*, VWP general permit authorization revocation, or denial of a ~~renewal application~~ *continuation of coverage request*.

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 authorization may be reopened to modify its conditions when the circumstances on which the previous VWP general permit authorization 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 general permit authorization was issued and thereby constitute cause for VWP general permit authorization 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 authorization are severable.

G. Right of entry. The permittee shall allow the board or its agents, 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 general permit authorization. This VWP general permit authorization 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 new permittee containing a specific date of transfer of VWP general permit authorization responsibility, coverage and liability to the new permittee, or that the existing permittee 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 new permittee of its intent to modify or revoke and reissue the VWP general permit authorization ~~within the 30-day time period~~ *15 days*.

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

I. Notice of planned change. Authorization under the VWP general permit may be modified subsequent to issuance if: (i) the permittee determines that additional *permanent* wetland ~~and~~ or stream impacts are necessary, provided that the cumulative increase in acreage of wetland impacts is not greater than 1/4 acre and the cumulative increase in stream impacts is not greater than 50 linear feet, and provided that the additional impacts are fully ~~mitigated~~ *compensated*; (ii) *the project results in less wetland or stream impacts, in which case, compensation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial authorization compensation goals*; (iii) *there is a change in the project plans that does not result in a change in project impacts*; (iv) *there is a change in the mitigation bank at which credits are purchased, provided that the same amount of credits are purchased and all criteria for use are met, as detailed in 9 VAC 25-210-115*; or (v) *typographical errors need to be corrected. A notice of planned change is not required if the project results in additional temporary impacts to surface waters, provided that DEQ is notified in writing, the additional temporary impacts are restored to preexisting conditions in accordance with Part I C 11 of this general permit, and the additional temporary impacts do not exceed the general permit threshold for use.* The permittee shall notify the board in advance of the planned change, and the ~~modification~~ *planned change* request will be reviewed according to all provisions of this regulation.

J. VWP general permit *authorization* termination *for cause*. This VWP general permit; *authorization is subject to*

Proposed Regulations

termination for cause by the board after public notice and opportunity for a hearing, is subject to termination. Causes
Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any condition of the VWP general permit *authorization*;
2. The permittee's failure in the application or during the VWP general permit *authorization* 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 that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by a VWP general permit *authorization modification planned change or termination for cause*.

K. VWP general permit authorization termination by consent. This VWP general permit authorization may be terminated by consent when all permitted activities requiring notification under 9 VAC 25-690-50 A 1 have been completed, when the authorized impacts do not occur, or when a planned change occurs that involves substituting a specified, approved mitigation bank with another specified, approved mitigation bank. The permittee shall submit a request for termination by consent within 30 days of project completion or project cancellation. The director may accept this termination of authorization on behalf of the board. The request for termination by consent shall contain the following information:

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

a. For project completion:

"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 surface waters in accordance with the VWP general permit, and that performing activities in surface waters 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 authorization."

b. For project cancellation:

"I certify under penalty of law that the activities authorized by this VWP general permit will not occur. I understand that by submitting this notice of termination, that I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters 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 authorization, nor does it allow me to

resume the permitted activities without reapplication and reauthorization."

~~K.~~ L. 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.~~ M. 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.~~ N. 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 ~~VSP~~ VWP permit has been granted in order to maintain compliance with the conditions of the VWP permit.

~~N.~~ O. Duty to provide information.

1. The permittee shall furnish to the board 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.

~~O.~~ P. 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. 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, as appropriate:

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 and time 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;
- f. The results of such analyses; and
- g. Chain of custody documentation.

P- Q. 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.

NOTICE: The forms used in administering 9 VAC 25-690, Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Department of Environmental Quality Water Division Permit Application Fee *Form* (eff. ~~10/04~~ 7/04).

Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (eff. ~~10/04~~ 4/04).

~~Virginia Water Protection General Permit Registration Statement (eff. 10/01).~~

~~Quarterly Reporting of Impacts Less than One-Tenth Acre (insert reporting period) Statewide (eff. 4/03).~~

Virginia Department of Transportation Inter-Agency Coordination Meeting Joint Permit Application (eff. 10/02).

VA.R. Doc. No. R04-103; Filed June 23, 2004, 8:01 a.m.



FINAL REGULATIONS

For information concerning Final Regulations, see Information Page.

Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a change from the proposed text of the regulation.

TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

STATE CORPORATION COMMISSION

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

Title of Regulation: 10 VAC 5-200. Payday Lending (adding 10 VAC 5-200-100).

Statutory Authority: §§ 6.1-458 and 12.1-13 of the Code of Virginia.

Effective Date: June 15, 2004.

Agency Contact: E. J. Face, Jr., Commissioner, Bureau of Financial Institutions, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 371-9659, FAX (804) 371-9416, or e-mail jface@scc.state.va.us.

Summary:

The amendments govern the conduct of any business other than payday lending where a licensed payday lending business is conducted and also limit such other businesses to those that are financial in nature. The regulation is amended to encourage, rather than require, licensees to maintain written evidence of commission approval of each other business at every location where such other business is conducted.

AT RICHMOND, JUNE 9, 2004

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2003-00054

Ex Parte: In re: proposed regulation relating to conduct of other business in payday lending offices

ORDER ADOPTING A REGULATION

On November 14, 2003, the State Corporation Commission ("Commission") entered an Order to Take Notice of a proposed regulation relating to the conduct of other business in payday lending offices. The Order and proposed regulation were published in the Virginia Register on December 15, 2003. The Order directed interested parties to comment or request a hearing on the proposed regulation on or before January 9, 2004. The Commission received written comments, and on March 29, 2004, entered an Order to Take Notice of Reproposed Regulation, which contained a

modification to the regulation that was proposed on November 14, 2003. Because our modification made a material change to the proposed regulation, interested parties were afforded an additional opportunity to comment and/or request a hearing on the revised proposed regulation.

Comments on the revised proposed regulation were filed by Anykind Check Cashing, LC d/b/a Check City ("Anykind"), James Frauenberg of BCCi-Check\$mart, and Larry E. Hughes, Vice President, Extol Corporation, Inc. d/b/a Quick-Check: Cash Advance Service. Anykind, by counsel, submitted comments and a request for hearing regarding the ability of businesses, including licensed payday lenders, to make or broker tax refund anticipation loans in light of certain provisions in the Payday Loan Act. However, by letter filed June 2, 2004, Anykind withdrew its request for hearing. BCCi-Check\$mart requested that licensees be permitted to maintain written evidence of Commission approval of each other business conducted at a corporate office rather than at each location where such other business is conducted.

NOW THE COMMISSION, having considered the record, the revised proposed regulation, and all of the written comments filed, concludes that the revised proposed regulation is a proper exercise of our authority under §§ 6.1-458 and 6.1-463 of the Code of Virginia, and should be adopted with one modification as discussed below. We find that the comments submitted by Anykind are not germane to the revised proposed regulation, but relate to specific statutory provisions that this Commission lacks authority to waive or modify. With regard to the comment submitted by BCCi-Check\$mart, we believe that each licensee should be encouraged to maintain written evidence of Commission approval of each other business at every location where such other business is conducted, but should not be required to do so. We hope that every licensee will make a good faith effort to retain a copy of the Commission's order approving other business for the benefit of both licensees and examiners. We therefore change "shall" to "should" in subsection D of the regulation. Finally, we find that the comments submitted by Extol Corporation, Inc. d/b/a Quick-Check: Cash Advance Service do not warrant any changes to the revised proposed regulation.

Accordingly, IT IS ORDERED THAT:

- (1) The modified revised proposed regulation, 10 VAC 5-200-100, attached hereto is adopted effective June 15, 2004.
- (2) The regulation shall be posted on the Commission's website at <http://www.state.va.us/scc/caseinfo.htm>.
- (3) An attested copy hereof, together with a copy of the regulation, shall be sent to the Registrar of Regulations for publication in the Virginia Register.
- (4) This case is dismissed from the Commission's docket of active matters.

AN ATTESTED COPY hereof shall be sent to the Commissioner of Financial Institutions, who shall forthwith mail a copy of this Order and the regulation to all licensed payday lenders and such other interested parties as he shall designate.

10 VAC 5-200-100. Other business in payday lending offices.

A. This section governs the conduct of any business other than payday lending where a licensed payday lending business is conducted.

B. Upon the filing of a written application and payment of the fee required by law, and subject to approval by the commission and the imposition of such conditions as the commission deems necessary and in the public interest, other business may be conducted in a location where a licensed payday lending business is conducted if the commission determines that such other business is financial in nature, except the selling of insurance or the enrolling of borrowers under group insurance policies. The commission shall in its discretion determine whether a proposed other business is "financial in nature," and shall not be obliged to consider the meaning of this term under federal law. ~~Notwithstanding whether a proposed other business is financial in nature, the commission may approve, among other things, the following: (i) furnishing copy machine or facsimile services; (ii) selling stamps, prepaid telephone cards, photo IDs, or check cashing membership cards; (iii) selling lottery tickets, provided the seller is licensed to sell lottery tickets by the State Lottery Department; (iv) operating a cash dispensing only ATM; or (v) selling any other product or service with a price of less than \$5.00.~~ A business is financial in nature if it primarily deals with the offering of debt, money or credit, or services directly related thereto.

C. Nothing contained herein shall apply to any nonfinancial other business conducted pursuant to any order of the commission entered on or before ~~November 30, 2003~~ [the effective date of this regulation June 15, 2004]. However, this subsection shall not be construed to authorize any person to begin engaging in such other business at payday lending locations where such other business was not conducted as of ~~November 30, 2003~~ the [effective date of this regulation June 15, 2004].

D. Written evidence of commission approval of each other business conducted by any payday lender licensee [shall should] be maintained at each location where such other business is conducted.

VA.R. Doc. No. R04-47; Filed June 11, 2004, 9:09 a.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Titles of Regulations: **12 VAC 5-200. Regulations Governing Eligibility Standards and Charges for Medical Care Services to Individuals (amending 12 VAC 5-200-10**

through 12 VAC 5-200-50, 12 VAC 5-200-80 through 12 VAC 5-200-190, 12 VAC 5-200-220, 12 VAC 5-200-230, 12 VAC 5-200-270, and 12 VAC 5-200-280; repealing 12 VAC 5-200-70 and 12 VAC 5-200-210; adding 12 VAC 5-200-105 and 12 VAC 5-200-290).

12 VAC 5-210. Charges and Payment Requirements By Income Levels (repealing 12 VAC 5-210-10 and 12 VAC 5-210-20).

Statutory Authority: §§ 32.1-11 and 32.1-12 of the Code of Virginia.

Effective Date: August 11, 2004.

Summary of Public Comments and Agency's Response: No comments were received by the promulgating agency.

Agency Contact: James Burns, M.D., Deputy Commissioner for Public Health, Department of Health, 109 Governor St., 13th Floor, Richmond, VA 23219, telephone (804) 864-7001, FAX (804) 864-7022, or e-mail jim.burns@vdh.virginia.gov.

Summary:

The existing regulations govern how Virginia's local health departments determine charges paid by patients who receive health services and have not been revised in 10 years. The revision simplifies the charging structure by tying it to Medicaid, allows goods and purchased services to be priced at their costs, encourages patients to apply for insurance for which they may be eligible, clarifies the family economic unit, and provides for the issuance of a guidance document that interprets and provides guidance for implementing the regulations. The sliding fee scale is not changed.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 20:12 VA.R. 1444-1454 February 23, 2004, without change. Therefore, pursuant to § 2.2-4031 A of the Code of Virginia, the text of the final regulation is not set out.

VA.R. Doc. No. R03-119; Filed June 23, 2004, 12:02 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **12 VAC 30-70. Methods and Standards for Establishing Payment Rates; Inpatient Hospital Care (amending 12 VAC 30-70-291, 12 VAC 30-70-301 and 12 VAC 30-70-331).**

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Effective Date: August 11, 2004.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Agency Contact: Steven E. Ford, Manager, Division of Reimbursement, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-7355, FAX (804) 786-1680, or e-mail Steve.Ford@dmas.virginia.gov.

Final Regulations

Summary:

The amendments (i) reduce fee-for-service operating rates for state teaching hospitals (referred to as "Type One hospitals") to a level commensurate with all other hospitals (referred to as "Type Two hospitals") and (ii) increase payments to Type One hospitals through other means (modifying Indirect Medical Education payments) to compensate for reductions in operating payments as well as revenue losses due to a federal regulatory change that now precludes previously used pass-through payments based on Medicaid managed care rates. These changes will not result in new revenues to the Type One hospitals but will maintain the overall previous revenue levels. These methodology changes will permit the continuation of managed care payments commensurate with fee-for-service payments. The goal of these actions is to maintain reimbursements for Type One hospitals at their current levels and thus maintain Medicaid managed care clients' access to the medical services these hospitals provide.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 20:15 VA.R. 1766-1769 April 5, 2004, without change. Therefore, pursuant to § 2.2-4031 A of the Code of Virginia, the text of the final regulation is not set out.

VA.R. Doc. No. R03-321; Filed June 23, 2004, 11:27 a.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with (i) § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved, and (ii) § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The State Board of Social Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 22 VAC 40-191. Background Checks for Child Welfare Agencies (amending 22 VAC 40-191-40 and 22 VAC 40-191-50).

Statutory Authority: §§ 63.2-1704, 63.2-1721 and 63.2-1724 of the Code of Virginia.

Effective Date: September 1, 2004.

Agency Contact: Wenda Singer, Program Consultant, Department of Social Services, 7 North 8th Street, Richmond, VA 23219, telephone (804) 726-7148 or FAX (804) 726-7132.

Summary:

The amendments allow parents and guardians to be alone with their own children in a religious exempt child day center

without obtaining background checks. The amendments also provide for a child-placing agency to approve as a foster parent an applicant convicted of statutory burglary for breaking and entering a dwelling home or other structure with intent to commit larceny who has had his rights restored by the Governor, provided 25 years have elapsed following the conviction.

22 VAC 40-191-40. Identifying who is covered by this regulation.

A. This regulation applies to:

1. Licensed family day homes;
2. Licensed family day systems;
3. Family day homes approved by family day systems;
4. Licensed child-placing agencies;
5. Licensed independent foster homes;
6. Foster and adoptive homes approved by child-placing agencies;
7. Voluntarily registered family day homes; and
8. Religious exempt child day centers.

B. Background checks are required at the time of initial application.

1. These background checks are required at the time of application for licensure, registration, or approval:

Who	What	When
Any applicant	Sworn statement or affirmation, search of central registry, and criminal history record check	Upon application for licensure or registration as a child welfare agency
Any agent at the time of application who is or will be involved in the day-to-day operations of the child welfare agency or who is or will be alone with, in control of, or supervising one or more of the children	Same	Same
Any other adult living in the home of an applicant for licensure or registration as a family day home, or any existing employee or volunteer	Same	Upon application for licensure or registration as a family day home
Prospective foster or adoptive parent	Same	Upon request for approval by child-placing agency
Operator of family day home requesting approval by family day system	Same	Upon request for approval by family day system

Any other adult residing in the family day home requesting approval and any employee or volunteer of a family day home	Same	Upon request by operator for approval by family day system
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Specific information related to persons aged 14 to 18 is found in subdivisions C 4 and 5 of this section.

2. These background checks are required at the time of initial application for religious exemption status:

Who	What	When
Any person who will be expected to be alone with one or more children enrolled in a religious exempt child day center except a parent-volunteer, as defined in this regulation, or a parent or guardian who may be left alone with his or her own child	Documentary evidence of sworn statement or affirmation, search of the central registry, and criminal history record check	With the written request for religious exemption status

C. Background checks are required after the initial licensure, registration, approval, or receipt of religious exemption status.

1. These background checks are required after initial licensure, registration, or approval:

Who	What	When
New person designated as applicant, licensee, registrant, approved individual, or agent who is or will be involved in the day-to-day operations of the facility or who is or will be alone with, in control of, or supervising one or more of the children	Sworn statement or affirmation	Whenever an applicant, licensee, approved individual, or registrant changes
	Search of central registry and criminal history record check	Before the end of 30 days after the change
Any employee of a licensed, registered, and approved facility who is involved in the day-to-day operations or who is alone with, in control of, or supervising one or more children	Sworn statement or affirmation	Prior to first day of employment at the facility
	Search of central registry and criminal history record check	Before 30 days of employment at the facility ends
Any applicant, licensee, agent, employee, volunteer, and person living in the home who is required to have background checks	Sworn statement or affirmation, search of central registry and criminal history record check	Before three years since the dates of the last sworn statement or affirmation, most recent central registry finding and most recent criminal history record check report

Voluntary registration provider, provider assistant, substitute provider, if any, and any adult residing in the home	Sworn statement or affirmation, search of central registry and criminal history record check	90 days before the date of application for renewal of the current certificate of registration (The application for renewal must be received by the contracting organization no later than 45 days before the expiration of the current certificate of registration.)
Volunteer at licensed, registered, or approved facility who will be alone with any child in the performance of duties, excluding a parent-volunteer for children attending a licensed, registered, or approved program	Sworn statement or affirmation	Prior to first day of service at the facility
	Search of central registry and criminal history record check	Before 30 days of service at the facility elapses
Foster parent or other adult member of the household	Search of central registry	If child-placing agency staff believe it is necessary

A person whose most recent background checks were before 1990 must request new checks by the end of December 2004. A person whose most recent background checks were from 1991 through 1995 must request new checks by the end of December 2005. A person whose most recent background checks were from 1996 to the present must request new checks by the end of December 2006, or before five years since the dates of the last sworn statement or affirmation, most recent central registry finding and most recent criminal history record check report, whichever is the shorter period of time.

2. These background checks are required after receipt of the initial religious exemption status letter.

Annually, prior to the expiration date in the current exemption letter, the religious exempt child day center must file with the department documentary evidence that the center is in compliance with the following:

Who	What	When
Prospective employee, volunteer, or any other person who is expected to be alone with one or more children enrolled in the religious exempt child day center except a parent-volunteer, or a parent or guardian who may be left alone with his or her own child	Sworn statement or affirmation	Before employment or commencement of service at the facility
	Search of central registry and criminal history record clearance check, as requested by the individual	Within 30 days of employment or commencement of service
Employee, volunteer, or any other person who is expected to be alone with one or more children enrolled in the religious exempt child	Sworn statement or affirmation, search of central registry and criminal	Before three years since the dates of the last sworn statement or affirmation, most recent central registry finding and most recent

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day center except a parent-volunteer, or a parent or guardian who may be left alone with his or her own child	history record check	criminal history record check report	registered family day home provider, A foster home approved by a licensed child-placing agency, An independent foster home, or An adoptive home approved by a licensed child-placing agency, until the adoption is final	Search of central registry and criminal history record check, as requested by the individual	Within 30 days of an 18-year-old beginning to reside in the home or a person in the home becoming 18 years old
<p>A person whose most recent background checks were before 1990 must request new checks by the end of December 2004. A person whose most recent background checks were from 1991 through 1995 must request new checks by the end of December 2005. A person whose most recent background checks were from 1996 to the present must request new checks by the end of December 2006, or before five years since the dates of the last sworn statement or affirmation, most recent central registry finding and most recent criminal history record check report, whichever is the shorter period of time.</p>					
<p>* Note: This does not apply to applicants for family day systems, licensed child-placing agencies, and religious exempt child day centers.</p>					

3. Background checks are required for independent contract employees and employees hired by a contract agency.

If a licensed, registered, or approved facility uses independent contract employees or contract employees hired by a contract agency who will be involved in the day-to-day operations of the facility or who will be alone with, in control of, or supervising one or more children, the facility must:

- a. Obtain background checks according to the above requirements for employees, or view the original required background checks maintained by the contract employee or contract agency;
- b. Accept all satisfactory background checks dated less than six months before independent contract employees or contract employees hired by contract agencies begin providing services at facilities;
- c. Make copies, and keep them at the licensed, registered, or approved facilities. Staff must write on the copies of the criminal record reports that they are photocopies of originals that facility staff verified; and
- d. Provide a sworn statement or affirmation, search of central registry and criminal history record check before three years since the dates of the last sworn statement or affirmation, most recent central registry finding and most recent criminal history record check report.

4. A person 18 years of age and older must have background checks:

Who	What	When
Person living in: The home of an applicant*, The home of a licensed or	Sworn statement or affirmation	When person age 18 years or older begins residing in the home or when a person in the home becomes 18 years old

5. A person 14 years of age and older must have a search of the central registry and make the information available for regulatory purposes:

Who	What	When
Person living in: An applicant's home, Home of a licensed or registered family day home provider, A foster home approved by a licensed child-placing agency, An independent foster home, or An adoptive home approved by a licensed child-placing agency, until the adoption is final	Child protective services central registry check	Within 30 days of a 14-year-old beginning to reside in the home or a person in the home becoming 14 years old

Exception: A person 14 years of age to 18 years of age who is placed in a foster home by a child-placing agency is not required to have a search of the central registry.

6. A facility must not accept a required criminal history record report or a central registry finding from an applicant, licensee, registrant, or other person required to obtain background checks that is dated more than 90 days prior to the date of employment, volunteering, residing in the home, or approving a family day home or foster or adoptive home.

Exception: See provisions for contracting agencies at subdivision C 3 of this section.

7. The department must not accept a required criminal history record report or a central registry finding from an applicant, licensee, registrant, or person who signs the statement of intent to operate a religious exempt center that is dated more than 90 days prior to date of licensure, registration, approval or exemption, or from the date when the person designated as the applicant or licensee changes.

8. The background checks remain valid at the facility if no more than 12 consecutive months have passed from when a person (i) began a leave of absence from that facility; (ii) was terminated from employment at that facility; or (iii) was transferred to a facility owned and operated by the same

employer or entity, unless there is a criminal conviction or a founded complaint of child abuse and neglect during that period.

22 VAC 40-191-50. Explaining requirements for satisfactory background checks.

A. The department and registering and approving authorities must require documentation of satisfactory background checks for applicants, agents, employees, volunteers, and others living in family day homes as specified in 22 VAC 40-191-40.

1. A satisfactory sworn statement or affirmation is:
 - a. A fully completed original that states that the person:
 - (1) Does not have a criminal conviction that is a barrier crime or is any felony conviction within the last five years; and
 - (2) Is not the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth; and
 - b. When there is no other knowledge that the individual has an unsatisfactory background.

Criminal convictions include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would be a felony if committed by an adult within or outside the Commonwealth. Convictions also include convictions in other states that are equivalent to those specified in this section.

2. A satisfactory central registry finding is one in which:
 - a. A copy of the department's child protective services check form is returned to the requesting agency or state or local Department of Social Services indicating that, as of the date on the reply, the individual whose name was searched is not identified in the Central Registry of Founded Child Abuse/Neglect Investigations as an involved caregiver with a founded disposition of child abuse/neglect; and
 - b. There is no other knowledge that the individual has a founded disposition in Virginia or elsewhere.
3. A satisfactory criminal history record check report is one in which:
 - a. An original hard copy or Internet inquiry reply from the Department of State Police is returned to the agency, individual or authorized agent making the request with:
 - (1) No convictions indicated; or
 - (2) Convictions indicated, but no barrier crimes or other felony convictions in the last five years; and
 - b. There is no other knowledge that the individual has a barrier crime, or other felony conviction in the past five years, in Virginia or elsewhere.

The facility must have viewed an original criminal history record report maintained by a contract employee or contract agency that is dated less than six months before the independent contract employee or contract employee is

hired by a contract agency begins providing services at the facility. (See also 22 VAC 40-191-90.)

A child-placing agency may approve as an adoptive parent an applicant convicted of not more than one misdemeanor of assault and battery, as defined in § 18.2-57 of the Code of Virginia, not involving abuse, neglect or moral turpitude, provided 10 years have elapsed following the conviction.

A child-placing agency may approve as a foster parent an applicant convicted of statutory burglary for breaking and entering a dwelling home or other structure with intent to commit larceny who has had his civil rights restored by the Governor, provided 25 years have elapsed following the conviction.

- B. Background checks results are not open ended.
 1. When a minor living in a family day home turns 18, the operator is responsible for making sure that the 18-year-old complies with all background check requirements for adults. (22 VAC 40-191-40 C 4)
 2. Operators must submit new background checks as part of the renewal application packages of registered family day homes. Background checks are required every three years for all other persons required to have background checks. (See 22 VAC 40-191-40 C.)
 3. If a person leaves a facility and the criminal history record report or central registry check finding is less than 91 days old, the person must be permitted to take the report or reports with him. The facility must keep a copy of any report a person takes and write on it that it is a copy, and that the original of any criminal history record report was verified.
 4. Unless there is a criminal conviction or a founded complaint of child abuse and neglect during that period, a background check remains valid at a facility if no more than 12 consecutive months have passed from when a person:
 - a. Began a leave of absence from that facility;
 - b. Was terminated from employment at that facility; or
 - c. Was transferred to a center owned and operated by the same employer or entity.
 5. The facility, department, or registering or approving authority may require a new background check relevant to this suspicion if there is reason to suspect that a person who has submitted acceptable background checks, as required by this regulation, has:
 - a. A barrier crime conviction in Virginia or elsewhere;
 - b. A felony conviction that is not for a barrier crime within the last five years in Virginia or elsewhere; or
 - c. A founded complaint of child abuse and neglect in Virginia or elsewhere.
 6. When the facility, department, or registering or approving authority chooses to require a new background check:
 - a. The facility, department, or registering or approving authority may allow the person to continue the same relationship with the child welfare agency until the child

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care provider or licensing, registering, or approval authority receives the new Virginia background check information or equivalent documentation from another state; or

b. If there is reason to suspect that a person has a barrier crime conviction, a felony conviction in the last five years, or has a founded complaint of child abuse and neglect, the facility, department, or registering or approving authority may require that the person not be alone with children, even if the documentation is not Virginia background check information or equivalent information from another state.

C. Waivers of some criminal convictions are possible. Refer to 22 VAC 40-191-90 through 22 VAC 40-191-130 for an explanation of the waiver.

VA.R. Doc. No. R04-176; Filed June 18, 2004, 11:09 a.m.



FAST-TRACK REGULATIONS

Section 2.2-4012.1 of the Code of Virginia provides an exemption from certain provisions of the Administrative Process Act for agency regulations deemed by the Governor to be noncontroversial. To use this process, Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations will become effective on the date noted in the regulatory action if no objections to using the process are filed in accordance with § 2.2-4012.1.

TITLE 11. GAMING

VIRGINIA RACING COMMISSION

Title of Regulation: 11 VAC 10-45. Advance Deposit Account Wagering (adding 11 VAC 10-45-10 through 11 VAC 10-45-70).

Statutory Authority: § 59.1-369 of the Code of Virginia.

Public Hearing Date: July 20, 2004 - 2 p.m.

Public comments may be submitted until September 10, 2004.

(See Calendar of Events section for additional information)

Effective Date: September 27, 2004

Agency Contact: David S. Lermond, Regulatory Coordinator, Virginia Racing Commission, P.O. Box 208, 10700 Horsemen's Road, New Kent, VA 23124, telephone (804) 966-7404, FAX (804) 966-7422, e-mail david.lermond@vrc.virginia.gov.

Basis: The Virginia Racing Commission derives its statutory authority to promulgate regulations from the provisions of § 59.1-369 of the Code of Virginia. Subdivision 5 of § 59.1-369 of the Code of Virginia requires that the commission establish regulations that control account wagering conducted in the Commonwealth. These regulations, in part, set standards and procedures for issuing licenses to qualified entities and provisions for revenue collection.

Purpose: The regulation is intended to protect the wagering public, specifically those who utilize account-wagering companies to place wagers on horse racing. It is also intended to protect the horsemen and the Commonwealth from potential loss of revenue; such protection would not be realized without the recent legislation and the commission's regulation. The statute and the regulation are intended to regulate a business that previously occurred in the Commonwealth without regulatory oversight.

Rationale for Using Fast-Track Process: Currently, there are emergency regulations in place that allow the Virginia Racing Commission to regulate account-wagering companies who wish to apply for, or have been granted a license to conduct business in the Commonwealth. This regulation was created to comply with § 59.1-369 of the Code of Virginia. The commission seeks to ensure that permanent regulations are in place before the expiration of the emergency regulations, so as to prevent an interruption in maintaining jurisdiction and control over these account-wagering companies. Following the "Fast-Track" process is necessary to limit the interruption of regulation.

This regulation was previously submitted as an emergency regulation and currently is in the "proposed" stage. The regulation is awaiting approval of the Secretary of Commerce and Trade, before proceeding on. This fast-track submission

is expected to be completed before the proposed regulation process is completed, and thus the reason for resubmission.

This process is not expected to generate any public comment, controversy, or objection, as the emergency regulations did not result in the offering of any public comment or objection of any kind. The regulation being offered in this fast-track process is identical to the proposed regulation previously submitted.

Substance: Companies operating account-wagering companies in Virginia are now required to meet standards and qualifications established by the commission so that they may be licensed and monitored by the Commonwealth. This ensures that only those companies with the highest standards are permitted to conduct business in the Commonwealth. The regulations call for background investigations to be conducted as well as ongoing compliance audits to ensure continuing integrity issues. Additionally, these regulations give the commission unlimited access to all books, records, memorandum or other relevant materials for the purposes of avoiding ethical dilemmas.

Issues: The primary advantage to the horse racing industry and public is that this new endeavor in the Commonwealth, advance deposit account wagering, will now be monitored through regulation and controlled through licensure. The goal is to ensure that the Commonwealth is aware of who is conducting this type of business and that they are accountable for their business actions.

This account wagering regulation will not have any negative impact or place any disadvantage upon the public in any way.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H 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. Section 59.1-369 of the Code of Virginia mandates that the Virginia Racing Commission promulgate regulations and conditions under which horse racing with pari-mutuel wagering be conducted in the Commonwealth. In addition, Chapter 682 of the 2003 Acts of Assembly amended the Code of Virginia to require that the Virginia Racing Commission promulgate regulations and conditions that regulate and control pari-mutuel wagering, permissible under the Interstate Horseracing Act, in which an individual may establish an account with an entity approved by the Virginia Racing Commission to place pari-mutuel wagers

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in person or electronically. Such regulations are to include (i) standards, qualifications, and procedures for the issuance of a license to such an entity, (ii) provisions regarding access to books, records, and memoranda and submission to investigations and audits, and (iii) provisions regarding the collection of revenues due to the Commonwealth from the placing of these wagers. With the exception of this method of pari-mutuel wagering, all other wagering on simulcast horseracing is to take place at a licensed racetrack or satellite facility.

The proposed regulation (i) establishes licensure requirements for individuals and entities conducting account wagering in Virginia, (ii) specifies operating and other requirements in order for licensees to maintain or renew their license, (iii) details the amount of the application fee, the licensure fee, and other fees to be charged by the Virginia Racing Commission (VRC), (iv) specifies the distribution of source market fees, (v) establishes penalties for violation of the regulation, and (vi) prohibits the use of any computers owned or leased by the Commonwealth or its subdivisions, by public elementary and secondary schools, and by public colleges and universities from being used for making pari-mutuel wagers.

The proposed regulation was adopted as an emergency regulation in 2003.

Estimated economic impact. Chapter 682 of the 2003 Acts of Assembly amended the Code of Virginia to require that the Virginia Racing Commission (VRC) promulgate regulations and conditions that regulate and control pari-mutuel wagering, permissible under the Interstate Horseracing Act, in which an individual may establish an account with an entity approved by the Virginia Racing Commission to place pari-mutuel wagers in person or electronically. This form of gambling is known as advance deposit account wagering. Prior to the amendment, advance deposit account wagering occurred in Virginia without any regulatory oversight. The amendment makes it illegal to conduct this type of wagering in Virginia without a license. Individuals will now be legally allowed to place bets by phone or via the Internet to licensed businesses in Virginia and in other states that specifically permit these activities.

The proposed regulation establishes licensure requirements for individuals and entities conducting advance deposit account wagering in Virginia, including the application and license renewal procedures. A nonrefundable application fee of \$5,000 is to be paid to VRC at the time of application. The applicant is to be billed for any costs in excess of \$5,000 incurred by VRC in reviewing the application. The application fee is intended to cover, among other things, the cost of a background investigation of the applicant (by VRC or by the Virginia State Police) and the cost of a review of the application by outside counsel. Licenses are to be valid for the calendar year in which they are issued and applications for renewal are to be received by VRC by 5 p.m. on December 1 of each year. In addition to the application fee, individuals and entities seeking a license or seeking to renew their license are required to pay an annual \$1,000 licensure fee. This fee is intended to cover any enforcement costs and the costs to review and monitor the activities of the licensee during the course of the year. Finally, VRC is to receive 0.5% of the

gross handle from the source market area (which is the entire state for the purpose of this regulation), to be paid to VRC by the tenth day of each month.

The proposed regulation also specifies the distribution of source market fees. Source market fees are a percentage of the total amount of money bet in the source market area payable by the licensee to the racetrack and to the majority horsemen's association. The percentage is to be based on a contractual agreement between the various parties. In case of a single racetrack licensee, the account wagering licensee is required to distribute the source market fee to the racetrack on the tenth of each month and to the horsemen's association within 48 hours after receiving the money. The regulation also specifies the distribution of source market fees in case of more than one racetrack licensee (this provision is not currently applicable as Colonial Downs is the only licensed racetrack in Virginia). According to VRC, these requirements are similar to those applied in other states, such as California and Oregon, which allow advance deposit account wagering.¹

The proposed regulation also establishes operating and other requirements in order for licensees to maintain and renew their license. Operational requirements include submitting proof to VRC every six months that account holders will be guaranteed the full value of their accounts regardless of the activities of the licensee and other entities, ensuring that all employees working on behalf of the licensee are permitted or licensed by VRC, and submitting quarterly reports detailing all account wagering activity. Other requirements include allowing wagers to be placed only on behalf of established account holders, administrative requirements dealing with opening and managing advance deposit wagering accounts, and recordkeeping requirements that allow VRC to review and monitor the activities of licensees. The proposed regulation also establishes penalties for violation of the regulation. Failure to comply with any of the requirements of the regulation or failure to get a license could result in the imposition of fines and suspensions and criminal or civil prosecution.

Finally, the proposed regulation prohibits the use of any computers owned or leased by the Commonwealth or its subdivisions, by public elementary and secondary schools, and by public colleges and universities from being used for making pari-mutuel wagers. This provision is required under the Code of Virginia.

The proposed regulation is likely to impose additional costs on businesses seeking to conduct advance deposit account wagering. These businesses will now be required to pay a nonrefundable application fee of \$5,000, any additional costs in excess of the \$5,000 incurred by VRC in reviewing the application, a license fee of \$1,000 for the issuance and renewal of licenses, a fee of 0.5% of the gross handle from the sources market area to VRC, and a negotiated percentage of the gross handle from the source market area to the licensee racetrack (currently only Colonial Downs) and the recognized majority horsemen's association.

¹ Other than California and Oregon, Washington is currently in the process of enacting a regulation allowing for advance deposit account wagering.

The nonrefundable application fee of \$5,000 was determined based on a \$3,000 estimate for outside counsel to review an application (charged at an hourly rate of \$120). Applications tend to be between 500 and 1,000 pages long. In addition, the application fee is to cover the cost of background investigations. According to VRC, the cost of background investigations varies greatly depending on the applicant, with some investigations costing over \$20,000. Any cost in excess of \$5,000 incurred by VRC in reviewing the application is to be covered by the applicant. VRC believes that the nonrefundable \$5,000 base fee is the minimum required to cover the cost of reviewing an application. It is also the minimum required to cover costs incurred by the agency when an application is withdrawn midway through the process. In addition to the application fee, applicants will be required to pay an annual license fee of \$1,000 in order to receive or renew a license. This fee is intended to cover the enforcement costs and the cost of reviewing and monitoring the activities of the licensee during the year. Only two other states, California and Oregon, currently allow advance deposit account wagering. According to VRC, neither of the two states charges an application fee. However, they do charge significantly higher annual license fees.

It should be noted that the proposed fee structure for the application fee could be designed in a more efficient manner. In order for VRC to charge applicants the exact cost to the agency in reviewing an application, it would be more appropriate for the agency to require applicants to make a \$5,000 deposit, rather than charging a \$5,000 nonrefundable fee. The cost to the agency to review the application, conduct background investigations, and have outside counsel review the application varies from applicant to applicant. These costs could be charged against the \$5,000 deposit. Any deposit in excess of these costs could be returned to the applicant following the review. An economically efficient fee is one that charges an applicant the exact cost incurred by the agency in conducting the review. The proposed fee structure is efficient insofar that it allows the agency to charge applicants any costs in excess of \$5,000. However, it could be made even more efficient by allowing for the refund of any money in excess of the cost of the review.

The regulation also proposes to charge businesses conducting advance deposit wagering 0.5% of the gross handle, to be paid to VRC by the tenth day of each month. Revenue generated from the handle is to be deposited in the State Racing Operations Fund, with any excess revenue deposited in the general fund at the end of each fiscal year. According to VRC, the 0.5% handle is consistent with the license tax charged when wagering at Colonial Downs or a satellite facility and with similar regulations in other states. Applicants are also required to pay a certain percentage of the gross handle to the licensee racetrack and to the horsemen's association. VRC expects between 7.0% and 8.0% of the total handle to go to Colonial Downs and another 7.0% and 8.0% of the total handle to go to the horsemen's association.

According to VRC, Virginians are wagering approximately \$28 million a year. Of this, approximately 80% (or \$22.4 million) are through offshore accounts. There is a great deal of uncertainty in estimating the gross handle from the source market area that the proposed regulation will be successful in

capturing. VRC expects the racetrack and the horsemen's association to get approximately \$150,000 each in the first year of operation under this regulation. Future revenues will depend on the number of businesses currently engaging in these activities that choose to become licensed in Virginia.

In addition to the above costs, the proposed regulation is also likely to produce economic benefits. By establishing licensing requirements, the proposed regulation will allow VRC to monitor businesses engaged in advance deposit account wagering and protect individuals utilizing these companies to place wagers from financial and other types of fraud. Businesses involved in advanced deposit account wagering have the potential to create a public hazard by conducting their activities in an improper or inappropriate manner. The aim of the proposed regulation is to enforce certain compulsory minimum standards of operation for such businesses and to reduce the risk to the public from their activities. Thus, the cost of applying for and obtaining a license can be viewed as part of the compliance cost incurred by these businesses to ensure that they do not create a public hazard. Prior to promulgation of the emergency regulation, these businesses were paying none of the costs associated with the risk posed to the public from their activities. This could potentially have resulted in unsuitable and undesirable individuals and entities entering the business. Charging fees that reflect the cost associated with reducing the risk to the public from the activities of these businesses to an acceptable level is likely to result in more efficient allocation of resources.

The net economic impact of the proposed application and licensure fees will depend on whether the fees being charged are commensurate with the risk posed to the public from the activities of advance deposit account wagering businesses. If fees are commensurate with the risk, the proposed application and license fees are likely to lead to a more efficient allocation of resources and produce a positive net economic impact. However, if the fees being proposed are in excess of the cost of reducing the risk to the public, the proposed fees are likely to lead to a waste of resources and have negative economic impact. According to VRC, the fees being proposed are the minimum required to ensure that the risk to the public from the activities of these businesses is reduced to an acceptable level.

VRC is not aware of any problems with businesses that have been conducting advance deposit wagering prior to the promulgation of the emergency regulation. Thus, the extent of the risk to the public from such activities is unclear. By setting a minimum of \$5,000 for the application fee and \$1,000 for the issuance and renewal of a license, the proposed regulation could very well be charging applicants a fee that is in excess of the risk they pose to the public from their activities. As suggested earlier, a fee structure that allowed for the refund of any unused portion of the application and licensure fee would be more appropriate and would reduce the likelihood of the fees producing a negative economic impact.

In addition to the application and license fees, the proposed regulation also imposes additional costs on businesses conducting advance deposit account wagering in the form of payments of a percentage of the gross handle to VRC, the licensee racetrack, and the horsemen's association. The net

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economic impact of these payments will depend on whether the benefits to the licensee and to the public from these fees are greater than or less than the proposed costs. While any benefits associated with the application and license fee are in the form of a reduced risk to the public from advanced deposit account wagering, the benefit of paying a percentage of the gross handle to VRC, the licensee racetrack, and the horsemen's association is not readily apparent. While the 0.5% handle fee is necessary in order to ensure that advanced deposit account wagering does not receive a competitive advantage compared to other methods of wagering (a similar tax is charged when wagering in person at the racetrack or its satellite facilities), the benefits of such payments are not clear. Thus, the net economic impact of a percentage of the gross handle being paid to VRC, the licensee racetrack, and the horsemen's association will depend on whether the payment provides the licensee with any benefits (such as improved horseracing and other related services provided by the state, improved racing facilities, and better and more interesting races being run in Virginia) and whether any of these benefits are greater than or less than the additional cost to businesses conducting advance deposit account wagering.

Overall, the net economic impact of the proposed change will depend on whether the benefits of the proposed regulation to the public (in terms of reducing the risk to the public from these activities) and to the licensees themselves (in terms of better horseracing facilities, an improvement in the quality of races, etc.) are greater than or less than the additional cost to businesses conducting advance deposit account wagering. A precise estimate of the benefits of the proposed regulation to the public and to the licensee is not available at this time.

An Undesirable Consequence of the Proposed Regulation:

Section 59.1-369 of the Code of Virginia requires that the allocation of revenues from advance deposit account wagering include a license fee to VRC and be based on a contractual agreement between the advance deposit account wagering licensee and (i) the racetrack licensee and (ii) the recognized majority horsemen's association. Based on the statutory requirement, the proposed regulation requires that all applicants for an advance deposit account wagering license submit a copy of the contractual agreement in order for the application to be deemed as complete and considered for licensure. According to VRC, California has a similar requirement as part of their licensing process.

Since the promulgation of the emergency regulation in August 2003, VRC has received five applications for licensure. However, only one had been approved as of May 2004. The only advance deposit account wagering licensee currently operating in Virginia is Colonial Downs. The application process for the remaining four applicants has not been able to proceed due to the lack of a fee-sharing agreement with Colonial Downs, the only racetrack licensee in Virginia. Colonial Downs is reportedly seeking between 11% and 12% of the total handle generated by account wagering activities in Virginia. Based on the profit margins typically generated by them, advance deposit account wagering companies believe this percentage to be too high. VRC also estimates that the percentage of retainage sought by Colonial Downs would

reduce the profit margins generated by these companies to close to zero.

The statutory requirement for a fee-sharing agreement with Colonial Downs, also seeking to establish itself in the advance deposit account wagering business, creates an incentive for Colonial Downs to withhold agreement to any reasonable fee-sharing arrangement. By doing so, Colonial Downs eliminates any potential competition, thus establishing a monopoly in the advance deposit account wagering market in Virginia and maximizing its profits. While monopoly firms earn larger profits, economic theory establishes that, compared to a competitive market, a monopoly market results in an overall loss of efficiency and a waste of resources. The size of the inefficiency is known as the deadweight loss due to monopoly. The market power that a monopoly firm has by virtue of being the sole supplier of certain goods and services allows it to set the price at which it sells these goods and services. The price is set at a level that maximizes the firm's profits. Profit maximizing by a monopoly firm results in the firm charging a price that is higher than the cost of producing the goods and services. Thus, prices tend to be higher and quantity supplied smaller in monopoly markets than in competitive markets. In this case, Colonial Downs is the sole supplier of advance deposit account wagering services in Virginia. Compared to a market with multiple providers these services, a market with only one provider is likely to result in higher prices being charged for these services in Virginia and consumer choice being restricted in terms of the number and variety of horse races Virginians can bet on using advance deposit account wagering.

Thus, the statutory requirement for a contractual agreement between Colonial Downs and any applicant for an advance deposit account wagering license coupled with the fact that Colonial Downs is also seeking to enter the advance deposit account wagering business creates an incentive for Colonial Downs to refuse to enter into a fee-sharing agreement, thus establishing a monopoly in the market. Failure of advance deposit account wagering companies to reach a reasonable fee-sharing arrangement to-date with Colonial Downs is evidence of that incentive. If Colonial Downs is successful in establishing a monopoly in the market, it is likely to lead to an inefficient allocation of resources and have a net negative economic impact on Virginia's economy. Apart from the overall negative economic impact, other consequences of the statutory requirement for a contractual agreement between the applicant and the racetrack could include a loss of revenues for the state from the 0.5% handle fee (due to fewer races to bet on) and legal challenges to the statute based on anti-competitive and interstate commerce laws.

California, which has a similar requirement, has not faced this problem. According to VRC, three account wagering companies have sought and received licenses in the state. Negotiating a contractual agreement on fee sharing has not been an issue as none of the racetracks have sought an advance deposit account wagering license.

The statutory requirement for a fee-sharing agreement with Colonial Downs and the majority horsemen's association is essentially a subsidy to these entities. Assuming the subsidy is deemed necessary by policy-makers, there are more

efficient ways of providing it. Requiring advance deposit account wagering companies to directly negotiate the amount of the subsidy with Colonial Downs and the majority horsemen's association creates incentive problems such as the one discussed in this section. This, in turn, leads to an inefficient allocation of resources.

Efficiency can be improved by having the state collect a percentage of the gross handle as a fee and use it to subsidize Colonial Downs and the majority horsemen's association. This would eliminate any incentive problems faced by Colonial Downs and the majority horsemen's association. The percentage of the gross handle to be retained, and hence the amount of the subsidy to be paid to Colonial Downs and the majority horsemen's association, would be determined by the state. It would be in the state's interest not to limit consumer choice and to license as many advance deposit account wagering companies as possible, thus maximizing the number and variety of horse races Virginians can bet on using this type of wagering. The larger the number of horse races that can be bet on using advance deposit account wagering, the larger the gross handle and the larger the revenues the state receives from the 0.5% fee on the gross handle. Moreover, by not limiting consumer choice and licensing as many advance deposit account wagering companies as possible, the state will prevent the development of a monopoly and avoid the deadweight loss due to monopoly, leading to a more efficient use of resources. This, more efficient, outcome will be achieved while still providing Colonial Downs and the majority horsemen's association with a subsidy in the amount policy-makers deem necessary. Thus, having the state collect a certain percentage of the gross handle as fees and use the fees so collected to provide subsidies to Colonial Downs and the majority horsemen's association will lead to more efficient allocation and use resources than the fee-sharing agreement currently required under the Code of Virginia.

Businesses and entities affected. The proposed regulation will affect all businesses and entities seeking to conduct advance deposit account wagering in Virginia. These businesses will now be required to obtain and maintain a license in order to be able to conduct these activities. The additional costs include a \$5,000 nonrefundable application fee, payment of any costs in excess of \$5,000 incurred by VRC in reviewing the application, a \$1,000 annual fee for the issuance and renewal of a license, payment of 0.5% of the gross handle from the source market area to VRC, and payment of a negotiated percentage of the gross handle from the source market area to the licensee racetrack and the recognized majority horsemen's association.

There are 28 businesses currently operating in the United States that conduct advance deposit wagering activities. VRC currently has applications pending from five of these businesses. The agency expects two or three more applications in the future.

Localities particularly affected. The proposed regulation will apply to all localities in the Commonwealth. However, it is not likely to impose any additional costs on localities.

Projected impact on employment. The proposed regulation is not likely to have a significant impact on employment. To the

extent that the proposed regulation captures some of the gross handle from betting by Virginians, it could lead to a shift of employment toward horseracing-related activities.

Effects on the use and value of private property. Businesses conducting advanced deposit wagering activities will now incur additional licensing and other costs, lowering their asset value. However, by establishing standards of operations for such businesses, the proposed regulation could encourage more Virginians to use advance deposit account wagering, mitigating some of the negative impact on the asset value of businesses engaged in these activities. The proposed regulation is also likely to provide additional funds to the licensee racetrack (Colonial Downs) and to the horsemen's association, raising the asset value of these businesses.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The commission does not consider the fee charged for background investigations to be a significant issue. In nearly all cases, the expenses of the investigations exceed the amount charged by the commission, as specified in the regulation.

The commission believes that a change to the existing account wagering statute will be necessary to address some of the concerns noted in the economic analysis. The commission, however, has not formally taken a specific position on this issue and will be considering the impact of the current statute in the coming months.

Summary:

The regulations provide definitions and interpret rules regarding advance deposit account wagering and detail the application and operation process of an entity wishing to conduct an account-wagering business in the Commonwealth. The regulations also detail the fees associated with this business and the penalties for violation of the regulations. These regulations satisfy the addition of subdivision 5 to § 59.1-369 of the Code of Virginia. This notice of the commission's intent to promulgate these rules was originally released as emergency regulation amendments to 11 VAC 10-20, which was published in the Virginia Register of Regulations, in Volume 19, Issue 26, on September 8, 2003, and subsequently was published as a proposed regulation in the Virginia Register in Volume 20, Issue 20, on June 14, 2004.

CHAPTER 45.

ADVANCE DEPOSIT ACCOUNT WAGERING.

11 VAC 10-45-10. Definitions.

The following definitions and interpretations shall apply to these rules unless otherwise indicated or the text otherwise requires:

"Account" means an account for account wagering with a specific identifiable record of deposits, wagers, and withdrawals established by an account holder and managed by the account-wagering licensee.

"Account holder" means an individual who successfully completed an application and for whom the account-wagering licensee has opened an account.

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"Advance deposit account wagering" (hereafter account wagering) means a form of pari-mutuel wagering in which an individual may deposit money in an account with an account wagering licensee and then use the current balance to place pari-mutuel wagers in person or electronically.

"Account wagering center" means an actual location, equipment, and staff of an account wagering licensee or agents of the account wagering licensee involved in the management, servicing and operation of account wagering.

"Account wagering licensee" means an entity licensed by the commission to accept deposits and wagers, issue a receipt or other confirmation to the account holder evidencing such deposits and wagers, and transfer credits and debits to and from accounts.

"Applicant" means an individual who has submitted an application to establish an account with either (i) an account wagering licensee or (ii) a company applying for an account wagering license from the commission.

"Commission" means the Virginia Racing Commission.

"Confidential information" means:

1. The amount of money credited to, debited from, withdrawn from, or present in any particular account holder's account;
2. The amount of money wagered by a particular account holder on any race or series of races;
3. The account number and secure personal identification code of a particular account holder;
4. The identities of particular entries on which the account holder is wagering or has wagered; and
5. Unless otherwise authorized by the account holder, the name, address, and other information in the possession of the account wagering center and race meet licensee that would identify the account holder to anyone other than the commission or the account wagering licensee.

"Credits" means all inflow of money to an account.

"Debits" means all outflow of money from an account.

"Deposit" means a payment of money by cash, check, money order, credit card, debit card, or electronic funds transfer made by an account holder to the account holder's account.

"Individual" means any natural person at least 18 years of age, but does not include any corporation, partnership, limited liability company, trust, estate or other legal entity.

"Other electronic media" means any electronic communication device or combination of devices including but not limited to personal computers, the Internet, private networks, interactive televisions and wireless communication technologies or other technologies approved by the commission.

"Principal residence address" means the street address identified by an applicant or a current account holder as that individual's residential address, as such address may be verified by the account wagering licensee.

"Proper identification" means a form of identification accepted in the normal course of business to establish that the person making a transaction is an account holder.

"Racetrack licensee" means any person holding a current unlimited license to own or operate a horse racetrack or satellite facility where pari-mutuel wagering is permitted.

"Secure personal identification code" means either a numeric or an alpha-numeric character code chosen by an account holder as a means by which the account wagering licensee may verify a wager or account transaction as authorized by the account holder.

"Source market fee" means the fee payable by the account wagering licensee pursuant to the terms and provisions of the contractual agreement among the prospective account wagering licensee, the racetrack licensee and the recognized majority horsemen's organizations.

"Source market fee area" means the Commonwealth of Virginia.

"Terms of agreement" means the agreement, approved by the commission, between an account wagering licensee and an account holder that includes but is not limited to the deposits, credits, debits, withdrawals and the opening and closing of accounts.

"Withdrawal" means a payment of money from an account by the account wagering licensee to the account holder when properly requested by the account holder.

"Withdrawal slip" means a form provided by the account wagering licensee for use by an account holder in withdrawing funds from an account.

11 VAC 10-45-20. Authorization to conduct account wagering.

A. No person shall conduct account wagering in the Commonwealth unless he has applied for and has been granted an account wagering license by the commission. No account wagering license shall be granted by the commission unless the applicant meets the criteria specified in § 59.1-369 of the Code of Virginia and these regulations.

B. An account wagering license shall be valid for the calendar year in which it is issued.

C. An application shall include, on a form prescribed by the commission, the names, addresses and telephone numbers of all officers and directors. It shall solicit the same information for an account wagering license, to the extent relevant, as required for an unlimited license as specified in 11 VAC 10-20-30 (Applicant's affidavit), 11 VAC 10-20-40 (Disclosure of ownership and control), 11 VAC 10-20-50 (Disclosure of character information), and subdivision 1 of 11 VAC 10-20-80 (Disclosure of financial resources) of the commission's regulations with the following modifications:

1. The first paragraph of the applicant's affidavit shall state that the application is made for a license to conduct account wagering in the Commonwealth;
2. The applicant must disclose any agreements or understandings that the applicant or any individual or entity

identified pursuant to 11 VAC 10-20-40 has entered into with a person or persons other than the applicant regarding ownership or operation of the applicant and must provide copies of any such agreements or understandings with the application; and

3. The disclosure of character information that is required by 11 VAC 10-20-50 must be made if the applicant, any individual or entity that owns a 5.0% or greater equity interest in the applicant, or any person or entity that will exercise any degree of management or control of the applicant has committed any of the acts or otherwise meets any of the criteria listed in 11 VAC 10-20-50. Nothing in this subsection shall require an applicant to include with its application copies of employment agreements unless requested by the commission.

D. As part of the application process, the license applicant also shall submit a detailed plan, including a detailed budget of the cost of implementation, of how its proposed account wagering system would operate including internal controls procedures. The commission may require changes in a proposed plan of operations as a condition of granting a request. No subsequent material changes in the system's operation may occur unless ordered by the commission or until approval is obtained from the commission after it receives a written request.

E. As part of the application process, the license applicant must provide a copy of the contractual agreement among the prospective account wagering licensee, the racetrack licensee, and representatives of the recognized majority horsemen's organizations. Included in such agreement shall be the agreed upon terms between the racetrack licensee and the recognized majority horsemen's organizations that details the distribution of retainage generated by account wagering within the source market fee area for each breed after the license fee to the commission has been paid.

F. The commission may conduct investigations or inspections or request additional information from the applicant for a license and its officers, directors, managers and equity holders, as applicable, holding 5.0% or more of the applicant's equity interest as it deems appropriate in determining if the applicant has the financial resources to conduct account wagering, and whether to allow the applicant to conduct account wagering.

G. Before being granted its original account wagering license, and every six months thereafter, the account wagering licensee shall furnish the commission with proof that the account holders will be guaranteed the full value of their accounts regardless of the acts of the account wagering licensee or any other entity. If the proof offered to the commission is not acceptable to the commission, the commission may require the account wagering licensee to purchase a bond or other form of insurance guaranteeing that the account holders receive the full value of their accounts.

H. An application to renew an account wagering license for each succeeding calendar year is due in the offices of the commission by 5 p.m. on December 1 on a form prescribed by the commission.

11 VAC 10-45-30. Operations by account wagering licensee.

A. Before beginning operations in Virginia, the account wagering licensee must be qualified to do business in Virginia.

B. Any action that suspends or otherwise prohibits an account wagering licensee of the commission from operating in another state may be used as grounds for a suspension of its account wagering license in Virginia pursuant to § 59.1-385 C of the Code of Virginia.

C. All employees working on behalf of the account wagering licensee's account wagering center must either have a Virginia commission permit or be licensed, permitted or otherwise authorized by the state where the account wagering center is located.

D. Within 45 days following the end of each quarter, the account wagering licensee shall provide to the racetrack licensee a summary report detailing wagering processed through the account wagering system by Virginia residents wagering on both in-state and out-of-state races and non-Virginia residents wagering on Virginia races. The reports shall be subject to review by the commission.

E. Only individuals who have established accounts with an account wagering company licensed by the commission may wager through an account and that account must be with an account wagering company licensed in Virginia.

F. Opening an account.

1. An account wagering licensee shall require from an applicant the following information including, but not limited to:

- a. Name;
- b. Principal residence address;
- c. Telephone number;
- d. Social security number;
- e. Age; and
- f. Other information necessary for the account administration.

2. The information obtained from the applicant shall be verified by the account wagering licensee using means acceptable to the commission.

G. Administration of an account.

1. Each account holder's wagering account shall be administered in accordance with the terms of agreement, which have been approved by the commission, including but not limited to:

- a. Deposits;
- b. Credits to accounts;
- c. Debits to accounts;
- d. Withdrawals;
- e. Minimum deposit; and

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f. Fees, if any, per wager.

2. A person may not directly or indirectly act as an intermediary, transmitter or agent in the placing of wagers for an account holder. A person may not place a wager on behalf of an account holder. Only an account holder may place an account wager. Direct or indirect involvement as an intermediary, transmitter or agent in the placing of wagers includes a system, known as a transfer account or master account, whereby funds are deposited to one account from another account. This section does not prohibit use of credit or debit cards specifically approved by the account wagering center or the use of checks, money orders or negotiable orders of withdrawal.

3. An account wagering licensee shall maintain for at least one year all records of the opening and closing of accounts, wagers, earnings and withdrawals;

4. An account wagering licensee may close accounts for violation of its terms of agreement or other appropriate reasons;

5. An account wagering licensee may close wagering on any particular race or racetrack;

6. An account wagering licensee shall provide the account holder with appropriate identification materials and the terms of agreement; and

7. The principal residence address provided in writing by the account holder at the time of application is deemed to be the proper address for the purposes of mailing checks, statements of account, account withdrawals, notices, or other appropriate correspondence. The mailing of checks or other correspondence to the address given by the account holder shall be at the sole risk of the account holder.

11 VAC 10-45-40. Account wagering licensee requirements.

A. An account wagering licensee shall conduct its operations with account holders in accordance with the terms of agreement, previously approved by the commission;

B. No employee or agent of the account wagering licensee shall divulge any confidential information related to the placing of any wager or any confidential information related to the operation of the account wagering center except:

1. To the account holder as required by these rules;
2. To the commission;
3. To the account wagering licensee and its affiliates;
4. To the racetrack licensee as required by the agreement between the account wagering licensee and the racetrack licensee; and
5. As otherwise required by state or federal law.

C. All wagering conversations, transactions or other wagering communications through the account wagering system, verbal or electronic, shall be recorded by means of the appropriate electronic media, and the tapes or other records of such communications shall be kept by the account wagering center for a period of one year. These tapes and other records shall

be made available to commissioners, employees and designees of the commission on request.

D. The recording of the confirmation of the transaction, as reflected in the voice or data recording records, shall be deemed to be the actual wager, regardless of what was recorded by the pari-mutuel system;

E. An account wagering licensee shall not accept wagers if its transcribing system is not operable;

F. An account wagering license shall be administered in accordance with its terms of licensure and the previously approved terms of agreement; and

G. The commission may review and monitor the equipment, staff and records of an account wagering licensee and any of the transactions conducted by the account wagering licensee in regards to wagers made by account holders.

11 VAC 10-45-50. Fees.

A. Application for account wagering license.

1. A nonrefundable application fee of \$5,000 must be submitted with the application.
2. The applicant will be billed and shall be responsible for any costs involved in the background checks and review of the application in excess of \$5,000.

B. Annual fees.

1. An annual fee of \$1,000 shall be payable to the commission on issuance of the original license and thereafter on or before January 1 of each year. The licensee will be billed and shall be responsible for any costs in excess of \$1,000 associated with the review of the annual renewal application.
2. One-half percent (0.5%) of the gross total handle from the source market area shall be payable to the commission on the tenth day of each month for the previous month.

C. Distribution for source market fees - single racetrack licensee.

1. The account wagering licensee shall distribute source market fees, and host fees if applicable, to the racetrack licensee on the tenth of each month for the previous month.
2. The racetrack licensee shall distribute the horsemen's shares to the respective partners accounts within 48 hours after receipt from the account wagering licensee.

D. Distribution of source market fees - more than one racetrack licensee. If more than one racetrack licensee operates in Virginia, then the source market fees shall be distributed as follows:

1. All source market fees derived from account wagers placed by account holders with a principal residence address located within a 50-mile radius (the "50-mile radius") of any track or satellite wagering facility operated by a racetrack licensee shall be distributed to each such licensee;
2. All source market fees derived from account wagers placed by account holders with a principal residence

address located outside any 50-mile radius shall be shared among the racetrack licensees in proportion to each licensee's respective capital expenditures on such licensee's track and satellite wagering facilities in Virginia; and

3. If an overlap exists between two 50-mile radii, the racetrack licensee to first operate a track or satellite wagering facility in such area shall receive the source market fees from account wagers placed within the overlapping area.

11 VAC 10-45-60. Enforcement and penalties.

A. The commission shall have all of the rights, powers and remedies provided for in the Act to ensure compliance with these regulations, including, but not limited to, injunctive relief and the imposition of fines and suspensions.

B. Additionally, with respect to any entity that engages in account wagering in Virginia without a license issued by the commission, the commission may take such measures as it deems necessary, including referral to the appropriate regulatory and law-enforcement authorities for civil action or criminal prosecution.

11 VAC 10-45-70. Use of certain Commonwealth computers prohibited.

No pari-mutuel wager may be made on or with any computer owned or leased by the Commonwealth, or any of its subdivisions, or at any public elementary or secondary school, or any public college or university.

VA.R. Doc. No. R04-188; Filed June 22, 2004, 11:47 a.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: 12 VAC 30-40. Eligibility Conditions and Requirements (amending 12 VAC 30-40-280, 12 VAC 30-40-290 and 12 VAC 30-40-345).

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until September 10, 2004.

(See Calendar of Events section for additional information)

Effective Date: September 25, 2004.

Agency Contact: Victoria Simmons or Brian McCormick, Regulatory Coordinators, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-8856, FAX (804) 786-1680, or e-mail Vicki.Simmons@dmas.Virginia.gov or Brian.McCormick@dmas.Virginia.gov.

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 authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the board's requirements. The Medicaid authority as established by § 1902 (a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services.

Purpose: The purpose of this action is to simplify the administrative requirements of the Medicaid eligibility determination process for the family and children's covered groups, eliminate financial barriers for applicants and recipients and reduce costs associated with Medicaid eligibility determinations. This action proposes to eliminate the counting of resources, the counting of earned income for certain children, and the counting of in-kind support and maintenance for low-income families and children.

Rationale for Using Fast-Track Process: This regulatory action will implement more liberal eligibility requirements in order to (i) streamline the Medicaid eligibility determination process and facilitate the enrollment of children and their parents/caretakers; (ii) align the resource requirements with other programs administered by the Department of Social Services; and (iii) allow for the development of a simplified family and children's application. Since this action eases the current eligibility policies, objections by client advocate groups are not anticipated. In the absence of the fast-track process, implementation of these more liberal requirements will be unnecessarily delayed and would likely result in denying the affected low-income children and their families access to needed healthcare coverage.

Substance: Due to Medicaid's statutory link to the Aid to the Families with Dependent Children (AFDC) program that was in effect as of July 16, 1996, current policies require that Medicaid count the value of resources and the fair market value of in-kind support and maintenance in determining financial eligibility. Additionally, states are required to count the earned income of children under the age of 19 who are students. However, § 1902(r)(2) of the Social Security Act permits states to have more liberal policies than those of the old AFDC program for resources and income allowances.

Elimination of the requirement to count the fair market value of in-kind support and maintenance: In-kind support and maintenance is food, clothing, or shelter, or any combination thereof, which may be provided to individuals. Currently, the fair market value of in-kind support and maintenance is counted as income when evaluating eligibility in the Low-Income Family and Children's covered groups. This regulatory action would eliminate the difficulty in and subjective nature of determining the fair market value of in-kind support and maintenance for the Low-Income Family and Children's covered groups. This proposed change simplifies and permits a more streamlined assessment of the financial eligibility criteria for such groups.

Elimination of the resource test: Resources are assets an individual owns, has the right, power or authority to convert to cash, and is not legally restricted from using for his support and maintenance, such as, checking accounts, savings accounts or retirement accounts. Currently, children's coverage under the Medicaid poverty level groups does not

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have a resource test; however, coverage under the Low-Income Families with Children group does require a resource test. Therefore, while children may be eligible for coverage, their parents, whose income was used to determine the children's eligibility, may not be eligible. Elimination of the resource test will allow for application of a single set of rules in determining eligibility for low-income parents and their children.

Elimination of the requirement to count the earned income of a student-child younger than 19 years of age: Currently, evaluating whether to count the earned income of a child who is a student, and how much of that income is to be counted, is a time-consuming and burdensome process that has little impact on the child's Medicaid eligibility. Elimination of this requirement will assist in streamlining the eligibility determination process and will align the Medicaid income counting policies for children with those of the FAMIS program.

The result of these regulatory changes will be the simplification of, and increased accuracy in, assessing the financial eligibility of families and children applying for coverage under the state's Medicaid program. This will likely reduce administrative expenses for the local agencies. These changes will facilitate the enrollment of children and their parents/caretakers, and streamline the eligibility determination process by reducing eligibility determination processing time. In addition, these changes will align the resource requirements with other programs administered by the Department of Social Services, such as Temporary Assistance for Needy Families (TANF), and allow for the development of a simplified application form for all families and children.

Issues: The primary advantage of these suggested regulatory changes is to make the Medicaid eligibility determinations more efficient, equitable, and objective. Reducing the administrative costs and burdens for local DSS eligibility workers also reduces taxpayer costs for Medicaid administration.

Streamlining and simplifying Medicaid eligibility policies will relieve applicants of the burdensome requirements of documenting, and local eligibility workers verifying, factors that have proven to have little, if any, impact on the eligibility determination outcome.

There are no disadvantages to the public in the implementation of these suggested changes, and the department projects no negative issues in implementing these proposed changes.

Department of Planning and Budget's Economic Impact

Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H 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 changes will (i) eliminate the resource test for low-income families with children and individuals under age 21 for whom a public agency is assuming full or partial financial responsibility, (ii) clarify that earned income of a child younger than age 19 who is a student is disregarded in eligibility determinations, and (iii) clarify that the value of all in-kind support and maintenance received by members of the family and children's covered groups is disregarded.

Estimated Economic Impact. These regulations establish eligibility criteria and methods of counting income and resources when determining Medicaid eligibility for low-income families with children and for individuals under age 21 (foster care, adoption assistance, mentally retarded, and corrections children). In fiscal year 2003, approximately 79,940 adults and children were eligible for Medicaid services under these two eligibility categories and the total Medicaid reimbursement was about \$204 million. Local departments of social services perform Medicaid eligibility determinations for these two groups, for which they receive compensation from the Department of Medical Assistance Services (DMAS). In fiscal year 2003, Department of Social Services received approximately \$103 million from federal and state funds to perform this function for all eligibility determinations performed for Medicaid, including the two groups affected by these regulatory changes.

Resource eligibility rules: One of the proposed changes will eliminate the resource eligibility rules for individuals under age 21 and for low-income families with children. Currently, the assistance is provided to families with countable resources less than or equal to \$1,000. Countable resources include nonhome real property, motor vehicles, cash and other liquid assets, bank accounts, life insurance, burial arrangements, child support refunds, and loans or promissory notes. However, numerous resources do not count toward the \$1,000 limit. Among these items are the exclusion of one vehicle and up to \$5,000 in a savings account for the purposes of "self-sufficiency." Enforcement of resource rules requires the local departments of social services to collect information from the applicant and then verify the reported cash resources, bank accounts, trust funds, stocks, bonds, mutual funds, or any other financial assets.

In FY 2003, 59 applications were denied for excess resources in the two affected groups. Based on this information, DMAS proposes to eliminate all of the resource eligibility criteria for these groups. It is estimated that this change will increase the medical assistance provided by \$153,000 for 59 recipients and provide \$216,000 savings in administrative costs for the local departments of social services annually as DMAS will not change eligibility determination payments to the Department of Social Services.¹

¹ These estimates are based on the following assumptions: a) 59 additional recipients will be eligible for Medicaid, b) average annual cost for a recipient will be \$2,593, c) DSS will not have to perform resource test on 12,000 applications,

One of the significant effects of this change is providing expanded access to medical care for low-income families and children under age 21. In addition, the proposed changes will streamline the eligibility requirements with other programs to different degrees. Recent regulatory changes eliminated all of the TANF resource criteria. Also, children under the medically indigent poverty level group and FAMIS have no resource rules and all other Medicaid covered groups disregard one automobile of any value in the Medicaid eligibility determination. Thus, the resource requirements will be aligned with several other programs, which will likely improve the efficiency of the eligibility determination process and reduce the potential for erroneous determinations.

Although DMAS expects some net fiscal benefits from this change, if 59 additional recipients is an underestimate, the agency's expectation may not be realized. The expected number of recipients who would be eligible when the resource rules are eliminated is based on the historical data. However, the use of historical data for this estimation is statistically biased downward, as it does not consider the behavioral response of rational potential recipients to this change. After the resource rules are eliminated, a number of applicants with excess resources may apply and qualify. The historical data does not contain information on such cases because people with excessive resources would not apply while these resource rules are in place. Thus, the expected increase in the number of recipients and the costs may be underestimated. In other words, the behavioral response of the potential recipients may be higher than the estimated 59 additional persons because this estimate assumes that the effect of behavioral response will be zero. Also, this proposed change will provide incentives to people to convert their stream of income into a resource and gain eligibility for Medicaid benefits. Such transactions are often not very difficult to arrange. For example, a divorce settlement may provide for a cash settlement rather than a stream of support payments. Thus, there could be an additional increase in the Medicaid recipients not accounted for in the department's estimated fiscal impact.

However, no data currently exists to make a reliable estimate of the magnitude of this effect. It is likely that the behavioral response will be relatively small because people with low incomes tend to have low resources. Also, there is the possibility that the added incentives for asset accumulation may help some of the recipients move out of poverty.

In short, while there are a number of mitigating factors, the actual long-term costs of this proposed change may be greater than the estimated 59 additional Medicaid cases when potential recipients adjust their behaviors to maximize their benefits under the proposed rules with no resource criteria.

An alternate and lower risk way of reducing costs associated with administration of resource rules could be conducting random verifications of reported resources. The main purpose of the proposed change is to reduce administrative costs. The random check approach is a cost effective and a sound practice utilized in many other regulatory programs. In this

case, the random check approach has the potential to provide significant administrative cost savings without introducing fiscal risks. For example, randomly verifying 10% of the cases would reduce the administrative staff time by 72% and there would be no significant fiscal risks from behavioral response of recipients.² However, a random verification approach would not be as effective unless it is consistent with eligibility determinations for other programs such as FAMIS and TANF. Given the recent trend toward eliminating resource criteria for welfare programs, the potential benefits of the random check approach that applies only to the low-income families with children and individuals under age 21 groups appear to be limited.

Earned income of a student: Another proposed change will clarify that the earned income of a child under the age of nineteen who is a student is disregarded. Similarly, this change applies to the eligibility determinations for the low-income families with children and the individuals under age 21 groups. Since 2002, this income has not been counted in the eligibility determinations as a result of a policy initiative. Thus, no significant economic effect is likely to occur upon promulgation of the proposed changes. When the student income was no longer counted in 2002, the effects of this change probably included an increase in the publicly funded Medicaid expenditures for additional recipients and a potential improvement in their health status and school performance and some administrative cost savings for DSS due to reduced workload in eligibility determinations. No longer counting student income may have also provided incentives for Medicaid-eligible students to work. However, there is no available data on the number of additional recipients who may have qualified for Medicaid following the policy initiative implemented in 2002.

Value of in-kind support: Finally, another proposed change will clarify that the fair market value of in-kind support and maintenance such as food, clothing, or shelter provided to Medicaid applicants under the low-income families with children and the individuals under age 21 groups will not be counted as income.

This proposed change reflects the current practice that has always been followed when determining eligibility for Medicaid coverage. Thus, this change is not expected to have any significant fiscal or economic effects other than conforming regulations to current practice.

Businesses and Entities Affected. The proposed regulations apply to applicants for Medicaid coverage under the low-income families with children and the individuals under age 21 groups. In fiscal year 2003, approximately 55,000 adults and 21,500 children were eligible for health care under these two groups.

Localities Particularly Affected. The proposed regulations will not uniquely affect any particular locality as they apply statewide.

d) average cost of application processing will be \$120, and e) the average processing costs will be reduced by 15%.

² This is based on the following assumptions a) there are 12,000 affected cases, b) it takes three minutes staff time to collect resource information and 12 minutes to verify that information on average.

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Projected Impact on Employment. The proposed regulations are expected to provide some administrative savings for the local departments of social services. However, there does not seem to be any plan to reduce the number of eligibility workers at this time. On the other hand, the expected 59 additional recipients may cause an increase in the health care services actually provided. However, the actual increase would be significant only if these recipients would not have received any services if they are not covered by Medicaid. But, it is very likely that some of the 59 recipients would have received at least some services through hospital emergency rooms or through other means. Thus, while the proposed changes have the potential to increase demand for labor, the magnitude of the effect is unknown.

Effects on the Use and Value of Private Property. The proposed regulations are not anticipated to have a significant effect on the use and value of private property unless the payments for additional recipients are significant to affect provider's future stream of profits.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Discontinue Resource Test and Counting of Earned Income for Family and Children Groups. The agency raises no issues with this analysis.

Summary:

The amendments (i) eliminate the resource test for low-income families with children and for individuals under age 21 for whom a public agency is assuming full or partial financial responsibility; (ii) eliminate the counting of all earned income of a child younger than age 19 who is a student; and (iii) eliminate the counting of all in-kind support and maintenance received by members of the family and children's covered groups.

12 VAC 30-40-280. More liberal income disregards.

A. For children covered under §§ 1902(a)(10)(A)(i)(III) and 1905(n) of the Social Security Act, the Commonwealth of Virginia will disregard one dollar plus an amount equal to the difference between 100% of the AFDC payment standard for the same family size and 100% of the Federal Poverty Level for the same family size as updated annually in the Federal Register.

B. For ADC-related cases, both categorically and medically needy, any individual or family applying for or receiving assistance shall be granted an income exemption consistent with the Act (§§ 1902(a)(10)(A)(i)(III), (IV), (VI), (VII); §§ 1902(a)(10)(A)(ii)(VIII), (IX); § 1902(a)(10)(C)(i)(III)). Any interest earned on one interest-bearing savings or investment account per assistance unit not to exceed \$5,000, if the applicant, applicants, recipient or recipients designate that the account is reserved for purposes related to self-sufficiency, shall be exempt when determining eligibility for medical assistance for so long as the funds and interest remain on deposit in the account. For purposes of this section, "purposes related to self-sufficiency" shall include, but are not limited to, (i) paying for tuition, books, and incidental expenses at any elementary, secondary, or vocational school, or any college or

university; (ii) for making down payment on a primary residence; or (iii) for establishment of a commercial operation that is owned by a member of the Medicaid assistance unit.

C. For the group described in §§ 1902(a)(10)(A)(i)(VII) and 1902(l)(1)(D), income in the amount of the difference between 100% and 133% of the Federal Poverty Level (as revised annually in the Federal Register) is disregarded.

D. For aged, blind, and disabled individuals, both categorically and medically needy, with the exception of the special income level group of institutionalized individuals, the Commonwealth of Virginia shall disregard the value of in-kind support and maintenance when determining eligibility. In-kind support and maintenance means food, clothing, or shelter or any combination of these provided to an individual.

E. For all categorically needy and medically needy children covered under the family and children covered groups, (§§1902(a)(10)(A)(i)(I), 1902(a)(10)(A)(i)(III), 1902(a)(10)(A)(i)(VI), 1902(a)(10)(A)(i)(VII), 1902(a)(10)(A)(ii)(VIII), 1902(a)(10)(C)(ii)(I) and 1905(n) of the Act), the Commonwealth will disregard all earned income of a child under the age of 19 who is a student.

F. For all categorically needy and medically needy individuals covered under the family and children covered groups (§§1902(a)(10)(A)(i)(I), 1902(a)(10)(A)(i)(III), 1902(a)(10)(A)(i)(IV), 1902(a)(10)(A)(i)(V), 1902(a)(10)(A)(i)(VI), 1902(a)(10)(A)(i)(VII), 1902(a)(10)(A)(ii)(VIII), 1902(a)(10)(C)(ii)(I) and 1905(n) of the Act), the Commonwealth will disregard the fair market value of all in-kind support and maintenance as income in determining financial eligibility. In-kind support and maintenance means food, clothing or shelter or any combination of these provided to an individual.

12 VAC 30-40-290. More liberal methods of treating resources under § 1902(r)(2) of the Act: § 1902(f) states.

A. Resources to meet burial expenses. Resources set aside to meet the burial expenses of an applicant/recipient or that individual's spouse are excluded from countable assets. In determining eligibility for benefits for individuals, disregarded from countable resources is an amount not in excess of \$3,500 for the individual and an amount not in excess of \$3,500 for his spouse when such resources have been set aside to meet the burial expenses of the individual or his spouse. The amount disregarded shall be reduced by:

1. The face value of life insurance on the life of an individual owned by the individual or his spouse if the cash surrender value of such policies has been excluded from countable resources; and
2. The amount of any other revocable or irrevocable trust, contract, or other arrangement specifically designated for the purpose of meeting the individual's or his spouse's burial expenses.

B. Cemetery plots. Cemetery plots are not counted as resources regardless of the number owned.

C. Life rights. Life rights to real property are not counted as a resource.

D. Reasonable effort to sell.

1. For purposes of this section, "current market value" is defined as the current tax assessed value. If the property is listed by a realtor, then the realtor may list it at an amount higher than the tax assessed value. In no event, however, shall the realtor's list price exceed 150% of the assessed value.

2. A reasonable effort to sell is considered to have been made:

a. As of the date the property becomes subject to a realtor's listing agreement if:

(1) It is listed at a price at current market value; and

(2) The listing realtor verifies that it is unlikely to sell within 90 days of listing given the particular circumstances involved (e.g., owner's fractional interest; zoning restrictions; poor topography; absence of road frontage or access; absence of improvements; clouds on title, right of way or easement; local market conditions); or

b. When at least two realtors refuse to list the property. The reason for refusal must be that the property is unsaleable at current market value. Other reasons for refusal are not sufficient; or

c. When the applicant has personally advertised his property at or below current market value for 90 days by use of a "Sale By Owner" sign located on the property and by other reasonable efforts, such as newspaper advertisements, or reasonable inquiries with all adjoining landowners or other potential interested purchasers.

3. Notwithstanding the fact that the recipient made a reasonable effort to sell the property and failed to sell it, and although the recipient has become eligible, the recipient must make a continuing reasonable effort to sell by:

a. Repeatedly renewing any initial listing agreement until the property is sold. If the list price was initially higher than the tax-assessed value, the listed sales price must be reduced after 12 months to no more than 100% of the tax-assessed value.

b. In the case where at least two realtors have refused to list the property, the recipient must personally try to sell the property by efforts described in subdivision 2 c of this subsection for 12 months.

c. In the case of a recipient who has personally advertised his property for a year without success (the newspaper advertisements and "for sale" sign do not have to be continuous; these efforts must be done for at least 90 days within a 12-month period), the recipient must then:

(1) Subject his property to a realtor's listing agreement at price or below current market value; or

(2) Meet the requirements of subdivision 2 b of this subsection which are that the recipient must try to list the property and at least two realtors refuse to list it

because it is unsaleable at current market value; other reasons for refusal to list are not sufficient.

4. If the recipient has made a continuing effort to sell the property for 12 months, then the recipient may sell the property between 75% and 100% of its tax assessed value and such sale shall not result in disqualification under the transfer of property rules. If the recipient requests to sell his property at less than 75% of assessed value, he must submit documentation from the listing realtor, or knowledgeable source if the property is not listed with a realtor, that the requested sale price is the best price the recipient can expect to receive for the property at this time. Sale at such a documented price shall not result in disqualification under the transfer of property rules. The proceeds of the sale will be counted as a resource in determining continuing eligibility.

5. Once the applicant has demonstrated that his property is unsaleable by following the procedures in subdivision 2 of this subsection, the property is disregarded in determining eligibility starting the first day of the month in which the most recent application was filed, or up to three months prior to this month of application if retroactive coverage is requested and the applicant met all other eligibility requirements in the period. A recipient must continue his reasonable efforts to sell the property as required in subdivision 3 of this subsection.

E. Automobiles. Ownership of one motor vehicle does not affect eligibility. If more than one vehicle is owned, the individual's equity in the least valuable vehicle or vehicles must be counted. The value of the vehicles is the wholesale value listed in the National Automobile Dealers Official Used Car Guide (NADA) Book, Eastern Edition (update monthly). In the event the vehicle is not listed, the value assessed by the locality for tax purposes may be used. The value of the additional motor vehicles is to be counted in relation to the amount of assets that could be liquidated that may be retained.

F. Life, retirement, and other related types of insurance policies. Life, retirement, and other related types of insurance policies with face values totaling \$1,500 or less on any one person 21 years old and over are not considered resources. When the face values of such policies of any one person exceeds \$1,500, the cash surrender value of the policies is counted as a resource.

G. Resource exemption for Aid to Dependent Children categorically and medically needy (the Act §§ 1902(a)(10)(A)(i)(III), (IV), (VI), (VII); §§ 1902(a)(10)(A)(ii)(VIII), (IX); § 1902(a)(10)(C)(i)(III)). For ADC-related cases, both categorically and medically needy, any individual or family applying for or receiving assistance may have or establish one interest-bearing savings or investment account per assistance unit not to exceed \$5,000 if the applicant, applicants, recipient or recipients designate that the account is reserved for purposes related to self-sufficiency. Any funds deposited in the account shall be exempt when determining eligibility for medical assistance for so long as the funds and interest remain on deposit in the account. Any amounts withdrawn and used for purposes related to self-sufficiency shall be exempt. For purposes of

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this section, purposes related to self-sufficiency shall include, but are not limited to, (i) paying for tuition, books, and incidental expenses at any elementary, secondary, or vocational school, or any college or university; (ii) for making down payment on a primary residence; or (iii) for establishment of a commercial operation that is owned by a member of the medical assistance unit.

H. Disregard of resources. The Commonwealth of Virginia will disregard all resources for qualified children covered under §§ 1902(a)(10)(A)(i)(I), 1902(a)(10)(A)(i)(III), 1902(a)(10)(A)(ii)(VIII), and 1905(n) of the Social Security Act.

I. Household goods and personal effects. The Commonwealth of Virginia will disregard the value of household goods and personal effects. Household goods are items of personal property customarily found in the home and used in connection with the maintenance, use and occupancy of the premises as a home. Examples of household goods are furniture, appliances, televisions, carpets, cooking and eating utensils and dishes. Personal effects are items of personal property that are worn or carried by an individual or that have an intimate relation to the individual. Examples of personal property include clothing, jewelry, personal care items, prosthetic devices and educational or recreational items such as books, musical instruments, or hobby materials.

J. Determining eligibility based on resources. When determining Medicaid eligibility, an individual shall be eligible in a month if his countable resources were at or below the resource standard on any day of such month.

12 VAC 30-40-345. Eligibility under § 1931 of the Act.

A. The state covers low-income families and children under § 1931 of the Act as follows:

AFDC children age 18 who are full-time students in a secondary school or in the equivalent level of vocational or technical training.

~~B. In determining eligibility for Medicaid, the agency uses the AFDC standards and methodologies in effect as of July 16, 1996, without modification, for individuals who do not receive TANF benefits.~~

~~C. B. In determining eligibility for Medicaid, the agency uses the AFDC standards and methodologies in effect as of July 16, 1996, with the following modifications.~~

1. The agency applies higher income standards than those in effect as of July 16, 1996, increased by no more than the percentage increases in the CPI-U since July 16, 1996. The agency increases the July 16, 1996, income standards shown in 12 VAC 30-40-220 by the annual increase in the CPI beginning July 1, 2001.

2. The agency uses less restrictive income or resource methodologies than those in effect as of July 16, 1996. *The agency does not consider resources in determining eligibility. The agency disregards all earned income of a child under the age of 19 who is a student. The agency disregards the fair market value of all in-kind support and maintenance as income in determining financial eligibility for the above referenced group.*

3. *The income or resource methodologies that the less restrictive methodologies replace are as follows:*

a. Resources. The family resource limit was \$1,000. Additionally, any applicant or recipient may have or establish one savings or investment account not to exceed \$5,000 if the applicant or recipient designates that the account is reserved for purposes related to self-sufficiency. Any funds deposited in the account and any interest earned on or appreciation in the value of the funds shall be exempt when determining eligibility for as long as the funds and interest on or appreciation in value of remain in the account. Any amounts withdrawn and used for purposes related to self-sufficiency shall be exempt. For purposes of this section, "purposes related to self-sufficiency" shall include, but is not limited to, paying for tuition, books and incidental expenses at any elementary, secondary or vocational school or any college or university; making down payment on a primary residence; or establishing a commercial operation that is owned by a member of the Medicaid assistance unit. The income or resource methodologies that the less restrictive methodologies replace are as follows:

~~a. Resources. Any individual or family applying for or receiving assistance may have or establish one interest-bearing savings or investment account per assistance unit not to exceed \$5,000 at a financial institution if the applicant or recipient designates that the account is reserved for one of the following purposes: (i) paying for tuition, books, and incidental expenses at any elementary, secondary or vocational school or any college or university; (ii) making down payment on a primary residence; or (iii) business incubation. Any funds deposited in the account shall be exempt when determining eligibility for medical assistance for so long as the funds and interest remain on deposit in the account. Any amounts withdrawn and used for any of the purposes stated in this section shall be exempt. For purposes of this section, "business incubation" shall mean the initial establishment of a commercial operation that is owned by a member of the Medicaid assistance unit. The net worth of any business owned by a member of the assistance unit shall be exempt from consideration as long as the net worth of the business is less than \$5,000.~~

b. Income. Any interest or appreciation earned on one interest-bearing savings account per medical assistance unit not to exceed \$5,000 at a financial institution, if the applicant or recipient designates that the account is reserved for the purpose of paying for tuition, books, and incidental expenses at any elementary, secondary or vocational school or any college or university, or for making down payment on a primary residence or for business incubation, shall be exempt when determining eligibility for medical assistance for as long as the funds and interest remain on deposit in the account. For purposes of this section, "business incubation" means the initial establishment of a commercial operation owned by a member of the Medicaid assistance unit.

c. Income earned by a child under the age of 19 who is a student was counted in determining eligibility in

accordance with the AFDC income methodologies that were in effect as of July 16, 1996.

d. The fair market value of in-kind support and maintenance is counted as income when evaluating the financial eligibility of the above-referenced group. In-kind support and maintenance means food, clothing or shelter or any combination of these provided to an individual.

~~D.~~ C. The agency continues to apply the following waivers of the provisions of Part A of Title IV in effect as of July 16, 1996, or submitted prior to August 22, 1996, and approved by the secretary on or before July 1, 1997. For individuals who receive TANF benefits and meet the requirements of Virginia's § 1115 waiver for the Virginia Independence Program, the agency continues to apply the following waivers of the provisions of Part A of Title IV in effect as of July 16, 1996, or submitted prior to August 22, 1996, and approved by the secretary on or before July 1, 1997. The waiver contains the following more liberal income disregards:

4. Earned income will be disregarded so long as the earnings plus the AFDC benefits are equal to or less than 100% of the Federal Income Poverty Guidelines. For any month in which earnings plus the AFDC standard of payment for the family size exceed the Federal Poverty Income Guidelines for a family of the same size, earned income above 100% of the Federal Poverty Income Guidelines shall be counted.

~~2. One automobile valued at \$7,500.~~

These waivers will apply only to TANF cash assistance recipients. These waivers will be continued only for as long as eligibility for TANF was established under the welfare reform demonstration project for which these waivers were originally approved.

VA.R. Doc. No. R04-190; Filed June 23, 2004, 11:31 a.m.



EMERGENCY REGULATIONS

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF NURSING

Title of Regulation: 18 VAC 90-20. Regulations Governing the Practice of Nursing (amending 18 VAC 90-20-10 and 18 VAC 90-20-300; adding 18 VAC 90-20-181, 18 VAC 90-20-182, and 18 VAC 90-20-183).

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

Effective Dates: June 24, 2004, through June 23, 2005.

Preamble:

The adoption of an emergency regulation by the Board of Nursing is required to comply with the second enactment clause of Chapter 49 of the 2004 Acts of the Assembly, which states "That the Board of Nursing shall promulgate regulations to implement the provisions of the Nurse Licensure Compact to be effective within 280 days of the enactment of this act." The date of enactment was March 4, 2004, the day the Governor approved HB 633.

Emergency regulations set out the regulations for implementation of the Nurse Licensure Compact including rules for issuance of a multistate licensure privilege, moving from one party state to another, notification of licensure denial to a former party state, limitations by disciplinary order on practice under a multistate privilege, a licensee's access to information in the licensure information system, and inclusion of the multistate privilege in the disciplinary provisions.

Agency Contact: Elaine J. Yeatts, Senior Policy Analyst, Department of Health Professions, 6603 West Broad Street, Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (805) 662-9114, or e-mail elaine.yeatts@dhp.virginia.gov.

18 VAC 90-20-10. Definitions.

In addition to words and terms defined in § 54.1-3030 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"Approval" means the process by which the board or a governmental agency in another state or foreign country evaluates and grants official recognition to nursing education programs that meet established standards not inconsistent with Virginia law.

"Associate degree nursing program" means a nursing education program preparing for registered nurse licensure, offered by a Virginia college or other institution and designed to lead to an associate degree in nursing, provided that the institution is authorized to confer such degree by the State Board of Education, State Council of Higher Education or an Act of the General Assembly.

"Baccalaureate degree nursing program" means a nursing education program preparing for registered nurse licensure,

offered by a Virginia college or university and designed to lead to a baccalaureate degree with a major in nursing, provided that the institution is authorized to confer such degree by the State Board of Education, the State Council of Higher Education or an Act of the General Assembly.

"Board" means the Board of Nursing.

"Clinical nurse specialist" means a licensed registered nurse who holds:

1. A master's degree from a board-approved program which prepares the nurse to provide advanced clinical nursing services; and
2. Specialty certification from a national certifying organization acceptable to the board or an exception available from March 1, 1990, to July 1, 1990.

"Clinical setting" means any location in which the clinical practice of nursing occurs as specified in an agreement between the cooperating agency and the school of nursing.

"Conditional approval" means a time-limited status which results when an approved nursing education program has failed to maintain requirements as set forth in Article 2 (18 VAC 90-20-10 et seq.) of Part II of this chapter.

"Cooperating agency" means an agency or institution that enters into a written agreement to provide learning experiences for a nursing education program.

"Diploma nursing program" means a nursing education program preparing for registered nurse licensure, offered by a hospital and designed to lead to a diploma in nursing, provided the hospital is licensed in this state.

"National certifying organization" means an organization that has as one of its purposes the certification of a specialty in nursing based on an examination attesting to the knowledge of the nurse for practice in the specialty area.

"Nursing education program" means an entity offering a basic course of study preparing persons for licensure as registered nurses or as licensed practical nurses. A basic course of study shall include all courses required for the degree, diploma or certificate.

"Nursing faculty" means registered nurses who teach the practice of nursing in nursing education programs.

"Practical nursing program" means a nursing education program preparing for practical nurse licensure, offered by a Virginia school, that leads to a diploma or certificate in practical nursing, provided the school is authorized by the appropriate governmental agency.

"Preceptor" means a licensed health care provider who is employed in the clinical setting, serves as a resource person and role model, and is present with the nursing student in that setting.

"Primary state of residence" means the state of a person's declared fixed permanent and principal home or domicile for legal purposes.

"Program director" means a registered nurse who has been designated by the controlling authority to administer the nursing education program.

"Provisional approval" means the initial status granted to a nursing education program which shall continue until the first class has graduated and the board has taken final action on the application for approval.

"Recommendation" means a guide to actions that will assist an institution to improve and develop its nursing education program.

"Requirement" means a mandatory condition that a nursing education program must meet to be approved.

18 VAC 90-20-181. Issuance of a license with a multistate licensure privilege.

A. In order to be issued a license with a multistate licensure privilege by the board, a nurse currently licensed in Virginia or a person applying for licensure in Virginia shall submit a declaration stating that his primary residence is in Virginia. Evidence of a primary state of residence may be required to include but not be limited to:

1. A driver's license with a home address;
2. A voter registration card displaying a home address; or
3. A federal or state tax return declaring the primary state of residence.

B. A nurse changing the primary state of residence from another party state to Virginia may continue to practice under the former party state license and multistate licensure privilege during the processing of the nurse's licensure application by the board for a period not to exceed 30 days.

1. If a nurse is under a pending investigation by a former home state, the licensure application in Virginia shall be held in abeyance and the 30-day authorization to practice stayed until resolution of the pending investigation.
2. A license issued by a former party state shall no longer be valid upon issuance of a license by the board.
3. If the board denies licensure to an applicant from another party state, it shall notify the former home state within 10 business days, and the former home state may take action in accordance with the laws and regulations of that state.

18 VAC 90-20-182. Limitations of a multistate licensure privilege.

The board shall include in all disciplinary orders that limit practice or require monitoring the requirement that the licensee subject to the order shall agree to limit practice to Virginia during the period in which the order is in effect. A nurse may be allowed to practice in other party states while an order is in effect with prior written authorization from both the board and boards of other party states.

18 VAC 90-20-183. Access to information in the coordinated licensure information system.

A licensee may submit a request in writing to the board to review the public data relating to the licensee maintained in

the coordinated licensure information system. In the event a licensee asserts that any related data is inaccurate, the burden of proof shall be upon the licensee to provide evidence that substantiates such claim. The board shall verify and correct inaccurate data in the information system within 10 business days.

18 VAC 90-20-300. Disciplinary provisions.

A. The board has the authority to deny, revoke or suspend a license or multistate licensure privilege issued, or to otherwise discipline a licensee or holder of a multistate licensure privilege, upon proof that the licensee or holder of a multistate licensure privilege has violated any of the provisions of § 54.1-3007 of the Code of Virginia. For the purpose of establishing allegations to be included in the notice of hearing, the board has adopted the following definitions:

1. Fraud or deceit means, but shall not be limited to:
 - a. Filing false credentials;
 - b. Falsely representing facts on an application for initial license, reinstatement or renewal of a license; or
 - c. Giving or receiving assistance in the taking of the licensing examination.
2. Unprofessional conduct means, but shall not be limited to:
 - a. Performing acts beyond the limits of the practice of professional or practical nursing as defined in Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia, or as provided by §§ 54.1-2901 and 54.1-2957 of the Code of Virginia;
 - b. Assuming duties and responsibilities within the practice of nursing without adequate training or when competency has not been maintained;
 - c. Obtaining supplies, equipment or drugs for personal or other unauthorized use;
 - d. Employing or assigning unqualified persons to perform functions that require a licensed practitioner of nursing;
 - e. Falsifying or otherwise altering patient or employer records;
 - f. Abusing, neglecting or abandoning patients or clients;
 - g. Practice of a clinical nurse specialist beyond that defined in 18 VAC 90-20-290;
 - h. Representing oneself as or performing acts constituting the practice of a clinical nurse specialist unless so registered by the board; or
 - i. Delegating nursing tasks to an unlicensed person in violation of the provisions of Part X (18 VAC 90-20-420 et seq.) of this chapter; or
 - j. Violating any provision of this chapter.

B. Any sanction imposed on the registered nurse license of a clinical nurse specialist shall have the same effect on the clinical nurse specialist registration.

Emergency Regulations

/s/ Mark R. Warner
Governor
Date: June 22, 2004

VA.R. Doc. No. R04-191; Filed June 24, 2004, 3:25 p.m.

GOVERNOR

EXECUTIVE ORDER NUMBER 64 (2004)

CONTINUING THE DECLARATION OF A STATE OF EMERGENCY IN THE COMMONWEALTH OF VIRGINIA TO EXPAND HOURS FOR EMERGENCY POWER RESTORATION WORKERS

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Chapter 1 of Title 2.2, Section 2.2-103 and Section 44-146.17 of the Code of Virginia, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby continue the state of emergency that I declared in Executive Order 62 (04), signed on January 16, 2004.

This Executive Order shall be effective upon its signing and shall remain in full force and effect until March 1, 2004, unless sooner amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 13th day of February 2004.

/s/ Mark R. Warner
Governor

VA.R. Doc. No. R04-177; Filed June 21, 2004, 11:56 a.m.

EXECUTIVE ORDER NUMBER 65 (2004)

PROMULGATION OF THE COMMONWEALTH OF VIRGINIA EMERGENCY OPERATIONS PLAN

By virtue of the authority vested in me by Section 44-146.17 of the Code of Virginia as Governor and as Director of Emergency Management, I hereby promulgate and issue the Commonwealth of Virginia Emergency Operations Plan ("the Plan") dated 2004. The Plan provides for state government's response to emergencies and disasters wherein assistance is needed by affected local governments in order to save lives; to protect public health, safety, and property; to restore essential services; and to enable and assist with economic recovery.

The State Coordinator of Emergency Management, on behalf of the Governor, is hereby authorized to activate the Commonwealth of Virginia Emergency Operations Center ("State EOC") in order to direct and control state government emergency operations. Activation of the State EOC shall constitute implementation of the Plan.

In accordance with the duties and responsibilities assigned in the Plan, the head of each designated state department or agency shall appoint a lead and at least one alternate Emergency Coordination Officer for the agency. The Emergency Coordination Officer is assigned the following responsibilities:

1. Coordinate with the Department of Emergency Management on emergency preparedness, response, and recovery issues;
2. Prepare and maintain designated parts of the Plan for which the agency is responsible;

3. Prepare and maintain internal plans and procedures to fulfill the responsibilities designated in the Plan;

4. Maintain a roster of agency personnel to assist in disaster operations and ensure that persons on the roster are accessible and available for training, exercises, and activations of the Plan;

5. Coordinate appropriate training for agency personnel assigned to disaster operations;

6. Prepare and maintain internal emergency preparedness, response, and recovery plans for the agency's resources (facilities, personnel, and assets) that outline a comprehensive and effective program to ensure continuity of essential state functions under all circumstances;

7. Assure the State Coordinator of Emergency Management that preparedness plans for its facilities are coordinated with the applicable local emergency management agency.

The Plan is consistent with the Commonwealth of Virginia Emergency Services and Disaster Law of 2000 (Chapter 3.2, Title 44 of the Code of Virginia, as amended) and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288, as amended) with its implementing regulations.

This Executive Order rescinds Executive Order Number Seventy-three (97) issued on May 9, 1997, by Governor George Allen.

This Executive Order shall be effective upon its signing and shall remain in full force and effect until amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 1st day of April 2004.

/s/ Mark R. Warner
Governor

VA.R. Doc. No. R04-178; Filed June 21, 2004, 11:56 a.m.

EXECUTIVE ORDER NUMBER 66 (2004)

A MODIFICATION OF THE DECLARATION OF A STATE OF EMERGENCY FOR THE COMMONWEALTH OF VIRGINIA DUE TO THE SIGNIFICANT FLOODING AND WIND DAMAGE CAUSED BY HURRICANE ISABEL

On September 16, 2003, I issued Executive Order Fifty-Six (2003) declaring a state of emergency to exist for the entire Commonwealth of Virginia based on forecasts that indicated that Hurricane Isabel could cause damaging high winds, flash flooding, and possible tornadoes throughout the state. On September 18 and 19, 2003, Hurricane Isabel did in fact cause significant damage through much of the Commonwealth.

On October 13, 2003, I issued Executive Order Fifty-Eight (2003), a modification of the Declaration of a State of Emergency declared in Executive Order Fifty-Six (2003). Executive Order Fifty-Eight authorized the Marine Resources Commissioner to act on behalf of the Commission in issuing

Governor

permits pursuant to Chapter 12 of Title 28.2 of the Code of Virginia when, in the judgment of the Commissioner, it is necessary to address immediate health and safety needs and the Commissioner would be unable to convene a meeting of the full Commission in a timely manner. Executive Order Fifty-Eight further stated that no permits for encroachments over state-owned submerged lands shall be required to replace previously permitted structures that conform to stated criteria, which included the requirement that reconstruction activities must be initiated prior to December 31, 2003 and completed prior to June 30, 2004.

The devastation caused by Hurricane Isabel was so profound that many Virginia residents, particularly those in coastal or tidal areas, have been engaged in major home reconstruction activities and have been unable to begin reconstruction of structures over state-owned submerged lands. Therefore, I hereby extend the provisions of Executive Order Fifty-Eight for one year and require that reconstruction activities authorized under Executive Order Fifty-Eight be initiated by December 31, 2004 and completed by June 30, 2005.

This Executive Order shall be retroactive to January 1, 2004 and shall remain in full force and effect until June 30, 2005, unless sooner amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 7th day of April 2004.

/s/ Mark R. Warner
Governor

VA.R. Doc. No. R04-179; Filed June 21, 2004, 11:56 a.m.

EXECUTIVE ORDER NUMBER 67 (2004)

CREATION OF THE OFFICE OF THE INSPECTOR GENERAL AND WORKING GROUP ON BUDGET REFORM

The taxpayers expect state dollars to be used in the most efficient way possible. Program evaluation of the efficiency and effectiveness of state agencies is one important tool towards achieving this goal. Investigation of waste, fraud, and abuse by state agencies is another important tool.

Therefore, by virtue of the authority granted to me by Article V of the Constitution of Virginia and by Chapter 1 of Section 2.2 of the Code of Virginia, I hereby create the Office of the State Inspector General within the executive department of state government.

The Office of the State Inspector General

The State Inspector General shall report directly to the Governor, but shall consult regularly with the Secretary of Administration, the Secretary of Finance, and the Governor's Chief of Staff. The State Inspector General shall have the power and duty to:

1. Operate and manage the Office of the State Inspector General and employ such personnel as may be required within limits prescribed by the Governor and the Chief of Staff.

2. Conduct independent evaluations of the efficiency and effectiveness of programs and activities of state agencies and services, as well as non-state agencies receiving state funding.

3. Prepare a detailed report of each investigation or program evaluation including findings and recommendations for improving efficiency and effectiveness as well as needed corrective action.

4. Document any waste, fraud, abuse, or wrongful acts and provide timely notification to the State Police, pursuant to Section 30-138 of the Code of Virginia whenever the State Inspector General has reasonable grounds to believe there has been a violation of state criminal law.

5. Enter into agreements with the Department of Accounts, the Department of Planning and Budget, the Auditor of Public Accounts, and the Joint Legislative Audit and Review Commission to share information and avoid duplication of effort in program evaluation and investigation of waste, fraud, and abuse.

6. As resources permit work with the Department of Planning and Budget to provide technical assistance to individual state agencies and non-state agencies receiving state funds in developing clear goals and objective measures of performance for programs and activities. The goals and objective measures established by the Governor for each agency shall be a part of any independent evaluation conducted by the Inspector General.

Program Evaluation of State and Non-state Agencies

The State Inspector General shall develop a schedule for the evaluation of the programs and services of state agencies and non-state agencies receiving state funding. The Inspector General shall prioritize evaluations in terms of program expenditures, program risk, and other factors as may seem appropriate.

Each program evaluation shall include, but not be limited to, the following measures and determinations regarding such programs and services: (i) effectiveness, (ii) efficiency, (iii) cost, (iv) alternative service delivery options, and (v) consolidation or privatization opportunities.

The State Inspector General shall prepare a report of each evaluation and submit the report to the Governor immediately upon its completion and to the General Assembly in its annual report. The State Inspector General shall also conduct unscheduled evaluations at the request of the Governor.

Within one year after an evaluation has been conducted, the state or non-state agency that is the subject of the evaluation shall report to the Governor and State Inspector General on the progress made toward the implementation of any recommendations made by the State Inspector General.

Cooperation of state agencies

Each state agency and every state officer and state employee, shall cooperate with, and provide assistance to, the State Inspector General in the performance of any investigation. Each state agency shall make its premises, equipment,

personnel, books, records, and papers readily available to the State Inspector General upon request.

The State Inspector General may enter upon the premises of any state agency at any time, without prior announcement, if necessary to the successful completion of an investigation. In the course of an investigation, the State Inspector General may interview any state officer or state employee serving in, and any person transacting business with, the state agency, and may inspect and copy any books, records, or papers in the possession of the state agency. The State Inspector General shall preserve the confidentiality of any information obtained from a state agency during the course of an investigation as required by applicable state and federal law.

Annual Report of the State Inspector General

The State Inspector General shall prepare an annual report for the governor and his Chief of Staff summarizing the activities of the Office. Such report shall include, but need not be limited to:

1. A description of significant problems, abuses, and deficiencies related to the management or operation of state agencies during the reporting period and recommendations for corrective action made by the State Inspector General;
2. An identification of each significant recommendation described in previous reports for which corrective action has not been completed;
3. A summary of any matters referred to the State Police and actions taken on them during the reporting period; and
4. Information concerning the numbers of complaints received and types of investigations completed by the Office during the reporting period.
5. Other issues as may seem appropriate.

Within 30 days of the transmission of each annual report, the State Inspector General shall make copies of such report available to the public upon request and shall make such reports available on the Office's web site.

The State Inspector General shall report immediately to the Governor whenever the Office becomes aware of particularly serious problems, abuses, or deficiencies relating to the management or operation of a state agency.

The State Inspector General may conduct such additional investigations and make such reports relating to the management and operation of state agencies as are, in the judgment of the State Inspector General, necessary or desirable. Records that are confidential under federal or state law shall be maintained as confidential by the State Inspector General, and shall not be further disclosed, except as permitted by law. Working papers for the Office of the State Inspector General shall be maintained in accordance with relevant "yellow book" standards issued by Comptroller General of the United States.

Working Group on Budget Reform

A need exists to improve the transparency and accountability of the state budget. Accordingly, I hereby create the Governor's Working Group on Budget Reform. The purpose of

this working group will be to make recommendations to improve accountability of the state budget and to make it easier for citizens to understand.

The working group shall include members of the House of Delegates and Senate of Virginia as well as citizen members. All members shall be appointed by the Governor and shall serve at his pleasure.

The working group shall work in consultation with the Council on Virginia's Future and its interagency staff team. The working group shall be responsible for making recommendations on making the budget more clear and accountable in time for incorporation into the Governor's 2006-2008 biennial budget submission. The working group shall examine and make recommendations on how to incorporate the following, to the extent practical, into the executive budget process:

1. Relevant activities and recommendations of the Council on Virginia's Future.
2. Each agency's mission, clearly defined goals and measurable objectives, and performance measures and descriptions of how (i) the goals and measurable objectives are directly related to furthering the agency's mission, and (ii) the agency is operating to achieve its mission, goals, and measurable objectives.
3. Specific objectives and performance measures for agency program and service and specific resource requirements for agency program and service.
4. Programs and services administered by two or more agencies.
5. Evaluations conducted by the Office of the State Inspector General.
6. Other issues as may seem appropriate.

The working group shall also recommend any necessary statutory changes, including codification of the Office of the State Inspector General.

The working group shall present its initial report to the Governor no later than November 1, 2004.

Members of the working group shall serve without compensation, but they may receive reimbursement for expenses incurred in the discharge of their official duties upon approval of the Chief of Staff.

Staff support necessary for the work of the working group shall be provided by the Office of the Secretary of Administration, the Secretary of Finance, the Department of Planning and Budget, the Department of Accounts, and such executive branch agencies as the Governor may designate. An estimated 2,000 hours of staff time shall be needed to support the work of the working group.

This Executive Order shall be effective immediately upon its signing and shall remain in full force and effect unless amended or rescinded by further Executive Order.

Given under my hand and the Seal of the Commonwealth of Virginia, this 20th day of April 2004.

Governor

/s/ Mark R. Warner
Governor

VA.R. Doc. No. R04-180; Filed June 21, 2004, 11:56 a.m.

EXECUTIVE ORDER NUMBER 68 (2004)

THE GOVERNOR'S COMMISSION ON NATIONAL AND COMMUNITY SERVICE

Mindful of the importance of national and community service, and by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Section 2.2-134 of the Code of Virginia, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby continue the Governor's Commission on Community and National Service, which was created in 2002.

The Commission is classified as a gubernatorial advisory commission in accordance with Section 2.2-2100 of the Code of Virginia.

The Commission shall be established to comply with the provisions of the National and Community Services Trust Act of 1993 and to advise the Governor on matters related to promotion and development of national service in the Commonwealth of Virginia. The Commission shall have the following specific duties:

1. To advise the Governor, the Secretaries of Health and Human Resources, Education, Natural Resources, and the Commissioner of the Department of Social Services on national and community service programs in Virginia and on fulfilling the responsibilities and duties prescribed by the federal Corporation for National Service.
2. To advise the Governor, the Secretaries of Health and Human Resources, Education, Natural Resources, and the Commissioner of the Department of Social Services on the development, implementation, and evaluation of Virginia's Unified State Plan that outlines strategies for supporting and expanding national and community service throughout the Commonwealth.
3. To promote the expansion of AmeriCorps programs to meet Virginia's most pressing human, educational, environmental, and public safety needs.
4. To work collaboratively with the Governor's Citizen Corps Initiative to promote volunteerism and public service throughout the Commonwealth.
5. To collaborate with the Virginia Department of Social Services and the Virginia Volunteerism Leadership Council to recognize and call attention to the significant community service contributions of Virginia citizens and organizations.
6. To encourage Virginians to answer the President's challenge to dedicate two years over the course of a lifetime to service to others.
7. To develop a plan for doubling, within four years, the number of Virginia service programs supported by the Corporation for National Service.

8. To highlight the significant voluntary contributions of Virginia citizens, businesses, and organizations.

9. To advise the Assistant to the Governor for Commonwealth Preparedness on ways to integrate community service programs into the Commonwealth's preparedness efforts.

10. To promote and coordinate State programs offering opportunities for community service within the Commonwealth.

The Commission shall be comprised of no more than twenty-five voting members appointed by the Governor and serving at his pleasure. No more than 25 percent of voting members may be state employees.

The Governor may appoint additional persons at his discretion as ex-officio non-voting members. The voting members of the Commission shall elect the Chairman. Commission voting membership shall include representatives for the categories as outlined in federal regulations issued by the Corporation for National Service.

Such staff support as is necessary to support the Commission's work during the term of its existence shall be furnished by the Office of the Secretary of Health and Human Resources, the Department of Social Services, and any other executive branch agencies having definitely and closely related purposes, as the Governor may designate. An estimated 900 hours of staff time will be required to support the work of the Commission.

Funding necessary to support the Commission and its staff shall be provided from federal funds, private contributions, and state funds appropriated for the same purposes as the Commission, authorized by Section 2.2-135 of the Code of Virginia. Direct costs for this Commission are estimated at \$5,000.

Members of the Commission shall serve without compensation and shall receive reimbursement for expenses incurred in the discharge of their official duties.

The Commission shall meet at least quarterly upon the call of the Chairperson. The Commission shall make an annual report to the Governor and shall issue such other reports and recommendations as it deems necessary or as requested by the Governor.

This Executive Order shall be effective upon its signing and shall remain in force and effect until May 3, 2005 unless amended or rescinded by further executive order.

Given under my hand and under the seal of the Commonwealth of Virginia this 3rd day of May 2004.

/s/ Mark R. Warner
Governor

VA.R. Doc. No. R04-181; Filed June 21, 2004, 11:56 a.m.

EXECUTIVE ORDER NUMBER 69 (2004)**VIRGINIA'S SECURE COMMONWEALTH INITIATIVE**

Among the most important responsibilities and profound duties of government at all levels is to provide for the safety and security of its citizens. With this most serious obligation in mind and by virtue of the authority vested in me by Article 5, Sections 1 and 7 of the Constitution of Virginia and by Section 44-146.17 of the Code of Virginia, I hereby establish the Virginia's Secure Commonwealth Initiative. The purpose of this Initiative shall be to implement strategies that enhance the safety and security of the citizens of the Commonwealth. The Initiative shall include, but not be limited to, enhancing the Commonwealth's prevention, preparedness and response and recovery capability for natural disasters and emergencies of all kinds, including terrorist attacks.

SECURE COMMONWEALTH PANEL

To support this Initiative, I hereby establish the Secure Commonwealth Panel (herein called the "Panel") to monitor and assess the implementation of statewide prevention, response and recovery initiatives and where necessary to review, evaluate and make recommendations relating to the emergency preparedness of government at all levels in the Commonwealth. Additionally, the Panel shall facilitate cabinet-level coordination among the various agencies of state government related to emergency preparedness and will facilitate private sector preparedness and communication. The Panel shall deliver to me by December 1, 2005, a comprehensive strategic plan that outlines the status of ongoing statewide efforts and recommendations for future activities to manage the physical, economic and societal risks of emergencies and disasters of all kinds, including terrorism.

The Panel shall consist of 20 members. The chairman of the Panel shall be the Assistant to the Governor for Commonwealth Preparedness. Other members of the Panel shall include the Lieutenant Governor; the Attorney General; two members of the House of Delegates; two members of the Senate of Virginia; and the Secretaries of Health and Human Resources, Public Safety, Technology, and Transportation. The Governor shall appoint two local first responders and three local government representatives to the panel. The Governor shall also appoint four additional members from the private sector. Ex officio members may be appointed to the Panel by the Governor at his discretion.

Members of the Panel shall serve without compensation but may receive reimbursement for expenses incurred in the discharge of their official duties upon approval by the Governor's Chief of Staff or his designee. The Panel shall convene, within sixty days of the signing of this order.

The Panel shall prepare quarterly reports for the Governor to keep him apprised of the state's emergency preparedness, response, recovery and prevention efforts. Staff support for the Panel will be provided by the Office of the Governor, the Office of the Secretary of Public Safety, the Office of the Secretary of Health and Human Resources, the Department of State Police, the Department of Emergency Management, the Department of Planning and Budget, and such other executive offices and agencies as may be designated by the Governor.

An estimated 500 hours of staff time will be required to support the work of the Panel.

Funding necessary to support the Panel's work will be provided from sources, including both private and appropriated funds, contributed or appropriated for purposes related to the work of the Panel, as authorized by § 2.2-135(B) of the Code of Virginia. Direct expenditures for the Panel's work are estimated to be \$60,000. All or part of the costs incurred by the Panel may be paid, upon my approval, out of the sum sufficient appropriation for Disaster Planning and Operations contained in Item 45 of Chapter 1073, 2000 Virginia Acts of Assembly, or any other funds available for such purpose.

STATE AGENCY PLANS

I hereby direct all executive branch agency heads to certify to me by June 1, 2004, that they have completed updates and/or development of plans that address continuity of their operations and services, and the security of their customers and employees, in the event of natural or man-made disasters or emergencies, including terrorist attacks. I further direct that all executive branch agencies exercise and test these plans on or before September 1, 2005.

RESPONSIBILITY FOR HOMELAND SECURITY ISSUES

I hereby designate the Assistant to the Governor for Commonwealth Preparedness as my primary liaison for the U.S. Department of Homeland Security and the Executive Office of the President, Homeland Security Council. He shall be responsible for coordinating, on my behalf, activities as required to promote unity of effort among federal, state, local, private sector and citizen activities related to preparedness and homeland security.

I hereby designate the Secretary of Public Safety as the single point of contact for federal law enforcement agencies regarding homeland security issues and to serve as an alternate liaison to the U.S. Department of Homeland Security and Executive Office of the President, Homeland Security Council if so required.

I hereby designate the Assistant to the Governor for Commonwealth Preparedness to work with appropriate cabinet secretaries to coordinate grants that may be provided to improve preparedness in Virginia communities with the goal of ensuring an integrated enterprise wide approach to prevention and preparedness.

This Executive Order rescinds Executive Order 07 (02). Given under my hand and under the Seal of the Commonwealth of Virginia, this 3rd day of May 2004.

/s/ Mark R. Warner
Governor

VA.R. Doc. No. R04-182; Filed June 21, 2004, 11:56 a.m.

Governor

EXECUTIVE ORDER NUMBER 70 (2004)

ESTABLISHING THE GOVERNOR'S COMMISSION ON ARMENIAN AFFAIRS

By virtue of the authority vested in me by Section 2.2-134 of the Code of Virginia, I hereby establish the Governor's Commission on Armenian Affairs (hereinafter referred to as "the Commission").

The Commission is classified as a gubernatorial advisory commission in accordance with Sections 2.2-134, 2.2-135, and 2.2-2100 of the Code of Virginia. The purpose of this Commission shall be to:

1. Advise the Governor regarding the development of economic, professional, cultural, educational, and governmental links between the Commonwealth of Virginia, the Virginia Armenian Community and the Republic of Armenia.
2. Undertake studies, symposiums, research and factual reports in order to gather information to formulate and present recommendations to the Governor relative to the Commonwealth's relationship with the Republic of Armenia and advise the Governor regarding any and all cultural, educational and historical studies it pursues about the Armenia Nation and its Virginia-Armenian Community in order to educate the people of the Commonwealth of Virginia.
3. Advise the Governor regarding mutual exchange of cultural and historical information between the citizens of the Commonwealth and citizens of the Republic of Armenia.

The Commission shall have 20 members, appointed by the Governor and serving at his pleasure. Mr. Bedros C. Bandazian shall serve as Chairman. The Governor may appoint additional members to the Commission at his discretion.

Members of the Commission shall serve without compensation. They may receive reimbursement for expenses incurred in the discharge of their official duties upon approval by the Governor's Chief of Staff or his designee.

Such staff support as is necessary for the conduct of the Commission's work during the term of its existence shall be furnished by the Office of the Governor and such other executive agencies as the Governor may designate. An estimated 500 hours of staff time will be required to support the work of the Commission. An estimated \$10,000 is required to support the work of the Commission. Such funding as is necessary for the term of the Commission's existence shall be provided from sources, including both private and appropriated funds, contributed or appropriated for purposes related to the work of the Commission, as authorized by Section 2.2-135(B) of the Code of Virginia. The Commission shall be able to apply for, accept, and expend gifts, grants, or donations from public, quasi-public or private sources to enable it to better carry out its purposes for the Commonwealth of Virginia and its community.

This Executive Order shall be effective May 18, 2004 and shall remain in full force and effect until May 17, 2005, unless amended or rescinded by further executive order. Given under

my hand and under the Seal of the Commonwealth of Virginia, this 18th day of May 2004.

/s/ Mark R. Warner
Governor

VA.R. Doc. No. R04-183; Filed June 21, 2004, 11:56 a.m.

EXECUTIVE ORDER NUMBER 71 (2004)

ESTABLISHING THE GOVERNOR'S COMMISSION ON RAIL ENHANCEMENT FOR THE 21ST CENTURY

The Commonwealth of Virginia is a leader in providing high-quality passenger and freight rail service. The hard work and dedication of the many Virginians involved in providing and promoting public and private rail service throughout the Commonwealth is a testament both to Virginia's proud history and our bright future.

Establishment of the Commission

By virtue of the authority vested in me under Article V of the Constitution of Virginia, and by Section 2.2-134 of the Code of Virginia, I hereby establish the Governor's Commission on Rail Enhancement for the 21st Century (the "Commission").

The Commission is classified as a gubernatorial advisory commission in accordance with Sections 2.2-134, 2.2-135, and 2.2-2100 of the Code of Virginia. The purpose of this Commission shall be to examine the future of rail transportation in the Commonwealth, including the consideration of a Rail Authority. The Commission shall provide leadership on freight and passenger rail issues, policies, and needs, as well as examine options for leveraging private and public funding for rail service and infrastructure across the Commonwealth.

The Commission shall have seven members appointed by the Governor and serving at his pleasure, including a chairman as designated by the Governor. In addition, the Secretary of Transportation and the Secretary of Commerce and Trade, or their designees, and the Director of the Department of Rail and Public Transportation shall serve as ex-officio members of the Commission. Members of the Commission shall serve without compensation. The Governor may add additional members to the Commission at his discretion.

Duties of the Commission

The Commission shall review the Virginia State Rail Plan (the "Plan") and factor the results of the Plan into its recommendations for enhancing rail service and infrastructure in the Commonwealth. The Commission also shall review Senate Bill 413 (2004) and make recommendations regarding the structure, authority, and funding of a Rail Transportation Development Authority, including innovative financing options to expedite freight and passenger rail service. The Commission shall make other recommendations to the Governor as may be appropriate.

The Commission shall make its recommendations in a report to the Governor by December 1, 2004.

Staff Support for the Commission

Such staff support as is necessary for the conduct of the Commission's work during the term of its existence shall be furnished by the Department of Rail and Public Transportation, the Virginia Economic Development Partnership, the Department of Treasury, and such other executive agencies as the Governor may designate. An estimated 200 hours of staff time will be required to support the commission.

Such funding as is necessary for the term of the Commission's existence shall be provided from sources, including both private and appropriated funds, contributed or appropriated for purposes related to the work of the Commission, as authorized by Section 2.2-135(B) of the Code of Virginia. Direct expenditures for the Commission's work are estimated to be \$5,000.

This Executive Order shall be effective upon its signing, and shall remain in full force and effect until May 17, 2005, unless amended or rescinded by further executive order. Given under my hand and under the Seal of the Commonwealth of Virginia, this 18th day of May 2004.

/s/ Mark R. Warner
Governor

VA.R. Doc. No. R04-184; Filed June 21, 2004, 11:56 a.m.

EXECUTIVE ORDER NUMBER 72 (2004)**CONTINUING THE COMMISSION ON MILITARY BASES**

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Sections 2.2-103, 2.2-134, and 2.2-135 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby continue the Commission on Military Bases, which was established through Executive Order 49 (2003).

This commission is classified as a gubernatorial advisory commission in accordance with Sections 2.2-134 and 2.2-2100 of the Code of Virginia. Its specific duties and responsibilities remain as stated in Executive Order 49 (2003), with the funding sources and amounts of staff and financial support originally estimated.

This executive order shall be effective immediately upon its signing and shall remain in full force and effect until May 24, 2005, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this the 25th day of May 2004.

/s/ Mark R. Warner
Governor

VA.R. Doc. No. R04-185; Filed June 21, 2004, 11:56 a.m.

EXECUTIVE ORDER NUMBER 73 (2004)**DECLARATION OF A STATE OF EMERGENCY FOR THE COUNTIES OF TAZEVELL AND RUSSELL DUE TO THE EFFECTS OF SIGNIFICANT FLOODING**

On May 25, 2004 I verbally declared a state of emergency to exist for the counties of Tazewell and Russell based on information of damages caused by heavy rains and flash flooding that began on May 24, 2004 and are continuing. Forecasts indicate that the current weather pattern could cause additional heavy rains, flooding and high winds in several parts of the Commonwealth.

The health and general welfare of the citizens of the Commonwealth required that state action be taken to help alleviate the conditions that are resulting from this situation. State agencies have responded with assistance to local governments and to the citizens of Tazewell County and Russell County. I found that the potential effects of these floods constituted a natural disaster wherein human life and public and private property are imperiled, as described in § 44-146.16 of the Code of Virginia.

Therefore, by virtue of the authority vested in me by § 44-146.17 of the Code of Virginia, as Governor and as Director of Emergency Management, and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia and by § 44-75.1 of the Code of Virginia, as Governor and Commander-in-Chief of the armed forces of the Commonwealth, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby confirm, ratify, and memorialize in writing my verbal orders issued May 25, 2004, wherein I proclaimed that a state of emergency exists and directed that appropriate assistance be rendered by agencies of both state and local governments to assist people in harm's way, and to alleviate any conditions resulting from significant flooding, and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions insofar as possible. Pursuant to § 44-75.1.A.3 and A.4 of the Code of Virginia, I also directed that the Virginia National Guard and the Virginia Defense Force be called forth to state duty to assist in providing such aid. This shall include Virginia National Guard assistance to the Virginia State Police to direct traffic, provide security, and perform such other law enforcement functions as the Superintendent of State Police, in consultation with the State Coordinator of Emergency Management, the Adjutant General, and the Secretary of Public Safety, may find necessary.

In order to marshal all public resources and appropriate preparedness, response and recovery measures to meet this potential threat and recover from its effects, and in accordance with my authority contained in § 44-146.17 of the Emergency Services and Disaster Laws, I hereby order the following protective and restoration measures:

A. The implementation by agencies of the state and local governments of Volume 1 (Basic Plan) and Volume 2 (Disaster Recovery Plan) of the Virginia Emergency Operations Plan, as amended, along with other appropriate state agency plans.

Governor

B. Activation of the Virginia Emergency Operations Center (VEOC) and Virginia Emergency Response Team (VERT). Furthermore, I am directing that the VEOC and VERT coordinate state operations in support of potential affected localities and the Commonwealth, to include issuing mission assignments to agencies designated in the Commonwealth of Virginia Emergency Operations Plan (COVEOP) and others that may be identified by the State Coordinator of Emergency Management, in consultation with the Secretary of Public Safety, which are needed to provide for the preservation of life, protection of property, and implementation of recovery activities.

C. The authorization to assume control over the Commonwealth's state-operated telecommunications systems, as required by the State Coordinator of Emergency Management, in coordination with the Virginia Information Technology Agency, and with the consultation of the Secretary of Public Safety, making all systems assets available for use in providing adequate communications, intelligence and warning capabilities for the event, pursuant to § 44-146.18 of the Code of Virginia.

D. The evacuation of areas threatened or stricken by flooding or other affects of the storms. Following a declaration of a local emergency pursuant to § 44-146.21 of the Code of Virginia, if a local governing body determines that evacuation is deemed necessary for the preservation of life or other emergency mitigation, response or recovery, pursuant to § 44-146.17 (1) of the Code of Virginia, I direct the evacuation of all or part of the populace therein from such areas and upon such timetable as the local governing body, in coordination with the Virginia Emergency Operations Center (VEOC), acting on behalf of the State Coordinator of Emergency Management, shall determine. Notwithstanding the foregoing, I reserve the right to direct and compel evacuation from the same and different areas and determine a different timetable both where local governing bodies have made such a determination and where local governing bodies have not made such a determination. Violations of any order to citizens to evacuate shall constitute a violation of this Executive Order and are punishable as a Class 1 misdemeanor.

E. The activation, implementation and coordination of appropriate mutual aid agreements and compacts, including the Emergency Management Assistance Compact, and the authorization of the State Coordinator of Emergency Management to enter into any other supplemental agreements, pursuant to §§ 44-146.17(5) and 44-146.28:1 of the Code of Virginia, to provide for the evacuation and reception of injured and other persons and the exchange of medical, fire, police, National Guard personnel and equipment, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies. The State Coordinator of Emergency Management is hereby designated as Virginia's authorized representative within the meaning of the Emergency Management Assistance Compact, § 44-146.28:1 of the Code of Virginia.

F. The authorization of appropriate oversight boards, commissions and agencies to ease building code restrictions, and to permit emergency demolition, hazardous waste

disposal, debris removal, emergency landfill siting and operations and other activities necessary to address immediate health and safety needs without regard to time-consuming procedures or formalities and without regard to application or permit fees or royalties. This state of emergency constitutes a major medical emergency under the Rules and Regulations of the Board of Health Governing Emergency Medical Services, pursuant to Article 3.01 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1, of the Code of Virginia, Statewide Emergency Medical Services System and Services, and exemptions specified in the Rules and Regulations regarding patient transport and provider certification in disasters apply.

G. The implementation by public agencies under my supervision and control of their emergency assignments as directed in the COVEOP without regard to normal procedures pertaining to performance of public work, entering into contracts, incurring of obligations, or other logistical and support measures of the Emergency Services and Disaster Laws, as provided in § 44-146.28 (b) of the Code of Virginia. Section 44-146.24 of the Code of Virginia also applies to the disaster activities of state agencies.

H. Designation of members and personnel of volunteer, auxiliary and reserve groups including search and rescue (SAR), Virginia Associations of Volunteer Rescue Squads (VAVRS), Civil Air Patrol (CAP), member organizations of the Voluntary Organizations Active in Disaster (VOAD), amateur radio operators, volunteer fire fighters, and others identified and tasked by the State Coordinator of Emergency Management for specific disaster-related mission assignments as representatives of the Commonwealth engaged in emergency services activities within the meaning of the immunity provisions of § 44-146.23 (a) of the Code of Virginia, in the performance of their specific disaster-related mission assignments.

The following conditions apply to the deployment of the Virginia National Guard and the Virginia Defense Force:

1. The Adjutant General of Virginia, after consultation with the State Coordinator of Emergency Management, shall make available on state active duty such units and members of the Virginia National Guard and Virginia Defense Force and such equipment as may be necessary or desirable to assist in preparations and in alleviating the human suffering and damage to property.
2. Pursuant to § 52-6 of the Code of Virginia, I authorize and direct the Superintendent of State Police to appoint any and all such Virginia Army and Air National Guard personnel called to state active duty as additional police officers. These police officers shall have the same powers and perform the same duties as the regular State Police officers appointed by the Superintendent. However, they shall nevertheless remain members of the Virginia National Guard, subject to military command as members of the State Militia. Any bonds and/or insurance required by § 52-7 of the Code of Virginia shall be provided for them at the expense of the Commonwealth.
3. In all instances, members of the Virginia National Guard and Virginia Defense Force shall remain subject to military

command as prescribed by § 44-78.1 of the Code of Virginia and not subject to the civilian authorities of county or municipal governments. This shall not be deemed to prohibit working in close cooperation with members of the Virginia Departments of State Police or Emergency Management or local law enforcement or emergency management authorities or receiving guidance from them in the performance of their duties.

4. Should service under this Executive Order result in the injury or death of any member of the Virginia National Guard, the following will be provided to the member and the member's dependents or survivors:

(a) Workers Compensation benefits provided to members of the National Guard by the Virginia Workers Compensation Act, subject to the requirements and limitations thereof; and, in addition,

(b) The same benefits, or their equivalent, for injury, disability and/or death, as would be provided by the federal government if the member were serving on federal active duty at the time of the injury or death. Any such federal-type benefits due to a member and his or her dependents or survivors during any calendar month shall be reduced by any payments due under the Virginia Workers Compensation Act during the same month. If and when the time period for payment of Workers Compensation benefits has elapsed, the member and his or her dependents or survivors shall thereafter receive full federal-type benefits for as long as they would have received such benefits if the member had been serving on federal active duty at the time of injury or death. Any federal-type benefits due shall be computed on the basis of military pay grade E-5 or the member's military grade at the time of injury or death, whichever produces the greater benefit amount. Pursuant to § 44-14 of the Code of Virginia, and subject to the availability of future appropriations that may be lawfully applied to this purpose, I now approve of future expenditures out of appropriations to the Department of Military Affairs for such federal-type benefits as being manifestly for the benefit of the military service.

5. The costs incurred by the Department of Military Affairs and the Virginia Defense Force in performing these missions shall be paid from state funds.

The following conditions apply to service by the Virginia Defense Force:

1. Compensation shall be at a daily rate that is equivalent of base pay only for a National Guard Unit Training Assembly, commensurate with the grade and years of service of the member, not to exceed 20 years of service;

2. Lodging and meals shall be provided by the Adjutant General or reimbursed at standard state per diem rates;

3. All privately owned equipment, including, but not limited to, vehicles, boats, and aircraft, will be reimbursed for expense of fuel. Damage or loss of said equipment will be reimbursed, minus reimbursement from personal insurance, if said equipment was authorized for use by the Adjutant

General in accordance with § 44-54.12 of the Code of Virginia; and

4. In the event of death or injury, benefits shall be provided in accordance with the Virginia Workers Compensation Act, subject to the requirements and limitations thereof.

Upon my approval, the costs incurred by state agencies and other agents in performing mission assignments through the VEOC of the Commonwealth as defined herein and in § 44-146.28 of the Code of Virginia, other than costs defined in Item 5 of the paragraphs above pertaining to the Virginia National Guard and the Virginia Defense Force, in performing these missions shall be paid from state funds.

This Executive Order shall be effective May 24, 2004, and shall remain in full force and effect until June 30, 2005, unless sooner amended or rescinded by further executive order. Termination of the Executive Order is not intended to terminate any Federal-type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 25th day of May 2004.

/s/ Mark R. Warner
Governor

VA.R. Doc. No. R04-186; Filed June 21, 2004, 11:56 a.m.

EXECUTIVE ORDER NUMBER 74 (2004)

INCLUSION OF LEE COUNTY IN THE DECLARATION OF A STATE OF EMERGENCY FOR THE COUNTIES OF TAZEWELL AND RUSSELL DUE TO THE EFFECTS OF SIGNIFICANT FLOODING

On May 25, 2004, I issued Executive Order Number 73, declaring a state of emergency to exist for the Counties of Tazewell and Russell based on reported damages and dangerous conditions caused by flash flooding. On May 28, 2004, as the storm system continued throughout Southwest Virginia, a tornado destroyed homes in Lee County. The tornado resulted from the continuation of the weather pattern that caused the earlier flash floods in Tazewell County and Russell County.

The health and general welfare of the citizens of the Commonwealth required that state action be taken to help alleviate the conditions which resulted from this situation. I also found that the impact of these storms, including the tornado in Lee County, constituted a natural disaster wherein human life and public and private property were imperiled, as described in § 44-146.16 of the Code of Virginia.

Therefore, by virtue of the authority vested in me by § 44-146.17 of the Code of Virginia, as Governor and as Director of Emergency Management, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby amend those orders and directives contained in Executive Order 73 to include Lee County.

This Executive Order shall be effective June 3, 2004, and shall remain in full force and effect until June 30, 2005, unless

Governor

sooner amended or rescinded by further executive order. Termination of the Executive Order is not intended to terminate any Federal-type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 3rd day of June 2004.

/s/ Mark R. Warner
Governor

VA.R. Doc. No. R04-187; Filed June 21, 2004, 11:56 a.m.

GENERAL NOTICES/ERRATA

STATE CORPORATION COMMISSION

REGISTRAR'S NOTICE: The distribution list referenced as Appendix A in the following order is not being published. However, the list is available for public inspection at the State Corporation Commission, Document Control Center, Tyler Building, 1st Floor, 1300 East Main Street, Richmond, Virginia 23219, from 8:15 a.m. to 5 p.m., Monday through Friday; or may be viewed at the Virginia Code Commission, General Assembly Building, 2nd Floor, 910 Capitol Street, Richmond, Virginia 23219, during regular office hours.

AT RICHMOND, JUNE 16, 2004

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE-2004-00068

Ex Parte: In the matter of establishing rules and regulations pursuant to the Virginia Electric Utility Restructuring Act for exemptions to minimum stay requirements and wires charges

ORDER ESTABLISHING PROCEEDING

The Virginia Electric Utility Restructuring Act, Chapter 23 (§ 56-576 et seq. of the Code of Virginia) ("the Act"), as amended by Chapter 827 of the 2004 Acts of Assembly (Senate Bill 651), directs the State Corporation Commission ("Commission") to promulgate rules and regulations, and adopt certain market-based pricing methodologies, in order to implement two new provisions of the Act. These new statutory provisions relate to the minimum stay requirements adopted by the Commission pursuant to § 56-577 E of the Act, and wires charges imposed pursuant to § 56-583 of the Act.

Under the Commission's Rules Governing Retail Access to Competitive Energy Services,¹ local distribution companies, under certain circumstances, can require large commercial and industrial customers who return to capped rate service to remain a customer of the company for a minimum period of 12 months.² Senate Bill 651 creates a statutory exemption to the minimum stay provision. Under § 56-577 E 2 of the Act, effective July 1, 2004, large commercial and industrial customers who return to an incumbent electric utility or default provider can elect to accept market-based costs for electric energy as an alternative to being bound by the 12-month minimum stay provision. However, customers electing to pay market-based costs are not allowed to purchase electric energy from an incumbent electric utility or default provider at capped rates thereafter unless they agree to comply with the minimum stay provision.

Senate Bill 651 further provides that the Commission shall establish a methodology for determining market-based costs for those customers who opt-out of the minimum stay provision. The methodology approved by the Commission must allow an incumbent electric utility to recover all its costs

¹ 20 VAC 5-312-10 et seq.

² 20 VAC 5-312-80 Q.

to provide such service, including: (i) the actual expenses of procuring such electric energy from the market, (ii) additional administrative and transaction costs associated with procuring such energy, including, but not limited to, costs of transmission line losses, and ancillary services, and (iii) a reasonable margin. The Commission is required by § 56-577 E 4 of the Act to promulgate rules and regulations necessary to implement this new minimum stay exemption program.

Senate Bill 651 also adopted a new subsection E for § 56-583 of the Act. Under § 56-583 E, effective July 1, 2004, large industrial and commercial customers, and aggregated customers in all rate classes subject to such aggregated demand criteria as may be established by the Commission, are given the opportunity to switch to a competitive service provider without paying wires charges if they agree to pay market-based costs for electric energy if they ever return to an incumbent electric utility or default provider. Customers are allowed to avoid wires charges and participate in this program on a first-come, first-served basis until the most recent billing demand of all transferred customers reaches 1000 MW or eight percent of such utility's prior year Virginia adjusted peak-load within the 18 months after the program's commencement date. In addition, customers who participate in this program are not allowed to return to their incumbent electric utility or default provider thereafter under capped rates.

Senate Bill 651 also requires the Commission to establish a methodology for determining market-based costs and to adopt rules and regulations implementing this new statutory provision. Once again, the methodology to determine market-based costs approved by the Commission must allow an incumbent electric utility to recover all its costs to provide such service, including (i) the actual expenses of procuring such electric energy from the market, (ii) additional administrative and transaction costs associated with procuring such energy, including, but not limited to, costs of transmission, transmission line losses, and ancillary services, and (iii) a reasonable margin. The costs to be recovered under this program are identical to those costs identified under the new minimum stay exemption found in § 56-577 E of the Act.

Given the similarity of the statutory requirements imposed upon the Commission with respect to adopting market-based costs for those customers electing to opt-out of the minimum stay requirement or avoid wires charges, we find that it is appropriate, both in terms of judicial economy and expediency, to consider both programs in the context of one docket. We will implement these new programs using a two-tiered approach. First, we will convene a work group to consider how best to implement these new statutory provisions. We will direct the Staff of the Commission to invite representatives of interested parties to participate in the work group to facilitate the Staff's recommendation of an appropriate methodology to determine market-based costs, as well as proposed rules and regulations to implement these two programs. Once the work group completes its charge, the second stage of the proceeding will be devoted to providing public notice of the proposed rules and regulations recommended by Staff, and affording interested parties an opportunity to comment or request a hearing. We emphasize,

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however, that the first stage of this proceeding will be devoted primarily to stakeholders' input on issues relevant to the new programs.

We will not appoint specific members of the work group in this Order. Based on our experience in related proceedings involving retail competition, the Commission is confident that a variety of individuals having an interest in the new programs will participate in the work group. The Commission will also not limit the size of the work group. However, in order to promote maximum participation in the work group, we will establish procedures for providing notice of the convening of the work group.

We will schedule the first meeting of the work group for August 19, 2004. The work group will schedule additional meeting dates, as necessary, to complete their work and make recommendations to the Staff on how best to implement these programs. We further expect that the work group will complete its charge in a timely manner, and that the Staff will be able to file its report within 30 days of the last meeting. In order to give our Staff sufficient flexibility, we will not establish a date certain for the filing of the Staff report in this Order. However, all work group participants are encouraged to provide input in a timely manner concerning the issues presented in this case.

To focus consideration on the issues raised by the new statutory exemptions created by Senate Bill 651, the Commission requests that prospective representatives and other interested persons respond to any or all of the following questions:

1. What new retail access rules and modifications to existing retail access rules are needed to implement the Minimum Stay and Wires Charge exemption programs?
2. What verifiable milestone event(s) constitutes "the transfer of the management and control of an incumbent electric utility's transmission assets to a regional transmission entity?"
3. Do the legislated Minimum Stay and Wires Charge exemption programs apply to retail electric cooperatives? Explain why or why not?
4. Describe, in reasonable detail, the methodology that should be used to determine "market-based costs." Such description should address each of the three cost components: "(i) actual expenses of procuring such electric energy from the market, (ii) additional administrative and transaction costs associated with procuring such energy, including, but not limited to, costs of transmission line losses, and ancillary services, and (iii) a reasonable margin." Specifically, for each component, identify (1) each cost item that should be considered within that component; (2) how each such cost item should be determined, including the informational source of any data needed in such determination (differentiate between actual and estimated costs and also, to the extent relevant, differentiate between incremental cost and fully allocated cost, including the application of cost overheads); and (3) an explanation of the economic rationale for the determination of a reasonable margin.
5. How will the Commission be assured that:

- a. an incumbent utility purchases electric energy from the market without adversely affecting itself or retail customers?
- b. an incumbent utility purchases electric energy to assure minimum cost for such energy?
- c. an incumbent utility uses appropriate hedging techniques in the purchase of electric energy? Should the cost of any hedging techniques be included among the "actual expenses" of electric energy?

6. Given the requirement that the methodology to determine "market-based costs" must be consistent with the goal of promoting economic development within the Commonwealth, as well as promoting effective competition, should issues associated with the level and stability of rates and prices reflecting "market-based costs" be considered? If so, how?

7. Should the ultimate methodology to determine "market-based costs" be permitted to vary among incumbent utilities? Explain why or why not.

8. Interpret the extent of the legislated jurisdiction provided to the Commission with respect to the determination of "market-based costs," for example:

- a. Is the Commission's jurisdiction strictly limited to determination and approval of a methodology?
- b. How frequently may and should the Commission review and/or modify the approved methodology?
- c. Does the Commission's jurisdiction extend to oversight of the actual determination of "market-based costs," including the audit, calculation, and billing of such costs and dispute resolution?

9. Given the Wires Charge exemption program requirement for 60 days' prior notice to the incumbent utility for the return to service and purchase of retail electric energy at "market-based costs," who, if anyone, is obligated to serve a participating customer for those 60 days, and at what price, if such customer's competitive service provider defaults and there are no competitive options available to the customer?

10. What demand threshold should be established for aggregated customer participation in the Wires Charge exemption program? Explain why.

11. Subsequent to the eighteen-month demand limitation on participation in the Wires Charge exemption program, should such limitations be completely eliminated? Explain why or why not?

To allow for broad and efficient dissemination of information, we will request the filing of responses to these questions, if possible, in electronic form. The responses will be posted on the Commission's Division of Economics and Finance web site. We recognize that responses to some of the questions may contain information which the authors deem confidential. Accordingly, only information which is available in the public domain and not deemed confidential will be posted on the web site. Any response deemed confidential should be filed in paper form and be prominently marked as confidential in accordance with 5 VAC 5-20-170 of the Commission's Rules of Practice and Procedure. If possible, a complete electronic

response to all questions, including any material deemed confidential, should be provided to the designated Staff members.

The Commission Staff has developed lists of individuals, organizations, and companies that may be interested in the implementation of the two new programs established by Senate Bill 651. The Commission will direct the Staff to provide copies of this Order by electronic transmission or, when electronic transmission is not possible, by mail to individuals, organizations, and companies on these lists.

Accordingly, IT IS ORDERED THAT:

- (1) This matter be docketed as Case No. PUE-2004-00068 and all associated papers filed herein.
- (2) Within five (5) business days of the filing of this Order with the Clerk, the Commission Staff shall transmit electronically or mail copies of this Order to interested persons and organizations as discussed in this Order.
- (3) The Commission Staff shall promptly submit a copy of this Order for publication in the Virginia Register of Regulations.
- (4) On or before June 30, 2004, the Commission Staff shall file with the Clerk a certificate of the transmission or mailing required by paragraph (2) of this Order, and shall include a list of the names and addresses of persons to whom the Order was transmitted or mailed.
- (5) On or before July 26, 2004, all persons who desire to participate in the work group shall file with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, a letter expressing their intention to participate in the work group. The letter shall include a complete mailing address, voice telephone number, facsimile telephone number (if available), and electronic mailing address (if available). If several interested persons are members of the same organization or employees of the same entity, they shall designate in the letters one contact person. Interested persons are encouraged to transmit a copy of the letter filed with the Clerk, or the requested information, to econfin@scc.state.va.us.
- (6) On or before July 26, 2004, one paper copy of any responses to the questions set out in this Order, and, if possible, an electronic copy of the complete response, shall be mailed or delivered to the following Commission Staff:

Susan D. Larsen, Deputy Director
slarsen@scc.state.va.us
Division of Public Utility Accounting
State Corporation Commission
P.O. Box 1197
Richmond, VA 23218-1197

David R. Eichenlaub, Assistant Director
deichenlaub@scc.state.va.us
Division of Economics and Finance
State Corporation Commission
P.O. Box 1197
Richmond, VA 23218-1197

Timothy R. Faherty, Manager Consumer Services

tfaherty@scc.state.va.us
Division of Energy Regulation
State Corporation Commission
P.O. Box 1197
Richmond, VA 23218-1197

If possible, complete copies of responses to the questions, including spreadsheets, attachments and the like, should be transmitted electronically to econfin@scc.state.va.us. Any portion of the responses deemed confidential should be deleted from responses transmitted to this electronic address.

(7) The Commission Staff shall post promptly upon receipt all materials received by electronic transmission to econfin@scc.state.va.us on the Division of Economics and Finance Web site, <http://www.state.va.us/scc/division/eaf/comments.htm>. The Commission Staff shall not be responsible for editing any posted document to remove information deemed confidential.

(8) The Commission Staff shall convene the work group on August 19, 2004, in the Tyler Building, 1300 East Main Street, Richmond, Virginia, at 9:00 a.m. If necessary, the Staff may convene the meeting on the same date at the same time at a nearby location. The Staff shall make a reasonable effort to inform interested persons of the new location.

(9) Individuals with disabilities who require an accommodation to participate in the work group meetings should contact the Commission at least seven (7) days before the scheduled meeting date at 1-800-552-7945 (voice) or 1-804-371-9206 (TDD).

(10) This matter shall be continued generally pending further Order of the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: the individuals listed on Appendix A attached hereto; C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, 2nd Floor, Richmond, Virginia 23219; and the Commission's Office of General Counsel and Divisions of Economics and Finance, Energy Regulation, and Public Utility Accounting.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intent to Eliminate the Calculation of NICU DSH Payment

Notice is hereby given that the Department of Medical Assistance Services (DMAS) intends to modify its reimbursement plan for inpatient hospitals pursuant to the department's authority under Title XIX of the Social Security Act. This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902 (a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). The changes contained in this public notice are occurring in response to Appropriation Act language directing DMAS to eliminate the separate calculation of Disproportionate Share Hospital (DSH) payments for hospitals with recognized Medicaid Neonatal Intensive Care Units (NICUs). The language directs DMAS to make this

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methodology change budget-neutral system-wide through an enhancement to the IME payment calculation. Because of this budgetneutrality requirement, there is no fiscal impact related to this regulatory change.

A copy of this notice is available for public review from Scott Crawford, Director, Provider Reimbursement Division, Department of Medical Assistance Services, 600 Broad Street, Suite 1300, Richmond, VA 23219, and this notice is available for public review on the Regulatory Town Hall (www.townhall.com). Comments or inquiries may be submitted, in writing, within 30 days of this notice publication to Mr. Crawford and such comments are available for review at the same address.

Notice of Intent to Exempt Freestanding Psychiatric Hospitals from Rate Rebasing

Notice is hereby given that the Department of Medical Assistance Services (DMAS) intends to modify its reimbursement plan for freestanding psychiatric hospitals pursuant to the department's authority under Title XIX of the Social Security Act. This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a (a)(13). The changes contained in this public notice are occurring in response to Appropriation Act language directing DMAS to exclude freestanding psychiatric hospitals from the 2005 hospital rate rebasing.

Freestanding psychiatric hospital rates will not be rebased for 2005, but will remain based on data used in the calculation of the 2004 rates, inflated to the 2005 rate year. The rates updated for inflation to the 2005 rate year represent a 2.5% increase over the 2004 rates. Inflationary adjustments were included in DMAS's base budget; therefore, there is no fiscal impact associated with this methodology change.

A copy of this notice is available for public review from Scott Crawford, Director, Provider Reimbursement Division, Department of Medical Assistance Services, 600 Broad Street, Suite 1300, Richmond, VA 23219, and this notice is available for public review on the Regulatory Town Hall (www.townhall.com). Comments or inquiries may be submitted, in writing, within 30 days of this notice publication to Mr. Crawford and such comments are available for review at the same address.

STATE WATER CONTROL BOARD

Approval of Four Total Maximum Daily Load (TMDL) Reports

Notice is hereby given that the State Water Control Board (board) is seeking comment on the approval of four Total Maximum Daily Load (TMDL) reports and authorization to include the four TMDL reports in the appropriate Water Quality Management Plan.

The purpose of this action is to approve four Total Maximum Daily Load reports containing seven bacteria TMDLs as the

plans for the pollutant reductions necessary for attainment of water quality goals in several impaired waterbodies. These actions are taken in accordance with the Public Participation Procedures for Water Quality Management Planning.

The TMDLs listed below have been developed in accordance with Federal Regulations (40 CFR 130.7) and are exempt from the provisions of Article II of the Virginia Administrative Process Act. The TMDLs have been through the TMDL public participation process contained in DEQ's Public Participation Procedures for Water Quality Management Planning. The public comment process provides the affected stakeholders an opportunity for public appeal of the TMDLs. All four TMDL reports have been approved by EPA. DEQ staff intends to recommend that the board approve these TMDL reports and authorize their inclusion in the appropriate WQMP.

TMDLs in the Shenandoah River Basin:

"Bacteria Total Maximum Daily Load (TMDL) for Cub Run in Rockingham County, Virginia"

1. Cub Run bacteria TMDL, located in Rockingham County, proposes bacteria reductions for portions of the watershed.

TMDLs in the Rappahannock River Basin:

"Bacteria TMDL for Deep Run, Stafford and Fauquier Counties, Virginia"

2. Thumb Run bacteria TMDL, located in Stafford and Fauquier Counties, proposes bacteria reductions for portions of the watershed.

TMDLs in the Roanoke River Basin:

"Bacteria TMDL for Birch Creek Watershed, Virginia"

3. Birch Creek bacteria TMDL, located in Pittsylvania and Halifax Counties, proposes bacteria reductions for portions of the watershed.

TMDLs in the Tennessee-Big Sandy River Basin:

"Bacteria TMDLs for Sepulcher Creek, Toms Creek (including Little Toms Creek) and Crab Orchard Branch, Wise County, Virginia"

4. Little Toms Creek bacteria TMDL, located in Wise County, proposes bacteria reductions for portions of the watershed.

5. Toms Creek bacteria TMDL, located in Wise County, proposes bacteria reductions for portions of the watershed.

6. Sepulcher Creek bacteria TMDL, located in Wise County, proposes bacteria reductions for portions of the watershed.

7. Crab Orchard Creek bacteria TMDL, located in Wise County, proposes bacteria reductions for portions of the watershed.

Public Participation: The board is seeking comments on the intended approval of four bacteria TMDL reports. Anyone wishing to submit written comments may do so by mail or by e-mail to Jutta Schneider at the address given below. Written comments must include the name and address of the commenter and must be received no later than 4 p.m. on August 11, 2004.

Contact: Additional information is available on the Department of Environmental Quality web site at <http://www.deq.virginia.gov/tmdl/> or contact Jutta Schneider, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, or telephone (804) 698-4099, or e-mail at jschneider@deq.virginia.gov.

A copy of the full text of these procedures is available electronically at <http://www.deq.virginia.gov/tmdl/pn/tmdlapproval71204.pdf>.

The electronic copy is in PDF format and may be read online or downloaded. Also, hard copies are available upon request.

Water Quality Management Planning Regulation Amendment - Thirteen Total Maximum Daily Load (TMDL) Waste Load Allocations

Notice is hereby given that the State Water Control Board (board) in accordance with the Public Participation Procedures for Water Quality Management Planning is seeking comment on amending the regulation entitled 9 VAC 25-720, Water Quality Management Planning Regulation. Statutory authority for promulgating these amendments can be found in § 62.1-44.15(10) of the Code of Virginia.

The purpose of the amendment to the state's Water Quality Management Planning Regulation (9 VAC 25-720) is to adopt 13 Total Maximum Daily Load (TMDL) waste load allocations contained in nine TMDL reports. These TMDL reports have been developed in accordance with Federal Regulations (40 CFR 130.7) and are exempt from the provisions of Article II of the Virginia Administrative Process Act. These TMDL reports have been through the TMDL public participation process contained in DEQ's Public Participation Procedures for Water Quality Management Planning. The public comment process provides the affected stakeholders an opportunity for public appeal of the TMDLs. The nine TMDL reports with 13 TMDL wasteload allocations have been approved by EPA. DEQ staff intends to recommend (i) that the board approve the nine TMDL reports as the plans for the pollutant reductions necessary for attainment of water quality goals in the impaired segments, and (ii) that the board adopt the 13 TMDL waste load allocations as part of the state's Water Quality Management Planning Regulation in accordance with § 2.2-4006 A 4 c and B of the Code of Virginia.

Specifically, the amendment will revise the state's Water Quality Management Planning regulation for the following river basins by adopting the following thirteen TMDL waste load allocations contained in nine TMDL reports: Potomac-Shenandoah River Basin (9 VAC 25-720-50 A), James River Basin (9 VAC 25-720-60 A), Roanoke River Basin (9 VAC 25-720-80 A), and the Tennessee - Big Sandy River Basin (9 VAC 25-720-90 A). The nine TMDL reports and specific TMDLs are listed below.

In the Potomac-Shenandoah River Basin:

"Benthic TMDLs for the Goose Creek Watershed"

1. Little Creek benthic TMDL, located in Loudoun County, proposes sediment reductions for portions of the watershed.

2. Goose Creek benthic TMDL, located in Loudoun and Fauquier Counties, proposes sediment reductions for portions of the watershed.

"Benthic TMDL for Toms Brook in Shenandoah County, Virginia"

3. Toms Brook benthic TMDL, located in Loudoun and Fauquier Counties, proposes sediment reductions for portions of the watershed.

In the James River Basins:

"General Standard Total Maximum Daily Load Development for Unnamed Tributary to Deep Creek, Nottoway County, Virginia"

4. Deep Creek benthic TMDL, located in Nottoway County, proposes elimination of raw sewage discharges to Deep Creek.

In the Roanoke River Basin:

"Total Maximum Daily Load Development for Ash Camp Creek"

5. Ash Camp Creek benthic TMDL, located in Charlotte County, proposes sediment reductions for portions of the watershed.

"Total Maximum Daily Load Development for the Upper Blackwater River Watershed"

6. North Fork Blackwater River benthic TMDL, located in Franklin County, proposes sediment reductions for portions of the watershed.

7. North Fork Blackwater River benthic TMDL, located in Franklin County, proposes phosphorus reductions for portions of the watershed.

8. Upper Blackwater River benthic TMDL, located in Franklin County, proposes sediment reductions for portions of the watershed.

In the Tennessee-Big Sandy River Basin:

"Total Maximum Daily Load Development for the Upper Clinch River Watershed"

9. Clinch River benthic TMDL, located in Tazewell County, proposes sediment reductions for portions of the watershed.

"Total Maximum Daily Load Development for the Lewis Creek Watershed"

10. Lewis Creek benthic TMDL, located in Russell County, proposes sediment reductions for portions of the watershed.

"General Standard Total Maximum Daily Load Development for Black Creek, Wise County, Virginia"

11. Black Creek benthic TMDL, located in Wise County, proposes manganese reductions for portions of the watershed.

"General Standard Total Maximum Daily Load Development for Dumps Creek, Russell County, Virginia"

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12. Dumps Creek benthic TMDL, located in Russell County, proposes total dissolved solids reductions for portions of the watershed.

13. Dumps Creek benthic TMDL, located in Russell County, proposes total suspended solids reductions for portions of the watershed.

Public Participation: The board is seeking comments on the intended amendment to the Water Quality Management Regulation. Anyone wishing to submit written comments may do so by mail or by e-mail to Jutta Schneider at the address given below. Written comments must include the name and address of the commenter and must be received no later than 4 p.m. on August 11, 2004.

Contact: Additional information is available on the Department of Environmental Quality web site at <http://www.deq.virginia.gov/tmdl/> or contact Jutta Schneider, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, or telephone (804) 698-4099, or e-mail at jschneider@deq.virginia.gov.

A copy of the full text of these procedures is available electronically at <http://www.deq.virginia.gov/tmdl/pn/wla/adoption71204.pdf>.

The electronic copy is in PDF format and may be read online or downloaded. Also, hard copies are available upon request.

Proposed Consent Special Order for Pepper's Ferry Regional Wastewater Treatment Authority

The State Water Control Board (SWCB) proposes to issue a Consent Special Order Amendment (CSOA) to Pepper's Ferry Regional Wastewater Treatment Authority regarding modification of a settlement of a civil enforcement action related to compliance with the Permit Regulation, 9 VAC 25-31. On behalf of the SWCB, the department will consider written comments relating to this settlement for 30 days after the date of publication of this notice. Comments should be addressed to Robert Steele, Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, NW, Roanoke, VA 24019.

The final CSOA is available at www.deq.state.va.us/enforcement/notices.html and at the above office during regular business hours. You may also request copies from Mr. Steele at the address above or at (540) 562-6777.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Mailing Address: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, FAX (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://register.state.va.us>.

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
RESPONSE TO PETITION FOR RULEMAKING-RR13
FAST-TRACK RULEMAKING ACTION-RR14

CALENDAR OF EVENTS

Symbol Key

- † Indicates entries since last publication of the *Virginia Register*
♿ Location accessible to persons with disabilities
☎ Teletype (TTY)/Voice Designation

NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the *Virginia Register* deadline may preclude a notice of such cancellation. If you are unable to find a meeting notice for an organization in which you are interested, please check the Commonwealth Calendar at www.vipnet.org or contact the organization directly.

For additional information on open meetings and public hearings held by the standing committees of the legislature during the interim, please call Legislative Information at (804) 698-1500 or Senate Information and Constituent Services at (804) 698-7410 or (804) 698-7419/TTY☎, or visit the General Assembly web site's Legislative Information System (<http://leg1.state.va.us/lis.htm>) and select "Meetings."

VIRGINIA CODE COMMISSION

EXECUTIVE

BOARD OF ACCOUNTANCY

† **August 3, 2004 - 10 a.m.** -- Open Meeting
Holiday Inn-Richmond, 6531 West Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to discuss general business matters including complaint cases. A public comment period will be held at the beginning of the meeting. All meetings are subject to cancellation and change of meeting time. Any person desiring to attend the meeting and requiring special accommodations or interpretative services should contact the board at (804) 367-8505 or (804) 367-9753/TTY at least 10 days prior to the meeting so suitable arrangements can be made. The board fully complies with the American with Disabilities Act.

Contact: Nancy Taylor Feldman, Executive Director, Board of Accountancy, 3600 W. Broad St., Suite 378, Richmond, VA 23230, telephone (804) 367-8505, FAX (804) 367-2174, (804) 367-9753/TTY ☎, e-mail boa@boa.virginia.gov.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Virginia Cattle Industry Board

July 15, 2004 - Noon -- Open Meeting
Four Points Hotel by Sheraton, U.S. Route 33, 1400 East Market Street, Harrisonburg, Virginia. ♿

During the regular business meeting, the board will approve minutes from the April 2004 meeting in addition to reviewing the financial statements for the period October 1 through July 1. Staff will give program updates for the state and national level. The board will review projects submitted from both staff and outside parties within the industry. 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 Reginald B. Reynolds at least five days before the meeting date so that suitable arrangements can be made.

Contact: Reginald B. Reynolds, Executive Director, Virginia Cattle Industry Board, P.O. Box 9, Daleville, VA 24083, telephone (540) 992-1992, FAX (540) 992-4632.

Virginia Cotton Board

July 20, 2004 - 9 a.m. -- Open Meeting
Tidewater Agriculture Research and Extension Center, 6321 Holland Road, Suffolk, Virginia. ♿

A meeting to approve minutes of the last meeting. In addition, the board will review financial reports and the status of current projects and contracts, discuss priorities for future funding initiatives, and consider any other business that may come before the board. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Gail Moody Milteer at least five days before the meeting date so that suitable arrangements can be made.

Contact: Gail Moody Milteer, Program Director, Virginia Cotton Board, 1100 Armory Dr., Suite 120, Franklin, VA 23851, telephone (757) 569-1100, FAX (757) 562-6104.

Virginia Horse Industry Board

† **September 7, 2004 - 10 a.m.** -- Open Meeting
Marion duPont Scott Equine Medical Center, 17690 Old Waterford Road, Library, Leesburg, Virginia. ♿

The board will review the minutes of the last meeting, the end of the fiscal year financial report, and the status of marketing projects. The board will also discuss grant guidelines. 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 Andrea S.

Calendar of Events

Heid at least five days before the meeting date so that suitable arrangements can be made.

Contact: Andrea S. Heid, Equine Marketing Specialist/Program Manager, Department of Agriculture and Consumer Services, 1100 Bank St., 9th Floor, Richmond, VA 23219, telephone (804) 786-5842, FAX (804) 786-3122, e-mail ahead@vdacs.state.va.us.

Virginia Small Grains Board

July 21, 2004 - 8 a.m. -- Open Meeting
Double Tree Hotel, Richmond Airport, 5501 Eubank Road, Richmond, Virginia. 

The board will review FY 2003-04 project reports and will receive and approve the 2004-05 project proposals. Minutes from the last board meeting and a current financial statement will be heard and approved. Additionally, action will be taken on any other new business that comes before the group. 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 for any appropriate accommodation.

Contact: Philip T. Hickman, Program Director, Department of Agriculture and Consumer Services, 1100 Bank St., Room 1005, Richmond, VA 23219, telephone (804) 371-6157, FAX (804) 371-7786.

VIRGINIA Soybean Board

† August 5, 2004 - 3 p.m. -- Open Meeting
Mobjack Farms, Route 14, Port Haywood, Virginia. 

A meeting of the board to discuss checkoff revenues and the financial status of the board following the end of the fiscal year ending June 30, 2004, and to hear and approve the minutes of the March 11, 2004, meeting. Also, reports will be heard from the chairman, United Soybean Board representatives, and from other committees. 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 for any appropriate accommodation.

Contact: Philip T. Hickman, Program Director, Department of Agriculture and Consumer Services, 1100 Bank Street, Room 906, Richmond, VA 23219, telephone (804) 371-6157, FAX (804) 371-7786, or e-mail phickman@vdacs.state.va.us.

ALCOHOLIC BEVERAGE CONTROL BOARD

July 19, 2004 - 9 a.m. -- Open Meeting
August 2, 2004 - 9 a.m. -- Open Meeting
August 16, 2004 - 9 a.m. -- Open Meeting
August 30, 2004 - 9 a.m. -- Open Meeting
September 13, 2004 - 9 a.m. -- Open Meeting

September 27, 2004 - 9 a.m. -- Open Meeting
Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia. 

A meeting to receive and discuss reports and activities from staff members and to discuss other matters not yet determined.

Contact: W. Curtis Coleburn, III, Secretary to the Board, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, (804) 213-4687/TTY , e-mail wccolen@abc.state.va.us.

ART AND ARCHITECTURAL REVIEW BOARD

August 6, 2004 - 10 a.m. -- Open Meeting
September 3, 2004 - 10 a.m. -- Open Meeting
† October 1, 2004 - 10 a.m. -- Open Meeting
Science Museum of Virginia, 2500 West Broad Street, Richmond, Virginia. 

A monthly meeting to review projects submitted by state agencies. Art and Architectural Review Board submittal forms and submittal instructions can be downloaded by visiting the DGS forms at www.dgs.state.va.us. Request Submittal Form #DGS-30-905 or DGS Submittal Instructions Form #DGS-30-906.

Contact: Richard L. Ford, AIA Chairman, 101 Shockoe Slip, 3rd Floor, Richmond, VA 23219, telephone (804) 648-5040, FAX (804) 225-0329, toll free (804) 786-6152, or e-mail rford@comarchs.com.

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

July 23, 2004 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Room 453, Richmond, Virginia. 

An informal fact-finding conference.

Contact: David Dick, Assistant Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail alhi@dpor.virginia.gov.

August 19, 2004 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A meeting to conduct board business.

Contact: David Dick, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, FAX (804) 367-6128, (804) 367-9753/TTY , e-mail alhi@dpor.virginia.gov.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

August 19, 2004 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond Virginia.  (Interpreter for the deaf provided upon request)

A quarterly business meeting to include regulatory and disciplinary matters as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

Contact: Elizabeth Young, Executive Director, Board of Audiology and Speech-Language Pathology, Alcoa Building, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9111, FAX (804) 662-9523, (804) 662-7197/TTY , e-mail elizabeth.young@dhp.virginia.gov.

BOARD FOR BARBERS AND COSMETOLOGY

September 27, 2004 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A general business meeting to consider regulatory issues as may be presented on the agenda. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Public comment will be heard at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpretive 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: William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY , e-mail barberscosmo@dpor.virginia.gov.

CHARITABLE GAMING BOARD

September 14, 2004 - 10 a.m. -- Open Meeting
Science Museum of Virginia, 2500 West Broad Street, Discovery Room, Richmond, Virginia. 

A general meeting. An agenda will be posted on the agency website.

Contact: Frances C. Jones, Office Manager, Department of Charitable Gaming, 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 786-3014, FAX (804) 786-1079, e-mail Frances.Jones@dcg.virginia.gov.

STATE CHILD FATALITY REVIEW TEAM

July 13, 2004 - 10 a.m. -- Open Meeting
Office of the Chief Medical Examiner, 400 East Jackson Street, Richmond, Virginia. 

The business portion of the State Child Fatality Review Team meeting, from 10 a.m. to 10:30 a.m., is open to the

public. At the conclusion of the open meeting, the team will go into closed session for confidential case review.

Contact: Virginia Powell, Manager, Fatality Review and Surveillance Programs, Department of Health, 400 East Jackson St., Richmond, VA 23219, telephone (804) 786-6047, FAX (804) 371-8595, toll-free (800) 447-1708, e-mail Virginia.Powell@vdh.virginia.gov.

VIRGINIA COLLEGE SAVINGS PLAN BOARD

July 13, 2004 - 10 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, 5th Floor Boardroom, Richmond, Virginia. 

A Board of Directors meeting.

Contact: Lee Hall, Special Projects Assistant, 101 N. 14th St., James Monroe Building, Richmond, VA 23219, telephone (804) 786-3605, FAX (804) 786-2453, e-mail lhall@virginia529.com.

STATE BOARD FOR COMMUNITY COLLEGES

† **July 28, 2004 - 1:30 p.m.** -- Open Meeting
† **September 8, 2004 - 1:30 p.m.** -- Open Meeting
James Monroe Building, 101 North 14th Street, 15th Floor, Richmond, Virginia. 

Meetings of the Academic, Student Affairs and Workforce Committee, the Audit Committee, and the Budget and Finance Committee. The Facilities Committee and the Personnel Committee will meet at 3 p.m. The Executive Committee will meet at 4:30 p.m.

Contact: D. Susan Hayden, Director of Public Affairs, State Board for Community Colleges, VCCS, 101 N. 14th St., Richmond, VA 23219, telephone (804) 819-4961, FAX (804) 819-4768, (804) 371-8504/TTY

† **July 29, 2004 - 9 a.m.** -- Open Meeting
† **September 9, 2004 - 9 a.m.** -- Open Meeting
James Monroe Building, 101 N. 14th St., Godwin-Hamel Board Room, 15th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

The State Board for Community Colleges will meet on Thursday, July 29, 2004, at 9 a.m. in the Godwin-Hamel Board Room, 15th Floor, James Monroe Building, 101 N. 14th Street, Richmond, VA 23219. Public comment may be received at the beginning of the meeting upon notification at least five working days prior to the meeting.

Contact: D. Susan Hayden, Director of Public Affairs, State Board for Community Colleges, VCCS, 15th Floor, 101 N. 14th St., Richmond, VA 23219, telephone (804) 819-4961, FAX (804) 819-4768, (804) 371-8504/TTY 

COMPENSATION BOARD

July 21, 2004 - 11 a.m. -- Open Meeting
Compensation Board, 202 North 9th Street, 10th Floor, Richmond, Virginia. 

A monthly board meeting.

Calendar of Events

Contact: Cindy Waddell, Administrative Staff Assistant, Compensation Board, P.O. Box 710, Richmond, VA 23218, telephone (804) 786-0786, FAX (804) 371-0235, e-mail cindy.waddell@scb.virginia.gov.

DEPARTMENT OF CONSERVATION AND RECREATION

July 27, 2004 - 6:30 p.m. -- Open Meeting
Williamsburg Regional Library, 7770 Croaker Road, Community Room, Williamsburg, Virginia.

A meeting of the York River State Park Master Plan Advisory Committee to continue work on development of a new park master plan.

Contact: Robert Munson, Environmental Program Manager, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-6140, FAX (804) 371-7899, e-mail rsmunson@dcr.state.va.us.

July 28, 2004 - 4 p.m. -- Open Meeting
Appomattox County Community Center, 220 Community Lane, Appomattox, Virginia.

A meeting of the Holliday Lake State Park Master Plan Advisory Committee to continue the development of a new park master plan.

Contact: Scott Bedwell, Environmental Planner, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 371-2594, FAX (804) 371-7899, e-mail sbedwell@dcr.state.va.us.

August 4, 2004 - 7 p.m. -- Open Meeting
Westmoreland State Park, Conference Center, 1650 State Park Road, Montross, Virginia.

The Westmoreland State Park master planning process will be explained, and public input will be received on the draft park mission statement and draft goals and objectives.

Contact: Bill Conkle, Park Planner, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-5492, FAX (804) 371-7899, e-mail bconkle@dcr.state.va.us.

August 11, 2004 - 7 p.m. -- Open Meeting
September 15, 2004 - 7 p.m. -- Open Meeting
Appomattox County Community Center, Route 2, Box 117, Appomattox, Virginia. 

The state park master planning process will be explained, and public input will be received on the draft park mission statement and draft goals and objectives for Holliday Lake State Park.

Contact: Scott Bedwell, Environmental Planner, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 371-2594, FAX (804) 371-7899, e-mail sbedwell@dcr.state.va.us.

August 25, 2004 - 4 p.m. -- Open Meeting
Appomattox County Community Center, 220 Community Lane, Appomattox, Virginia. 

A meeting of the Holliday Lake State Park Master Plan Advisory Committee to discuss input from the August 11, 2004, public meeting and future park development as the committee continues work on development of a new park master plan.

Contact: Scott Bedwell, Environmental Planner, Department of Conservation and Recreation, 203 Governor Street, Suite 326, Richmond, VA 23219, telephone (804) 371-2594, FAX (804) 371-3899, e-mail sbedwell@dcr.state.va.us.

September 15, 2004 - 7 p.m. -- Open Meeting
Appomattox County Community Center, 220 Community Lane, Appomattox, Virginia. 

The state park master planning process will be explained, and public input will be received on the draft park master plan, including proposed developments at the Holiday Lake State Park.

Contact: Scott Bedwell, Environmental Planner, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 371-2594, FAX (804) 371-7899, e-mail sbedwell@dcr.state.va.us.

BOARD FOR CONTRACTORS

July 13, 2004 - 9 a.m. -- Open Meeting

July 15, 2004 - 9 a.m. -- Open Meeting

July 27, 2004 - 9 a.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. 
(Interpreter for the deaf provided upon request)

Informal fact-finding conferences.

Contact: Eric L. Olson, Executive Director, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY , e-mail contractors@dpor.virginia.gov.

August 11, 2004 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A meeting of the Tradesman and Education Committee to conduct committee business. The department fully complies with the Americans with Disabilities Act.

Contact: Eric L. Olson, Executive Director, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY , e-mail contractors@dpor.virginia.gov.

August 24, 2004 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A regular scheduled meeting to address policy and procedural issues, review and render decisions on applications for contractors' licenses, and review and render case decisions on matured complaints against licensees. The meeting is open to the public; however, a portion of the board's business may be conducted in closed session. The department fully complies with the Americans with Disabilities Act.

Contact: Eric L. Olson, Executive Director, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY ☎, e-mail contractors@dpor.virginia.gov.

BOARD OF CORRECTIONS

July 13, 2004 - 10 a.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, 3rd Floor Board Room, Richmond, Virginia. ♿

A meeting of the Liaison Committee to discuss correctional matters of interest to the board.

Contact: Barbara Woodhouse, Administrative Staff Assistant, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3124, FAX (804) 674-3509, e-mail woodhousebl@vadoc.state.va.us.

July 13, 2004 - 1 p.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, 3rd Floor Board Room, Richmond, Virginia. ♿

A meeting of the Correctional Services/Policy and Regulations Committee to discuss correctional services and policy/regulation matters to be considered by the board.

Contact: Barbara Woodhouse, Administrative Staff Assistant, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3124, FAX (804) 674-3509, e-mail woodhousebl@vadoc.state.va.us.

July 14, 2004 - 9:30 a.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, Room 3065, Richmond, Virginia. ♿

A meeting of the Administration Committee to discuss administrative matters to be considered by the board.

Contact: Barbara Woodhouse, Administrative Staff Assistant, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3124, FAX (804) 674-3509, e-mail woodhousebl@vadoc.state.va.us.

July 14, 2004 - 10 a.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, 3rd Floor Board Room, Richmond, Virginia. ♿

A meeting of the board to discuss all matters considered by board committees that now require presentation to and action by the full board.

Contact: Barbara Woodhouse, Administrative Staff Assistant, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3124, FAX (804) 674-3509, e-mail woodhousebl@vadoc.state.va.us.

BOARD OF COUNSELING

August 26, 2004 - 10 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, Board Room 1, Richmond, Virginia. ♿

A meeting of the Credential Review Committee to review applicants' credentials for licensure.

Contact: Evelyn B. Brown, Executive Director, Board of Counseling, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9912, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail evelyn.brown@dhp.virginia.gov.

August 27, 2004 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 1, Richmond, Virginia. ♿

A business meeting.

Contact: Evelyn B. Brown, Executive Director, Board of Counseling, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9912, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail evelyn.brown@dhp.virginia.gov.

CRIMINAL JUSTICE SERVICES BOARD

† **September 9, 2004 - 9 a.m.** -- Public Hearing
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia.

† **September 10, 2004** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Criminal Justice Services intends to amend regulations entitled **6 VAC 20-180, Crime Prevention Specialists**. The purpose of the proposed action is to expand the program to allow the chief executive of any local, state or federal government agency to designate staff who serve in law-enforcement, crime prevention or criminal justice capacities to become certified as crime prevention specialists. The current law restricts certification to staff from local and state law-enforcement agencies.

Statutory Authority: §§ 9.1-102 and 9.1-161 of the Code of Virginia.

Contact: Tami Wyrick, Program Analyst and Grants Coordinator, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-5664, FAX (804) 692-0948 or e-mail twyrick@dcjs.state.va.us.

September 9, 2004 - 11 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. ♿

A general business meeting.

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.

BOARD OF DENTISTRY

† **July 16, 2004 - 9 a.m.** -- Open Meeting
† **July 23, 2004 - 9 a.m.** -- Open Meeting
† **August 13, 2004 - 9 a.m.** -- Open Meeting
† **August 20, 2004 - 9 a.m.** -- Open Meeting

Calendar of Events

Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

A Special Conference Committee will meet to hold informal conferences. There will not be a public comment period.

Contact: Cheri Emma-Leigh, Operations Manager, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9906, FAX (804) 662-7246, (804) 662-7197/TTY , e-mail Cheri.Emma-Leigh@dhp.virginia.gov.

† **July 30, 2004 - 8:30 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

The board will meet to hold a formal hearing. There will not be a public comment period.

Contact: Cheri Emma-Leigh, Operations Manager, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9906, FAX (804) 662-7246, (804) 662-7197/TTY , e-mail Cheri.Emma-Leigh@dhp.virginia.gov.

July 30, 2004 - 9 a.m. -- Open Meeting
September 10, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 1, Richmond, Virginia. 

A meeting to discuss regular board business. There will be a public comment period at the start of the meeting.

Contact: Sandra Reen, Executive Director, Board of Dentistry, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9906, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail sandra.reen@dhp.virginia.gov.

DESIGN-BUILD/CONSTRUCTION MANAGEMENT REVIEW BOARD

July 15, 2004 - 11 a.m. -- Open Meeting
August 19, 2004 - 11 a.m. -- Open Meeting
September 16, 2004 - 11 a.m. -- Open Meeting
Department of General Services, Eighth Street Office Building, 3rd Floor, 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. Contact the Division of Engineering and Building to confirm the meeting.

Contact: Rhonda M. Bishton, Administrative Assistant, Department of General Services, 805 E. Broad Street, Room 101, Richmond, VA 23219, telephone (804) 786-3263, FAX (804) 371-7934, (804) 786-6152/, or e-mail rbishton@dgs.state.va.us.

BOARD OF EDUCATION

July 15, 2004 - 8:30 a.m. -- Open Meeting
July 16, 2004 - 8:30 a.m. -- Open Meeting

Radisson Hotel Historic Richmond, 301 West Franklin Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the State Special Education Advisory Committee. The public is urged to confirm arrangements prior to each meeting by viewing the Department of Education's public meeting calendar at <http://www.pen.k12.va.us/VDOE/meetings.html>. This site will contain the latest information on the meeting arrangements and will note any last-minute changes in time or location. Please note that persons requesting the services of an interpreter for the deaf are asked to do so at least 72 hours in advance so that the appropriate arrangements may be made.

Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department 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.

July 28, 2004 - 9 a.m. -- Open Meeting
September 22, 2004 - 9 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate Room B, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular business meeting of the board. The public is urged to confirm arrangements prior to each meeting by viewing the Department of Education's public meeting calendar at <http://www.pen.k12.va.us/VDOE/meetings.html>. This site will contain the latest information on the meeting arrangements and will note any last-minute changes in time or location. Persons who wish to speak or who require the services of an interpreter for the deaf should contact the agency at least 72 hours in advance. Public comment will be received.

Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department of Education, P.O. Box 2120, James Monroe Bldg., 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail mroberts@mail.vak12ed.edu.

STATE EMERGENCY MEDICAL SERVICES ADVISORY BOARD

† **August 6, 2004 - 1 p.m.** -- Open Meeting
The Place at Innsbrook, 4036 Cox Road, Glen Allen, Virginia. 

A quarterly meeting.

Contact: Gary R. Brown, Director, State Emergency Medical Services Advisory Board, 109 Governor St., Suite UB-55, Richmond, VA 23219, telephone (804) 864-7600, FAX (804) 864-7580, toll-free (800) 523-6019, e-mail gary.brown@vdh.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

July 20, 2004 - 9 a.m. -- Open Meeting
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia. 

A regular meeting of the Ground Water Protection Steering Committee.

Contact: Mary Ann Massie, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4042, FAX (804) 698-4032, e-mail mamassie@deq.state.va.us.

BOARD OF FORESTRY

July 13, 2004 - 7 p.m. -- Open Meeting
Lord Fairfax Community College, 173 Skirmisher Lane, Auditorium, Middletown, Virginia.  (Interpreter for the deaf provided upon request)

July 14, 2004 - 7 p.m. -- Open Meeting
Northern Virginia Community College, 8333 Little River Turnpike, Forum, Annandale, Virginia.  (Interpreter for the deaf provided upon request)

July 20, 2004 - 7 p.m. -- Open Meeting
Southwest Virginia Higher Education Center, Virginia Highlands Community College Campus, Route 372, Auditorium - Ground Floor, Abingdon, Virginia.  (Interpreter for the deaf provided upon request)

† **July 21, 2004 - 7 p.m.** -- Open Meeting
Fort Lewis Fire Department, 3915 West Main Street, Salem, Virginia.  (Interpreter for the deaf provided upon request)

† **July 22, 2004 - 7 p.m.** -- Open Meeting
Southside Community College, John H. Daniel Campus, 200 Daniel Road, Keysville, Virginia.  (Interpreter for the deaf provided upon request)

† **July 27, 2004 - 7 p.m.** -- Open Meeting
Chesapeake Conference Center, 900 Greenbrier Circle, Chesapeake, Virginia.  (Interpreter for the deaf provided upon request)

† **July 28, 2004 - 7 p.m.** -- Open Meeting
Dorey Recreation Center, 7200 Dorey Park Drive, Varina, Virginia.  (Interpreter for the deaf provided upon request)

† **July 29, 2004 - 7 p.m.** -- Open Meeting
Department of Forestry Central Office, 900 Natural Resources Drive, Charlottesville, Virginia.  (Interpreter for the deaf provided upon request)

An information-gathering session to discuss Senate Joint Resolution 75. The discussion will address landowners concerns and recommendations regarding forest preservation incentives.

Contact: Donna S. Hoy, Administrative Staff Specialist, Department of Forestry, 900 Natural Resources Dr., Suite 800, Charlottesville, VA 22903, telephone (434) 977-6555, FAX (434) 977-7749, (434) 977-6555/TTY , e-mail hoyd@dof.state.va.us.

July 14, 2004 - 9 a.m. -- Open Meeting
Virginia Inland Port, Route 522 and Route 340 North, 2nd Floor Conference Room, Front Royal, Virginia.  (Interpreter for the deaf provided upon request)

A business meeting.

Contact: Donna S. Hoy, Administrative Staff Specialist, Department of Forestry, 900 Natural Resources Dr., Suite 800, Charlottesville, VA 22903, telephone (434) 977-6555, FAX (434) 977-7749, (434) 977-6555/TTY , e-mail hoyd@dof.state.va.us.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

† **July 27, 2004 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

A meeting to hear possible violations of the laws and regulations governing the practice of funeral service.

Contact: Elizabeth Young, Executive Director, Board of Funeral Directors and Embalmers, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9907, FAX (804) 662-9523, (804) 662-7197/TTY , e-mail elizabeth.young@dhp.virginia.gov.

September 7, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

A quarterly business meeting to include regulatory and disciplinary matters as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

Contact: Elizabeth Young, Executive Director, Board of Funeral Directors and Embalmers, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9907, FAX (804) 662-9523, (804) 662-7197/TTY , e-mail elizabeth.young@dhp.virginia.gov.

† **October 5, 2004 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.

A meeting of the Task Force on Inspection Process to review current inspection procedures for funeral homes.

Contact: Elizabeth Young, Executive Director, Board of Funeral Directors and Embalmers, Alcoa Building, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9907, FAX (804) 662-9523, (804) 662-7197/TTY , e-mail elizabeth.young@dhp.virginia.gov.

BOARD FOR GEOLOGY

July 21, 2004 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A meeting to conduct board business.

Calendar of Events

Contact: David E. Dick, Executive Director, Board for Geology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, FAX (804) 367-6128, (804) 367-9753/TTY ☎, e-mail geology@dpor.virginia.gov.

STATE BOARD OF HEALTH

July 22, 2004 - 9 a.m. -- Open Meeting
The Place at Innsbrook, 4036 Cox Road, Glen Allen, Virginia. ♿

A quarterly board meeting. The meeting will continue on July 23, 2004.

Contact: Margot Fritts, Policy Analyst, Office of Health Policy, Department of Health, 109 Governor St., 10th Floor, Richmond, VA 23219, telephone (804) 864-7428, FAX (804) 864-7440, e-mail margot.fritts@vdh.virginia.gov.

DEPARTMENT OF HEALTH

July 22, 2004 - 10:30 a.m. -- Open Meeting
109 Governor Street, Fifth Floor Conference Room, Richmond, Virginia. ♿

A meeting of the Sewage Handling and Disposal Regulations Advisory Committee to make recommendations to the commissioner regarding sewage handling and disposal policies, procedures and programs of the department.

Contact: Donna Tiller, Executive Secretary, Department of Health, 109 Governor St., 5th Floor, Richmond, VA 23219, telephone (804) 864-7470, FAX (804) 864-7476, e-mail donna.tiller@vdh.virginia.gov.

BOARD OF HEALTH PROFESSIONS

July 15, 2004 - 11 a.m. -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

August 13, 2004 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Health Professions intends to adopt regulations entitled **18 VAC 75-40, Regulations Governing the Criteria for Certification of Dialysis Technicians**. The purpose of the proposed action is to establish the criteria for certification as a dialysis technician.

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

Public comments may be submitted until August 13, 2004, to Elizabeth A. Carter, Ph.D., Executive Director, Board of Health Professions, 6603 West Broad Street, Richmond, VA 23230.

Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or email Elaine.yeatts@dhp.virginia.gov.

DEPARTMENT OF HEALTH PROFESSIONS

August 20, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, Alcoa Building, 6603 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. ♿

A meeting of the Intervention Program Committee for the Health Practitioners' Intervention Program (HPIP).

Contact: Donna P. Whitney, Intervention Program Manager, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9424, FAX (804) 662-7358, e-mail donna.whitney@dhp.virginia.gov.

† **September 8, 2004 - 11 a.m.** -- Open Meeting
Virginia State Forensic Science Building, 6600 Northside High School Road, Roanoke, Virginia. ♿

A working meeting of the Advisory Committee Prescription Monitoring Program for the purpose of reviewing data collected for the Program Evaluation Workplan and planning for a fall conference. Public comments will be received during this meeting.

Contact: Ralph Orr, Program Manager, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9129, FAX (804) 662-9240.

† **October 8, 2004 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, Conference Room 3, Richmond, Virginia. ♿

A meeting of the Intervention Program Committee for the Health Practitioners' Intervention Program.

Contact: Donna Whitney, Intervention Program Manager, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9424, FAX (804) 662-7358, e-mail donna.whitney@dhp.virginia.gov.

BOARD FOR HEARING AID SPECIALISTS

July 12, 2004 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A general business meeting including consideration of regulatory issues as may be presented on the agenda. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Public comment will be heard at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpretive 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: William H. Ferguson, II, Executive Director, Board for Hearing Aid Specialists, 3600 West Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY ☎, e-mail hearingaidspec@dpor.virginia.gov.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

July 19, 2004 - 5 p.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, Richmond, Virginia.

A meeting of the Executive Committee. Agenda materials will be available at www.schev.edu approximately one week prior to the meeting.

Contact: Lee Ann Rung, State Council of Higher Education for Virginia, 101 N 14th St., Richmond, VA 23219, telephone (804) 225-2602, FAX (804) 371-7911, e-mail LeeAnnRung@schev.edu.

July 20, 2004 - 8:30 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, 9th Floor, Richmond, Virginia.

Agenda materials will be available at www.schev.edu approximately one week prior to the meeting. A public comment period will be allocated on the meeting agenda. To be scheduled, persons interested in making public comment should contact Lee Ann Rung no later than 5 p.m. three business days prior to the meeting date. At the time of the request, the speaker's name, address and topic must be provided. Each speaker will be given up to three minutes to address SCHEV. Speakers are asked to submit a written copy of their remarks at the time of comment.

Contact: Lee Ann Rung, State Council of Higher Education for Virginia, 101 N 14th St., Richmond, VA 23219, telephone (804) 225-2602, FAX (804) 371-7911, e-mail LeeAnnRung@schev.edu.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

August 27, 2004 - 10 a.m. -- Open Meeting
Department of Housing and Community Development, 501 North 2nd Street, Richmond, Virginia. 

A regular business meeting of the board.

Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7000, FAX (804) 371-7090, (804) 371-7089/TTY , e-mail steve.calhoun@dhcd.virginia.gov.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

State Building Code Technical Review Board

July 16, 2004 - 10 a.m. -- Open Meeting
Department of Housing and Community Development, 501 North 2nd Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to hear appeals of decisions under the Virginia Uniform Statewide Building Code and the Virginia Statewide Fire Prevention Code and other regulations of the

department. The board also formulates recommendations for future changes to those codes for the Board of Housing and Community Development.

Contact: Vernon W. Hodge, Secretary, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7150.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

† July 28, 2004 - 9 a.m. -- Open Meeting
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia. 

The annual meeting of the Board of Commissioners to elect a Chairman and Vice Chairman and to review and, if appropriate, approve the minutes from the prior meeting. The board may consider for approval and ratification mortgage loan commitments under its various programs; will review the authority's operations for prior months; and may consider such other matters and take such other actions as deemed appropriate. Various committees of the Board of Commissioners, including the Programs Committee, the Audit/Operations Committee, the Executive Committee and the Committee of the Whole, may also meet during the day preceding the meeting and before or after the meeting and consider matters within their purview. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. The annual meeting of the shareholders and board of directors of Housing for Virginia, Inc., a corporation wholly owned by the authority, will be held following the meeting.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 343-5540, FAX (804) 783-6701, toll-free (800) 968-7837, (804) 783-6705/TTY 

VIRGINIA INFORMATION TECHNOLOGIES AGENCY

Wireless E-911 Service Board

July 14, 2004 - 9 a.m. -- Open Meeting
110 South 7th Street, 3rd Floor Conference Room, Richmond, Virginia. 

A meeting of the Wireless E-911 Service Board Subcommittee. A request will be made to hold the meeting in closed session.

Contact: Steve Marzolf, Public Safety Communications Coordinator, Virginia Information Technologies Agency, 110 S. 7th St., Richmond, VA, telephone (804) 371-0015, FAX (804) 786-4177, e-mail steve.marzolf@vita.virginia.gov.

July 14, 2004 - 10 a.m. -- Open Meeting
110 South 7th Street, 3rd Floor Conference Room, Richmond, Virginia. 

A regular meeting.

Calendar of Events

Contact: Steve Marzolf, Public Safety Communications Coordinator, Virginia Information Technologies Agency, 110 S. 7th St., Richmond, VA, telephone (804) 371-0015, FAX (804) 786-4177, e-mail steve.marzolf@vita.virginia.gov.

VIRGINIA INTERAGENCY COORDINATING COUNCIL

September 8, 2004 - 9:30 a.m. -- Open Meeting
Henrico Area Mental Health, 10299 Woodman Road, Glen Allen, Virginia.  (Interpreter for the deaf provided upon request)

A quarterly meeting to advise and assist the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services, as lead agency for Part C (of IDEA), early intervention for infants and toddlers with disabilities and their families. Discussion focuses on issues related to Virginia's implementation of the Part C program.

Contact: LaKeisha White, Part C Office Specialist, Department of Mental Health, Mental Retardation and Substance Abuse Services, Early Intervention, 9th Floor, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-3710, FAX (804) 371-7959.

JAMESTOWN-YORKTOWN FOUNDATION

August 4, 2004 - 2 p.m. -- Open Meeting
McGuireWoods, One James Center, 901 East Cary Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

† October 6, 2004 - Noon -- Open Meeting
Location to be announced.

A regular meeting of the Executive Committee of the Jamestown 2007 Steering Committee.

Contact: Stacy Ruckman, Administrative Office Manager, Jamestown-Yorktown Foundation, P.O. Box 1607, Williamsburg, VA 23187, telephone (757) 253-4253, FAX (757) 253-5299, (757) 253-5110/TTY , e-mail sruckman@jyf.state.va.us.

DEPARTMENT OF LABOR AND INDUSTRY

Virginia Migrant and Seasonal Farmworkers Board

July 28, 2004 - 10 a.m. -- Open Meeting
State Capitol, House Room 2, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular quarterly meeting.

Contact: Betty B. Jenkins, Board Administrator, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2391, FAX (804) 371-6524, (804) 786-2376/TTY , e-mail bjj@doli.state.va.us.

COMMISSION ON LOCAL GOVERNMENT

† July 19, 2004 - 10 a.m. -- Open Meeting
The Jackson Center, 501 North 2nd Street, First Floor Board Room, Richmond, Virginia. 

A regular meeting.

Contact: Ted McCormack, Associate Director, Commission on Local Government, 501 N. 2nd, Richmond, VA 23219, telephone (804) 786-6508, FAX (804) 371-7090, (804) 828-1120/TTY , e-mail ted.mccormack@dhcd.virginia.gov.

VIRGINIA MANUFACTURED HOUSING BOARD

† August 19, 2004 - 10 a.m. -- Open Meeting
The Jackson Center, 501 North 2nd Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting to receive and address complaints against manufactured housing licensees, review claims to the Transaction Recovery Fund, and carry out administration of the Manufactured Housing Licensing and Transaction Recovery Fund Regulations.

Contact: Curtis L. McIver, State Building Code Administrator, Virginia Manufactured Housing Board, 501 N. 2nd Street, Richmond, VA 23219, telephone (804) 371-7160, FAX (804) 371-7092, (804) 371-7089/TTY , e-mail Curtis.McIver@dhcd.virginia.gov.

BOARD OF MEDICAL ASSISTANCE SERVICES

July 13, 2004 - 10 a.m. -- Open Meeting
September 14, 2004 - 10 a.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor Conference Room, Richmond, Virginia. 

A quarterly meeting.

Contact: Nancy Malczewski, Board Liaison, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-8096, FAX (804) 371-4981, (800) 343-0634/TTY , e-mail nancy.malczewski@dmas.virginia.gov.

July 15, 2004 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled **12 VAC 30-90, Methods and Standards for Establishing Payment Rates for Long-Term Care**. The purpose of the proposed action is to require a minimum holding period by the individual or small-chain owner and seller of a nursing facility in order for the sale to result in the reimbursement of capital costs, after the sale, under the full fair rental value methodology.

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Public comments may be submitted until July 15, 2004.

Contact: N. Stanley Fields, Director, Division of Cost Settlement, Department of Medical Assistance Services, 600 E. Broad St., Richmond, VA 23219, telephone (804) 786-5590, FAX (804) 786-1680 or e-mail Stanley.Fields@dmas.virginia.gov.

† **September 10, 2004** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled **12 VAC 30-40, Eligibility Conditions and Requirements**. The purpose of the proposed action is to (i) eliminate the resource test for Low-Income Families with Children and for Individuals Under Age 21 for whom a public agency is assuming full or partial financial responsibility; (ii) eliminate the counting of all earned income of a child younger than age 19 who is a student; and (iii) eliminate the counting of all in-kind support and maintenance received by members of the family and children's covered groups.

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Public comments may be submitted until September 10, 2004.

Contact: Pat Sykes, Eligibility Manager, Department of Medical Assistance Services, 600 E. Broad St., Richmond, VA 23219, telephone (804) 786-7958, FAX (804) 786-1680 or e-mail Patricia.sykes@dmas.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

July 21, 2004 - 1 p.m. -- Open Meeting

† **September 15, 2004 - 1 p.m.** -- Open Meeting

Department of Medical Assistance Services, 600 East Broad Street, 13th Floor Board Room, Richmond, Virginia. 

A meeting of the Medicaid Transportation Advisory Committee to discuss issues and concerns about Medicaid transportation with the committee and the community.

Contact: Donna Garrett, Administrative Assistant, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-0194, FAX (804) 786-5799, (800) 343-0634/TTY , e-mail donna.garrett@dmas.virginia.gov.

August 17, 2004 - 1 p.m. -- Open Meeting

Department of Medical Assistance Services, 600 East Broad Street, 13th Floor Board Room, Richmond, Virginia. 

A meeting of the Pharmacy Liaison Committee to discuss current pharmacy issues and programs.

Contact: Javier Menendez, RPh, Pharmacy Manager, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300 Richmond, VA 23219, telephone (804) 786-2196,

(800) 343-0634/TTY , e-mail javier.menendez@dmas.virginia.gov.

August 23, 2004 - 9 a.m. -- Open Meeting

Department of Medical Assistance Services, 600 East Broad Street, Board Room, 13th Floor, Richmond, Virginia. 

A meeting of the Pharmacy and Therapeutics Committee to conduct the annual review of Phase I PDL drug classes.

Contact: Adrienne Fegans, Program Operations Administrator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-4112, FAX (804) 371-4981, (800) 343-0634/TTY , e-mail adrienne.fegans@dmas.virginia.gov.

August 27, 2004 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled **12 VAC 30-120, Waivered Services**. The purpose of the proposed action is to conform the Medallion II regulations to the Balanced Budget Act of 1997, and to update these regulations with respect to the Medallion waiver and current program practices.

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Public comments may be submitted until August 27, 2004, to Tammy Driscoll, Health Care Services Division, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219.

Contact: Brian McCormick, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680 or e-mail Brian.McCormick@dmas.virginia.gov.

August 27, 2004 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled **12 VAC 30-120, Waivered Services**. The purpose of the proposed action is to conform the Medallion regulations to the Balanced Budget Act of 1997, and to update these regulations with respect to the Medallion waiver and current program practices.

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Public comments may be submitted until August 27, 2004, to Alissa Nashwinter, Health Care Services Division, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219.

Calendar of Events

Contact: Brian McCormick, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680 or e-mail Brian.McCormick@dmas.virginia.gov.

September 15, 2004 - 1 p.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor Board Room, Richmond, Virginia. ☎

A meeting of the Medicaid Transportation Advisory Committee to discuss issues and concerns on Medicaid transportation with the advisory committee and the community.

Contact: Donna Garrett, Administrative Assistant, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-0194, FAX (804) 786-5799, (800) 343-0634/TTY ☎, e-mail donna.garrett@dmas.virginia.gov.

Drug Utilization Review Board

August 5, 2004 - 2 p.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor Board Room, Richmond, Virginia. ☎

A quarterly meeting to review new drugs on the market and discuss current drug utilization policy.

Contact: Javier Menendez, Pharmacy Manager, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-2196, (800) 343-0634/TTY ☎, e-mail javier.menendez@dmas.virginia.gov.

BOARD OF MEDICINE

July 14, 2004 - 9:15 a.m. -- Open Meeting
Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, Virginia.

† **July 20, 2004 - 9 a.m.** -- Open Meeting
Clarion Hotel, 3315 Ordway Drive, Roanoke, Virginia.

† **July 21, 2004 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, Richmond, Virginia.

July 28, 2004 - 9 a.m. -- Open Meeting
Holiday Inn Select, 2801 Plank Road, Fredericksburg, Virginia.

An informal conference committee 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. Public comment will not be received.

Contact: Peggy Sadler or Renee Dixon, Staff, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-7332, FAX (804) 662-9517, (804) 662-7197/TTY ☎, e-mail peggy.sadler@dhp.virginia.gov.

July 16, 2004 - 8:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia.

The Legislative Committee will consider regulatory matters as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

August 13, 2004 - 8 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia.

The Executive Committee will consider regulatory and disciplinary matters as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

Advisory Board on Acupuncture

September 22, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.

A meeting to consider issues related to the regulation of acupuncture. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

Advisory Board on Athletic Training

September 23, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.

A meeting to consider issues related to the regulation of athletic training. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

Advisory Board on Physician Assistants

September 23, 2004 - 1 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.

A meeting to consider issues related to the regulation of physician assistants. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

Advisory Board of Occupational Therapy

September 21, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.

A meeting to consider issues related to the regulation of occupational therapy. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

Advisory Board on Radiologic Technology

September 22, 2004 - 1 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.

A meeting to consider issues related to the regulation of radiologic technology. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

Advisory Board on Respiratory Care

September 21, 2004 - 1 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.

A meeting to consider issues related to the regulation of respiratory care. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

August 24, 2004 - 10 a.m. -- Public Hearing
Jefferson Building, 1220 Bank Street, 9th Floor Conference Room, Richmond, Virginia. ♿

A public hearing to receive comments on the Virginia Community Mental Health Services Performance Partnership Block Grant Application for federal fiscal year 2005. Copies of the application are available for review at the Office of Mental Health Services, Jefferson Building, 10th Floor, Richmond, VA 23219, and at each community services board office. Comments may be made at the hearing or in writing by no later than August 24, 2004, to the Office of the Commissioner, DMHMRSAS, P.O. Box 1797, Richmond, VA 23218. Any person wishing to make a presentation at the hearing should contact William T. Ferriss, LCSW. Copies of oral presentations should be filed at the time of the hearing.

Contact: William T. Ferriss, LCSW, Office of Mental Health, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-4837, FAX (804) 371-0091, (804) 371-8977/TTY ☎.

August 24, 2004 - 1 p.m. -- Open Meeting
September 24, 2004 - 9 a.m. -- Open Meeting
Virginia Housing and Development Authority, 601 Belvidere Street, Richmond, Virginia. ♿

A meeting of the Olmstead Community Integration Implementation Team.

Contact: Viktoria Glenn, Administrative Assistant, Department of Rehabilitative Services, 8004 Franklin Farms Dr., P.O. Box K-300, Richmond, VA 23288, telephone (804) 662-7069, FAX (804) 662-7662, e-mail glennvh@drs.state.va.us.

VIRGINIA COMMISSION ON MILITARY BASES

July 16, 2004 - 10 a.m. -- Open Meeting
Naval District Washington, West Area Dahlgren, 17320 Dahlgren Road, Warfare Systems Lab Building 1510, 1st Street Conference Room 1, Second Floor, Dahlgren, Virginia. ♿

The meeting will be held on base. All attendees must enter through the Main Gate.

Contact: Cynthia H. Arrington, Communications Manager, Virginia Commission on Military Bases, P.O. Box 798, Richmond, VA 23218, telephone (804) 225-3743, FAX (804) 786-1121, e-mail carrington@YesVirginia.org.

STATE MILK COMMISSION

August 25, 2004 - 10:30 a.m. -- Open Meeting
Department of Forestry, Office Building, 900 Natural Resources Drive, Room 2063, Charlottesville, Virginia

Calendar of Events

A regular meeting to consider industry issues, distributor licensing, base transfers, and reports from staff. The commission offers anyone in attendance an opportunity to speak at the conclusion of the agenda. Those persons requiring special accommodations should notify the agency meeting contact at least five working days prior to the meeting date so that suitable arrangements can be made.

Contact: Edward C. Wilson, Jr., Deputy Administrator, State Milk Commission, Washington Bldg., 1100 Bank St., Suite 1019, Richmond, VA 23218, telephone (804) 786-2013, FAX (804) 786-3779, e-mail ewilson@smc.state.va.us.

MOTOR VEHICLE DEALER BOARD

July 12, 2003 - 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)

Committees will meet as follows:

- Dealer Practices Committee - 8:30 a.m.
- Franchise Law Committee - To be scheduled as needed
- Licensing Committee - Immediately following Dealer Practices
- Advertising Committee - 9:30 a.m. or immediately following Licensing
- Transaction Recovery Fund Committee - Immediately following Advertising

The full board will meet at 10:30 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.

DEPARTMENT OF MOTOR VEHICLES

Medical Advisory Board

† August 11, 2004 - 8 a.m. -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A general business meeting.

Contact: Jacquelin Branche, R. N., Division Manager, Department of Motor Vehicles, 2300 W. Broad St., Richmond VA 23269-0001, telephone (804) 497-7188, FAX (804) 367-1604, toll-free (800) 435-5137, (804) 272-9268/TTY , e-mail dmvj3b@dmv.state.va.us.

VIRGINIA MUSEUM OF FINE ARTS

† September 9, 2004 - 8 a.m. -- Open Meeting
† October 5, 2004 - 8 a.m. -- Open Meeting
Virginia Museum of Fine Arts, Main Lobby Conference Room, 200 North Boulevard, Richmond, Virginia. 

A meeting for staff to update the Executive Committee. Public comment will not be received.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 200 N. Boulevard, Richmond, VA 23220-4007, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY , e-mail sbroyles@vmfa.state.va.us.

† September 21, 2004 - 1 p.m. -- Open Meeting
Virginia Museum of Fine Arts, CEO Parlor, 200 North Boulevard, Richmond, Virginia. 

A meeting for staff to orient new trustees. Public comment will not be heard.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 200 N. Boulevard, Richmond, VA 23220-4007, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY , e-mail sbroyles@vmfa.state.va.us.

BOARD OF NURSING

July 19, 2004 - 9 a.m. -- Open Meeting
July 21, 2004 - 9 a.m. -- Open Meeting
July 22, 2004 - 9 a.m. -- Open Meeting
September 20, 2004 - 9 a.m. -- Open Meeting
September 22, 2004 - 9 a.m. -- Open Meeting
September 23, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. 

A panel of the board will conduct formal hearings with licensees or certificate holders. Public comment will not be received.

Contact: Jay P. Douglas, R.N., M.S.M., C.S.A.C., Executive Director, Board of Nursing, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY , e-mail nursebd@dhp.virginia.gov.

July 20, 2004 - 9 a.m. -- Open Meeting
September 21, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. 

A general business meeting including committee reports, consideration of regulatory action, and disciplinary case decisions as presented on the agenda. Public comment will be received at 11 a.m.

Contact: Jay P. Douglas, R.N., M.S.M., C.S.A.C., Executive Director, Board of Nursing, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY , e-mail jay.douglas@dhp.virginia.gov.

August 4, 2004 - 9 a.m. -- Open Meeting
August 17, 2004 - 9 a.m. -- Open Meeting
August 24, 2004 - 9 a.m. -- Open Meeting
August 30, 2004 - 9 a.m. -- Open Meeting
September 2, 2004 - 9 a.m. -- Open Meeting
† October 4, 2004 - 9 a.m. -- Open Meeting
† October 12, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Conference Room 3, Richmond, Virginia. ♿

August 31, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Conference Room 1, Richmond, Virginia. ♿

A Special Conference Committee comprised of two or three members of the Virginia Board of Nursing will conduct informal conferences with licensees and certificate holders. Public comment will not be received.

Contact: Jay P. Douglas, R.N., M.S.M., C.S.A.C., Executive Director, Board of Nursing, 6603 West Broad Street, 5th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, e-mail nursebd@dhp.virginia.gov.

September 9, 2004 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia. ♿

A meeting of the Nursing Practice Advisory Committee to discuss nursing practice issues.

Contact: Jay P. Douglas, Executive Director, Board of Nursing, 6603 W. Broad Street, 5th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, e-mail nursebd@dhp.virginia.gov.

JOINT BOARDS OF NURSING AND MEDICINE

August 25, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia. ♿

A meeting of the Joint Boards of Nursing and Medicine.

Contact: Jay P. Douglas, R.N., M.S.M., C.S.A.C., Executive Director, Board of Nursing, 6603 W. Broad Street, 5th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, e-mail nursebd@dhp.virginia.gov.

BOARD OF NURSING HOME ADMINISTRATORS

† July 14, 2004 - 11 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia. ♿

A Special Conference Committee will meet to hold informal conferences. Public comment will not be heard.

Contact: Cheri Emma-Leigh, Operations Manager, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-7457, FAX (804) 662-7246, (804) 662-7197/TTY ☎, e-mail Cheri.Emma-Leigh@dhp.virginia.gov.

† July 30, 2004 - 9:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad, Street Richmond, Virginia. ♿

The board will conduct a general business meeting to consider regulatory issues as may be presented on the agenda. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Public comment will be heard at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to this meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: William H. Ferguson, II, Executive Director, Board for Opticians, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY ☎, e-mail opticians@dpor.virginia.gov.

BOARD FOR OPTICIANS

† July 30, 2004 - 9:30 a.m. -- Open Meeting
† October 8, 2004 - 9:30 a.m. -- Open Meeting
Department of Professional and Occupational regulation, 3600 West Broad Street, Richmond, Virginia. ♿

The board will conduct a general business meeting to consider regulatory issues as may be presented on the agenda. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Public comment will be heard at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to this meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: William H. Ferguson, II, executive Director, Board for Opticians, 3600 West Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY ☎, or e-mail opticians@dpor.virginia.gov.

BOARD OF PHARMACY

† July 22, 2004 - 9 a.m. -- Open Meeting
† July 27, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Conference Room 4, Richmond, Virginia. ♿

A Special Conference Committee will discuss disciplinary matters. Public comments will not be received.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9911, FAX (804) 662-9313.

Calendar of Events

BOARD OF PHYSICAL THERAPY

July 16, 2004 - 9 a.m. -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

A quarterly business meeting to include regulatory and disciplinary matters as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

Contact: Elizabeth Young, Executive Director, Board of Physical Therapy, Alcoa Bldg., 6603 West Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9924, FAX (804) 662-9523, (804) 662-7197/TTY , e-mail elizabeth.young@dhp.virginia.gov.

July 16, 2004 - 1 p.m. -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

A meeting to hear possible violations of the laws and regulations governing the practice of physical therapy.

Contact: Elizabeth Young, Executive Director, Board of Physical Therapy, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9924, FAX (804) 662-9523, (804) 662-7197/TTY , e-mail elizabeth.young@dhp.state.va.us.

POLYGRAPH EXAMINERS ADVISORY BOARD

September 2, 2004 - 10 a.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A meeting to conduct board business. The board fully complies with the Americans with Disabilities Act.

Contact: Eric Olson, Executive Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail eric.olson@dpor.virginia.gov.

BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION

September 20, 2004 - 10 a.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, Conference Room 5W, Richmond, Virginia. 

A quarterly meeting.

Contact: Judy Spiller, Executive Secretary, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8519, FAX (804) 367-9537, (804) 367-9753/TTY , e-mail judy.spiller@dpor.virginia.gov.

BOARD OF PSYCHOLOGY

July 13, 2004 - 9:30 a.m. -- Open Meeting

† **October 12, 2004 - 9:30 a.m.** -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.

A business meeting to include reports from standing committees and any other disciplinary or regulatory matters as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

Contact: Evelyn B. Brown, Executive Director, Board of Psychology, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9913, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail evelyn.brown@dhp.virginia.gov.

VIRGINIA PUBLIC GUARDIAN AND CONSERVATOR ADVISORY BOARD

September 23, 2004 - 10 a.m. -- Open Meeting

1610 Forest Avenue, Suite 100, Richmond, Virginia. 

A quarterly meeting.

Contact: Terry Raney, Guardianship Coordinator, Department for the Aging, 1610 Forest Ave., Suite 100, Richmond, VA 23229, telephone (804) 662-7049, FAX (804) 662-9354, toll-free (800) 552-3402, (804) 662-9333/TTY , e-mail traney@vda.virginia.gov.

VIRGINIA RACING COMMISSION

July 20, 2004 - 2 p.m. -- Public Hearing

New Kent County Administrators Office, 12007 Courthouse Circle, Board Room, New Kent, Virginia.

August 13, 2004 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Virginia Racing Commission intends to promulgate regulations entitled **11 VAC 10-45, Advance Deposit Account Wagering**. The purpose of the proposed action is to establish licensure requirements for individuals and entities conducting advance deposit account wagering in Virginia, including the application and license renewal procedures.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Contact: Nick A. Christner, Regulatory Coordinator, Virginia Racing Commission, P.O. Box 208, 10700 Horsemen's Rd., New Kent, VA 23124, telephone (804) 966-7408, FAX (804) 966-7422, e-mail christner@vrc.state.va.us.

† **July 20, 2004 - 2 p.m.** -- Public Hearing

New Kent County Administrators Office, 12007 Courthouse Circle, Board Room, New Kent, Virginia.

† **September 10, 2004** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Virginia Racing Commission intends to promulgate regulations entitled **11 VAC 10-45**,

Advance Deposit Account Wagering. The purpose of the proposed action is to establish licensure requirements for individuals and entities conducting advance deposit account wagering in Virginia, including the application and license renewal procedures.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Contact: David S. Lermond, Regulatory Coordinator, Virginia Racing Commission, P.O. Box 208, 10700 Horsemen's Rd., New Kent, VA 23124, telephone (804) 966-7404, FAX (804) 966-7422, e-mail David.Lermond@vrc.state.va.us.

REAL ESTATE APPRAISER BOARD

August 17, 2004 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia.

A meeting to conduct board business.

Contact: Karen W. O'Neal, Regulatory Programs Coordinator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail Karen.O'Neal@dpor.virginia.gov.

VIRGINIA RESOURCES AUTHORITY

July 13, 2004 - 9 a.m. -- Open Meeting
August 10, 2004 - 9 a.m. -- Open Meeting
September 21, 2004 - 9 a.m. -- Open Meeting
Eighth and Main Building, 707 East Main Street, 2nd Floor,
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: Bonnie R. C. McRae, Executive Assistant, Virginia Resources Authority, 707 E. Main St., Richmond, VA 23219, telephone (804) 644-3100, FAX (804) 644-3109, e-mail bmcrac@vra.state.va.us.

SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD

August 11, 2004 - 10 a.m. -- Open Meeting
September 15, 2004 - 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 septic tank permits.

Contact: Susan Sherertz, Secretary to the Board, Department of Health, 109 Governor St., 5th Floor, Richmond, VA 23219, telephone (804) 864-7464, FAX (804) 864-7475, e-mail susan.sherertz@vdh.virginia.gov.

VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

July 21, 2004 - Noon -- Open Meeting
Department of Business Assistance, 707 East Main Street,
3rd Floor Board Room, Richmond, Virginia. ♿

A meeting to review applications for loans submitted to the authority for approval and to conduct general business of the board. The meeting time is subject to change depending upon the board's agenda.

Contact: Scott E. Parsons, Executive Director, Department of Business Assistance, P.O. Box 446, Richmond, VA 23218-0446, telephone (804) 371-8256, FAX (804) 225-3384, toll-free (866) 248-8814, or e-mail scott.parsons@dba.virginia.gov.

DEPARTMENT OF TAXATION

State Land Evaluation Advisory Council

August 3, 2004 - 11 a.m. -- Open Meeting
September 7, 2004 - 11 a.m. -- Open Meeting
Department of Taxation, 2220 West Broad Street, Richmond, Virginia. ♿

A meeting of the State Land Evaluation Advisory Council to adopt suggested ranges of values for agricultural, horticultural, forest and open-space land use and the use-value assessment program.

Contact: H. Keith Mawyer, Property Tax Manager, Department of Taxation, 2220 W. Broad St., Richmond, VA 23220, telephone (804) 367-8020, FAX (804) 367-8662, e-mail kmawyer@tax.state.va.us.

COMMONWEALTH TRANSPORTATION BOARD

July 15, 2004 - 9 a.m. -- Open Meeting
VDOT Central Auditorium, 1221 East Broad Street, Richmond, Virginia. ♿

A work session, open to the public, of the CTB, VDOT and DRPT staff providing updates on projects, policy development, budgets and pending action items. A public comment period will not be provided at the workshop.

Calendar of Events

Contact: Katherine Tracy, Assistant Secretary of the Commonwealth Transportation Board, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-3090, FAX (804) 225-4700, e-mail Katherine.Tracy@virginiadot.org.

July 15, 2004 - 10:30 a.m. -- Open Meeting
VDOT Central Auditorium, 1221 East Broad Street, Richmond, Virginia. 

A meeting of the CTB to vote on action items presented regarding bids, conveyances, budgets, the Six-Year Improvement Program and any other matter requiring board approval. The meeting is open to the public. Public comments will be received at the outset of the meeting. Remarks are limited to five minutes. Groups are requested to select a spokesperson. CTB reserves the right to amend these conditions. Committee meetings, which are open to the public, may be held upon call of the chairman and will be posted separately.

Contact: Katherine Tracy, Assistant Secretary of the Commonwealth Transportation Board, Department of Transportation, Policy Division, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-3090, FAX (804) 225-4700, e-mail Katherine.Tracy@virginiadot.org.

July 15, 2004 - 12:30 p.m. -- Open Meeting
VDOT Central Auditorium, 1221 East Broad Street, Richmond, Virginia. 

A work session of the Vtrans 2025 Multi-Modal Transportation Policy Committee dealing with the development of the long range multimodal transportation plan. The chair and five of the committee members are members of the CTB. Contact Katherine Graham at 804-786-4198 for further information.

Contact: Katherine Tracy, Assistant Secretary of the Commonwealth Transportation Board, Department of Transportation, Policy Division, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-3090, FAX (804) 225-4700, e-mail Katherine.Tracy@virginiadot.org.

TREASURY BOARD

† **July 21, 2004 - 9 a.m.** -- Open Meeting
† **August 18, 2004 - 9 a.m.** -- Open Meeting
James Monroe Building, 101 North 14th Street, 3rd Floor, Treasury Board Room, Richmond, Virginia. 

A regular meeting.

Contact: Melissa Mayes, Treasury Board Secretary, Department of the Treasury, 101 N. 14th St., 3rd Floor, Richmond, VA, telephone (804) 371-6011, FAX (804) 225-3187, e-mail melissa.mayes@trs.state.va.us.

STATE WATER CONTROL BOARD

July 14, 2004 - 10 a.m. -- Open Meeting
August 11, 2004 - 10 a.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. 

A meeting of the technical advisory committee assisting the department in the reissuance of the general VPDES permit for domestic sewage discharges of less than or equal to 1,000 gallons per day.

Contact: Lily Choi, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4054, FAX (804) 698-4032, e-mail ychoi@deq.virginia.gov.

July 20, 2004 - 2 p.m. -- Public Hearing
Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, Virginia.

July 21, 2004 - 10 a.m. -- Public Hearing
Department of Environmental Quality Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia. 

August 13, 2004 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled **9 VAC 25-191, Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Concentrated Animal Feeding Operations**. The purpose of the proposed action is to develop and adopt a general permit regulation to comply with the requirements set forth in 40 CFR Parts 9, 122, 123, and 412, as published in the Federal Register, Volume 68, No. 29, dated February 12, 2003. This general permit regulation will govern the authorization to manage pollutants from concentrated animal feeding operations, including storage and land application of animal waste.

Statutory Authority: §§ 62.1-44.15 and 62.1-44.17:1 of the Code of Virginia.

Contact: Jon G. Van Soestbergen, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4117, FAX (804) 698-4032 or e-mail jvansoest@deq.virginia.gov.

July 20, 2004 - 2 p.m. -- Public Hearing
Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, Virginia.

July 21, 2004 - 10 a.m. -- Public Hearing
Department of Environmental Quality Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia. 

August 13, 2004 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled **9 VAC 25-192, Virginia Pollutant Abatement (VPA) General Permit Regulation for Animal Feeding Operations**. The purpose of the proposed action is to reissue the existing Virginia Pollution Abatement General Permit for Confined Animal Feeding Operations that governs the authorization to manage pollutants from confined animal feeding operations,

including storage and land application of animal waste. This action is not related to implementation of the federal CAFO rule.

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

Contact: Jon G. Van Soestbergen, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4117, FAX (804) 698-4032 or e-mail jvansoest@deq.virginia.gov.

July 20, 2004 - 2 p.m. -- Public Hearing
Department of Environmental Quality Valley Regional Office, 4411 Early Road, Harrisonburg, Virginia.

July 21, 2004 - 10 a.m. -- Public Hearing
Department of Environmental Quality Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia. 

August 13, 2004 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled **9 VAC 25-630, Virginia Pollutant Abatement General Permit for Poultry Waste Management**. The purpose of the proposed action is to amend the VPA general permit for poultry waste management, where applicable, to reflect changes to 40 CFR Parts 9, 122, 123, and 412, as published in the Federal Register on February 12, 2003.

Statutory Authority: §§ 62.1-44.15 and 62.1-44.17:1.1 of the Code of Virginia.

Contact: Jon G. Van Soestbergen, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4117, FAX (804) 698-4032 or e-mail jvansoest@deq.virginia.gov.

August 3, 2004 - 10 a.m. -- Open Meeting
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia. 

A meeting of the advisory committee assisting in the development of amendments to the State Water Control Board Nutrient Enriched Waters Policy.

Contact: John M. Kennedy, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4312, FAX (804) 698-4116, e-mail jmkennedy@deq.virginia.gov.

† August 11, 2004 - 7 p.m. -- Public Hearing
Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, Virginia.

† August 12, 2004 - 2 p.m. -- Public Hearing
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia.

† August 16, 2004 - 7 p.m. -- Public Hearing
Suffolk City Council Chambers, 441 Market Street, Suffolk, Virginia.

† September 10, 2004 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled **9 VAC 25-260, Water Quality Standards**. The purpose of the proposed action is to amend the antidegradation policy of the Water Quality Standards by designating a section of Ragged Island Creek as an exceptional water.

Statutory Authority: § 62.1-44.15 of the Code of Virginia, Clean Water Act (33 USC § 1251 et seq.) and 40 CFR Part 131.

Contact: Jean W. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4113, FAX (804) 698-4522 or e-mail jwgregory@deq.virginia.gov.

† August 11, 2004 - 7 p.m. -- Public Hearing
Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, Virginia.

† August 12, 2004 - 2 p.m. -- Public Hearing
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia.

† August 16, 2004 - 7 p.m. -- Public Hearing
Suffolk City Council Chambers, 441 Market Street, Suffolk, Virginia.

† September 10, 2004 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled **9 VAC 25-260, Water Quality Standards**. The purpose of the proposed action is to amend the antidegradation policy of the Water Quality Standards by designating a section of Little Stony Creek as an exceptional water.

Statutory Authority: § 62.1-44.15 of the Code of Virginia, Clean Water Act (33 USC § 1251 et seq.) and 40 CFR Part 131.

Contact: Jean W. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4113, FAX (804) 698-4522 or e-mail jwgregory@deq.virginia.gov.

† August 11, 2004 - 7 p.m. -- Public Hearing
Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, Virginia.

† August 12, 2004 - 2 p.m. -- Public Hearing
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia.

Calendar of Events

† **August 16, 2004 - 7 p.m.** -- Public Hearing
Suffolk City Council Chambers, 441 Market Street, Suffolk,
Virginia.

† **September 10, 2004** - Public comments may be submitted
until this date.

Notice is hereby given in accordance with § 2.2-4007 of the
Code of Virginia that the State Water Control Board intends
to amend regulations entitled **9 VAC 25-260, Water Quality
Standards**. The purpose of the proposed action is to
amend the antidegradation policy of the Water Quality
Standards by designating a section of Bottom Creek as an
exceptional water.

Statutory Authority: § 62.1-44.15 of the Code of Virginia,
Clean Water Act (33 USC § 1251 et seq.) and 40 CFR Part
131.

Contact: Jean W. Gregory, Department of Environmental
Quality, P.O. Box 10009, Richmond, VA 23240, telephone
(804) 698-4113, FAX (804) 698-4522 or e-mail
jwgregory@deq.virginia.gov.

† **August 11, 2004 - 7 p.m.** -- Public Hearing
Department of Environmental Quality, West Central Regional
Office, 3019 Peters Creek Road, Roanoke, Virginia.

† **August 12, 2004 - 2 p.m.** -- Public Hearing
Department of Environmental Quality, Piedmont Regional
Office, 4949-A Cox Road, Glen Allen, Virginia.

† **August 16, 2004 - 7 p.m.** -- Public Hearing
Suffolk City Council Chambers, 441 Market Street, Suffolk,
Virginia.

† **September 10, 2004** - Public comments may be submitted
until this date.

Notice is hereby given in accordance with § 2.2-4007 of the
Code of Virginia that the State Water Control Board intends
to amend regulations entitled **9 VAC 25-260, Water Quality
Standards**. The purpose of the proposed action is to
amend the antidegradation policy of the Water Quality
Standards by designating Lake Drummond and portions of
Brown Mountain Creek, Laurel Fork, North Fork of the
Buffalo River, Pedlar River, Ramseys Draft and Whitetop
Laurel Creek as exceptional waters.

Statutory Authority: § 62.1-44.15 of the Code of Virginia,
Clean Water Act (33 USC § 1251 et seq.) and 40 CFR Part
131.

Contact: Jean W. Gregory, Department of Environmental
Quality, P.O. Box 10009, Richmond, VA 23240, telephone
(804) 698-4113, FAX (804) 698-4522 or e-mail
jwgregory@deq.virginia.gov.

† **August 26, 2004 - 3 p.m.** -- Public Hearing
Department of Environmental Quality, Piedmont Regional
Office, 4949-A Cox Road, Glen Allen, Virginia.

† **September 10, 2004** - Public comments may be submitted
until this date.

Notice is hereby given in accordance with § 2.2-4007 of the
Code of Virginia that the State Water Control Board intends
to amend regulations entitled **9 VAC 25-660, Virginia
Water Protection General Permit for Impacts Less than
One-Half of an Acre**. The purpose of the proposed action
is to correct several administrative procedures, clarify
application and permitting requirements and allow for a
more efficient application review process.

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the
Code of Virginia and § 401 of the Clean Water Act (33 USC §
1251 et seq.).

Contact: Ellen Gilinsky, Department of Environmental Quality,
P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-
4375, FAX (804) 698-4032 or e-mail
egilinsky@deq.virginia.gov.

† **August 26, 2004 - 3 p.m.** -- Public Hearing
Department of Environmental Quality, Piedmont Regional
Office, 4949-A Cox Road, Glen Allen, Virginia.

† **September 10, 2004** - Public comments may be submitted
until this date.

Notice is hereby given in accordance with § 2.2-4007 of the
Code of Virginia that the State Water Control Board intends
to amend regulations entitled **9 VAC 25-670, 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**. The purpose of the proposed
action is to allow for revisions to the general permit
regulation to correct several administrative procedures,
clarify application and permitting requirements, and allow for
a more efficient application review process.

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the
Code of Virginia and § 401 of the Clean Water Act (33 USC
§ 1251 et seq.).

Contact: Ellen Gilinsky, Department of Environmental Quality,
P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-
4375, FAX (804) 698-4032 or e-mail
egilinsky@deq.virginia.gov.

† **August 26, 2004 - 3 p.m.** -- Public Hearing
Department of Environmental Quality, Piedmont Regional
Office, 4949-A Cox Road, Glen Allen, Virginia.

† **September 10, 2004** - Public comments may be submitted
until this date.

Notice is hereby given in accordance with § 2.2-4007 of the
Code of Virginia that the State Water Control Board intends
to amend regulations entitled **9 VAC 25-680, Virginia
Water Protection General Permit for Linear
Transportation Projects**. The purpose of the proposed

action is to allow for revisions to the general permit regulation to correct several administrative procedures, clarify application and permitting requirements and allow for a more efficient application review process.

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia and § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Contact: Ellen Gilinsky, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4375, FAX (804) 698-4032 or e-mail egilinsky@deq.virginia.gov.

† **August 26, 2004 - 3 p.m.** -- Public Hearing
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia.

† **September 10, 2004** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled **9 VAC 25-690, Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities**. The purpose of the proposed action is to correct several administrative procedures, clarify application and permitting requirements and allow for a more efficient application review process.

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia and § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Contact: Ellen Gilinsky, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4375, FAX (804) 698-4032 or e-mail egilinsky@deq.virginia.gov.

August 31, 2004 - 9:30 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia. ♿

A regular board meeting.

Contact: Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, P.O. Box 10009 Richmond, VA 23240, telephone (804) 698-4378, FAX (804) 698-4346, e-mail cmberndt@deq.virginia.gov.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

September 14, 2004 - 8:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting to conduct board business.

Contact: David E. Dick, Executive Director, Board for Waterworks and Wastewater Works Operators, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, FAX (804) 367-6128, (804) 367-9753/TTY ♿, e-mail waterwasteoper@dpor.virginia.gov.

INDEPENDENT

VIRGINIA OFFICE FOR PROTECTION AND ADVOCACY

† **July 19, 2004 - 9 a.m.** -- Open Meeting
Virginia Office for Protection and Advocacy, Byrd Building, 1910 Byrd Avenue, Suite 5, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

Public comment is welcome and will be accepted at the start of the meeting. Persons wishing to provide public comment via telephone, contact Lisa Shehi at 1-800-552-3962 or via e-mail at shehilm@vopa.state.va.us no later than Monday, July 12, 2004. If interpreter services or other accommodations are required, please contact Ms. Shehi no later than Monday, July 12, 2004.

Contact: Lisa Shehi, Administrative Assistant, Virginia Office for Protection and Advocacy, 1910 Byrd Ave., Suite 5, Richmond, VA, telephone (804) 225-2042, FAX (804) 662-7431, toll-free (800) 552-3962, (804) 225-2042/TTY ♿, e-mail shehilm@vopa.state.va.us.

VIRGINIA RETIREMENT SYSTEM

August 17, 2004 - Noon -- Open Meeting
Virginia Retirement System Headquarters Building, 1200 East Main Street, Richmond, Virginia. ♿

A regular meeting of the Optional Retirement Plan Advisory Committee. No public comment will be received at the meeting.

Contact: LaShaunda B. King, Executive Assistant, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ♿, e-mail lking@vrs.state.va.us

August 18, 2004 - TBD -- Open Meeting

August 19, 2004 - TBD -- Open Meeting

To be determined at a later date. ♿

Please note that the time and location of the Board of Trustees Annual Retreat will be determined at a later date.

Contact: LaShaunda B. King, Executive Assistant, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ♿, e-mail lking@vrs.state.va.us.

August 18, 2004 - 11 a.m. -- Open Meeting
Virginia Retirement System Investment Department, Bank of America Building, 1111 East Main Street, Richmond, Virginia. ♿

The following committees will meet:

- 11 a.m. - Investment Advisory Committee
- 2:30 p.m. - Benefits and Actuarial Committee
- 4 p.m. - Administration and Personnel Committee
- 4 p.m. - Audit and Compliance Committee

Calendar of Events

Contact: Phyllis Henderson, Administrative Assistant, Virginia Retirement System, 1111 E. Main St., Richmond, VA 23219, telephone (804) 697-6675, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail phenderson@vrs.state.va.us.

† **October 6, 2004 - 2:30 p.m.** -- Open Meeting
Virginia Retirement System Headquarters Building, 1200 East Main Street, Richmond, Virginia. ♿

A regular meeting of the Benefits and Actuarial Committee. No public comment will be received at the meeting.

Contact: LaShaunda B. King, Executive Assistant, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3124/TTY ☎, e-mail lking@vrs.state.va.us.

October 7, 2004 - 9 a.m. -- Open Meeting
Virginia Retirement System Headquarters Building, 1200 E. Main Street, Richmond, Virginia. ♿

A regular meeting of the Board of Trustees. No public comment will be received at the meeting.

Contact: LaShaunda B. King, Executive Assistant, Virginia Retirement System, 1200 E. Main Street, Richmond, VA 23219, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, or e-mail lking@vrs.state.va.us.

LEGISLATIVE

VIRGINIA CODE COMMISSION

July 14, 2004 - 2 p.m. -- Open Meeting

July 15, 2004 - 9 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Street, 6th Floor, Speaker's Conference Room, Richmond, Virginia. ♿

A two-day meeting to continue with the revisions of Titles 1 and 37.1 and to conduct any other business that may come before the commission. A brief public comment period is scheduled at the end of the meeting.

Contact: Jane Chaffin, Registrar of Regulations, Virginia Code Commission, General Assembly Bldg., 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 692-0625, e-mail jchaffin@leg.state.va.us.

August 18, 2004 - 10 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Street, 6th Floor, Speaker's Conference Room, Richmond, Virginia. ♿

A meeting to continue with the revisions of Titles 1, 3.1 and 37.1 and to conduct any other business that may come before the commission. A brief public comment period is scheduled at the end of the meeting.

Contact: Jane Chaffin, Registrar of Regulations, Virginia Code Commission, General Assembly Bldg., 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 692-0625, e-mail jchaffin@leg.state.va.us.

VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

July 13, 2004 - 11 a.m. -- Open Meeting

September 16, 2004 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, 2nd Floor, Room 250, Richmond, Virginia. ♿

FOIA and Geographic Information System Subcommittee meeting.

Contact: Lynda Waddill, Administrative Assistant, or Lisa Wallmeyer, Assistant Director, Virginia Freedom of Information Advisory Council, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 225-3056, FAX (804) 371-0169, toll-free (866) 448-4100, e-mail foiaacouncil@leg.state.va.us.

September 16, 2004 - 2 p.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. ♿

A regular meeting.

Contact: Lynda Waddill, Administrative Assistant, or Lisa Wallmeyer, Assistant Director, Virginia Freedom of Information Advisory Council, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 225-3056, FAX (804) 371-0169, toll-free (866) 448-4100, e-mail foiaacouncil@leg.state.va.us.

JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION

July 12, 2004 - 10 a.m. -- Open Meeting

General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia. ♿

Special report: Interstate Benchmarks; Follow-up: Acclimation of Virginia's Foreign-Born Population; Exploratory Study: Tenure and Post-Tenure Review Policies; Virginia Retirement System Oversight Reports.

Contact: Trish Bishop, Principal Legislative Analyst, Joint Legislative Audit and Review Commission, General Assembly Building, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-1258, FAX (804) 371-0101, e-mail tbishop@leg.state.va.us.

JOINT COMMISSION ON TECHNOLOGY AND SCIENCE

August 3, 2004 - 9:30 a.m. -- Canceled - to be rescheduled

September 21, 2004 - 9:30 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. ♿

A meeting of the JCOTS Computer Crimes Advisory Committee.

Contact: Mitchell Goldstein, Director, Joint Commission on Technology and Science, General Assembly Bldg., 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 786-0169, e-mail jcots@leg.state.va.us.

CHRONOLOGICAL LIST

OPEN MEETINGS

August 4, 2004 - 1:30 p.m. -- Open Meeting
September 22, 2004 - 1:30 p.m. -- Open Meeting
 General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. ♿

A meeting of the JCOTS Nanotechnology Advisory Committee.

Contact: Eric Link, Staff Attorney, Joint Commission on Technology and Science, General Assembly Bldg., 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 371-0169, e-mail jcots@leg.state.va.us.

August 17, 2004 - 9:30 a.m. -- Open Meeting
† October 5, 2004 - 9:30 a.m. -- Open Meeting
 General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. ♿

A meeting of the JCOTS's Integrated Government Advisory Committee.

Contact: Eric Link, Staff Attorney, Joint Commission on Technology and Science, General Assembly Bldg., 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 371-0167, e-mail jcots@leg.state.va.us.

August 18, 2004 - 1:30 p.m. -- Open Meeting
† October 6, 2004 - 1:30 p.m. -- Open Meeting
 General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. ♿

A meeting of the JCOT's Privacy Advisory Committee.

Contact: Mitchell Goldstein, Director, Joint Commission on Technology and Science, General Assembly Bldg., 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 371-0169, e-mail jcots@leg.state.va.us.

September 8, 2004 - 9:30 a.m. -- Open Meeting
 General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. ♿

A full commission meeting to discuss computer security.

Contact: Mitchell Goldstein, Director, Joint Commission on Technology and Science, General Assembly Bldg., 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 371-0169, e-mail jcots@leg.state.va.us.

VIRGINIA UNIFORM LAWS COMMISSIONERS

July 19, 2004 - 10 a.m. -- Open Meeting
 General Assembly Building, 9th and Broad Streets, 7th Floor, West Conference Room, Richmond, Virginia. ♿

A meeting to review Uniform Acts to be considered by the National Conference of Commissioners on Uniform State Laws at its annual meeting.

Contact: Jessica D. French, Senior Attorney, Division of Legislative Services, General Assembly Bldg, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 371-0169, e-mail jfrench@leg.state.va.us.

July 12
 Hearing Aid Specialists, Board for
 Legislative Audit and Review Commission, Joint
 Motor Vehicle Dealer Board

July 13
 Child Fatality Review Team, State
 College Savings Plan Board, Virginia
 Contractors, Board for
 Corrections, Board of
 Forestry, Board of
 Freedom of Information Advisory Council, Virginia
 Medical Assistance Services, Board of
 Psychology, Board of
 Resources Authority, Virginia

July 14
 Code Commission, Virginia
 Corrections, Board of
 Forestry, Board of
 Information Technologies Agency, Virginia
 - Wireless E-911 Service Board
 Medicine, Board of
 † Nursing Home Administrators, Board of
 Water Control Board, State

July 15
 Agriculture and Consumer Services, Department of
 - Virginia Cattle Industry Board
 Code Commission, Virginia
 Contractors, Board for
 Design-Build/Construction Management Review Board
 Education, Board of
 Transportation Board, Commonwealth

July 16
 † Dentistry, Board of
 Education, Board of
 Housing and Community Development, Department of
 - State Building Code Technical Review Board
 Medicine, Board of
 Military Bases, Virginia Commission on
 Physical Therapy, Board of

July 19
 Alcoholic Beverage Control Board
 Higher Education for Virginia, State Council of
 † Local Government, Commission on
 Nursing, Board of
 † Protection and Advocacy, Board for
 Uniform Laws Commissioners, Virginia

July 20
 Agriculture and Consumer Services, Department of
 - Virginia Cotton Board
 Environmental Quality, Department of
 Forestry, Board of
 Higher Education for Virginia, State Council of
 † Medicine, Board of
 Nursing, Board of

July 21
 Agriculture and Consumer Services, Department of
 - Virginia Small Grains Board

Calendar of Events

- Compensation Board
† Forestry, Board of
Geology, Board for
Medical Assistance Services, Department of
- Medicaid Transportation Advisory Committee
† Medicine, Board of
Nursing, Board of
† Small Business Financing Authority
† Treasury Board
- July 22**
† Forestry, Board of
Health, State Board of
Health, Department of
Nursing, Board of
† Pharmacy, Board of
- July 23**
Asbestos, Lead, and Home Inspectors, Virginia Board for
† Dentistry, Board of
- July 27**
Conservation and Recreation, Department of
Contractors, Board for
† Forestry, Board of
† Funeral Directors and Embalmers, Board of
† Pharmacy, Board of
- July 28**
† Community Colleges, State Board for
Conservation and Recreation, Department of
Education, Board of
† Forestry, Board of
† Housing Development Authority, Virginia
Labor and Industry, Department of
- Virginia Migrant and Seasonal Farmworkers Board
Medicine, Board of
- July 29**
† Community Colleges, State Board for
† Forestry, Board of
- July 30**
† Dentistry, Board of
† Opticians, Board for
† Nursing Home Administrators, Board of
- August 2**
Alcoholic Beverage Control Board
- August 3**
† Accountancy, Board of
Taxation, Department of
- State Land Evaluation Advisory Council
Water Control Board, State
- August 4**
Conservation and Recreation, Department of
Jamestown-Yorktown Foundation
Nursing, Board of
Technology and Science, Joint Commission on
- August 5**
† Agriculture and Consumer Services, Department of
- Virginia Soybean Board
Medical Assistance Services, Department of
- Drug Utilization Review Board
- August 6**
Art and Architectural Review Board
† Emergency Medical Services Advisory Board, State
- August 10**
Resources Authority, Virginia
- August 11**
Conservation and Recreation, Department of
Contractors, Board for
† Motor Vehicles, Department of
- Medical Advisory Board
Sewage Handling and Disposal Appeal Review Board
Water Control Board, State
- August 13**
† Dentistry, Board of
Medicine, Board of
- August 16**
Alcoholic Beverage Control Board
- August 17**
Medical Assistance Services, Department of
- Pharmacy Liaison Committee
Nursing, Board of
Real Estate Appraiser Board
Retirement System, Virginia
Technology and Science, Joint Commission on
- August 18**
Code Commission, Virginia
Retirement System, Virginia
Technology and Science, Joint Commission on
† Treasury Board
- August 19**
Asbestos, Lead and Home Inspectors, Virginia Board for
Audiology and Speech-Language Pathology, Board of
Design-Build/Construction Management Review Board
† Manufactured Housing Board, Virginia
Retirement System, Virginia
- August 20**
† Dentistry, Board of
Health Professions, Department of
- August 23**
Medical Assistance Services, Department of
- August 24**
Contractors, Board for
Mental Health, Mental Retardation and Substance Abuse
Services, Department of
Nursing, Board of
- August 25**
Conservation and Recreation, Department of
Milk Commission, State
Nursing and Medicine, Joint Boards of
- August 26**
Counseling, Board of
- August 27**
Counseling, Board of
Housing and Community Development, Board of
- August 30**
Alcoholic Beverage Control Board
Nursing, Board of
- August 31**
Nursing, Board of
Water Control Board, State
- September 2**
Nursing, Board of
Polygraph Examiners Advisory Board
- September 3**
Art and Architectural Review Board
- September 7**
† Agriculture and Consumer Services, Department of

- Virginia Horse Industry Board
- Funeral Directors and Embalmers, Board of Taxation, Department of
- State Land Evaluation Advisory Council

September 8

- † Community Colleges, State Board for
- † Health Professions, Department of Interagency Coordinating Council, Virginia Technology and Science, Joint Commission on

September 9

- † Community Colleges, State Board for
- † Criminal Justice Services Board
- † Museum of Fine Arts, Virginia Nursing, Board of

September 10

- Dentistry, Board of

September 13

- Alcoholic Beverage Control Board

September 14

- Charitable Gaming Board
- Medical Assistance Services, Board of Waterworks and Wastewater Works Operators, Board for

September 15

- Conservation and Recreation, Department of
- Medical Assistance Services, Department of
 - Medicaid Transportation Advisory Committee
- Sewage Handling and Disposal Appeal Review Board

September 16

- Design-Build/Construction Management Review Board
- Freedom of Information Advisory Council, Virginia

September 20

- Nursing, Board of
- Professional and Occupational Regulation, Board for

September 21

- Medicine, Board of
 - Advisory Board on Occupational Therapy
 - Advisory Board on Respiratory Care
- † Museum of Fine Arts, Virginia
- Nursing, Board of
- Resources Authority, Virginia
- Technology and Science, Joint Commission on

September 22

- Education, Board of
- Medicine, Board of
 - Advisory Board on Acupuncture
 - Advisory Board on Radiologic Technology
- Nursing, Board of
- Technology and Science, Joint Commission on

September 23

- Medicine, Board of
 - Advisory Board on Athletic Training
 - Advisory Board on Physicians Assistants
- Nursing, Board of
- Public Guardian and Conservator Advisory Board

September 24

- Mental Health, Mental Retardation and Substance Abuse Services, Department of

September 27

- Alcoholic Beverage Control Board
- Barbers and Cosmetology, Board for

October 1

- † Art and Architectural Review Board

October 4

- † Nursing, Board of

October 5

- † Funeral Directors and Embalmers, Board of
- † Museum of Fine Arts, Virginia
- † Technology and Science, Joint Commission on

October 6

- † Jamestown-Yorktown Foundation
- † Retirement System, Virginia
- † Technology and Science, Joint Commission on

October 7

- † Retirement System, Virginia

October 8

- † Health Professions, Department of
- † Opticians, Board for

October 12

- † Nursing, Board of
- † Psychology, Board of

PUBLIC HEARINGS

July 15

- Health Professions, Board of

July 20

- Racing Commission, Virginia
- Water Control Board, State

July 21

- Water Control Board, State

August 11

- Water Control Board, State

August 12

- Water Control Board, State

August 16

- Water Control Board, State

August 24

- Mental Health, Mental Retardation and Substance Abuse Services, Department of

August 26

- Water Control Board, State

September 9

- † Criminal Justice Services Board

Calendar of Events
