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CUMULATIVE TABLE OF VIRGINIA ADMINISTRATIVE CODE SECTIONS ADOPTED, AMENDED, OR REPEALED

The table printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Spring 2004 VAC Supplement includes final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1 VAC 55-20-10	Repealed	20:20 VA.R. 2159	7/16/04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1 VAC 55-20-50	Repealed	20:20 VA.R. 2159	7/16/04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1 VAC 55-20-120	Repealed	20:20 VA.R. 2161	7/16/04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1 VAC 55-20-420	Repealed	20:20 VA.R. 2164	7/16/04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	--
1 VAC 75-40-10 through 1 VAC 75-40-60	Added	20:25 VA.R. 3082	9/22/04
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2 VAC 5-440-80	Repealed	20:12 VA.R. 1474	3/25/04
2 VAC 5-440-90	Repealed	20:12 VA.R. 1474	3/25/04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	--
2 VAC 20-30	Erratum	20:25 VA.R. 3111	--
2 VAC 20-30-20	Amended	20:23 VA.R. 2541	8/26/04
2 VAC 20-30-30	Amended	20:23 VA.R. 2541	8/26/04
2 VAC 20-30-40	Amended	20:23 VA.R. 2541	8/26/04
Title 3. Alcoholic Beverages			
3 VAC 5-30	Erratum	21:1 VA.R. 44	--
3 VAC 5-40	Erratum	21:1 VA.R. 44	--
3 VAC 5-70	Erratum	21:1 VA.R. 44	--
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 15-40-280	Amended	21:1 VA.R. 24	10/20/04
4 VAC 15-50-81	Amended	20:23 VA.R. 2542	8/25/04
4 VAC 15-50-91	Amended	20:23 VA.R. 2543	8/25/04

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 15-90-231	Amended	20:23 VA.R. 2543	8/25/04
4 VAC 15-90-241	Amended	20:23 VA.R. 2544	8/25/04
4 VAC 15-240-81	Amended	20:23 VA.R. 2544	8/25/04
4 VAC 15-240-91	Amended	20:23 VA.R. 2545	8/25/04
4 VAC 15-260-10	Amended	20:25 VA.R. 3082	7/28/04
4 VAC 15-320-100	Amended	21:1 VA.R. 24	9/20/04
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 20-270-30	Amended	20:26 VA.R. 3191	8/6/04
4 VAC 20-320-10	Amended	20:26 VA.R. 3191	8/6/04
4 VAC 20-320-70	Amended	20:26 VA.R. 3192	8/6/04
4 VAC 20-320-80	Amended	20:26 VA.R. 3192	8/6/04
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 20-564-10 through 4 VAC 20-564-50 emer	Added	20:25 VA.R. 3096	8/16/04-9/3/04
4 VAC 20-620-50	Amended	20:16 VA.R. 1863	3/26/04
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 25-20-20	Amended	20:23 VA.R. 2547	8/25/04
4 VAC 25-20-30	Amended	20:23 VA.R. 2547	8/25/04
4 VAC 25-20-40	Amended	20:23 VA.R. 2547	8/25/04
4 VAC 25-20-50	Amended	20:23 VA.R. 2547	8/25/04
4 VAC 25-20-70	Amended	20:23 VA.R. 2547	8/25/04
4 VAC 25-20-90	Amended	20:23 VA.R. 2547	8/25/04
4 VAC 25-20-100	Amended	20:23 VA.R. 2547	8/25/04
4 VAC 25-20-110	Amended	20:23 VA.R. 2548	8/25/04
4 VAC 25-20-140	Amended	20:23 VA.R. 2548	8/25/04
4 VAC 25-20-190	Amended	20:23 VA.R. 2548	8/25/04
4 VAC 25-20-200	Amended	20:23 VA.R. 2548	8/25/04
4 VAC 25-20-210	Amended	20:23 VA.R. 2548	8/25/04
4 VAC 25-20-220	Amended	20:23 VA.R. 2549	8/25/04
4 VAC 25-20-250	Amended	20:23 VA.R. 2549	8/25/04
4 VAC 25-20-255	Amended	20:23 VA.R. 2549	8/25/04
4 VAC 25-20-259	Amended	20:23 VA.R. 2549	8/25/04
4 VAC 25-20-390	Amended	20:23 VA.R. 2549	8/25/04

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 25-20-410	Amended	20:23 VA.R. 2549	8/25/04
4 VAC 25-20-430	Amended	20:23 VA.R. 2549	8/25/04
4 VAC 25-31 (Forms)	Amended	20:15 VA.R. 1784-1792	--
4 VAC 25-31 (Forms)	Amended	21:1 VA.R. 28	--
4 VAC 25-35-10 through 4 VAC 25-35-40	Amended	20:23 VA.R. 2549-2550	8/25/04
4 VAC 25-35-75	Added	20:23 VA.R. 2550	8/25/04
4 VAC 25-35-80	Amended	20:23 VA.R. 2550	8/25/04
4 VAC 25-35-100	Amended	20:23 VA.R. 2551	8/25/04
4 VAC 25-35-110	Amended	20:23 VA.R. 2551	8/25/04
4 VAC 25-35-120	Amended	20:23 VA.R. 2551	8/25/04
4 VAC 25-125-10 through 4 VAC 25-125-40	Added	20:23 VA.R. 2552-2553	8/25/04
4 VAC 25-130-801.17	Amended	20:23 VA.R. 2625	10/12/04
4 VAC 25-130-801.18	Amended	20:23 VA.R. 2626	10/12/04
4 VAC 25-130 (Forms)	Amended	20:19 VA.R. 2081-2083	--
Title 6. Criminal Justice and Corrections			
6 VAC 20-210-10 through 6 VAC 20-210-110	Added	20:23 VA.R. 2554-2555	8/26/04
6 VAC 20-240-10 through 6 VAC 20-240-140 emer	Added	20:25 VA.R. 3097-3102	8/23/04-8/22/05
6 VAC 35-160-10 through 6 VAC 35-160-390	Added	20:23 VA.R. 2555-2562	8/25/04
Title 8. Education			
8 VAC 20-340-10	Amended	20:23 VA.R. 2562	8/25/04
8 VAC 20-340-20	Added	20:23 VA.R. 2562	8/25/04
8 VAC 20-340-30	Added	20:23 VA.R. 2562	8/25/04
8 VAC 20-670-10 through 8 VAC 20-670-440	Added	20:24 VA.R. 2892-2898	9/10/04
8 VAC 40-130-10	Amended	20:23 VA.R. 2562	7/26/04
8 VAC 40-130-25	Amended	20:23 VA.R. 2563	7/26/04
Title 9. Environment			
9 VAC 5-20-21	Amended	20:12 VA.R. 1476	3/24/04
9 VAC 5-20-204	Amended	20:23 VA.R. 2564	8/25/04
9 VAC 5-20-204	Erratum	20:26 VA.R. 3210-3211	--
9 VAC 5-20-205	Amended	20:23 VA.R. 2564	8/25/04
9 VAC 5-20-205	Erratum	20:26 VA.R. 3210-3211	--
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 5-30-10	Amended	20:24 VA.R. 2898	9/8/04
9 VAC 5-30-30 through 9 VAC 5-30-50	Amended	20:24 VA.R. 2898-2900	9/8/04
9 VAC 5-30-55	Added	20:24 VA.R. 2899	9/8/04
9 VAC 5-30-60	Amended	20:24 VA.R. 2899	9/8/04
9 VAC 5-30-65	Added	20:24 VA.R. 2899	9/8/04
9 VAC 5-30-70	Amended	20:24 VA.R. 2900	9/8/04
9 VAC 5-30-80	Amended	20:24 VA.R. 2900	9/8/04
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

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 5-60-91	Added	20:24 VA.R. 2900	9/8/04
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 5-80-2250 through 9 VAC 5-80-2300	Added	20:23 VA.R. 2566-2567	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 20-60-18	Amended	20:23 VA.R. 2568	7/1/04
9 VAC 20-60-18	Amended	20:24 VA.R. 2901	9/8/04
9 VAC 20-60-262	Amended	20:23 VA.R. 2568	7/1/04
9 VAC 20-60-270	Amended	20:23 VA.R. 2568	7/1/04
9 VAC 20-60-315	Amended	20:23 VA.R. 2570	7/1/04
9 VAC 20-60-1260	Amended	20:23 VA.R. 2571	7/1/04
9 VAC 20-60-1270	Amended	20:23 VA.R. 2571	7/1/04
9 VAC 20-60-1280	Amended	20:23 VA.R. 2573	7/1/04
9 VAC 20-60-1283	Added	20:23 VA.R. 2573	7/1/04
9 VAC 20-60-1284	Added	20:23 VA.R. 2573	7/1/04
9 VAC 20-60-1285	Amended	20:23 VA.R. 2574	7/1/04
9 VAC 20-60-1286	Added	20:23 VA.R. 2575	7/1/04
9 VAC 20-90-10	Amended	20:23 VA.R. 2576	7/1/04
9 VAC 20-90-30	Amended	20:23 VA.R. 2576	7/1/04
9 VAC 20-90-50	Amended	20:23 VA.R. 2576	7/1/04
9 VAC 20-90-60	Amended	20:23 VA.R. 2577	7/1/04
9 VAC 20-90-65	Added	20:23 VA.R. 2577	7/1/04
9 VAC 20-90-70	Amended	20:23 VA.R. 2578	7/1/04
9 VAC 20-90-90	Amended	20:23 VA.R. 2579	7/1/04
9 VAC 20-90-100	Amended	20:23 VA.R. 2579	7/1/04
9 VAC 20-90-110	Amended	20:23 VA.R. 2580	7/1/04
9 VAC 20-90-115	Added	20:23 VA.R. 2580	7/1/04
9 VAC 20-90-117	Added	20:23 VA.R. 2581	7/1/04
9 VAC 20-90-120	Amended	20:23 VA.R. 2581	7/1/04
9 VAC 20-90-130	Added	20:23 VA.R. 2583	7/1/04
9 VAC 20-110-90	Amended	20:24 VA.R. 2901	9/8/04
9 VAC 20-110-110	Amended	20:24 VA.R. 2901	9/8/04
9 VAC 25-20-10 through 9 VAC 25-20-80	Amended	20:23 VA.R. 2584-2586	7/1/04
9 VAC 25-20-100 through 9 VAC 25-20-130	Amended	20:23 VA.R. 2586-2591	7/1/04
9 VAC 25-20-140	Repealed	20:23 VA.R. 2591	7/1/04
9 VAC 25-20-142	Added	20:23 VA.R. 2591	7/1/04
9 VAC 25-20-145	Added	20:23 VA.R. 2592	7/1/04
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
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

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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 25-400-10	Repealed	20:25 VA.R. 3083	9/22/04
9 VAC 25-401-10 through 9 VAC 25-401-50	Added	20:25 VA.R. 3083	9/22/04
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 25-720-50	Amended	20:24 VA.R. 2903	9/8/04
9 VAC 25-720-60	Amended	20:24 VA.R. 2910	9/8/04
9 VAC 25-720-90	Amended	20:24 VA.R. 2918	9/8/04
9 VAC 25-720-130	Amended	20:24 VA.R. 2920	9/8/04
9 VAC 25-770	Erratum	20:24 VA.R. 2981	--
9 VAC 25-770-10 through 9 VAC 25-770-180	Added	20:23 VA.R. 2593-2596	8/25/04
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
10 VAC 5-200-100	Added	20:22 VA.R. 2403	6/15/04
Title 11. Gaming			
11 VAC 10-20-190	Amended	20:23 VA.R. 2598	8/25/04
11 VAC 10-20-200	Amended	20:25 VA.R. 3083	9/23/04
11 VAC 10-20-220	Amended	20:23 VA.R. 2596	8/25/04
11 VAC 10-20-240 emer	Amended	20:25 VA.R. 3102	7/28/04-7/27/05
11 VAC 10-45	Erratum	20:25 VA.R. 3112	--
11 VAC 10-45-10 through 11 VAC 10-45-70	Added	20:22 VA.R. 2413-2417	9/27/04
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 5-200-10 through 12 VAC 5-200-50	Amended	20:22 VA.R. 2403	8/11/04
12 VAC 5-200-70	Repealed	20:22 VA.R. 2403	8/11/04
12 VAC 5-200-80 through 12 VAC 5-200-190	Amended	20:22 VA.R. 2403	8/11/04
12 VAC 5-200-105	Added	20:22 VA.R. 2403	8/11/04
12 VAC 5-200-210	Repealed	20:22 VA.R. 2403	8/11/04
12 VAC 5-200-220	Amended	20:22 VA.R. 2403	8/11/04
12 VAC 5-200-230	Amended	20:22 VA.R. 2403	8/11/04
12 VAC 5-200-270	Amended	20:22 VA.R. 2403	8/11/04
12 VAC 5-200-280	Amended	20:22 VA.R. 2403	8/11/04
12 VAC 5-200-290	Added	20:22 VA.R. 2403	8/11/04
12 VAC 5-210-10	Repealed	20:22 VA.R. 2403	8/11/04
12 VAC 5-210-20	Repealed	20:22 VA.R. 2403	8/11/04
12 VAC 5-220-10	Amended	20:26 VA.R. 3193	9/27/04

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12 VAC 5-220-160	Amended	20:26 VA.R. 3196	9/27/04
12 VAC 5-220-230	Amended	20:26 VA.R. 3197	9/27/04
12 VAC 5-220-385	Amended	20:26 VA.R. 3198	9/27/04
12 VAC 5-371-110	Amended	20:26 VA.R. 3200	9/27/04
12 VAC 30-40-235	Added	20:19 VA.R. 2060	8/1/04
12 VAC 30-40-280	Amended	20:22 VA.R. 2420	9/25/04
12 VAC 30-40-290	Amended	20:22 VA.R. 2420	9/25/04
12 VAC 30-40-345	Amended	20:22 VA.R. 2422	9/25/04
12 VAC 30-50-130 emer	Amended	20:23 VA.R. 2630	7/1/04-6/30/05
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 30-60-61 emer	Amended	20:23 VA.R. 2632	7/1/04-6/30/05
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 30-70-291	Amended	20:22 VA.R. 2403	8/11/04
12 VAC 30-70-291 emer	Amended	20:24 VA.R. 2968	9/1/04-8/31/05
12 VAC 30-70-301	Amended	20:22 VA.R. 2403	8/11/04
12 VAC 30-70-301 emer	Amended	20:24 VA.R. 2968	9/1/04-8/31/05
12 VAC 30-70-331	Amended	20:22 VA.R. 2403	8/11/04
12 VAC 30-70-391 emer	Amended	20:24 VA.R. 2969	9/1/04-8/31/05
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 30-80-190 emer	Amended	20:26 VA.R. 3203	9/1/04-8/31/05
12 VAC 30-80-190 emer	Amended	20:26 VA.R. 3204	9/1/04-8/31/05
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 30-130-860 through 12 VAC 30-130-890 emer	Amended	20:23 VA.R. 2633-2638	7/1/04-6/30/05
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 13. Housing			
13 VAC 5-51-134 emer	Added	20:24 VA.R. 2970	7/8/04-7/7/05
13 VAC 5-62-260	Amended	20:25 VA.R. 3084	9/8/04
Title 14. Insurance			
14 VAC 5-90-10 through 14 VAC 5-90-50	Amended	20:25 VA.R. 3090-3091	8/4/04
14 VAC 5-90-30	Erratum	20:17 VA.R. 1984	--
14 VAC 5-90-55	Added	20:25 VA.R. 3091	8/4/04
14 VAC 5-90-60 through 14 VAC 5-90-180	Amended	20:25 VA.R. 3092	8/4/04
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 5-90 (Forms)	Amended	20:25 VA.R. 3092	8/4/04
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 25-40-10	Amended	20:26 VA.R. 3201	10/15/04
16 VAC 25-40-20	Amended	20:26 VA.R. 3201	10/15/04
16 VAC 25-40-50	Amended	20:26 VA.R. 3202	10/15/04
16 VAC 25-90-1910	Erratum	21:1 VA.R. 44	--
16 VAC 25-90-1910, Appendix C of Subpart T of Part 1910	Added	20:19 VA.R. 2073	7/1/04

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16 VAC 25-90-1910.103	Amended	20:26 VA.R. 3202	10/15/04
16 VAC 25-90-1910.217	Amended	20:26 VA.R. 3202	10/15/04
16 VAC 25-90-1910.219	Amended	20:26 VA.R. 3202	10/15/04
16 VAC 25-90-1910.268	Amended	20:26 VA.R. 3202	10/15/04
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 25-175-1926	Erratum	21:1 VA.R. 44	--
16 VAC 25-90-1926.307	Amended	20:26 VA.R. 3202	10/15/04
16 VAC 25-145-10 through 16 VAC 25-145-50	Added	20:12 VA.R. 1505-1506	4/1/04
Title 18. Professional and Occupational Licensing			
18 VAC 15-30-420	Amended	20:24 VA.R. 2924	9/8/04
18 VAC 15-30-820	Amended	20:24 VA.R. 2925	9/8/04
18 VAC 15-30 (Forms)	Amended	20:24 VA.R. 2925	9/8/04
18 VAC 30-20-80	Amended	20:23 VA.R. 2598	8/25/04
18 VAC 30-20-150	Amended	20:23 VA.R. 2598	8/25/04
18 VAC 30-20-160	Amended	20:23 VA.R. 2598	8/25/04
18 VAC 30-20-290 emer	Added	20:23 VA.R. 2638	8/25/04-8/24/05
18 VAC 30-20-320	Amended	20:23 VA.R. 2598	8/25/04
18 VAC 41-30-10 through 18 VAC 41-30-250 emer	Added	20:23 VA.R. 2639-2650	7/1/04-6/30/05
18 VAC 41-40-10 through 18 VAC 41-40-260	Added	20:19 VA.R. 2074	7/1/04
18 VAC 41-50-10 through 18 VAC 41-50-220 emer	Added	20:23 VA.R. 2651-2662	7/1/04-6/30/05
18 VAC 45-10-10 through 18 VAC 45-10-40	Amended	20:25 VA.R. 3093-3094	11/8/04
18 VAC 45-10-60 through 18 VAC 45-10-90	Amended	20:25 VA.R. 3094-3095	11/8/04
18 VAC 60-20-17 emer	Added	20:23 VA.R. 2663	8/25/04-8/24/05
18 VAC 60-20-20 emer	Amended	20:24 VA.R. 2971	7/15/04-7/14/05
18 VAC 60-20-91 emer	Added	20:24 VA.R. 2971	7/15/04-7/14/05
18 VAC 60-20 (Forms) emer	Amended	20:24 VA.R. 2972	7/15/04-7/14/05
18 VAC 62-20	Erratum	21:1 VA.R. 44	--
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 62-20-40 emer	Added	20:25 VA.R. 3104	7/23/04-2/1/05
18 VAC 62-20-90 emer	Added	20:25 VA.R. 3104	7/23/04-2/1/05
18 VAC 65-20-15 emer	Added	20:24 VA.R. 2973	7/15/04-7/14/05
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 80-10-10 through 18 VAC 80-10-90	Amended	20:23 VA.R. 2628-2629	10/9/04
18 VAC 85-15-10	Added	21:1 VA.R. 26	9/1/04-8/31/05
18 VAC 85-15-20	Added	21:1 VA.R. 26	9/1/04-8/31/05
18 VAC 85-15-30	Added	21:1 VA.R. 26	9/1/04-8/31/05
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 85-80-61 emer	Added	20:25 VA.R. 3105	7/27/04-7/26/05
18 VAC 85-120-10 through 18 VAC 85-120-150	Amended	20:23 VA.R. 2599-2601	8/25/04
18 VAC 85-120-75	Added	20:24 VA.R. 2928	9/8/04
18 VAC 85-120 (Forms)	Amended	20:24 VA.R. 2928	9/8/04
18 VAC 90-15-10	Added	21:1 VA.R. 27	9/1/04-8/31/05
18 VAC 90-15-20	Added	21:1 VA.R. 27	9/1/04-8/31/05
18 VAC 90-15-30	Added	21:1 VA.R. 27	9/1/04-8/31/05
18 VAC 90-20-10 emer	Amended	20:22 VA.R. 2424	6/24/04-6/23/05
18 VAC 90-20-10	Amended	20:24 VA.R. 2929	9/8/04
18 VAC 90-20-30	Amended	20:20 VA.R. 2166	7/14/04
18 VAC 90-20-35	Amended	20:24 VA.R. 2929	9/8/04
18 VAC 90-20-40	Amended	20:24 VA.R. 2929	9/8/04
18 VAC 90-20-50	Amended	20:24 VA.R. 2929	9/8/04

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18 VAC 90-20-60	Amended	20:24 VA.R. 2929	9/8/04
18 VAC 90-20-65	Added	20:24 VA.R. 2929	9/8/04
18 VAC 90-20-95	Amended	20:24 VA.R. 2929	9/8/04
18 VAC 90-20-120	Amended	20:24 VA.R. 2929	9/8/04
18 VAC 90-20-140	Amended	20:24 VA.R. 2929	9/8/04
18 VAC 90-20-160	Amended	20:24 VA.R. 2929	9/8/04
18 VAC 90-20-170	Amended	20:24 VA.R. 2929	9/8/04
18 VAC 90-20-181 emer	Added	20:22 VA.R. 2425	6/24/04-6/23/05
18 VAC 90-20-182 emer	Added	20:22 VA.R. 2425	6/24/04-6/23/05
18 VAC 90-20-183 emer	Added	20:22 VA.R. 2425	6/24/04-6/23/05
18 VAC 90-20-190	Amended	20:24 VA.R. 2929	9/8/04
18 VAC 90-20-200	Amended	20:24 VA.R. 2929	9/8/04
18 VAC 90-20-220	Amended	20:24 VA.R. 2929	9/8/04
18 VAC 90-20-230	Amended	20:24 VA.R. 2929	9/8/04
18 VAC 90-20-270	Amended	20:24 VA.R. 2929	9/8/04
18 VAC 90-20-280	Amended	20:24 VA.R. 2929	9/8/04
18 VAC 90-20-300 emer	Amended	20:22 VA.R. 2425	6/24/04-6/23/05
18 VAC 90-20-300	Amended	20:24 VA.R. 2929	9/8/04
18 VAC 90-20-310 through 18 VAC 90-20-360	Repealed	20:24 VA.R. 2929	9/8/04
18 VAC 90-20-390	Amended	20:24 VA.R. 2929	9/8/04
18 VAC 90-20-410	Amended	20:24 VA.R. 2929	9/8/04
18 VAC 90-20-460	Amended	20:24 VA.R. 2929	9/8/04
18 VAC 90-20 (Forms)	Amended	20:24 VA.R. 2930	9/8/04
18 VAC 90-25-10 through 18 VAC 90-25-100	Added	20:24 VA.R. 2931-2934	9/8/04
18 VAC 90-25 (Forms)	Amended	20:24 VA.R. 2934	9/8/04
18 VAC 90-30-80 emer	Amended	20:24 VA.R. 2974	7/15/04-7/14/05
18 VAC 90-30-100 emer	Amended	20:24 VA.R. 2974	7/15/04-7/14/05
18 VAC 90-30-110 emer	Amended	20:24 VA.R. 2974	7/15/04-7/14/05
18 VAC 90-30-120 emer	Amended	20:24 VA.R. 2975	7/15/04-7/14/05
18 VAC 95-20-471 emer	Added	20:25 VA.R. 3105	7/28/04-7/27/05
18 VAC 105-20-41 emer	Added	20:24 VA.R. 2975	8/25/04-8/24/05
18 VAC 110-20-10 through 18 VAC 110-20-40	Amended	20:23 VA.R. 2602-2604	8/25/04
18 VAC 110-20-15 emer	Added	20:24 VA.R. 2976	7/15/04-7/14/05
18 VAC 110-20-60	Amended	20:23 VA.R. 2604	8/25/04
18 VAC 110-20-70	Amended	20:23 VA.R. 2604	8/25/04
18 VAC 110-20-80	Amended	20:23 VA.R. 2604	8/25/04
18 VAC 110-20-90	Amended	20:23 VA.R. 2604	8/25/04
18 VAC 110-20-105	Amended	20:23 VA.R. 2605	8/25/04
18 VAC 110-20-110	Amended	20:23 VA.R. 2605	8/25/04
18 VAC 110-20-120	Amended	20:23 VA.R. 2605	8/25/04
18 VAC 110-20-121	Added	20:23 VA.R. 2605	8/25/04
18 VAC 110-20-130 through 18 VAC 110-20-220	Amended	20:23 VA.R. 2605	8/25/04
18 VAC 110-20-240	Amended	20:23 VA.R. 2606	8/25/04
18 VAC 110-20-250	Amended	20:23 VA.R. 2606	8/25/04
18 VAC 110-20-280	Amended	20:23 VA.R. 2606	8/25/04
18 VAC 110-20-285	Amended	20:23 VA.R. 2606	8/25/04
18 VAC 110-20-330	Amended	20:23 VA.R. 2606	8/25/04
18 VAC 110-20-350	Amended	20:23 VA.R. 2606	8/25/04
18 VAC 110-20-355	Amended	20:23 VA.R. 2606	8/25/04
18 VAC 110-20-360	Amended	20:23 VA.R. 2606	8/25/04
18 VAC 110-20-370	Repealed	20:23 VA.R. 2606	8/25/04
18 VAC 110-20-380	Repealed	20:23 VA.R. 2606	8/25/04
18 VAC 110-20-410	Amended	20:23 VA.R. 2606	8/25/04
18 VAC 110-20-412	Amended	20:23 VA.R. 2606	8/25/04
18 VAC 110-20-415	Amended	20:23 VA.R. 2606	8/25/04
18 VAC 110-20-420	Amended	20:23 VA.R. 2606	8/25/04

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18 VAC 110-20-440	Amended	20:23 VA.R. 2606	8/25/04
18 VAC 110-20-450	Amended	20:23 VA.R. 2607	8/25/04
18 VAC 110-20-460	Amended	20:23 VA.R. 2607	8/25/04
18 VAC 110-20-470	Amended	20:23 VA.R. 2607	8/25/04
18 VAC 110-20-480	Repealed	20:23 VA.R. 2607	8/25/04
18 VAC 110-20-490	Amended	20:23 VA.R. 2607	8/25/04
18 VAC 110-20-500	Amended	20:23 VA.R. 2607	8/25/04
18 VAC 110-20-510	Amended	20:23 VA.R. 2607	8/25/04
18 VAC 110-20-530	Amended	20:23 VA.R. 2607	8/25/04
18 VAC 110-20-540	Amended	20:23 VA.R. 2607	8/25/04
18 VAC 110-20-550	Amended	20:23 VA.R. 2607	8/25/04
18 VAC 110-20-555	Amended	20:23 VA.R. 2607	8/25/04
18 VAC 110-20-590	Amended	20:23 VA.R. 2607	8/25/04
18 VAC 110-20-680 through 18 VAC 110-20-710	Amended	20:23 VA.R. 2607	8/25/04
18 VAC 110-20-720	Amended	20:18 VA.R. 2021	7/1/04
18 VAC 112-20-10	Amended	20:24 VA.R. 2935	9/8/04
18 VAC 112-20-20	Repealed	20:24 VA.R. 2935	9/8/04
18 VAC 112-20-26 emer	Added	20:23 VA.R. 2664	8/25/04-8/24/05
18 VAC 112-20-40	Amended	20:24 VA.R. 2935	9/8/04
18 VAC 112-20-50	Amended	20:24 VA.R. 2935	9/8/04
18 VAC 112-20-60	Amended	20:24 VA.R. 2935	9/8/04
18 VAC 112-20-65	Amended	20:24 VA.R. 2935	9/8/04
18 VAC 112-20-70	Amended	20:24 VA.R. 2935	9/8/04
18 VAC 112-20-80	Repealed	20:24 VA.R. 2935	9/8/04
18 VAC 112-20-90	Amended	20:24 VA.R. 2935	9/8/04
18 VAC 112-20-100	Amended	20:24 VA.R. 2935	9/8/04
18 VAC 112-20-110	Repealed	20:24 VA.R. 2935	9/8/04
18 VAC 112-20-120	Amended	20:24 VA.R. 2935	9/8/04
18 VAC 112-20-130	Amended	20:24 VA.R. 2935	9/8/04
18 VAC 112-20 (Forms)	Amended	20:24 VA.R. 2936	9/8/04
18 VAC 115-15-10 emer	Added	20:23 VA.R. 2665	8/25/04-8/24/05
18 VAC 115-15-20 emer	Added	20:23 VA.R. 2665	8/25/04-8/24/05
18 VAC 115-15-30 emer	Added	20:23 VA.R. 2665	8/25/04-8/24/05
18 VAC 115-20-20	Amended	20:24 VA.R. 2936	9/8/04
18 VAC 115-20-100	Amended	20:24 VA.R. 2936	9/8/04
18 VAC 115-20-105	Added	20:24 VA.R. 2936	9/8/04
18 VAC 115-20-106	Added	20:24 VA.R. 2936	9/8/04
18 VAC 115-20-107	Added	20:24 VA.R. 2936	9/8/04
18 VAC 115-20-110	Amended	20:24 VA.R. 2936	9/8/04
18 VAC 115-20-140	Amended	20:24 VA.R. 2936	9/8/04
18 VAC 115-20 (Forms)	Amended	20:24 VA.R. 2937	9/8/04
18 VAC 115-50-20	Amended	20:24 VA.R. 2936	9/8/04
18 VAC 115-50-90	Amended	20:24 VA.R. 2936	9/8/04
18 VAC 115-50-95	Added	20:24 VA.R. 2936	9/8/04
18 VAC 115-50-96	Added	20:24 VA.R. 2936	9/8/04
18 VAC 115-50-97	Added	20:24 VA.R. 2936	9/8/04
18 VAC 115-50-100	Amended	20:24 VA.R. 2936	9/8/04
18 VAC 115-50-120	Amended	20:24 VA.R. 2936	9/8/04
18 VAC 115-50 (Forms)	Amended	20:24 VA.R. 2937	9/8/04
18 VAC 115-60-20	Amended	20:24 VA.R. 2936	9/8/04
18 VAC 115-60-110	Amended	20:24 VA.R. 2936	9/8/04
18 VAC 115-60-115	Added	20:24 VA.R. 2936	9/8/04
18 VAC 115-60-116	Added	20:24 VA.R. 2936	9/8/04
18 VAC 115-60-117	Added	20:24 VA.R. 2936	9/8/04
18 VAC 115-60-120	Amended	20:24 VA.R. 2936	9/8/04
18 VAC 115-60-140	Amended	20:24 VA.R. 2936	9/8/04

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 115-60 (Forms)	Amended	20:24 VA.R. 2937	9/8/04
18 VAC 120-10-100	Erratum	20:13 VA.R. 1644	--
18 VAC 125-15-10 emer	Added	20:25 VA.R. 3106	7/28/04-7/27/05
18 VAC 125-15-20 emer	Added	20:25 VA.R. 3106	7/28/04-7/27/05
18 VAC 125-15-30 emer	Added	20:25 VA.R. 3106	7/28/04-7/27/05
18 VAC 135-20-80	Amended	20:23 VA.R. 2608	9/1/04
18 VAC 135-20-120	Amended	20:23 VA.R. 2608	9/1/04
18 VAC 135-20-140	Amended	20:23 VA.R. 2608	9/1/04
18 VAC 135-20-370	Amended	20:23 VA.R. 2608	9/1/04
18 VAC 140-20-171 emer	Added	20:23 VA.R. 2665	8/25/04-8/24/05
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	--
18 VAC 150-20-10	Amended	20:24 VA.R. 2966	10/23/04
18 VAC 150-20-15 emer	Added	20:23 VA.R. 2666	8/25/04-8/24/05
18 VAC 150-20 (Forms)	Amended	20:24 VA.R. 2967	10/23/04
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
20 VAC 5-419-10 through 20 VAC 5-419-40	Amended	20:24 VA.R. 2939-2942	7/21/04
20 VAC 5-425-10 through 20 VAC 5-425-50	Added	20:23 VA.R. 2611-2613	7/1/04
Title 22. Social Services			
22 VAC 15-20-10 through 22 VAC 15-20-380	Repealed	20:24 VA.R. 2942-2943	11/1/04
22 VAC 15-50-10 through 22 VAC 15-50-70	Repealed	20:24 VA.R. 2943	10/1/04
22 VAC 15-51-10 through 22 VAC 15-51-80	Added	20:24 VA.R. 2943-2948	10/1/04
22 VAC 30-50-30	Amended	20:18 VA.R. 2022	6/18/04
22 VAC 40-32	Repealed	20:23 VA.R. 2613	9/1/04
22 VAC 40-80-10	Amended	20:24 VA.R. 2948	11/1/04
22 VAC 40-80-30 through 22 VAC 40-80-60	Amended	20:24 VA.R. 2950-2951	11/1/04
22 VAC 40-80-80 through 22 VAC 40-80-210	Amended	20:24 VA.R. 2951-2955	11/1/04
22 VAC 40-80-220	Repealed	20:24 VA.R. 2955	11/1/04
22 VAC 40-80-230	Amended	20:24 VA.R. 2955	11/1/04
22 VAC 40-80-240	Amended	20:24 VA.R. 2955	11/1/04
22 VAC 40-80-260	Amended	20:24 VA.R. 2956	11/1/04
22 VAC 40-80-270	Amended	20:24 VA.R. 2956	11/1/04
22 VAC 40-80-290	Amended	20:24 VA.R. 2956	11/1/04
22 VAC 40-80-300	Amended	20:24 VA.R. 2957	11/1/04
22 VAC 40-80-310	Amended	20:24 VA.R. 2957	11/1/04
22 VAC 40-80-330	Amended	20:24 VA.R. 2957	11/1/04
22 VAC 40-80-340	Amended	20:24 VA.R. 2957	11/1/04
22 VAC 40-80-350	Repealed	20:24 VA.R. 2958	11/1/04
22 VAC 40-80-360	Repealed	20:24 VA.R. 2958	11/1/04
22 VAC 40-80-370	Amended	20:24 VA.R. 2958	11/1/04
22 VAC 40-80-375	Added	20:24 VA.R. 2959	11/1/04
22 VAC 40-80-380	Repealed	20:24 VA.R. 2959	11/1/04
22 VAC 40-80-390 through 22 VAC 40-80-520	Added	20:24 VA.R. 2959-2964	11/1/04
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 40-191-40	Amended	20:22 VA.R. 2404	9/1/04
22 VAC 40-191-50	Amended	20:22 VA.R. 2407	9/1/04
22 VAC 40-290-10	Repealed	20:23 VA.R. 2613	9/1/04
22 VAC 40-293-10	Added	20:21 VA.R. 2245	7/28/04

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
22 VAC 40-293-20	Added	20:21 VA.R. 2245	7/28/04
22 VAC 40-295-10 through 22 VAC 40-295-170	Added	20:23 VA.R. 2614-2620	9/1/04
22 VAC 40-300	Repealed	20:23 VA.R. 2613	9/1/04
22 VAC 40-310	Repealed	20:23 VA.R. 2613	9/1/04
22 VAC 40-320	Repealed	20:23 VA.R. 2613	9/1/04
22 VAC 40-330-10	Amended	20:23 VA.R. 2620	9/1/04
22 VAC 40-330-20	Amended	20:23 VA.R. 2620	9/1/04
22 VAC 40-340-10	Amended	20:23 VA.R. 2621	9/1/04
22 VAC 40-350	Repealed	20:23 VA.R. 2613	9/1/04
22 VAC 40-360	Repealed	20:23 VA.R. 2613	9/1/04
22 VAC 40-370	Repealed	20:23 VA.R. 2613	9/1/04
22 VAC 40-380	Repealed	20:23 VA.R. 2613	9/1/04
22 VAC 40-390	Repealed	20:23 VA.R. 2613	9/1/04
22 VAC 40-420	Repealed	20:23 VA.R. 2613	9/1/04
22 VAC 40-430	Repealed	20:23 VA.R. 2613	9/1/04
22 VAC 40-440	Repealed	20:23 VA.R. 2613	9/1/04
22 VAC 40-450	Repealed	20:23 VA.R. 2613	9/1/04
22 VAC 40-460	Repealed	20:23 VA.R. 2613	9/1/04
22 VAC 40-490	Repealed	20:23 VA.R. 2613	9/1/04
22 VAC 40-500	Repealed	20:23 VA.R. 2613	9/1/04
22 VAC 40-510	Repealed	20:23 VA.R. 2613	9/1/04
22 VAC 40-520	Repealed	20:23 VA.R. 2614	9/1/04
22 VAC 40-530	Repealed	20:23 VA.R. 2614	9/1/04
22 VAC 40-550	Repealed	20:23 VA.R. 2614	9/1/04
22 VAC 40-580	Repealed	20:23 VA.R. 2614	9/1/04
22 VAC 40-590	Repealed	20:23 VA.R. 2614	9/1/04
22 VAC 40-610	Repealed	20:23 VA.R. 2614	9/1/04
22 VAC 40-620	Repealed	20:23 VA.R. 2614	9/1/04
22 VAC 40-650	Repealed	20:23 VA.R. 2614	9/1/04
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	--
22 VAC 40-750	Repealed	20:23 VA.R. 2614	9/1/04
22 VAC 40-760	Repealed	20:23 VA.R. 2614	9/1/04
Title 24. Transportation and Motor Vehicles			
24 VAC 20-70	Repealed	20:25 VA.R. 3092	9/22/04
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 2. AGRICULTURE

STATE BOARD OF AGRICULTURE AND CONSUMER SERVICES

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 Agriculture and Consumer Services intends to consider amending regulations entitled **2 VAC 5-70, Health Requirements Governing the Control of Equine Infectious Anemia in Virginia**. The purpose of the proposed action is to review the regulation for effectiveness and continued need, including amending the testing requirements for equine infectious anemia. The agency invites comments on whether an advisor should be appointed.

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

Statutory Authority: §§ 3.1-724, 3.1-726 and 3.1-730 of the Code of Virginia.

Public comments may be submitted until October 15, 2004.

Contact: David E. Cardin, Deputy State Veterinarian, Department of Agriculture and Consumer Services, 1100 Bank St., Suite 101, Richmond, VA 23219, telephone (804) 692-0601, FAX (804) 225-2666 or e-mail dcardin@vdacs.state.va.us.

VA.R. Doc. No. R04-258; Filed July 28, 2004, 3:12 p.m.

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 5-40, Existing Stationary Sources**. The purpose of the proposed action is to reduce emissions of volatile organic compounds (VOCs) and nitrogen oxides (NO_x) from open burning and special incineration devices in Virginia's emissions control areas in order to attain and maintain the federal health-based air quality standard for ozone and nitrogen oxides.

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

Statutory Authority: § 10.1-1308 of the Code of Virginia and federal Clean Air Act (§§ 110, 111, 123, 129, 171, 172 and 182), 40 CFR Parts 51 and 60.

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

Contact: Mary L. Major, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4423, FAX (804) 698-4510 or e-mail mlmajor@deq.virginia.gov.

VA.R. Doc. No. R05-24; Filed September 15, 2004, 11:20 a.m.

VIRGINIA WASTE MANAGEMENT BOARD

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Virginia Waste Management Board intends to consider amending regulations entitled **9 VAC 20-85, Regulation Governing Management of Coal Combustion By-Products**. The purpose of the proposed action is to include (i) provisions for fossil fuel combustion products; (ii) the possibility of eliminating the regulation and placing all provisions of the regulation into the Virginia Solid Waste Management Regulations (VSWMR), or removing the provisions addressing coal ash from the VSWMR and consolidating the provisions in this regulation; and (iii) additional issues that are identified during the NOIRA comment period, the technical advisory committee meetings, and during the public comment period.

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

Statutory Authority: §§ 10.1-1402 and 10.1-1408.1 et seq. of the Code of Virginia, 42 USC 6941 et seq., and 40 CFR Part 257.

Public comments may be submitted until 5 p.m. on November 15, 2004.

Contact: Michael Dieter, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone: 804-698-4146, FAX: 804-698-4327, or e-mail: mjdieter@deq.virginia.gov.

VA.R. Doc. No. R05-25; Filed September 16, 2004, 11:44 a.m.

STATE WATER 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 Water Control Board intends to consider amending regulations entitled **9 VAC 25-194,**

Notices of Intended Regulatory Action

General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Car Wash Facilities. The purpose of the proposed action is to reissue the existing general VPDES permit for car wash facilities that expires on October 15, 2007.

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

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the Clean Water Act; 40 CFR Parts 122, 123 and 124.

Public comments may be submitted until 5 p.m. on October 20, 2004.

Contact: George Cosby, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4067, FAX (804) 698-4032 or e-mail gecosby@deq.virginia.gov.

VA.R. Doc. No. R05-05; Filed August 27, 2004, 8:38 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to consider amending regulations entitled **9 VAC 25-260, Water Quality Standards**. The purpose of the proposed action is to amend the state's Antidegradation Policy (9 VAC 25-260-30), part of the Water Quality Standards, by designating portions of the Cowpasture River and Simpson Creek as Exceptional State Waters.

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

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

Public comments may be submitted until 5 p.m. on November 15, 2004.

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 jwggregory@deq.virginia.gov.

VA.R. Doc. No. R05-26; Filed September 15, 2004, 11:20 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to consider promulgating regulations entitled **9 VAC 25-800, Virginia Water Protection General Permit for Minor Water Withdrawals**. The purpose of the proposed action is to establish a general Virginia Water Protection permit for water withdrawals.

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

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

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

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

VA.R. Doc. No. R04-263; Filed August 2, 2004, 12:55 p.m.

TITLE 11. GAMING

CHARITABLE GAMING BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Charitable Gaming Board intends to consider amending regulations entitled **11 VAC 15-22, Charitable Gaming Rules and Regulations**. The 2003 General Assembly created the Department of Charitable Gaming and the Charitable Gaming Board to replace the former Charitable Gaming Commission. The current Charitable Gaming Rules and Regulations were adopted by the former commission effective January 1, 1998, and include many references to the commission, which no longer exists, as well as to statutes that have since been amended. The goals of the amended regulations will be to simplify and clarify the regulations while also making them consistent with current statutes.

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

Statutory Authority: §§ 2.2-2546 and 18.2-340.19 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on October 20, 2004.

Contact: Clyde E. Cristman, Director, Department of Charitable Gaming, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219-3684, telephone (804) 786-1681, FAX (804) 786-1079 or e-mail Clyde.Cristman@dca.virginia.gov.

VA.R. Doc. No. R05-07; Filed August 23, 2004, 10:42 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Charitable Gaming Board intends to consider amending regulations entitled **11 VAC 15-31, Supplier Regulations**. The 2003 General Assembly created the Department of Charitable Gaming and the Charitable Gaming Board to replace the former Charitable Gaming Commission. The current Supplier Regulations were adopted by the former commission effective January 1, 1998, and include many references to the commission, which no longer exists, as well as to statutes that have since been amended. The goals of the amended regulations will be to simplify and clarify the regulations while also making them consistent with current statutes.

Notices of Intended Regulatory Action

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

Statutory Authority: §§ 2.2-2546 and 18.2-340.34 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on October 20, 2004.

Contact: Clyde E. Cristman, Director, Department of Charitable Gaming, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219-3684, telephone (804) 786-1681, FAX (804) 786-1079 or e-mail Clyde.Cristman@dca.virginia.gov.

VA.R. Doc. No. R05-08; Filed August 23, 2004, 10:43 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 repealing regulations entitled **12 VAC 5-190, State Plan for the Provision of Children's Specialty Services;** and adopting regulations entitled **12 VAC 5-191, State Plan for the Children with Special Health Care Needs Program.** The purpose of the proposed action is to replace the current State Plan for the Provision of Children's Specialty Services with the State Plan for the Children with Special Health Care Needs Program.

The current regulations do not adequately address the existing model for providing services to children with special health care needs. With the expansion of publicly financed health care coverage for children with special health care needs, the growth of managed care delivery systems, and a federal emphasis on developing systems of care that provide family-centered care coordination and services, the Virginia Department of Health (VDH) discontinued the diagnosis-based, clinic direct service, Children's Specialty Services Program starting in 2000. Based upon results from a 1999 comprehensive needs assessment with families of children with special health care needs, changing federal emphasis, and examination of successful service delivery models, the state Children with Special Health Care Needs Program now contracts with local entities to manage five regional Centers of Excellence known as Care Connection for Children Centers. The sixth center is managed by the Children with Special Health Care Needs Program. Care Connection for Children Centers are affiliated with major hospitals and universities with the capacity to provide pediatric specialty care. These centers provide care coordination, including family-to-family support and health insurance benefits counseling, to any resident of Virginia under age 21 with a chronic physical condition. In addition, the Children with Special Health Care Needs Program continues to administer a limited pool of funds to assist with payment of services for uninsured and

underinsured children with special health care needs. The new regulations will amend the state plan to meet the program's expanded and modified model of care and to address program requirements for access to the pool of funds, which is not an entitlement and subject to availability of funds.

VDH continues to operate child development clinics across the state, another service under the Children with Special Health Care Needs Program. The Children with Special Health Care Needs Program also administers the state-mandated Bleeding Disorders (Hemophilia) Program. The replacement regulations will provide a state plan for administration, eligibility, and scope of these two programs.

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 and 32.1-77 of the Code of Virginia.

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

Contact: Bob Swander, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7649 or e-mail bob.swander@vdh.virginia.gov.

VA.R. Doc. No. R05-21; Filed September 13, 2004, 3:51 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled **12 VAC 30-80, Methods and Standards for Establishing Payment Rates; Other Types of Care (OB/GYN Rates).** The purpose of the proposed action is to increase the rates of reimbursement paid for obstetric/gynecological services by 34%.

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

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Public comments may be submitted until October 20, 2004, to Steve Ford, Manager, Division of Provider Reimbursement, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons or Brian McCormick, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959, FAX (804) 786-1680 or e-mail vicki.simmons@dmas.virginia.gov or brian.mccormick@dmas.virginia.gov.

VA.R. Doc. No. R05-06; Filed August 20, 2004, 10:03 a.m.

Notices of Intended Regulatory Action

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled **12 VAC 30-80, Methods and Standards for Establishing Payment Rates; Other Types of Care (Increase Emergency Room Physician Fees)**. The purpose of the proposed action is to (i) add language providing that certain physician procedure codes be increased by 2.0% above the normal calculated amounts; (ii) update old references to the federal funding agency; (iii) remove outdated or time-limited text that is no longer needed; and (iv) consider other technical corrections as may be appropriate.

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

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Public comments may be submitted until October 20, 2004, to Steve Ford, Manager, Division of Provider Reimbursement, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons or Brian McCormick, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959, FAX (804) 786-1680 or e-mail vicki.simmons@dmas.virginia.gov or brian.mccormick@dmas.virginia.gov.

VA.R. Doc. No. R05-10; Filed August 26, 2004, 9:50 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Virginia Board for Asbestos, Lead, and Home Inspectors intends to consider amending regulations entitled **18 VAC 15-20, Virginia Asbestos Licensing Regulations**. The purpose of the proposed action is to review the board's regulation of asbestos project monitors to identify any amendments that assure the presence of a project monitor on asbestos projects and examine whether the existing duties, responsibilities and functions should be amended to assure public protection. Also, the intent of the planned regulatory action is to review the existing regulations and propose amendments to empower the board to deny license and approval as well as to take disciplinary action against those acting as or being an ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensed or approved entity. In addition, the board will carefully evaluate its existing

regulations for effectiveness and continued need, and will propose any amendments necessary to protect the public health, safety, and welfare, or to further the efficient and economical performance of important government functions.

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

Statutory Authority: § 54.1-501 of the Code of Virginia.

Public comments may be submitted until October 15, 2004.

Contact: Tom Perry, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, FAX (804) 367-6128 or e-mail alhi@dpor.virginia.gov.

VA.R. Doc. No. R04-241; Filed July 15, 2004, 2:30 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Virginia Board for Asbestos, Lead, and Home Inspectors intends to consider amending regulations entitled **18 VAC 15-30, Lead-Based Paint Activities Regulations**. The purpose of the proposed action is to review the existing regulations and propose amendments to empower the board to deny license and approval as well as to take disciplinary action against those acting as or being an ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensed or approved entity. In addition, the board will carefully evaluate its existing regulations for effectiveness and continued need, and will propose any amendments necessary to protect the public health, safety, and welfare, or to further the efficient and economical performance of important government functions.

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

Statutory Authority: § 54.1-501 of the Code of Virginia.

Public comments may be submitted until October 15, 2004.

Contact: Tom Perry, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, FAX (804) 367-6128 or e-mail alhi@dpor.virginia.gov.

VA.R. Doc. No. R04-239; Filed July 15, 2004, 2:29 p.m.

AUCTIONEERS BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Auctioneers Board intends to consider amending regulations entitled **18 VAC 25-21, Rules and Regulations of the Virginia Auctioneers Board**. The purpose of the proposed action is to develop necessary regulations to implement a mandatory continuing education program for the renewal/reinstatement of auctioneer licenses

Notices of Intended Regulatory Action

as required by Chapter 956 of the 2004 Acts of Assembly. Other changes that may be necessary pursuant to the board's periodic review of its regulation and any other changes will also be considered.

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

Statutory Authority: §§ 54.1-602 and 54.1-603.1 of the Code of Virginia.

Public comments may be submitted until October 6, 2004.

Contact: Mark N. Courtney, Executive Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail auctioneers@dpor.virginia.gov.

VA.R. Doc. No. R04-278; Filed August 17, 2004, 12:04 p.m.

BOARD OF MEDICINE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled **18 VAC 85-15, Regulations Governing Delegation to an Agency Subordinate**. The purpose of the proposed action is to set out the decision to delegate at the time of a probable cause determination the types of cases that may be delegated and the individuals who may be designated as agency subordinates.

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

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

Public comments may be submitted until 5 p.m. on October 20, 2004.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9512 or e-mail william.harp@dhp.virginia.gov.

VA.R. Doc. No. R05-01; Filed September 1, 2004, 9:40 a.m.

BOARD OF NURSING

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Nursing intends to consider amending regulations entitled **18 VAC 90-15, Regulations Governing Delegation to an Agency Subordinate**. The purpose of the proposed action is to set out the criteria for delegation of informal fact-finding to an agency subordinate.

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

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

Public comments may be submitted until 5 p.m. on October 20, 2004.

Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9909, FAX (804) 662-9512 or e-mail jay.douglas@dhp.virginia.gov.

VA.R. Doc. No. R05-03; Filed September 1, 2004, 9:45 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 Nursing intends to consider amending regulations entitled **18 VAC 90-20, Regulations of the Board of Nursing**. As a special fund agency, the Board of Nursing is mandated to levy fees sufficient to cover all expenses for the administration and operation of the board and the Department of Health Professions. Therefore, action must be taken to address the current and projected shortfall in the nurse aide budget.

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

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

Public comments may be submitted until 5 p.m. on October 20, 2004.

Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9909, FAX (804) 662-9512 or e-mail jay.douglas@dhp.virginia.gov.

VA.R. Doc. No. R05-09; Filed August 26, 2004, 10:36 a.m.

BOARD OF OPTOMETRY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 54.1-3223 of the Code of Virginia that the Board of Optometry intends to consider amending regulations entitled **18 VAC 105-20, Regulations Governing the Practice of Optometry**. The purpose of the proposed action is to amend regulations establishing treatment guidelines and a current and appropriate list of therapeutic pharmaceuticals on the formulary for optometrists certified to use therapeutic pharmaceutical agents.

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

Statutory Authority: § 54.1-3223 of the Code of Virginia.

Public comments may be submitted until 10 a.m. on October 6, 2004.

Contact: Elizabeth A. Carter, Ph.D., Executive Director, Board of Optometry, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9910, FAX (804) 662-7098 or e-mail elizabeth.carter@dhp.virginia.gov.

VA.R. Doc. No. R04-280; Filed August 18, 2004, 9:10 a.m.

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TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

DEPARTMENT OF MOTOR VEHICLES

† Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the Department of Motor Vehicles has WITHDRAWN the Notice of Intended Regulatory Action for 24 VAC 20-120, Virginia Commercial Driver Training School Regulations, which was published in 17:16 VA.R. 2304 April 23, 2001.

Contact: Marc Copeland, Department of Motor Vehicles, 2300 West Broad Street, Richmond, VA 23269-0001, telephone (804) 435-5137, FAX (804) 367-6631 or e-mail commish@dmv.state.va.us.

VA.R. Doc. No. R01-159; Filed September 13, 2004, 1:48 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Motor Vehicles intends to consider repealing regulations entitled **24 VAC 20-120, Commercial Driver Training School Regulations** and adopting regulations entitled **24 VAC 20-121, Driver Training School Regulations**. The purpose of the proposed action is to ensure that graduates of Class A (commercial vehicle training) and Class B (passenger vehicle training) driver training schools licensed by the Department of Motor Vehicles (DMV) are adequately prepared to safely and independently operate motor vehicles on the public roadways. The overall goals are to (i) strengthen DMV training school standards and develop additional standards to ensure that the instruction provided is uniform and meets all established requirements; (ii) strengthen DMV's oversight process to ensure that reviews of training documentation are consistent, evaluation of school curricula are expanded, and school audits are more comprehensive and less burdensome on driver training course providers; and (iii) implement additional changes intended to ensure that consistently high quality instruction is provided across the driver training school system and that the learning environment for younger students is safe, secure and peer-oriented.

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

Statutory Authority: §§ 46.2-203 and 46.2-1703 of the Code of Virginia.

Public comments may be submitted until November 3, 2004.

Contact: Marc Copeland, Department of Motor Vehicles, 2300 West Broad Street, Richmond, VA 23269-0001, telephone (804) 435-5137, FAX (804) 367-6631 or e-mail commish@dmv.state.va.us.

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 8. EDUCATION

BOARD OF EDUCATION

Title of Regulation: 8 VAC 20-30. Regulations Governing Adult High School Programs (amending 8 VAC 20-30-10 through 8 VAC 20-30-40, 8 VAC 20-30-60, and 8 VAC 20-30-70; repealing 8 VAC 20-30-50).

Statutory Authority: § 22.1-224 of the Code of Virginia.

Public Hearing Date: November 17, 2004 - 11 a.m.

Public comments may be submitted until 5 p.m. on December 6, 2004.

(See Calendar of Events section for additional information)

Agency Contact: Robert MacGillivray, Adult Education Services, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 371-2333, FAX (804) 225-2524.

Basis: Section 22.1-224 of the Code of Virginia authorizes the Board of Education to promulgate appropriate standards and guidelines for adult education programs.

Purpose: The Regulations Governing Adult High School Programs were last amended in 1985 and are not currently consistent with the Regulations Establishing the Standards for Accrediting Public Schools in Virginia (8 VAC 20-131). The purpose of this action is twofold. First, adult high school programs, where adults are able to earn a standard or advanced studies diploma, will be required to maintain the same high standards as regular day school programs. Second, the change provides a high-standard alternative diploma, to be named the adult high school diploma, for adults who are unable to complete the current requirements for a standard or advanced studies diploma.

Today there are over one million adults in Virginia over the age of 18 years who do not have a high school credential. Many adults return to school after many years out of the classroom. They have numerous obstacles to overcome, including a high incidence of undiagnosed learning disabilities, limited English proficiency, significant gaps in previous education, high mobility rates, and economic and societal hardships due, in part, to the lack of a secondary credential. Adult high school programs offer quality education with measured achievement and accountability as part of the National Reporting System (NRS) of the U. S. Department of Education. Adults are offered an opportunity to earn a high school credential, increase their employability, and contribute positively to the economy, their families, and the communities of the Commonwealth. Illiteracy costs Virginia taxpayers nearly \$300 million a year due to unemployment, welfare dependency, and loss of tax revenue. The goal of this regulatory action is to clarify the process by which adults can

earn a high school diploma and diploma types for which they may be eligible.

Substance: Only two substantive changes are recommended to the existing regulations. The first recommendation is intended to create a new diploma, the adult high school diploma, which will be available only to adult students. The adult high school diploma is intended to accommodate the unique circumstances that preclude many adults from earning a standard or advanced studies diploma and will be available to students who complete the External Diploma Program (EDP). The EDP is currently offered in 10 school divisions in the Commonwealth. The second recommendation is to ensure that standard and advanced studies diplomas issued through adult high school programs are consistent with the Regulations Establishing Standards for Accrediting Public Schools in Virginia. Adult education students may earn a standard or advanced studies diploma if they meet the Standards of Accreditation requirements that are in effect at the time they expect to graduate. NOTE: The proposed regulations are expected to be amended at the final stage to state that adult education students may earn a standard or advanced studies diploma if they meet the Standards of Accreditation requirements that are in effect at the time they enroll providing that the enrollment is continuous.

Issues: Working-aged adults who do not have a high school diploma will have credible diploma choices tailored to their individual needs and life circumstances. High standards are associated with each diploma choice. Coupling the General Achievement Diploma (GAD) and the General Educational Development (GED) Certificate with the diploma options resulting from these proposed regulations, adults would have a menu of five different secondary credentials that certify educational attainment at the high school level. The proposed regulations pose 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. The Board of Education (board) proposes to create an adult high school diploma for: (i) individuals who were not required to earn verified credit at the

time they entered the ninth grade, but who meet the credit requirements that were in place at the time they entered the ninth grade, and (ii) individuals who successfully complete the External Diploma Program (EDP). Individuals who were not required to earn verified credit at the time they entered the ninth grade or who have successfully completed the EDP will no longer be eligible for a standard or advanced diploma unless they meet all credit requirements defined by the current Regulations Establishing the Standards for Accrediting Public Schools in Virginia (including verified credit) at the time that they expect to graduate.

Estimated economic impact. Under the current regulations, an adult may earn a standard diploma by satisfying the requirements that were in place at the time he first entered ninth grade, or by successfully completing the EDP. This is misleading for the public, particularly since going forward individuals who were not required to earn verified credit (pass Standards of Learning (SOL) exams) at the time they entered the ninth grade, but who meet the credit requirements that were in place at the time they entered the ninth grade, would be awarded the same diploma as students who must earn verified credit. The board proposes to create an adult high school diploma for those adults who have met the credit requirements that were in place at the time they entered the ninth grade or who have successfully completing the EDP, but who have not taken and passed at least six SOL exams (the verified credit requirement). The board's proposal is beneficial to the public because: (i) it continues to enable individuals who were not required to earn verified credit at the time they entered the ninth grade, but who meet the credit requirements that were in place at the time they entered the ninth grade, to earn a high school diploma, and (ii) the public is not misled into believing that these individuals have met the same standard as current and future high school students, i.e., earned sufficient verified credit to earn a standard diploma.

Separate from these proposed regulations, the board has created the General Achievement Diploma (GAD) for students who have completed all requirements for graduation other than verified credit and obtain a passing score on the GED examination. Potentially, an adult student could choose to satisfy all of the current requirements for a high school diploma other than the verified credits, pass the GED, and obtain the GAD. By creating separate names (standard, adult, GAD) for these three separate routes to obtaining a high school diploma, the public is better informed regarding what was accomplished to obtain the designation.

Businesses and entities affected. The proposed amendments affect the 131 school divisions in the Commonwealth, individuals seeking a high school diploma, and employers or other entities who wish to have a better understanding of what diploma holders have accomplished to earn their degree. During the 2002-2003 school year, 284 adult Virginians in localities other than Fairfax earned a standard high school diploma by satisfying graduation requirements that existed when they were in ninth grade.¹ The Department of Education estimates that another 150 adult students in Fairfax earned a

standard high school diploma by satisfying graduation requirements that existed when they were in ninth grade. In addition, 50 students earned a standard high school diploma by completing the EDP during 2002-2003. Under the proposed regulations, the diploma earned by all these students will be called an adult high school diploma.

Localities particularly affected. The proposed regulations affect all Virginia localities.

Projected impact on employment. The proposed amendments are unlikely to have a significant impact on employment.

Effects on the use and value of private property. The proposed amendments are unlikely to have a significant impact on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency agrees with the Economic Impact Analysis done by DPB on April 30, 2004. The agency will continue to examine the economic and administrative impact of the regulations as they progress through the Administrative Process Act process.

Summary:

The proposed amendments create an adult high school diploma for (i) individuals who were not required to earn verified credit at the time they entered the ninth grade, but who meet the credit requirements that were in place at the time they entered the ninth grade and (ii) individuals who successfully complete the External Diploma Program (EDP). Individuals who were not required to earn verified credit at the time they entered the ninth grade or who have successfully completed the EDP will no longer be eligible for a standard or advanced diploma unless they meet all credit requirements defined by the Regulations Establishing the Standards for Accrediting Public Schools in Virginia (8 VAC 20-131) at the time they expect to graduate.

8 VAC 20-30-10. Responsibility.

Local authorities are responsible for evaluating and awarding credit for educational achievement, other than that earned in the ~~regular~~ high school program.

8 VAC 20-30-20. Minimum requirements for ~~secondary~~ adult high school programs.

~~Secondary~~ Adult high school programs for adults which are not part of the ~~regular day 9 through 12~~ high school program and shall meet the following minimum requirements:

1. Age. A- *An adult student shall be at least 18 years of age. Under circumstances which local school authorities consider justifiable, the age limit may be lowered. Only in exceptional circumstances should local authorities permit a ~~regularly an individual~~ enrolled ~~day student~~ in grades 9 through 12 to earn credits toward high school graduation in adult classes. ~~(In such cases, alternative~~ All educational programs alternatives must have been considered) prior to placing an enrolled student in an adult class.*

2. Credit.

a. Satisfactory completion of 108 hours of classroom instruction in a subject shall constitute sufficient evidence

¹ Source: Department of Education

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~~for one unit of credit toward a high school diploma. Where accelerated or other innovative instructional methods are used, satisfactory completion of comparable competencies as the regular secondary school program as measured by objective testing in a subject shall constitute sufficient evidence for one unit of credit.~~

~~b. Eighteen units of credit are required for graduation as specified in the Standards for Accrediting Schools in Virginia with the exclusion of health and physical education.~~

~~c. An Advanced Studies Diploma (20 credits) shall be awarded to students who complete the credits as specified in the Standards for Accrediting Schools in Virginia with the exclusion of health and physical education.~~

~~d. In addition to the units of credit specified in the Standards for Accrediting Schools in Virginia, each student must demonstrate mastery of minimum competencies as prescribed by the Board of Education.~~

~~e. b. When, in the judgment of the principal or the superintendent, an adult not regularly enrolled in the day 9 through 12 high school program is able to demonstrate by examination or other objective evidence, satisfactory completion of the work, he may receive credit in accordance with policies adopted by the local school board. It is the responsibility of the school issuing the credit to document the types of examinations employed, or other objective evidence used, the testing or assessment procedures, and the extent of progress in each case.~~

~~f. No student may be issued a diploma by earning credits in adult or evening classes prior to the time that he would have graduated from a secondary school had he remained in school and made normal progress.~~

~~g. c. Credits actually earned in adult secondary high school programs shall be transferable as identified in the Standards for Accrediting Schools in Virginia Regulations Establishing Standards for Accrediting Public Schools in Virginia (8 VAC 20-131) within the sponsoring school division and shall be transferable to public secondary schools outside of the sponsoring school division.~~

3. Diplomas.

a. A diploma shall be awarded to an adult student who completes all requirements of the diploma regulated by the Board of Education in effect at the time he will graduate; however, the board may authorize substitute assessments for adult students.

b. An adult high school diploma shall be awarded to an adult student who completes the course credit requirements in effect for any Board of Education diploma, with the exception of health and physical education course requirements, at the time he first entered the ninth grade; however, the board may authorize substitute assessments for adult students.

c. An adult high school diploma shall be awarded to an adult student who demonstrates through applied

performance assessment full mastery of the National External Diploma Program Generalized Competencies Correlated with CASAS Competencies, 1996, as promulgated by the American Council on Education and validated and endorsed by the United States Department of Education.

8 VAC 20-30-30. Minimum qualifications of teachers.

The minimum qualifications of teachers teaching in the adult and evening high school shall be the same in all respects as those required for the regular day school public high schools.

8 VAC 20-30-40. Library facilities.

The library facilities available for the regular day school shall be available for the adult evening school.

The adult high school program shall have library media services, science laboratories, and computer technology accessible to instructional staff and adult learners.

8 VAC 20-30-50. Science laboratory facilities. (Repealed.)

~~If science is offered, the laboratory facilities also shall be available.~~

8 VAC 20-30-60. Administration and supervision.

The adult and evening high school program shall be under the supervision of the secondary high school principal, assistant principal, or a qualified staff member approved by the division superintendent.

8 VAC 20-30-70. Guidance services.

The adult and evening high school should program shall have appropriate guidance services available.

DOCUMENTS INCORPORATED BY REFERENCE

~~Standards for Accrediting Public Schools in Virginia, 1988 edition.~~

~~Standards for Accrediting Schools in Virginia, 1992 edition.~~

National External Diploma Program Generalized Competencies Correlated with CASAS Competencies, Comprehensive Adult Student Assessment System EDP/CASAS, 1996.

VA.R. Doc. No. R04-141; Filed September 10, 2004, 3:18 p.m.



TITLE 12. HEALTH

STATE BOARD OF HEALTH

Titles of Regulations: 12 VAC 5-230. State Medical Facilities Plan (amending 12 VAC 5-230-10, 12 VAC 5-230-20 and 12 VAC 5-230-30; adding 12 VAC 5-230-40 through 12 VAC 5-230-710).

12 VAC 5-240. General Acute Care Services (REPEAL).

12 VAC 5-250. Perinatal Services (REPEAL).

- 12 VAC 5-260. Cardiac Services (REPEAL).**
- 12 VAC 5-270. General Surgical Services (REPEAL).**
- 12 VAC 5-280. Organ Transplantation Services (REPEAL).**
- 12 VAC 5-290. Psychiatric and Substance Abuse Treatment Services (REPEAL).**
- 12 VAC 5-300. Mental Retardation Services (REPEAL).**
- 12 VAC 5-310. Medical Rehabilitation Services (REPEAL).**
- 12 VAC 5-320. Diagnostic Imaging Services (REPEAL).**
- 12 VAC 5-330. Lithotripsy Services (REPEAL).**
- 12 VAC 5-340. Radiation Therapy Services (REPEAL).**
- 12 VAC 5-350. Miscellaneous Capital Expenditures (REPEAL).**
- 12 VAC 5-360. Nursing Home Services (REPEAL).**

Statutory Authority: §§ 32.1-12, 32.1-102.1, 32.1-102.2, and 32.1-102.3 of the Code of Virginia.

Public Hearing Date: N/A

Public comments may be submitted until Friday, December 3, 2004.

(See Calendar of Events section for additional information)

Agency Contact: Carrie Eddy, Senior Policy Analyst, Department of Health, Center for Quality Health Care, 3600 West Broad Street, Suite 216, Richmond, VA 23230, telephone (804) 367-2157, FAX (804) 367-2149, or e-mail carrie.eddy@vdh.virginia.gov.

Basis: The State Medical Facilities Plan (SMFP) is promulgated by the Center for Quality Health Care Services and Consumer Protection of the Virginia Department of Health, for the Board of Health, under the authority of §§ 32.1-102.1 through 32.1-102.3 of the Code of Virginia. Section 32.1-102.1 defines the SMFP as a planning document adopted by the Board of Health. Section 32.1-102.2 mandates that the board promulgate regulations to implement Virginia's Medical Care Facilities Certificate of Public Need (COPN) law in which, as set out in § 32.1-102.3 of the Code of Virginia, any decision to issue or approve the issuance of a certificate shall be consistent with the most recent applicable provision of the State Medical Facilities Plan. Existence of the SMFP, therefore, is mandated.

Purpose: The Virginia Medical Care Facilities Certificate of Public Need law requires owners or sponsors of medical care facility projects to secure a COPN from the State Health Commissioner prior to initiating such projects. The SMFP is essential to the implementation of the COPN program as it provides the criteria and standards for the full range of capital expenditure project categories that require review, including general acute care services, perinatal services, diagnostic imaging services, cardiac services, general surgical services, organ transplantation services, medical rehabilitation services, psychiatric/substance abuse services, mental retardation services, lithotripsy services, miscellaneous capital expenditures and nursing facility services. The SMFP provides applicants and reviewing agencies with a framework for

examining the need for these projects. The proposed SMFP provides more opportunity for new facility and service providers to obtain a COPN, thereby increasing availability of those services to Virginia's citizens.

Substance: The Code of Virginia specifies that the SMFP shall include, but is not limited to (i) methodologies for projecting need for medical care facility beds and services; (ii) statistical information on the availability of medical care facilities and services; and (iii) procedures, criteria and standards for the review of applications for projects or medical care facilities and services. Many standards were not measurable, or were reflective of licensing standards, and not relevant to the COPN application review process. Much of the language was archaic and subject to interpretation. Therefore, all standards were tested for measurability and were modified or deleted as appropriate. Duplicative and repetitive standards were combined and relocated to six new sections in the "Definitions and General Information" section of the document.

Issues: Since the SMFP is such an integral part of the COPN process, no discussion of the SMFP can be conducted without mentioning the COPN program. The COPN law states the program objectives: (i) promote comprehensive health planning to meet the needs of the public; (ii) promote highest quality of care at the lowest price; (iii) avoid unnecessary duplication of medical care facilities; and (iv) provide an orderly procedure for resolving questions concerning the need to construct or modify medical care facilities. In other words, the program seeks to contain health care costs while ensuring financial viability and access to health care for all Virginians at a reasonable cost. The COPN program has long been a controversial feature of government efforts to contain health care costs. However, lacking a consensus on what might work better, Virginia, like 36 other states, has chosen to maintain its COPN program. That decision, however, does not prevent the department from taking steps to address and alleviate, where possible, some of the ongoing controversy regarding the COPN program. There are two issues surrounding the COPN program and subsequently the SMFP: (i) the perception that the COPN program ensures "quality" health care services, and (ii) the program has become a guarantor of "franchise" providers, i.e., those providers already holding a COPN, making it difficult for new health care providers to enter the health care market in Virginia.

Over time, the COPN program has inherited a reputation as a program that monitors and ensures quality health care services to Virginia's citizens. However, only legislatively mandated licensure programs can ensure quality health care services. The COPN "quality" misperception results from some of the criteria in the current SMFP. Therefore, one of the objectives of the SMFP revision project was to remove references to provider actions that would occur well after the granting of a COPN. In actuality, the COPN law does not provide enforcement of the individual sections of the SMFP. Rather, a COPN can only be revoked when (i) substantial and continuing progress towards project completion has not been made, (ii) the maximum capital expenditure is exceeded, (iii) the applicant has willfully or recklessly misrepresented intentions or facts to obtain a COPN, or (iv) a continuous care retirement community has failed to establish a nursing facility

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as required by law. The COPN law does not permit inspection after issuing the COPN, the only method in which "quality" failures can be identified. The SMFP can only impact quality through the service volume standards. It is well known in the health care industry that the volume of service provision results in better outcomes and survival rates for patients and services recipients. Therefore, the service volume standards were carefully reviewed and adjusted to meet nationally accepted practices.

Another objective of the revision project was to ensure the resultant document is clearly written and understandable. Much work was necessary in order to bring the SMFP up to currently accepted standards and practice. The approach used was to strive for simplicity and avoid being burdensome while meeting the requirements of the law. The department was careful to replace archaic language, which was ambiguous and subject to interpretation, with common vernacular to ensure the document readability.

As a result of the two objectives, the department considers the proposed SMFP more user-friendly and provides more opportunity for new facility and services providers to obtain a COPN. Therefore, the proposed SMFP is advantageous for Virginia's citizens as well as the health care industry as it has the potential for allowing more competition.

In addition, the department hopes the new document successfully addresses one aspect of the COPN controversy: the general restrictiveness of the program or conversely, the perception that COPN restricts fair market competition. By carefully reviewing all service volume criteria, making appropriate adjustments, and removing criterion that is outdated or not applicable to the application review process, the department hopes to have successfully removed some of the more objectionable hurdles to obtaining a COPN. Therefore, there is no disadvantage to the public or the Commonwealth as a result of the proposed revisions.

Small businesses or organizations contracting with COPN applicants for development services would be affected by the revised regulation. This would include consultants and lawyers hired to help guide applicants through the COPN process.

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 significantly edit and reorganize the State Medical Facilities Plan regulations to improve clarity. The proposed

changes will also relax many of the measurable criteria used in assessing the public need for the proposed projects while making a number of criteria more stringent.

Estimated economic impact. The proposed regulations contain rules for the State Medical Facilities Plan (SMFP) component of the Certificate of Public Need (COPN) program. SMFP is one of the 20 criteria used in evaluating a COPN application, but it has a significant impact on approval/denial decisions. Under the COPN program, a certificate is required before expanding certain medical services, or creating a new facility. SMFP establishes facility need projection methodologies and project review standards. These medical services include general acute care services, perinatal services, diagnostic imaging services, cardiac services, general surgical services, organ transplantation services, medical rehabilitation services, lithotripsy services, miscellaneous capital expenditures, and nursing facility services. Even though the proposed changes are exclusively about the SMFP rules, analysis of their economic effects would be incomplete without the thorough understanding of the issues surrounding the COPN program.

A brief history of the Virginia's COPN program is provided in a 1997 report of the Virginia Joint Commission on Health Care. According to this report, the Virginia COPN program was established in 1973 primarily as a response to 1972 amendments to the federal Social Security Act, which allowed the federal government to deny reimbursement under Medicare, Medicaid, and Child Health Programs for capital projects that are found to be inconsistent with the plans of designated state planning agencies. In 1974, the National Health Planning and Resources Development Act (NHPDA) mandated all states to develop a COPN program by 1980. Later, in 1988, the role of federal government was eliminated with the expiration of NHPDA. However, 36 states, including Virginia, still maintain their COPN programs.¹

The Virginia COPN program is administered by the Department of Health in cooperation with five regional planning agencies (Health System Agencies). Projects are first evaluated at the regional level and then considered at the state level. The commissioner of health is in charge of making the final decisions. Adverse decisions could be appealed through the court system. The decisions of the commissioner must be consistent with the SMFP or the commissioner must find the SMFP outdated. Based on the amendments to the COPN law in 1998, the commissioner may condition approvals on the provision of free or reduced rate care to indigents, the acceptance of patients with special needs, or the facilitation of primary care for underserved areas.

In 2000, the General Assembly, through Senate Bill 337, required the Joint Commission on Health Care to develop a plan to eliminate the COPN program by July 2004. The deregulation plan was a "fragile" consensus among the stakeholders and contained several provisions for the support it needed. This fragile consensus was contingent upon provisions requiring the Commonwealth to provide \$135

¹ Between 1989 and 1992 specialty services, nonhospital facilities, specialized medical equipment, and other capital expenditures were deregulated.

million funding from the general fund for: (i) indigent care at academic health centers; (ii) increased Medicaid access to the adult parents, the aged, and the disabled; (iii) undergraduate medical education; (iv) increased Medicaid reimbursement to hospitals; (v) increased reimbursement to physicians; and (vi) increased state matching dollars for indigent health care trust fund. Probably because of significant fiscal implications, the deregulation plan has not been approved and implemented by the General Assembly.

Economics of the COPN program. Issues surrounding the COPN program can be grouped under medical care costs, quality, access, and charity care. Economic analysis of Virginia's COPN on each one of these variables requires extensive resources which are beyond the scope of this analysis. Even if significant resources are devoted for this purpose, we suspect that such an analysis would be unable to produce conclusive evidence on every facet of the COPN program and be of little practical importance due to data limitations. Instead, we rely on the economic theory and readily available empirical evidence to assess likely costs and benefits of the COPN program in Virginia.²

Costs. The initial driving force for the COPN programs, in addition to the 1974 federal mandate, appears to be the concern that excess capacity and capital investment contributed to publicly funded medical care costs, as early 1970s health care payments were based on cost-based reimbursement methodologies. Under cost-based reimbursement methodologies, providers were being reimbursed for their capital costs and had incentives to build excess capacity.

Since the inception of COPN programs, many changes occurred in health care financing and delivery rendering most of the fiscal benefits expected from COPN obsolete in today's market place. A significant change is the shift from cost-based reimbursement methodologies toward service-based payment methodologies. Many private health care insurance companies as well as large public programs such as Medicare and Medicaid adopted service based payments methods such as inpatient prospective payment system, diagnostic related groups, resource utilization groups, outpatient prospective system, ambulatory payment classification system, and managed care capitation rates over the last two decades. The trend toward service-based payments reduced provider incentives to build excess capacity or take on unneeded capital investment projects, as they cannot directly recover the cost of their investments. Thus, this concern does not seem to have validity in today's health care market as it did 30 years ago.

Additionally, proponents argue that COPN programs lead to fewer, larger firms to provide services, which in turn reduces cost of care. So, in the absence of COPN programs, we could see an increase in health care costs. This argument suggests that large health care firms produce services at lower average costs due to increased plant size, which is a well-known

possibility in economics, termed as "economies of scale." While economies of scale may well exist in production of some health care services over certain plant sizes, generalizing this possibility for all services covered under the COPN programs and for any quantity of production is bound to be wrong.

Even for those services where there are economies of scale, forcefully leading fewer firms to produce more output through the COPN program has certain social costs. These social costs should be weighed against the benefits expected from lower average production costs. These social costs stem from restricting entry into an otherwise competitive market. Under the COPN umbrella, incumbents are protected against competition from new entrants. Firms with significant market power are well known to charge prices that maximize their revenues rather than those reflect their average costs. And, prices charged definitely exceed the average cost of production if the firm is to make above normal profit, which is the case in a noncompetitive market.

In addition, the revenue-maximizing output level is known to be lower and the revenue-maximizing price is known to be higher than what it would be if entry were not restricted. In other words, if entry is limited through COPN, providers are likely to offer less and charge more. This profit maximizing behavior in the absence of competition takes welfare away from consumers and channels it to the providers and creates significant efficiency losses, known as "deadweight losses,"³ for the whole economy. A recent study by the Federal Trade Commission and the Department of Justice in 2004 goes on to state that these two agencies "...believe that CON programs can pose serious competitive concerns that generally outweigh CON programs' purported benefits. Where CON programs are intended to control health care costs, there is considerable evidence that they can actually drive up prices by fostering anticompetitive barriers to entry."

In short, the claim that leading fewer firms to produce more reduces cost of health care is not well founded because (i) lower average production costs does not necessarily mean the prices providers charge will be lower; (ii) quite the contrary, firms shielded from competition charge higher prices and produce less than optimal quantities; and (iii) other costs of COPN such as transferring welfare from consumers to providers and deadweight efficiency losses likely exceed any savings expected from COPN.

Another source of social costs that seems to escape the attention of most is the inefficiencies created by ignoring the economies of scope that may exist in health care production. Economies of scope occur when production of one good creates savings for production of another good. In such cases, production costs are lower when the two goods are produced together than produced separately. Because the COPN review criteria focus on volume and capacity but does not directly take into account the other types of services

² Empirical findings are primarily obtained from the State of Washington Joint Legislative Audit and Review Committee, 1999, literature review to minimize research costs.

³ "Deadweight losses" occur because a distortion to the market mechanism (such as restricting competition through the COPN program) takes welfare away from suppliers and buyers and no one in the economy receives them. In other words, it is the net loss in economic welfare that occurs due to distortions in the market. Thus, everyone could be better off if the distortion is removed.

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already provided in conjunction with the service for which approval is sought, it is more than likely that the COPN program forgoes some potential savings that would be realized if entry into the market were not restricted.

Empirical research does not appear to support the claim that COPN reduce health care costs. COPN is not found to be effective in controlling overall per capita health care spending because many factors affecting costs such as labor and physician services are beyond the scope of the COPN programs. Also, COPN is not found to be effective in controlling hospital costs because (i) not all services are regulated under COPN, (ii) COPN is not always effective controlling supply, and (iii) when bed supply was controlled expenditures per bed are found to increase. [Arnold and Mendelson, 1992; Delaware Health Commission, 1996; Conover and Sloan, 1998; Custer, 1997; Lanning et al., 1991; Mendelson and Arnold, 1993; Salkever, 1978].

Quality. Proponents argue that COPN programs improve quality of care because (i) COPN causes high utilization of medical equipment or services leading to better outcomes; (ii) it helps filter good providers by screening quality records and by judging their ability to meet conditions associated with quality care; (iii) it helps stabilize health care market by filtering out financially unsound or professionally unprepared providers; and (iv) it restrains growth of for-profit providers that may offer lower quality care.

It is probable that COPN could improve quality of care through these channels with the exception of clause (iv) of the previous paragraph. However, it is a wasteful way trying to improve quality of care through the COPN program. It is important to notice that the primary reason behind the COPN program is not that it would improve quality but rather that it would contain costs in a cost-based payment environment and that it was mandated by federal legislation. Thus, improved quality should be evaluated as a secondary unintended benefit associated with COPN programs. If the object of a regulation were to improve quality of care, it would have never been done the way COPN does it. In this sense, COPN is not a necessary program to assure quality of care. Other approaches directly targeting quality of care as the primary goal would probably be economically more efficient. There are already some quality safeguards in place. For example, dissemination of health care information to consumers mitigates potential quality of care risks through the market mechanism. Also, there are various government programs to monitor quality of care in the absence of the COPN program. These include facility licensure programs and Medicare and Medicaid certification programs. Perhaps, tailoring these existing mechanisms to bolster quality would be much more cost effective in protecting public health and safety rather than relying on very questionable COPN spillover quality improvements.

Furthermore, COPN could have adverse effects on quality by slowing the diffusion of technology, by protecting low-quality providers, and by preventing innovative providers entering the market. For instance, one can easily argue that if the equipment is outdated or the staff is incompetent, a COPN program may be forcing more consumers to take risks they would not be otherwise willing to take. Thus, limitations

COPN places on consumer choice may not be in the best interest of the public.

Empirical findings on the quality aspect of COPN appear to be mixed. Evidence is inconclusive regarding the ability of COPN in improving quality by forcing high utilization of equipment or services even though high utilization is found to improve outcomes. There is some evidence that COPN protects quality in the home health sector by filtering out unprepared or unqualified providers. COPN's effect on keeping out for-profit providers and resulting effects on quality are mixed. Finally, findings indicate that COPN does not provide an ongoing mechanism for monitoring quality. [Arnold and Mendelson, 1992; Brown et al., 1992; Collins and Keane, 1997; Conover and Sloan, 1998; Deemez et al., 1992; Delaware Health Care Commission, 1996; Federal Trade Commission, 1986; Griffiths et al., 1994; Lanning et al., 1991; Lewin/ICF and Alpha Center, 1991; Luft and Garnick, 1990; National Home Care Association Newsletter, 1998; Irvin, 1998; Burling, 1998; U.S. General Accounting Office, 1998].

Access. Proponents of the COPN program argue that the program improves access to health care by (i) limiting entry of new providers who may undermine the ability of incumbents to provide unprofitable services, (ii) restricting expansion of facilities in overbuilt areas leading providers to expand services in underserved areas, and (iii) requiring providers to serve all patients needing care in a particular geographic area. Again, it is generally unlikely that the COPN program could be effectively used to improve access to care. COPN is simply a wasteful way of trying to improve access. Based on economic theory, it can be reliably inferred that economic costs associated with trying to improve access through the COPN would far outweigh any ancillary access benefits.

Preventing entry of new competitors so that incumbents could continue to provide unprofitable services such as trauma or burn units, amounts to financing of such unprofitable operations through above normal profits the incumbents are allowed to make under the COPN umbrella. While many examples could be offered, teaching hospitals' status in Virginia is a particularly interesting case given their ability to shift costs. Teaching hospitals are able to collect revenues from high technology services under the COPN umbrella to make up their losses from providing uncompensated indigent care. If ownership were not restricted, new entrants would offer these lucrative revenue-generating services, thereby exacerbating teaching hospitals' losses. Thus, the COPN program shields teaching hospitals from competition and allows them to finance the cost centers by the revenue centers.

In this particular case, while proponents may argue COPN improves access to indigent, this mechanism distorts the prices of high technology revenue generating services upward, causes under consumption of these services by paying consumers, and results in inefficient allocation of resources. Economic theory predicts that such social costs would far outweigh the social benefits that can be expected from improved access. Furthermore, the economic theory suggests that in such cases it is best to address the market failure (i.e. provision of unprofitable services in this example)

through direct payments and allow the remaining market forces to operate with no intervention.

In general, similar conclusions apply to other cases where COPN is used as a nonmarket tool to enhance access to care.

The empirical evidence on the access aspect of COPN appears to be limited and conflicting. In some cases, COPN is found to protect inner city facilities and enhance access while in some other cases COPN may have restricted needed services as the opponents argue would happen. Also, access effects seem to vary from state to state and from service to service. Finally, there appears to be lack of empirical evidence to understand the rural access effects of COPN. [Arnold and Mendelson, 1992; Brown et al, 1992; Delaware Health Care Commission, 1996; Hackey, 1993; Kiel, 1993; Lewin/ICF and Alpha Center, 1991; McGinley, 1995; Mendelson and Arnold, 1993; Rettig, 1992; Sloan, 1988; Weaver, 1995].

Charity Care. Proponents argue that COPN enhances provision of charity care by (i) explicitly requiring a certain level of charity care as a condition of approval, (ii) indirectly improving the profit margins of existing providers, (iii) preventing new entrants who would "cherry pick" lucrative services, and (iv) favoring not-for-profit providers who would provide more charity care.

In Virginia, the COPN program is used as a tool to provide incentives to providers to offer services to indigent patients at reduced rates through the conditioning process adopted in 1988. In fact, there are claims made by some researchers that the implicit purpose of the COPN program is to issue licenses and restrict competition to create an incentive to provide care to the indigent rather than to prevent duplication of services and investment in costly excess capacity.

This conditioning process was created as a response to findings that the burden of uncompensated care is shared unevenly among the hospitals and there was no mechanism to correct this inequality. The 1988 General Assembly introduced the conditioning process into the COPN program and at the same time created the Indigent Health Care Trust fund to more evenly distribute the uncompensated care burden. With the conditioning mechanism, the state would be able to ensure provision of services to the indigent and uninsured who may have otherwise experienced difficulties with access to care if the intent of a provider were to prioritize paying patients.

The conditioning of certificates can be characterized as a mechanism that allows entry into an otherwise restricted market in exchange for providing uncompensated care. In economic terms, certificate holders are allowed to make above normal profits in the health care market and then are required to use some of these proceeds to finance health care for the indigent and the uninsured. Even though it may be difficult to find out whether these above normal profits are commensurate with the cost of uncompensated care provided, economic theory unambiguously predicts that such mechanism would be less efficient compared to financing of uncompensated care through direct payments. In other words, the society as a whole would be better off (particularly given the transfer of welfare from consumers to providers and

the deadweight efficiency losses as discussed earlier) if the conditioning mechanism is abandoned and uncompensated providers are paid directly.

Empirical evidence indicates that COPN programs initially screen for the likelihood of a facility providing charity care, but do not monitor ongoing compliance. There is some evidence showing that some states are more likely to approve providers offering more charity care. While COPN's effect on favoring not-for-profit providers is conflicting, evidence suggests that for-profits tend to provide less charity care, and public and teaching hospitals provide the most charity care. Some evidence shows that COPN improves operating margins of existing providers, which may lead to increased charity care. [Campbell and Ahern, 1993; Campbell and Fournier, 1993; Conover and Sloan, 1998; Hackey, 1993; Lanning et al., 1991; Lewin/ICF and Alpha Center, 1991; Mendelson and Arnold, 1993; Pennsylvania Legislative Budget and Finance Committee, 1996].

Summary. COPN programs emerged during 1970s as a response to a federal mandate introduced by the National Health Planning and Resources Development Act (NHRPDA) and to health care cost containment concerns associated with cost-based reimbursement methodologies. In today's environment, none of these original reasons seem to have validity as they did three decades ago. In 1988, when NHRPDA expired, COPN programs were no longer federally mandated. Also, the trend toward service-based payment methodologies coupled with expansion of managed care significantly mitigated the original cost containment concerns that existed when cost-based payment methodologies were being used. Finally, most empirical research has failed to find support for the claim that COPN programs reduce health care costs.

While these developments were taking place, several ancillary benefits seem to have emerged as primary justifications for the continued existence of these regulatory programs. This view severely suffers from several shortcomings. First, theoretically it is just as easy to conjecture that COPN programs could reduce quality, access, and charity care. In fact, empirical evidence on these matters is mixed showing both negative and positive effects. Second, economic theory unambiguously predicts that the use of COPN as an indirect mechanism to improve quality, access, and charity care is inferior to the use of direct mechanisms addressing the same issues. Finally, while COPN may produce some ancillary benefits, it channels significant welfare from consumers to providers, and creates economic inefficiencies known as deadweight losses. Thus, maintaining the COPN program for highly speculative and unreasonable ancillary benefits that may or may not occur is a waste of society's resources.

The balance of economic theory and empirical findings suggest that the repeal of the COPN program and simultaneous adoption of other regulatory programs directly addressing quality, access, and charity care issues would produce net economic benefits for the Commonwealth. The Federal Trade Commission and the Department of Justice further support this conclusion by urging "states with CON programs to reconsider whether they are best serving their citizen's health care needs by allowing these programs to

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continue." [Federal Trade Commission and the Department of Justice, 2004].

Proposed changes to SMFP. As mentioned, SMFP is one of the 20 criteria used in evaluating a COPN application. It establishes facility need projection methodologies and project review standards. Numerous proposed changes will significantly reorganize the regulations by eliminating redundant sections, combining duplicative sections, deleting philosophical and irrelevant statements, and adding new sections. These changes are primarily editorial and are not expected to create any significant economic effects, but are expected to improve the clarity of the regulations. Improved clarity would probably streamline the application process, reduce potential confusions, and produce some economic benefits in terms of administrative cost savings, avoided delays, or communication costs.

More importantly, the proposed changes will revise a significant number of measurable criteria established in the regulations. These criteria are used to evaluate the need for a proposed facility, equipment, or project and play a crucial role in approval/denial decisions. The majority of changes will lead to less restrictive distance, occupancy, and volume standards in following service areas: inpatient hospitals/beds, obstetrical services/beds, intermediate care facilities for mental retardation, introduction of open-heart surgery at an existing facility, nursing homes/beds, diagnostic imaging, radiation therapy, cardiac catheterization, lithotripsy.⁴ In general, these less restrictive measurable criteria are expected to allow approval of (i) facilities with lower occupancy rates, (ii) services or bed capacity for lower projected patient volume or sick population, (iii) more services or relocation of beds in a wider geographical area, (iv) projects for lower number of projected procedures, (v) services more accessible to population in the planning districts, (vi) services with less negative volume impact on existing programs, (vii) facilities with smaller capacity, (viii) more equipment in a planning district, (ix) additional equipment with lower past utilization rates, and (x) equipment based on projections with less restrictive assumptions.

On the other hand, the proposed changes will require higher volumes and survival rates to establish an organ transplant program. The department notes that the increased minimum volume requirements improve the outcomes, recent techniques improve the survival rates, and these standards are advocated by several national organizations. However, if higher utilization leads to better outcomes in transplantation services, this could be accomplished by other direct mechanisms outside the COPN framework in order to avoid economic losses associated with this program.

Additionally, the proposed changes will make some aspects of SMFP more stringent in service areas where the proposed changes are expected to result in less restrictive approval criteria on net. These include (i) requiring higher projected patient volume or sick population in order to establish a rehabilitation hospital, addition of rehabilitation beds, or introduction of rehabilitation services at an existing facility; (ii)

reducing nursing bed capacity allowed in an existing acute care facility from 20% to 10% of the number of nonnursing home beds; (iii) removing an alternate methodology which can be manipulated by the applicant to calculate the number CT scans for new or existing facilities; (iv) increasing the volume standards for MRIs for new or existing facilities; (v) establishing a minimum annual patient volume standard for cardiac cauterization services at an existing facility; and (vi) establishing a proximity standard and increasing the threshold number of referrals for lithotripsy services.

According to the Virginia Department of Health, approximately 522 (86%) applications were approved out of 608 over the last eight-year period. Even though a number of the proposed changes are more restrictive than the current requirements, the majority of changes with the exception of changes affecting organ transplant services are less restrictive. Thus, on average, the proposed standards should make the issuance of COPN easier for applicants. Less stringent quantitative criteria are expected to cause a small number of applicants to come forward who would not have under somewhat stricter SMFP criteria. We may see a small increase in applications in service areas where the proposed standards are less restrictive. However, a reliable estimate for the potential increase in applications is not available, as this would require extensive resources to develop.

Since the number of approvable projects in certain service areas is likely to increase, this could be seen as less restrictive entry requirements into regulated service areas. To the extent the proposed changes makes the issuance of a COPN less stringent, the economic effects would be akin to those of COPN discussed earlier. Based on the available empirical literature, we should expect no significant changes in healthcare costs and charity care. We could also see some negative or positive effects on quality and access varying from one service type to another. However, as restrictions on competition are reduced, we would expect a reduction in the welfare transferred from consumers to producers and a reduction in the economic inefficiencies embedded in the COPN program. Provided that the potential negative effects on quality, access, and charity care are negligible, or are addressed through other direct mechanisms, resulting ease of entry should produce net substantial economic benefits.⁵ The size of the net economic benefits expected from less restrictive SMFP standards are probably very small compared to the size of net benefits that would be realized if the COPN program were deregulated as envisioned by Senate Bill 337 of the 2000 General Assembly.

Businesses and entities affected. The proposed regulations apply to nursing facilities, hospitals, and other medical facility providers. Current inventory of regulated facilities/beds/equipment include 40 outpatient surgical hospitals, 273 nursing homes, 13 freestanding diagnostic imaging facilities, 83 general hospitals, two rehabilitation hospitals, eight freestanding radiation therapy facilities, two long-term acute care hospitals, 21 ICF/MR facilities, one freestanding cardiac catheterization center, five psychiatric

⁴ See appendix for a detailed list of proposed changes to measurable criteria.

⁵ On the contrary, net economic costs are expected for organ transplant services for which more restrictive measurable criteria are proposed.

hospitals, one freestanding substance abuse treatment facility, 32,607 nursing home beds, 18,640 acute care beds, 1,762 psychiatric beds, 557 ICF/MR beds, 738 operating rooms, 79 cardiac catheterization labs, 305 computed tomography scanners, 117 magnetic resonance imaging scanners, four positron emission tomography scanners, 51 radiation therapy equipment, 21 lithotripsy equipment, 18 open-heart surgery programs, and six organ transplant programs. Approximately, 100 applications for regulated services are reviewed each year. Additionally, these regulations affect five Health System Agencies as well as indigent and non-indigent patients receiving services from regulated providers.

Localities particularly affected. The proposed regulations apply throughout the Commonwealth. However, a locality may be particularly affected if it chooses to own or operate a regulated facility, as the facility would be subject to these regulations.

Projected impact on employment. The proposed regulations are expected to slightly increase the number of providers seeking approval. As they start providing services, they would hire new medical and support personnel contributing to the employment in Virginia. Whether these new facilities/services would significantly affect the employment by current providers is not known.

Effects on the use and value of private property. The proposed regulations are not expected to have an effect on the value of physical private property. However, by allowing more providers to operate services already regulated or by allowing providers to offer new services, the proposed regulations are expected to contribute, on average, to value of medical businesses in the Commonwealth. Whether the increased number of providers in the market would significantly affect the value of existing medical businesses is not known.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: Generally, VDH takes strong exception to several statements made and conclusions drawn in the EIA regarding the proposed amendments to the State Medical Facilities Plan (SMFP), specifically, those questioning the continuing existence of the COPN program and its economic benefits. As the executive agency tasked with administering this statutorily authorized program, VDH will continue its commitment to administering it according to the law. Any questions regarding the economic viability of this program is solely within the purview of the General Assembly to determine. Notwithstanding the merits of the COPN program, VDH takes exception to the following disparities in the EIA related directly to Virginia's COPN program and the SMFP:

1. The changes in the proposed SMFP that result in more restrictive standards are limited to very narrow aspects of a COPN project review and are, in a practical sense, *not* more restrictive as stated. The relatively few more restrictive criteria are more than offset by the large number of less restrictive changes. With the exception of the transplant volume and survivability criteria, which were strengthened along nationally accepted standards based on sound empirical evidence suggesting such changes result in

healthier outcomes, the overall effect of the changes is a less restrictive regulatory environment.

2. The SMFP is one of 20 criteria used to assess COPN applications. To suggest that the SMFP "has a significant impact on approval/denial decisions" in relation to COPN decisions is misleading. While § 32.1-102.3 of the Code states that decisions regarding the issuance of a certificate "shall be consistent with the most recent applicable provision of the SMFP," each of the 20 criterion is measured on its own merit. Therefore, decisions to grant a certificate are based on the entirety of the application.

3. The statement: "The 1988 General Assembly introduced the conditioning process into the COPN process and at the same time created the Indigent Health Care Trust Fund (IHCT) to more evenly distribute the uncompensated care burden," again, is misleading. While the goal is to "more evenly distribute the uncompensated care burden," the COPN conditioning process and the IHCT are uniquely different programs. The purpose of the IHCTF, established in 1989, is to compensate those hospitals that provide the majority of the uncompensated care through their emergency room services and admissions. Only hospitals and the Commonwealth contribute to the IHCTF. Disbursements are pro-rated to the hospitals providing the charity care. The COPN conditioning process, established in 1991, grants a COPN based on an applicant's agreement to: (i) provide a level of care at a reduced rate to indigents, accept patients requiring specialized care, and (iii) beginning in 1998, "facilitate the development and operation of primary medical care services in designated medically underserved areas of the applicant's planning district." Such conditions can be placed on all applicants, is not limited just to hospitals as is the IHCTF.

4. Reducing the bed capacity from 20% to 10% of the number of nonnursing home beds was directed at continuing care retirement communities or CCRCs, not "existing acute care facilities" as stated in the EIA. CCRCs are contractual retirement communities that provide residential, health care and support services. By law, CCRCs are prohibited from participating in Medicaid. Therefore, the establishment of nursing beds in CCRCs is treated differently from traditional nursing facilities, which accept patients from the community. CCRCs are allowed to accept patients from the community for the first three years of operation. Such "open" admissions allow CCRCs to admit private paying patients who may otherwise be admitted to Medicaid certified nursing facilities. Private-paying patients generate revenue for Medicaid participating facilities that helps traditional nursing facilities offset the cost of caring for Medicaid patient admissions.

In summary, VDH and the State Health Commissioner are committed to continuing its efforts in administering the COPN program effectively, as Virginia law authorizes and requires. As long as Virginia law requires the existence and administration of the COPN program, it will be carried out in accordance with law. The agency's mission requires nothing less. The General Assembly has revisited the COPN statute several times in recent years. Indeed, much public discussion regarding the difficult issues of the very

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existence and merits of the COPN program has occurred in recent years - of which DPB may not be fully cognizant. VDH has been an active participant in these discussions. Until such time as the General Assembly, in its wisdom, elects to revise the COPN law comprehensively, perhaps by carrying through substantially on a plan of deregulation, any analysis exploring the general merits and efficacy of the COPN program seems beyond the proper scope of an EIA on the amendments currently proposed by the State Board of Health.

Summary:

The regulation is one of 20 criteria used to determine public need in 11 categories of medical care facilities subject to the Certificate of Public Need (COPN) law. The proposed amendments update the criteria and standards to reflect current national and health care industry standards, remove archaic language and ambiguities, and consolidate all portions of the State Medical Facilities Plan into one comprehensive document. Because of the consolidation of the current 14 separate regulations into 12 VAC 5-230, 12 VAC 5-240 through 12 VAC 5-360 are being repealed.

CHAPTER 230. STATE MEDICAL FACILITIES PLAN.

PART I. DEFINITIONS AND GENERAL INFORMATION.

12 VAC 5-230-10. Definitions.

The following words and terms when used in ~~Chapters 230 (12 VAC 5-230) through 360 (12 VAC 5-360)~~ this chapter shall have the following meanings unless the context clearly indicates otherwise:

~~"Acceptability" means to the level of satisfaction expressed by consumers with the availability, accessibility, cost, quality, continuity and degree of courtesy and consideration afforded them by the health care system.~~

~~"Accessibility" means the ability of a population or segment of the population to obtain appropriate, available services. This ability is determined by economic, temporal, locational, architectural, cultural, psychological, organizational and informational factors which may be barriers or facilitators to obtaining services.~~

~~"Acute psychiatric services" means hospital-based inpatient psychiatric services provided in distinct inpatient units in general hospitals or freestanding psychiatric hospitals.~~

~~"Acute substance abuse disorder treatment services" means short-term hospital-based inpatient treatment services with access to the resources of (i) a general hospital, (ii) a psychiatric unit in a general hospital, (iii) an acute care addiction treatment unit in a general hospital licensed by the Department of Health, or (iv) a chemical dependency specialty hospital with acute care medical and nursing staff and life support equipment licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.~~

~~"Applicant" means any individual, corporation, partnership, association, trust, or other legal entity, whether governmental~~

~~or private, submitting an application for a Certificate of Public Need.~~

~~"Availability" means the quantity and types of health services that can be produced in a certain area, given the supply of resources to produce those services.~~

~~"Cardiac catheterization" means a procedure where a flexible tube is inserted into the patient through an extremity blood vessel and advanced under fluoroscopic guidance into the heart chambers to perform (i) a hemodynamic, electrophysiologic or angiographic examination of the left or right heart chamber or the coronary arteries; (ii) aortic root injections to examine the degree of aortic root regurgitation or deformity of the aortic valve; or (iii) angiographic procedures to evaluate the coronary arteries. Therapeutic intervention in a coronary artery may also be performed using cardiac catheterization. Cardiac catheterization does not include a simple right heart catheterization for monitoring purposes as might be performed in an electrophysiology laboratory, pulmonary angiography as an isolated procedure, or cardiac pacing through a right electrode catheter.~~

~~"Certificate of Public Need" or "COPN" means the orderly administrative process used to make medical care facilities and services needs decisions.~~

~~"Charges" means all expenses incurred by the provider in the production and delivery of health services.~~

~~"Commissioner" means the State Health Commissioner.~~

~~"Competing applications" means applications for the same or similar services and facilities that are proposed for the same planning district and are in the same batch review cycle.~~

~~"Computed tomography" or "CT" means a noninvasive diagnostic technology that uses computer analysis of a series of cross-sectional scans made along a single axis of a bodily structure or tissue to construct a three-dimensional image of that structure.~~

~~"Condition" means the agreed upon qualifications placed on a project by the commissioner when granting a Certificate of Public Need. Such conditions shall direct an applicant to provide a level of care to indigents, accept patients requiring specialized needs, or facilitate the development and operation of primary care services in designated medically underserved areas of the applicant's service area.~~

~~"Continuing care retirement community" or "CCRC" means a retirement community consistent with the requirements of Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2 of the Code of Virginia. CCRCs can have nursing home services available on site or at licensed facilities off site.~~

~~"Continuity of care" means the extent of effective coordination of services provided to individuals and the community over time, within and among health care settings.~~

~~"Cost" means all expenses incurred in the production and delivery of health services.~~

~~"Department" means the Virginia Department of Health.~~

~~"General inpatient hospital beds" means beds located in the following units or categories:~~

1. Medical/surgical units available for the care and treatment of adults not requiring specialized services; and

2. Pediatric units that are maintained and operated as a distinct unit for use by patients younger than 21. Newborn cribs and bassinets are excluded from this definition.

"Health planning region" means a contiguous geographic area of the Commonwealth as designated by the department with a population base of at least 500,000 persons, characterized by the availability of multiple levels of medical care services, reasonable travel time for tertiary care, and congruence with planning districts.

"Hospital" means a medical care facility licensed as a general, community, or special hospital licensed by the Department of Health or a psychiatric hospital licensed by the Department of Mental Health, Mental Retardation, and Substance Abuse Services.

"Hospital-based" means a service operating physically within, connected to a hospital, or on the hospital campus, and legally associated with a hospital.

"Indigent or uninsured" means persons eligible to receive reduced rate or uncompensated care at or below Income Level E as defined in 12 VAC 5-200-10 of the Virginia Administrative Code.

"Inpatient beds" means accommodations in a medical care facility with continuous support services, such as food, laundry, housekeeping, and staff to provide health or health-related services to patients who generally remain in the facility in excess of 24 hours. Such accommodations are known by various nomenclatures including but not limited to: nursing facility, intensive care, minimal or self care, isolation, hospice, observation beds equipped and staffed for overnight use, obstetric, medical/surgical, psychiatric, substance abuse disorder, medical rehabilitation, and pediatric. Bassinets and incubators and beds in labor and birthing rooms, emergency rooms, preparation or anesthesia induction rooms, diagnostic or treatment procedure rooms, or on-call staff rooms are excluded from this definition.

"Intensive care beds" means acute care beds located in the following units or categories:

1. General intensive care units are those units where patients are concentrated by reason of serious illness or injury regardless of diagnosis. Special lifesaving techniques and equipment are immediately available and patients are under continuous observation by nursing staff;

2. Cardiac care units are units staffed and equipped solely for the intensive care of cardiac patients; and

3. Specialized intensive care units are any units with specialized staff and equipment for the purpose of providing care to seriously ill or injured patients for selected categories of diagnoses, including units established for burn care, trauma care, neurological care, pediatric care, and cardiac surgery recovery. This category of beds does not include neonatal intensive care units.

"Intermediate care substance abuse disorder treatment services" means long-term hospital-based inpatient treatment

services that provide structured programs of assessment, counseling, vocational rehabilitation, and social rehabilitation.

"Lithotripsy" means a noninvasive therapeutic procedure of crushing kidney, renal and biliary stones using shock waves. Lithotripsy can also be used to fragment matter such as calcifications or bone and to relieve the pain associated with tendonitis.

"Magnetic resonance imaging" or "MRI" means a noninvasive diagnostic technology using a nuclear spectrometer to produce electronic images of specific atoms and molecular structures in solids, especially human cells, tissues and organs.

"Minimum survival rates" means the lowest percentage of those receiving organ transplants who survive at least one year or for such other period of time as specified by the United Network for Organ Sharing.

"MRI relevant patients" means the sum of: 0.55 times the number of patients with a principal diagnosis involving neoplasms (ICD-9-CM codes 140-239); 0.70 times the number of patients with a principal diagnosis involving diseases of the central nervous system (ICD-9-CM codes 320-349); 0.40 times the number of patients with a principal diagnosis involving cerebrovascular disease (ICD-9-CM codes 430-438); 0.40 times the number of patients with a principal diagnosis involving chronic renal failure (ICD-9-CM code 585); 0.19 times the number of patients with a principal diagnosis involving dorsopathies (ICD-9-CM codes 720-724); 0.40 times the number of patients with a principal diagnosis involving diseases of the prostate (ICD-9-CM codes 600-602); and 0.40 times the number of patients with a principal diagnosis involving inflammatory disease of the ovary, fallopian tube, pelvic cellular tissue or peritoneum (ICD-9-CM code 614). The applicant shall have discharged all patients in these categories during the most recent 12-month reporting period.

"Neonatal special care" means care for infants in one or more of the three service levels designated in 12 VAC 5-410-440 D 2 of the Rules and Regulations for the Licensure of Hospitals, i.e., intermediate level newborn services, specialty level newborn services, or subspecialty level newborn services.

"Network" means a group of medical care facilities, including hospitals, or health care systems, legally or operationally associated with one or more hospitals in a planning region.

"Nursing facility" means those facilities or components thereof licensed to provide long-term nursing care.

"Nursing facility beds" means inpatient beds that are located in distinct units of general hospitals that are licensed as long-term care units by the department. Beds in these long-term units are not included in the calculations of inpatient bed need.

"Obstetrical services" means the distinct organized program, equipment and care related to pregnancy and the delivery of newborns in inpatient facilities.

"Off-site replacement" means the relocation of existing beds or services from an existing medical care facility site to another location within the same planning district.

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"Open heart surgery" means a set of surgical procedures using a heart-lung bypass machine or pump to perform extracorporeal circulation and oxygenation during surgery. This technique is used when the heart must be slowed down to correct congenital and acquired cardiac and coronary artery disease. The use of the pump during the procedure distinguishes "open heart" from "closed heart" surgery.

"Operating room" means a room, meeting the requirements of 12 VAC 5-410-820, in a licensed general or outpatient surgical hospital used solely or principally for the provision of surgical procedures, excluding endoscopic and cystoscopic procedures.

"Operating room use" means the amount of time a patient occupies an operating room, plus the estimated or actual room preparation and cleanup time.

"Operating room visit" means one session in one operating room in a licensed general hospital or outpatient surgical hospital, which may involve several procedures. Operating room visit may be used interchangeably with "operation" or "case."

"Outpatient" means services provided to individuals who are not expected to require overnight hospitalization but who require treatment in a medical care facility exceeding the normal capability found in a physician's office. For the purposes of this chapter, outpatient services refers only to surgical services provided in operating rooms in licensed general hospitals or licensed outpatient surgical hospitals, and does not include surgical services provided in outpatient departments, emergency rooms, or treatment rooms of hospitals, or physicians' offices.

"Pediatric cardiac catheterization" means the cardiac catheterization of patients less than 21 years of age.

"Perinatal services" means those resources and capabilities that all hospitals offering general level newborn services as described in 12 VAC 5-410-440 D 2 a (1) of the Rules and Regulations for the Licensure of Hospitals must provide routinely to newborns.

"Physician" means a person licensed by the Board of Medicine to practice medicine or osteopathy in Virginia.

"Planning district" means a contiguous area within the boundaries established by the Virginia Department of Housing and Community Development or its successor.

"Planning horizon year" means the particular year for which bed needs are projected.

"Population" means the census figures shown in the most current series of projections published by the Virginia Employment Commission.

"Positron emission tomography" or "PET" means a noninvasive diagnostic using the computer-generated image of local metabolic and physiological functions in tissues produced through the detection of gamma rays emitted when introduced radio-nuclids decay and release positrons. A PET system includes two major elements: (i) a cyclotron that produces radio-pharmaceuticals and (ii) a scanner that includes a data acquisition system and a computer.

~~"Quality of care" means to the degree to which services provided are properly matched to the needs of the population, are technically correct, and achieve beneficial impact. Quality of care can include consideration of the appropriateness of physical resources, the process of producing and delivering services, and the outcomes of services on health status, the environment, and/or behavior.~~

"Radiation therapy" means the treatment of disease with radiation, especially by selective irradiation with x-rays or other ionizing radiation and by ingestion of radioisotopes.

"Relevant reporting period" means the most recent 12-month period, prior to the beginning of the applicable batch review cycle, for which data is available from the Virginia Employment Commission, Virginia Health Information, or other source identified by the department.

"Rural" means territory, population, and housing units that are classified as "rural" by the Bureau of the Census of the United States Department of Commerce, Economic and Statistics Administration.

"State medical facilities plan" or "SMFP" means the planning document adopted by the Board of Health that includes, but is not limited to (i) methodologies for projecting need for medical facility beds and services; (ii) statistical information on the availability of medical facility beds and services; and (iii) procedures, criteria and standards for the review of applications for projects for medical care facilities and services.

"Stereotactic radiosurgery" means a noninvasive therapeutic procedure for precisely locating points within the body using an external, 3-dimensional frame of reference. A stereotactic instrument is attached to the body and used to localize precisely an area in the body by means of coordinates related to anatomical structures. An example of a stereotactic radiosurgery instrument is a Gamma Knife® unit.

"Study" or "scan" means the gathering of data during a single patient visit from which one or more images may be constructed for the purpose of reaching a definitive clinical diagnosis.

"Substance abuse disorder treatment services" means services provided to individuals for the prevention, diagnosis, treatment, or palliation of chemical dependency, which may include attendant medical and psychiatric complications of chemical dependency.

"The center" means the Center for Quality Health Care Services and Consumer Protection.

"Use rate" means the rate at which an age cohort or the population uses medical facilities and services. The rates are determined from periodic patient origin surveys conducted for the department by the regional health planning agencies, or other health statistical reports authorized by Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1 of the Code of Virginia.

12 VAC 5-230-20. Preface. Responsibility of the department.

~~Virginia's Certificate of Public Need law defines the State Medical Facilities Plan as the "planning document adopted by~~

~~the Board of Health which shall include, but not be limited to, (i) methodologies for projecting need for medical facility beds and services; (ii) statistical information on the availability of medical facility beds and services; and (iii) procedures, criteria and standards for the review of applications for projects for medical care facilities and services." (§ 32.1-102.1 of the Code of Virginia.)~~

~~Section 32.1-102.3 of the Code of Virginia states that, "Any decision to issue or approve the issuance of a certificate (of public need) shall be consistent with the most recent applicable provisions of the State Medical Facilities Plan; provided, however, if the commissioner finds, upon presentation of appropriate evidence, that the provisions of such plan are not relevant to a rural locality's needs, inaccurate, outdated, inadequate or otherwise inapplicable, the commissioner, consistent with such finding, may issue or approve the issuance of a certificate and shall initiate procedures to make appropriate amendments to such plan."~~

~~Subsection B of § 32.1-102.3 of the Code of Virginia requires the commissioner to consider "the relationship" of a project "to the applicable health plans of the board" in "determining whether a public need for a project has been demonstrated."~~

~~This State Medical Facilities Plan is a comprehensive revision of the criteria and standards for COPN reviewable medical care facilities and services contained in the Virginia State Health Plan established from 1982 through 1987, and the Virginia State Medical Facilities Plan, last updated in July, 1988. This Plan supersedes the State Health Plan 1980-1984 and all subsequent amendments thereto save those governing facilities or services not presently addressed in this Plan.~~

A. Sections 32.1-102.1 and 32.1-102.3 of the Code of Virginia requires the Board of Health to adopt a planning document for review of COPN applications and that decisions to issue a COPN shall be consistent with the most recent provisions of the State Medical Facilities Plan.

B. The commissioner is the designated decision maker in the process of determining public need.

C. The center is a unit of the department responsible for administering the COPN program under the direction of the commissioner.

D. The regional health planning agencies assist the department in determining whether a certificate should be granted.

E. The center's COPN staff is available to answer questions and provide technical assistance throughout the application process.

F. In developing or revising standards for the COPN program, the board adheres to the requirements of the Administrative Process Act and the public participation process. The department, acting for the board, solicits input from applicants, applicant representatives, industry associations, and the general public in the development or revision of these criteria through informal and formal comment periods and may hold public hearings, as appropriate.

G. If, upon presentation of appropriate evidence, the commissioner finds that the provisions of this chapter are not relevant to a rural locality's needs, or are inaccurate, outdated, inadequate or otherwise inapplicable, he may issue or approve the issuance of a certificate and shall initiate procedures to make appropriate amendments to this chapter.

12 VAC 5-230-30. Guiding principles in certificate of public need.

~~The following general principles will be used in guiding the implementation of the Virginia Medical Care Facilities Certificate of Public Need (COPN) Program and have served serve as the basis for the development of the review criteria and standards for specific medical care facilities and services contained in this document:~~

1. The COPN program will give preference to *requests that encourage* medical care facility and service development approaches which can document improvement in *that improve* the cost-effectiveness of health care delivery. Providers should strive to develop new facilities and equipment and use already available facilities and equipment to deliver needed services at the same or higher levels of quality and effectiveness, as demonstrated in patient outcomes, at lower costs.

2. The COPN program ~~will seek~~ seeks to achieve a balance between ~~appropriate~~ *the* levels of availability and access to medical care facilities and services for all ~~the citizens of Virginia of Virginia's citizens~~ and the need to constrain excess facility and service capacity.

3. The COPN program ~~will seek~~ seeks to achieve economies of scale in development and operation, ~~and optimal quality of care~~, through establishing limits on the development of specialized medical care facilities and services, on a statewide, regional, or planning district basis.

4. The COPN program ~~will give preference to~~ *seeks to promote* the development and maintenance of needed services which are accessible to every person who can benefit from the services regardless of *their* ability to pay.

5. ~~The COPN program will promote the elimination of excess facility and service capacity.~~ The COPN program ~~will promote the~~ *promotes the elimination and* conversion of excess facility and service capacity to meet identified needs. ~~The COPN program will not facilitate the survival of medical care facilities and services which have rendered superfluous by changes in health care delivery and financing.~~

12 VAC 5-230-40. General application filing criteria.

A. In addition to meeting the requirements of the State Medical Facilities Plan, applicants for a Certificate of Public Need shall provide documentation that their proposal addresses the applicable 20 considerations listed in § 32.1-102.3 of the Code of Virginia.

B. Facilities and services shall be provided in locations that meet established zoning regulations, as applicable.

C. The department shall consider an application complete when all requested information, and the application fee, is

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submitted on the form required. If the department finds the application incomplete, the applicant will be notified in writing and the application may be held for possible review in the next available applicable batch review cycle.

12 VAC 5-230-50. Project costs.

The capital development and operating costs for providing services should be comparable to similar services in the health planning region.

12 VAC 5-230-60. Preferences.

In the review of competing applications, preference will be given to applicants:

1. Who have an established performance record in completing projects on time and within the authorized capital costs;
2. Whose proposals have lower direct construction costs and cost of equipment than their competitors and can demonstrate that their cost estimates are credible;
3. Who can demonstrate a commitment to facilitate the transport of patients residing in rural areas or medically underserved areas of urban localities to needed services, directly or through coordinated efforts with other organizations;
4. Who can demonstrate a consistent compliance with state licensure and federal certification regulations and a consistent history of few documented complaints, where applicable; or
5. Who can demonstrate a commitment to enhancing financial accessibility to services through the provision of documented charity care, exclusive of bad debts and disallowances from payers, and services to Medicaid beneficiaries.

12 VAC 5-230-70. Emerging technologies.

Inasmuch as the SMFP cannot contemplate all possible future applications and advances in the regulated technologies, these future applications and technological advances will be evaluated based on emerging national trends and evidence in the peer review literature. Until such time as the SMFP can be updated to reflect changes, emerging technologies should be registered with the center following 12 VAC 5-220-110 of the Virginia Administrative Code.

12 VAC 5-230-80. Institutional need.

Notwithstanding any other provisions of this chapter, consideration will be given to the expansion of services at existing medical care facilities in planning districts with an excess supply of such services when the proposed expansion can be justified on the basis of facility-specific utilization or geographic remoteness. If a facility with an institutional need is part of a network, the underutilized services at other facilities within the network should be relocated to the facility within the planning district with the institutional need when possible.

12 VAC 5-230-90. Compliance with the terms of a condition.

A. The commissioner may condition the approval of a COPN to provide care to Virginia's indigent population, patients with specialized needs, or the medically underserved.

B. The applicant shall actively seek to provide opportunities to offer the conditioned service directly to indigent or uninsured persons at a reduced rate or free of charge to patients with specialized needs, or by the facilitation of primary care services in designated medically underserved areas.

C. If the direct provision of the conditioned services does not fulfill the terms of the condition, the center may determine the applicant to be in compliance with the terms of the condition when:

1. The applicant is part of a facility or provider network and the facility or provider network has provided reduced rate or uncompensated care at or above the regional standard; or
2. The applicant provides direct financial support for community based health care services at a value equal to or greater than the difference between the terms of the condition and the amount of direct care provided.

Such direct financial support shall be in addition to, and not a substitute for, other charitable giving chosen by the applicant.

D. Acceptable proof for direct financial support is a signed receipt indicating the number or amount of services or other support provided and dollar value of that service or support. Applicants providing direct financial support for community based health care services should render that support through one of the following organizations:

1. The Virginia Association of Free Clinics;
2. The Virginia Health Care Foundation; or
3. The Virginia Primary Care Association.

E. Applicants shall demonstrate compliance with the terms of a condition for the previous 12-month period. The written condition report shall be certified or affirmed by the applicants and filed with the center. Such report shall include, but is not limited to, the:

1. Facility or service name and address;
2. Certificate number;
3. Facility or service gross patient revenues;
4. Dollar value of the charity care provided, excluding bad debts and disallowances from payers; and
5. Number of individuals served by the direct provision of care or a receipt from one of the allowable organizations listed in subsection D of this section.

PART II.
DIAGNOSTIC IMAGING SERVICES.

Article 1.

Criteria and Standards for Computed Tomography.

12 VAC 5-230-100. Accessibility.

CT services should be within 30 minutes driving time one way, under normal conditions, of 95% of the population of the planning district.

12 VAC 5-230-110. Need for new service.

A. No CT service should be approved at a location that is within 30 minutes driving time one way of:

1. A service that is not yet operational; or
2. An existing CT unit that has performed fewer than 3,000 scans during the relevant reporting period.

B. No new CT service or network shall be approved unless all existing CT services or networks in the planning district performed an average of 4,500 CT scans per machine during the relevant reporting period.

C. Consideration may be given to new CT services proposed for sites located beyond 30 minutes driving time one way of existing facilities that do not meet the 4,500 scans per machine criterion if the proposed sites are in rural areas.

12 VAC 5-230-120. Expansion of existing service.

Proposals to increase the number of CT scanners in an existing CT service or network may be approved only if the existing service or network performed an average of 3,000 CT scans for the relevant reporting period.

12 VAC 5-230-130. Staffing.

Providers of CT services should be under the direct supervision of one or more board-certified diagnostic radiologists.

12 VAC 5-230-140. Space.

Applicants shall provide documentation that:

1. A suitable environment will be provided for the proposed CT services, including protection against known hazards; and
2. Space will be provided for patient waiting, patient preparation, staff and patient bathrooms, staff activities, storage of records and supplies, and other space necessary to accommodate the needs of handicapped persons.

Article 2.

Criteria and Standards for Magnetic Resonance Imaging.

12 VAC 5-230-150. Accessibility.

MRI services should be within 30 minutes driving time one way, under normal conditions, of 95% of the population of the planning district.

12 VAC 5-230-160. Need for new service.

A. No new MRI services shall be approved unless all existing services in the planning district performed an average of 4,000 scans per machine during the relevant reporting period.

B. Consideration may be given to new MRI services proposed for sites located beyond 30 minutes driving time one way of existing facilities that do not meet the 4,000 scans per machine criterion if the proposed sites are in rural areas.

12 VAC 5-230-170. Expansion of services.

Proposals to expand existing MRI services through the addition of a new scanning unit may be approved if the existing service performed at least 4,000 scans per existing unit during the relevant reporting period.

12 VAC 5-230-180. Staffing.

MRI machines should be under the direct, on-site supervision of one or more board-certified diagnostic radiologists.

12 VAC 5-230-190. Space.

Applicants should provide documentation that:

1. A suitable environment will be provided for the proposed MRI services, including shielding and protection against known hazards; and
2. Space will be provided for patient waiting, patient preparation, staff and patient bathrooms, staff activities, storage of records and supplies, and other space necessary to accommodate the needs of handicapped persons.

Article 3.

Magnetic Source Imaging.

12 VAC 5-230-200. Policy for the development of MSI services.

Because Magnetic Source Imaging (MSI) scanning systems are still in the clinical research stage of development with no third-party payment available for clinical applications, and because it is uncertain as to how rapidly this technology will reach a point where it is shown to be clinically suitable for widespread use and distribution on a cost-effective basis, the entry and development of this technology in Virginia should initially occur at, or in affiliation with, the academic medical centers in the state.

Article 4.

Positron Emission Tomography.

12 VAC 5-230-210. Accessibility.

The service area for each proposed PET service shall be an entire planning district.

12 VAC 5-230-220. Need for service.

A. Whether the applicant is a consortium of hospitals, a hospital network, or a single general hospital, at least 850 new PET-appropriate cases should have been diagnosed in the planning district.

B. If the applicant is a general hospital, the facility shall provide radiation therapy services and specific ancillary services suitable for the equipment, and have reported at least

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500 new courses of treatment or at least 8,000 treatment visits in the most recent reporting period.

C. If the applicant is a consortium of general hospitals or a hospital network, at least one of the consortium or network members shall provide radiation therapy services and specific ancillary services suitable for the equipment, and have reported at least 500 new PET-appropriate patients.

D. Future applications of PET equipment shall be evaluated based on review of national literature.

12 VAC 5-230-230. Additional scanners.

No additional PET scanners shall be added in a planning district unless the applicant can demonstrate that the utilization of the existing PET service was at least 1,200 PET scans for a fixed site unit and that the proposed new or expanded service would not reduce the utilization of existing services below 850 PET scans for a fixed site unit. The applicant shall also provide documentation that the project complies with 12 VAC 5-230-240.

12 VAC 5-230-240. Staffing.

PET services should be under the direction of a physician who is a board certified radiologist. Such physician shall be a designated authorized user of isotopes used for PET by the Nuclear Regulatory Commission or licensed by the Office of Radiologic Health of the Virginia Department of Health, as applicable.

Article 5.

Noncardiac Nuclear Imaging Criteria and Standards.

12 VAC 5-230-250. Accessibility.

Noncardiac nuclear imaging services should be available within 30 minutes driving time one way, under normal driving conditions, of 95% of the population of the planning district.

12 VAC 5-230-260. Introduction of a service.

Any applicant proposing to establish a medical care facility for the provision of noncardiac nuclear imaging, or introducing nuclear imaging as a new service at an existing medical care facility, shall provide documentation that the service can achieve a minimum utilization level of (i) 650 scans in the first 12 months of operation, (ii) 1,000 scans in the second 12 months of services, and (iii) 1,250 scans in the second 12 months of operation.

12 VAC 5-230-270. Staffing.

The proposed new or expanded nuclear imaging service shall be under the direction of a board certified physician. Such physicians shall be a designated authorized user of isotopes licensed by the Nuclear Regulatory Commission or the Office of Radiologic Health of the Virginia Department of Health, as applicable.

PART III. RADIATION THERAPY SERVICES.

Article 1. Radiation Therapy Services.

12 VAC 5-230-280. Accessibility.

Radiation therapy services should be available within 60 minutes driving time one way, under normal conditions, for 95% of the population of the planning district.

12 VAC 5-230-290. Availability.

A. No new radiation therapy service shall be approved unless: (i) existing radiation therapy machines located in the planning district were used for at least 320 cancer cases and at least 8,000 treatment visits for the relevant reporting period; and (ii) it can be reasonably projected that the new service will perform at least 6,000 procedures by the third year of operation without reducing the utilization of existing radiation therapy machines within 60 minutes drive time one way, under normal conditions, such that less than 8,000 procedures will be performed by an existing machine.

B. The number of radiation therapy machines needed in a primary service area will be determined as follows:

$$\frac{\text{Population} \times \text{Cancer Incidence Rate} \times 60\%}{320}$$

where:

1. The population is projected to be at least 75,000 people three years from the current year as reported in the most current projections of the Virginia Employment Commission;
2. The "cancer incidence rate" is based on data from the Statewide Cancer Registry;
3. 60% is the estimated number of new cancer cases in a planning district that are treatable with radiation therapy; and
4. 320 is 100% utilization of a radiation therapy machine based upon an anticipated average of 25 treatment visits per case.

C. Consideration will be given to the approval of new radiation therapy services located at a general hospital at least 60 minutes driving time one way, under normal conditions, from any site that radiation therapy services are available if the applicant can demonstrate that the proposed new services will perform at least 4,500 treatment procedures annually by the second year of operation, without reducing the utilization of existing machines located within 60 minutes driving time one way, under normal conditions, from the proposed new service location.

D. Proposals for the expansion of radiation therapy services should not be approved unless all existing radiation therapy machines operated by the applicant in the planning district have performed at least 8,000 procedures for the relevant reporting period.

12 VAC 5-230-300. Statewide Cancer Registry.

Facilities with radiation therapy services shall participate in the Statewide Cancer Registry as required by Article 9 (§ 32.1-70 et seq.) of Chapter 2 of Title 32.1 of the Code of Virginia.

12 VAC 5-230-310. Staffing.

Radiation therapy services shall be under the direction of a physician board-certified in radiation oncology.

12 VAC 5-230-320. Equipment, patient care; support services.

In addition to the radiation therapy machine, the service should have direct access to:

1. Simulation equipment capable of precisely producing the geometric relations of the equipment to be used for treatment of the patient;
2. A computerized treatment planning system;
3. A custom block design and cutting system; and
4. Diagnostic, laboratory oncology services.

Article 2.

Criteria and Standards for Stereotactic Radiosurgery.

12 VAC 5-230-330. Availability; need for new service.

No new services should be approved unless (i) the number of procedures performed with existing units in the planning region average more than 350 per year and (ii) it can be reasonably projected that the proposed new service will perform at least 250 procedures in the second year of operation without reducing patient volumes to existing providers to less than 350 procedures.

12 VAC 5-230-340. Statewide Cancer Registry.

Facilities shall participate in the Statewide Cancer Registry as required by Article 9 (§ 32.1-70 et seq.) of Chapter 2 of Title 32.1 of the Code of Virginia.

12 VAC 5-230-350. Staffing.

The proposed new or expanded stereotactic radiosurgery services shall be under the direction of a physician who is board-certified in neurosurgery and a radiation oncologist with training in stereotactic radiosurgery.

PART IV.
CARDIAC SERVICES.

Article 1.

Criteria and Standards for Cardiac Catheterization Services.

12 VAC 5-230-360. Accessibility.

Adult cardiac catheterization services should be accessible within 60 minutes driving time one way, under normal conditions, for 95% of the population of the planning district.

12 VAC 5-230-370. Availability.

A. No new fixed site cardiac catheterization laboratory should be approved unless:

1. All existing fixed site cardiac catheterization laboratories located in the planning district were used for at least 960 diagnostic-equivalent cardiac catheterization procedures for the relevant reporting period; and

2. It can be reasonably projected that the proposed new service will perform at least 200 diagnostic equivalent procedures in the first year of operation, 500 diagnostic equivalent procedures in the second year of operation without reducing the utilization of existing laboratories in the planning district to less than 960 diagnostic equivalent procedures at any of those existing laboratories.

B. Proposals for the use of freestanding or mobile cardiac catheterization laboratories shall be approved only if such laboratories will be provided at a site located on the campus of a general or community hospital. Additionally, applicants for proposed mobile cardiac catheterization laboratories shall be able to project that they will perform 200 diagnostic equivalent procedures in the first year of operation, 350 diagnostic equivalent procedures in the second year of operation without reducing the utilization of existing laboratories in the planning district to less than 960 diagnostic equivalent procedures at any of those existing laboratories.

C. Consideration may be given for the approval of new cardiac catheterization services located at a general hospital located 60 minutes or more driving time one way, under normal conditions, from existing laboratories, if it can be projected that the proposed new laboratory will perform at least 200 diagnostic-equivalent procedures in the first year of operation, 400 diagnostic-equivalent procedures in the second year of operation without reducing the utilization of existing laboratories located within 60 minutes driving time one way, under normal conditions, of the proposed new service location.

D. Proposals for the addition of cardiac catheterization laboratories shall not be approved unless all existing cardiac catheterization laboratories operated in the planning district by the applicant have performed at least 1,200 diagnostic-equivalent procedures for the relevant reporting period, and the applicant can demonstrate that the expanded service will achieve a minimum of 200 diagnostic equivalent procedures per laboratory in the first 12 months of operation, 400 diagnostic equivalent procedures in the second 12 months of operation without reducing the utilization of existing cardiac catheterization laboratories in the planning district below 960 diagnostic equivalent procedures.

E. Emergency cardiac catheterization services shall be available within 30 minutes of admission to the facility.

F. No new or expanded pediatric cardiac catheterization services should be approved unless the proposed service will be provided at a hospital that:

1. Provides open heart surgery services, provides pediatric tertiary care services, has a pediatric intensive care unit and provides neonatal special care or has a cardiac intensive care unit and provides pediatric open heart surgery services; and

2. The applicant can demonstrate that each proposed laboratory will perform at least 100 pediatric cardiac

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catheterization procedures in the first year of operation and 200 pediatric cardiac catheterization procedures in the second year of operation.

G. Applications for new or expanded cardiac catheterization services that include nonemergent interventional cardiology services should not be approved unless emergency open heart surgery services are available within 15 minutes drive time in the hospital where the proposed cardiac catheterization service will be located.

12 VAC 5-230-380. Staffing.

A. Cardiac catheterization services should have a medical director who is board-certified in cardiology and clinical experience in the performing physiologic and angiographic procedures.

In the case of pediatric cardiac catheterization services, the medical director should be board-certified in pediatric cardiology and have clinical experience in performing physiologic and angiographic procedures.

B. All physicians who will be performing cardiac catheterization procedures should be board-certified or board-eligible in cardiology and clinical experience in performing physiologic and angiographic procedures.

In the case of pediatric catheterization services, each physician performing pediatric procedures should be board-certified or board-eligible in pediatric cardiology, and have clinical experience in performing physiologic and angiographic procedures.

C. All anesthesia services should be provided by or supervised by a board-certified anesthesiologist.

In the case of pediatric catheterization services, the anesthesiologist should be experienced and trained in pediatric anesthesiology.

Article 2.

Criteria and Standards for Open Heart Surgery.

12 VAC 5-230-390. Accessibility.

Open heart surgery services should be available 24 hours per day 7 days per week and accessible within a 60 minutes driving time one way, under normal conditions, for 95% of the population of the planning district.

12 VAC 5-230-400. Availability.

A. No new open heart services should be approved unless:

1. The service will be made available in a general hospital with established cardiac catheterization services that have been used for at least 960 diagnostic equivalent procedures for the relevant reporting period and have been in operation for at least 30 months;

2. All existing open heart surgery rooms located in the planning district have been used for at least 400 open heart surgical procedures for the relevant reporting period; and

3. It can be reasonably projected that the proposed new service will perform at least 150 procedures per room in the first year of operation and 250 procedures per room in the

second year of operation without reducing the utilization of existing open heart surgery programs in the planning district to less than 400 open heart procedures performed at those existing services.

B. Notwithstanding subsection A of this subsection, consideration will be given to the approval of new open heart surgery services located at a general hospital more than 60 minutes driving time one way, under normal conditions, from any site in which open heart surgery services are currently available if it can be projected that the proposed new service will perform at least 150 open heart procedures in the first year of operation; and 200 procedures in the second year of operation without reducing the utilization of existing open heart surgery rooms to less than 400 procedures per room within 2 hours driving time one way, under normal conditions, from the proposed new service location.

Such hospitals should also have provided at least 960 diagnostic-equivalent cardiac catheterization procedures during the relevant reporting period on equipment that has been in operation at least 30 months.

C. Proposals for the expansion of open heart surgery services should not be approved unless all existing open heart surgery rooms operated by the applicant have performed at least:

1. 400 adult-equivalent open heart surgery procedures in the relevant reporting period when the proposed facility is within two hours driving time one way, under normal conditions, of an existing open heart surgery service; or

2. 300 adult-equivalent open heart surgery procedures in the relevant reporting period when the applicant proposes expanding services in excess of two hours driving time, under normal conditions, of an existing open heart surgery service.

D. No new or expanded pediatric open heart surgery services should be approved unless the proposed new or expanded service is provided at a hospital that:

1. Has pediatric cardiac catheterization services that have been in operation for 30 months and have performed at least 200 pediatric cardiac catheterization procedures for the relevant reporting period; and

2. Has pediatric intensive care services and provides neonatal special care.

12 VAC 5-230-410. Staffing.

A. Open heart surgery services should have a medical director certified by the American Board of Thoracic Surgery in cardiovascular surgery with special qualifications and experience in cardiac surgery.

In the case of pediatric open heart surgery, the medical director shall be certified by the American Board of Thoracic Surgery in cardiovascular surgery and experience in pediatric cardiovascular surgery and congenital heart disease.

B. All physicians performing open heart surgery procedures should be board-certified or board-eligible in cardiovascular surgery, with experience in cardiac surgery. In addition to the cardiovascular surgeon who performs the procedure, there

should be a suitably trained board-certified or board-eligible cardiovascular surgeon acting as an assistant during the open heart surgical procedure. There should also be present at least one board-certified or board-eligible anesthesiologist with experience in open heart surgery.

In the case of pediatric open heart surgery services, each physician performing and assisting with pediatric procedures should be board-certified or board-eligible in cardiovascular surgery with experience in pediatric cardiovascular surgery. In addition to the cardiovascular surgeon who performs the procedure, there should be a suitably trained board-certified or board-eligible cardiovascular surgeon acting as an assistant during the open heart surgical procedure. All pediatric procedures should include a board-certified anesthesiologist with experience in pediatric anesthesiology and pediatric open heart surgery.

PART V.
GENERAL SURGICAL SERVICES.

12 VAC 5-230-420. Accessibility.

Surgical services should be available within 30 minutes driving time one way, under normal conditions, for 95% of the population of the planning district.

12 VAC 5-230-430. Availability.

A. The combined number of inpatient and outpatient general purpose surgical operating rooms needed in a planning district, exclusive of Level I and Level II Trauma Centers dedicated to the needs of the trauma service, dedicated cesarean section rooms, or operating rooms designated exclusively for open heart surgery, will be determined as follows:

$$FOR = \frac{((ORV/POP) \times (PROPOP)) \times AHORV}{1600}$$

ORV = the sum of total operating room visits (inpatient and outpatient) in the planning district in the most recent five years for which operating room utilization data has been reported by Virginia Health Information; and

POP = the sum of total population in the planning district in the most recent five years for which operating room utilization data has been reported by Virginia Health Information, as found in the most current projections of the Virginia Employment Commission.

PROPOP = the projected population of the planning district five years from the current year as reported in the most current projections of the Virginia Employment Commission.

AHORV = the average hours per general purpose operating room visit in the planning district for the most recent year for which average hours per general purpose operating room visit has been calculated from information collected by Virginia Health Information.

FOR = future general purpose operating rooms needed in the planning district five years from the current year.

1600 = available service hours per operating room per year based on 80% utilization of an operating room that is available 40 hours per week, 50 weeks per year.

B. Projects involving the relocation of existing general purpose operating rooms within a planning district may be authorized when it can be reasonably documented that such relocation will improve the distribution of surgical services within a planning district by making services available within 30 minutes driving time one way, under normal conditions, of 95% of the planning district's population.

PART VI.
GENERAL INPATIENT SERVICES.

12 VAC 5-230-440. Accessibility.

Acute care inpatient facility beds should be within 30 minutes driving time one way, under normal conditions, of 95% of the population of a planning district.

12 VAC 5-230-450. Availability.

A. Subject to the provisions of 12 VAC 5-230-80, no new inpatient beds should be approved in any planning district unless:

1. The resulting number of beds does not exceed the number of beds projected to be needed, for each inpatient bed category, for that planning district for the fifth planning horizon year;
2. The average annual occupancy, based on the number of beds, is at least 70% (midnight census) for the relevant reporting period; or
3. The intensive care bed capacity has an average annual occupancy of at least 65% for the relevant reporting period, based on the number of beds.

B. No proposal to replace or relocate inpatient beds to a location not contiguous to the existing site should be approved unless:

1. Off-site replacement is necessary to correct life safety or building code deficiencies;
2. The population currently served by the beds to be moved will have reasonable access to the beds at the new site, or to neighboring inpatient facilities;
3. The beds to be replaced experienced an average annual utilization of 70% (midnight census) for general inpatient beds and 65% for intensive care beds in the relevant reporting period;
4. The number of beds to be moved off site is taken out of service at the existing facility; and
5. The off-site replacement of beds results in: (i) a decrease in the licensed bed capacity; (ii) a substantial cost savings, cost avoidance, or consolidation of underutilized facilities; or (iii) generally improved operating efficiency in the applicant's facility or facilities.

C. For proposals involving a capital expenditure of \$5 million or more, and involving the conversion of underutilized beds to medical/surgical, pediatric or intensive care, consideration will

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be given to a proposal if: (i) there is a projected need in the category of inpatient beds that would result from the conversion; and (ii) it can be demonstrated that the average annual occupancy of the beds to be converted would reach the standard in subdivisions B 1, 2 and 3 for the bed category that would result from the conversion, by the first year of operation.

D. In addition to the terms of 12 VAC 5-230-80, a need for additional general inpatient beds may be demonstrated if the total number of beds in a given category in the planning district is less than the number of such beds projected as necessary to meet demand in the fifth planning horizon year for which the application is submitted.

E. The number of medical/surgical beds projected to be needed in a planning district shall be computed as follows:

1. Determine the projected total number of medical/surgical and pediatric inpatient days for the fifth planning horizon year as follows:

a. Add the medical/surgical and pediatric inpatient days for the past three years for all acute care inpatient facilities in the planning district as reported in the Annual Survey of Hospitals;

b. Add the projected planning district population for the same three year period as reported by the Virginia Employment Commission;

c. Divide the total of the medical/surgical and pediatric inpatient days by the total of the population and express the resulting rate in days per 1,000 population;

d. Multiply the days per 1,000 population rate by the projected population for the planning district (expressed in thousands) for the fifth planning horizon year.

2. Determine the projected number of medical/surgical and pediatric beds that may be needed in the planning district for the planning horizon year as follows:

a. Divide the result in subdivision E 1 d of this subsection by 365;

b. Divide the quotient obtained by 0.80 in planning districts in which 50% or more of the population resides in nonrural areas or 0.75 in planning districts in which less than 50% of the population resides in nonrural areas.

3. Determine the projected number of medical/surgical and pediatric beds that may be established or relocated within the planning district for the fifth planning horizon year as follows:

a. Determine the number of medical/surgical and pediatric beds as reported in the inventory;

b. Subtract the number of beds identified in subdivision E 1 from the number of beds needed as determined in subdivision E 2 b of this subsection. If the difference indicated is positive, then a need may exist for additional medical/surgical or pediatric beds. If the difference is negative, then no need for additional beds exists.

F. The projected need for intensive care beds shall be computed as follows:

1. Determine the projected total number of intensive care inpatient days for the fifth planning horizon year as follows:

a. Add the intensive care inpatient days for the past three years for all inpatient facilities in the planning district as reported in the annual survey of hospitals;

b. Add the planning district's projected population for the same three-year period as reported by the Virginia Employment Commission;

c. Divide the total of the intensive care days by the total of the population to obtain the rate in days per 1,000 population;

d. Multiply the days per 1,000 population rate by the projected population for the planning district (expressed in thousands) for the fifth planning horizon year to yield the expected intensive care patient days.

2. Determine the projected number of intensive care beds that may be needed in the planning district for the planning horizon year as follows:

a. Divide the number of days projected in subdivision F 1 d of this subsection by 365 to yield the projected average daily census;

b. Calculate the beds needed to assure with 99% probability that an intensive care bed will be available for unscheduled admissions.

3. Determine the projected number of intensive care beds that may be established or relocated within the planning district for the fifth planning horizon year as follows:

a. Determine the number of intensive care beds as reported in the inventory.

b. Subtract the number of beds identified in subdivision F 3 a of this subsection from the number of beds needed as determined in subdivision F 2 b of this subsection. If the difference is positive, then a need may exist for additional intensive care beds. If the difference is negative, then no need for additional beds exists.

G. No hospital should relocate beds to a new location if underutilized beds (less than 85% average annual occupancy for medical/surgical and pediatric beds), when the relocation involves such beds, and less than 65% average annual occupancy for intensive care beds when relocation involves such beds, are available within 30 minutes of the site of the proposed hospital.

PART VII. NURSING FACILITIES.

12 VAC 5-230-460. Accessibility.

A. Nursing facility beds should be accessible within 60 minutes driving time one way, under normal conditions, to 95% of the population in a planning region.

B. Nursing facilities should be accessible by public transportation when such systems exist in an area.

C. Preference will be given to proposals that improve geographic access and reduce travel time to nursing facilities within a planning district.

12 VAC 5-230-470. Availability.

A. No planning district shall be considered to have a need for additional nursing facility beds unless (i) the bed need forecast in that planning district (see subsection D of this section) exceeds the current inventory of beds in that planning district and (ii) the estimated average annual occupancy of all existing Medicaid-certified nursing facility beds in the planning district was at least 93% for the most recent two years following the first year of operation of new beds, excluding the bed inventory and utilization of the Virginia Veterans Care Center.

B. No planning district shall be considered to have a need for additional beds if there are unconstructed beds designated as Medicaid-certified.

C. Proposals for expanding existing nursing facilities should not be approved unless the facility has operated for at least two years and the average annual occupancy of the facility's existing beds was at least 93% in the most recent year for which bed utilization has been reported to the department.

Exceptions will be considered for facilities that operated at less than 93% average annual occupancy in the most recent year for which bed utilization has been reported when the facility has a rehabilitative or other specialized care focus that results in a relatively short average length of stay, causing an average annual occupancy lower than 93% for the facility.

D. The bed need forecast will be computed as follows:

$$PDBN = (UR64 \times PP64) + (UR69 \times PP69) + (UR74 \times PP74) + (UR79 \times PP79) + (UR84 \times PP84) + (UR85 \times PP85) \text{ where:}$$

PDBN = Planning district bed need.

UR64 = The nursing home bed use rate of the population aged 0 to 64 in the planning district as determined in the most recent nursing home patient origin study authorized by the department.

PP64 = The population aged 0 to 64 projected for the planning district three years from the current year as most recently published by the Virginia Employment Commission.

UR69 = The nursing home bed use rate of the population aged 65 to 69 in the planning district as determined in the most recent nursing home patient origin study authorized by the department.

PP69 = The population aged 65 to 69 projected for the planning district three years from the current year as most recently published by the Virginia Employment Commission.

UR74 = The nursing home bed use rate of the population aged 70 to 74 in the planning district as determined in the most recent nursing home patient origin study authorized by the department.

PP74 = The population aged 70 to 74 projected for the planning district three years from the current year as most recently published by the Virginia Employment Commission.

UR79 = The nursing home bed use rate of the population aged 75 to 79 in the planning district as determined in the most recent nursing home patient origin study authorized by the department.

PP79 = The population aged 75 to 79 projected for the planning district three years from the current year as most recently published by the Virginia Employment Commission.

UR84 = The nursing home bed use rate of the population aged 80 to 84 in the planning district as determined in the most recent nursing home patient origin study authorized by the department.

PP84 = The population aged 80 to 84 projected for the planning district three years from the current year as most recently published by the Virginia Employment Commission.

UR85+ = The nursing home bed use rate of the population aged 85 and older in the planning district as determined in the most recent nursing home patient origin study authorized by the department.

PP85+ = The population aged 85 and older projected for the planning district three years from the current year as most recently published by the Virginia Employment Commission.

Planning district bed need forecasts will be rounded as follows:

Planning District Bed Need	Rounded Bed Need
1-29	0
30-44	30
45-84	60
85-104	90
105-134	120
135-164	150
165-194	180
195-224	210
225+	240

The above applies, except in the case of a planning district that has two or more nursing facilities, has had an average annual occupancy rate in excess of 93% for the most recent two years for which bed utilization has been reported to the department, and has a forecasted bed need of 15 to 29 beds. In such a case, the bed need for this planning district will be rounded to 30.

E. No new freestanding nursing facilities of less than 90 beds should be authorized. Consideration will be given to new freestanding facilities with fewer than 90 nursing facility beds when such facilities can be justified on the basis of a lack of local demand for a larger facility and a maldistribution of nursing facility beds within a planning district.

F. Proposals for the development of new nursing facilities or the expansion of existing facilities by continuing care retirement communities will be considered when:

1. The total number of new or additional beds plus any existing nursing facility beds operated by the continuing care provider does not exceed 10% of the continuing care provider's total existing or planned independent living and adult care residence;

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2. The proposed beds are necessary to meet existing or reasonably anticipated obligations to provide care to present or prospective residents of the continuing care facility;

3. The applicant agrees in writing not to seek certification for the use of such new or additional beds by persons eligible to receive Medicaid;

4. The applicant agrees in writing to obtain the resident's written acknowledgement, prior to admission, that the applicant does not serve Medicaid recipients and that, in the event such resident becomes a Medicaid recipient and is eligible for nursing facility placement, the resident will not be eligible for placement in the CCRC's nursing facility unit;

5. The applicant agrees in writing that only continuing care contract holders who have resided in the CCRC as independent living residents or adult care residents will be admitted to the nursing facility unit after the first three years of operation.

G. The construction cost of proposed nursing facilities should be comparable to the most recent cost for similar facilities in the same health planning region. Consideration should be given to the current capital cost reimbursement methodology utilized by the Department of Medical Assistance Services.

H. Consideration should be given to applicants proposing to replace outdated and functionally obsolete facilities with modern nursing facilities that will result in the more cost efficient delivery of health care services to residents in a more aesthetically pleasing and comfortable environment. Proponents of the replacement and relocation of nursing facility beds should demonstrate that the replacement and relocation are reasonable and could result in savings in other cost centers, such as realized operational economies of scale and lower maintenance costs.

PART VIII. LITHOTRIPSY SERVICES.

12 VAC 5-230-480. Accessibility.

A. The waiting time for lithotripsy services should be no more than one week.

B. Lithotripsy services should be available within 30 minutes driving time in urban areas and 45 minutes driving time one way, under normal conditions, for 95% of the population of the health planning region.

12 VAC 5-230-490. Availability.

A. Consideration will be given to new lithotripsy services established at a general hospital through contract with, or by lease of equipment from, an existing service provider authorized to operate in Virginia, provided the hospital has referred at least two patients per week, or 100 patients annually, for the relevant reporting period to other facilities for lithotripsy services.

B. A new service may be approved at the site of any general hospital or hospital-based clinic or licensed outpatient surgical hospital provided the service is provided by:

1. A vendor currently providing services in Virginia;

2. A vendor not currently providing services who can demonstrate that the proposed unit can provide at least 750 procedures annually at all sites served; or

3. An applicant who can demonstrate that the proposed unit can provide at least 750 procedures annually at all sites to be served.

C. Proposals for the expansion of services by existing vendors or providers of such services may be approved if it can be demonstrated that each existing unit owned or operated by that vendor or provider has provided a minimum of 750 procedures annually at all sites served by the vendor or provider.

D. A new or expanded lithotripsy service may be approved when the applicant is a consortium of hospitals or a hospital network, when a majority of procedures will be provided at sites or facilities owned or operated by the hospital consortium or by the hospital network.

PART IX. ORGAN TRANSPLANT.

12 VAC 5-230-500. Accessibility.

A. Organ transplantation services should be accessible within two hours driving time one way, under normal conditions, of 95% of Virginia's population.

B. Providers of organ transplantation services should facilitate access to pre- and post-transplantation services needed by patients residing in rural locations by establishing part-time satellite clinics.

12 VAC 5-230-510. Availability.

A. There should be no more than one program for each transplantable organ in a health planning region.

B. Proposals to expand existing transplantation programs shall demonstrate that existing organ transplantation services comply with all applicable Medicare program coverage criteria.

12 VAC 5-230-520. Minimum utilization; minimum survival rate; service proficiency; systems operations.

A. Proposals to establish or expand organ transplantation services should demonstrate that the minimum number of transplants would be performed annually. The minimum number of transplants required by organ system is:

Kidney	30
Pancreas or kidney/pancreas	12
Heart	17
Heart/Lung	12
Lung	12
Liver	21
Intestine	2

Performance of minimum transplantation volumes does not indicate a need for additional transplantation capacity or programs.

B. Preference will be given to expansion of successful existing services, either by enabling necessary increases in the number of organ systems being transplanted or by adding

transplantation capability for additional organ systems, rather than developing additional programs that could reduce average program volume.

C. Facilities should demonstrate that they will achieve and maintain minimum transplant patient survival rates. Minimum one-year survival rates, listed by organ system, are:

Kidney	95%
Pancreas or kidney/pancreas	90%
Heart	85%
Heart/Lung	60%
Lung	77%
Liver	86%
Intestine	77%

D. Proposals to add additional organ transplantation services should demonstrate at least two years successful experience with all existing organ transplantation systems.

E. All physicians that perform transplants should be board-certified by the appropriate professional examining board, and should have a minimum of one year of formal training and two years of experience in transplant surgery and post-operative care.

PART X. MISCELLANEOUS CAPITAL EXPENDITURES.

12 VAC 5-230-530. Purpose.

This part of the SMFP is intended to provide general guidance in the review of projects that require COPN authorization by virtue of their expense but do not involve changes in the bed or service capacity of a medical care facility addressed elsewhere in this chapter. This part may be used in coordination with other parts of the SMFP addressing changes in bed or service capacity used in the COPN review process.

12 VAC 5-230-540. Project need.

All applications involving the expenditure of \$5 million dollars or more by a medical care facility should include documentation that the expenditure is necessary in order for the facility to meet the identified medical care needs of the public it serves. Such documentation should clearly identify that the expenditure:

1. Represents the most cost-effective approach to meeting the identified need; and
2. The ongoing operational costs will not result in unreasonable increases in the cost of delivering the services provided.

12 VAC 5-230-550. Facilities expansion.

Applications for the expansion of medical care facilities should document that the current space provided in the facility for the areas or departments proposed for expansion are inadequate. Such documentation should include:

1. An analysis of the historical volume of work activity or other activity performed in the area or department;

2. The projected volume of work activity or other activity to be performed in the area or department; and

3. Evidence that contemporary design guidelines for space in the relevant areas or departments, based on levels of work activity or other activity, are consistent with the proposal.

12 VAC 5-230-560. Renovation or modernization.

A. Applications for the renovation or modernization of medical care facilities should provide documentation that:

1. The timing of the renovation or modernization expenditure is appropriate within the life cycle of the affected building or buildings; and
2. The benefits of the proposed renovation or modernization will exceed the costs of the renovation or modernization over the life cycle of the affected building or buildings to be renovated or modernized.

B. Such documentation should include a history of the affected building or buildings, including a chronology of major renovation and modernization expenses.

C. Applications for the general renovation or modernization of medical care facilities should include downsizing of beds or other service capacity when such capacity has not operated at a reasonable level of efficiency as identified in the relevant sections of this chapter during the most recent three-year period.

12 VAC 5-230-570. Equipment.

Applications for the purchase and installation of equipment by medical care facilities that are not addressed elsewhere in this chapter should document that the equipment is needed. Such documentation should clearly indicate that the (i) proposed equipment is needed to maintain the current level of service provided, or (ii) benefits of the change in service resulting from the new equipment exceed the costs of purchasing or leasing and operating the equipment over its useful life.

PART XI. MEDICAL REHABILITATION.

12 VAC 5-230-580. Accessibility.

Comprehensive inpatient rehabilitation services should be available within 60 minutes driving time one way, under normal conditions, of 95% of the population of the planning region.

12 VAC 5-230-590. Availability.

A. The number of comprehensive and specialized rehabilitation beds needed in a health planning region will be projected as follows:

$$((UR \times PROJ. POP.)/365)/.90$$

Where UR = the use rate expressed as rehabilitation patient days per population in the health planning region as reported in the most recent "Industry Report for Virginia Hospitals and Nursing Facilities" published by Virginia Health Information; and

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PROJ.POP. = the most recent projected population of the health planning region three years from the current year as published by the Virginia Employment Commission.

B. No additional rehabilitation beds should be authorized for a health planning region in which existing rehabilitation beds were utilized at an average annual occupancy of less than 90% in the most recently reported year.

Preference will be given to the development of needed rehabilitation beds through the conversion of underutilized medical/surgical beds.

C. Notwithstanding subsection A of this section, the need for proposed inpatient rehabilitation beds will be given consideration when:

1. The rehabilitation specialty proposed is not currently offered in the health planning region; and
2. A documented basis for recognizing a need for the service or beds is provided by the applicant.

12 VAC 5-230-600. Staffing.

Medical rehabilitation facilities should have full-time medical direction by a physiatrist or other physician with a minimum of two years experience in the proposed specialized inpatient medical rehabilitation program.

PART XII. MENTAL HEALTH SERVICES.

Article 1.

Psychiatric and Substance Abuse Disorder Treatment Services.

12 VAC 5-230-610. Accessibility.

A. Acute psychiatric, acute substance abuse disorder treatment services, and intermediate care substance abuse disorder treatment services should be available within 60 minutes driving time one way, under normal conditions, of 95% of the population.

B. Existing and proposed acute psychiatric, acute substance abuse disorder treatment, and intermediate care substance abuse disorder treatment service providers shall have established plans for the provision of services to indigent patients which include, at a minimum: (i) the minimum number of unreimbursed patient days to be provided to indigent patients who are not Medicaid recipients; (ii) the minimum number of Medicaid-reimbursed patient days to be provided, unless the existing or proposed facility is ineligible for Medicaid participation; (iii) the minimum number of unreimbursed patient days to be provided to local community services boards; and (iv) a description of the methods to be utilized in implementing the indigent patient service plan and assuring the provision of the projected levels of unreimbursed and Medicaid-reimbursed patient days.

C. Proposed acute psychiatric, acute substance abuse disorder treatment, and intermediate care substance abuse disorder treatment service providers shall have formal agreements with their identified community services boards that: (i) specify the number of charity care patient days that will be provided to the community service board; (ii) describe

the mechanisms to monitor compliance with charity care provisions; (iii) provide for effective discharge planning for all patients, including return to the patients place of origin or home state if not Virginia; and (iv) consider admission priorities based on relative medical necessity.

D. Providers of acute psychiatric, acute substance abuse disorder treatment, and intermediate care substance abuse disorder treatment services serving large geographic areas should establish satellite outpatient facilities to improve patient access, where appropriate and feasible.

12 VAC 5-230-620. Availability.

A. The combined number of acute psychiatric and acute substance abuse disorder treatment beds needed in a planning district with existing acute psychiatric or acute substance abuse disorder treatment beds or both will be determined as follows:

$$((UR \times PROJ.POP.)/365)/.75$$

Where *UR* = the use rate of the planning district expressed as the average acute psychiatric and acute substance abuse disorder treatment patient days per population reported for the most recent five-year period; and

PROJ.POP. = the projected population of the planning district five years from the current year as reported in the most recent published projections of the Virginia Employment Commission.

For purposes of this methodology, no beds shall be included in the inventory of psychiatric or substance abuse disorder beds when these beds (i) are in facilities operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services; (ii) have been converted to other uses; (iii) have been vacant for six months or more; or (iv) are not currently staffed and cannot be staffed for acute psychiatric or substance abuse disorder patient admissions within 24 hours.

B. Subject to the provisions of 12 VAC 5-230-80, no additional acute psychiatric or acute substance abuse disorder treatment beds should be authorized for a planning district with existing acute psychiatric or acute substance abuse disorder treatment beds or both if the existing inventory of such beds is greater than the need identified using the above methodology.

However, consideration will be given to the addition of acute psychiatric or acute substance abuse disorder beds by existing medical care facilities in planning districts with an excess supply of beds when such additions can be justified on the basis of facility-specific utilization or geographic remoteness, i.e., driving time of 60 minutes or more, one way under normal conditions, to alternate acute care facilities. If the facility with the institutional need for beds is part of a hospital network, underutilized beds at the other facilities within the network should be relocated to the facility with the institutional need if possible.

C. No existing acute psychiatric or acute substance disorder abuse treatment beds should be relocated unless it can be reasonably projected that the relocation will not have a negative impact on the ability of existing acute psychiatric or substance abuse disorder treatment providers or both to

continue to provide historic levels of service to Medicaid or other indigent patients.

D. The combined number of acute psychiatric and acute substance abuse disorder treatment beds needed in a planning district without existing acute psychiatric or acute substance abuse disorder treatment beds will be determined as follows:

$$((UR \times PROJ.POP.)/365)/.80$$

Where UR = the use rate of the health planning region in which the planning district is located expressed as the average acute psychiatric and acute substance abuse disorder treatment patient days per population reported for the most recent five-year period;

PROJ.POP. = the projected population of the planning district five years from the current year as reported in the most recent published projections of the Virginia Employment Commission.

E. Preference will be given to the development of needed acute psychiatric and intermediate substance abuse disorder treatment beds through the conversion of unused general hospital beds. Preference will also be given to proposals for acute psychiatric and substance abuse beds demonstrating a willingness to accept persons under temporary detention orders (TDO) and to have contractual agreements to serve populations served by Community Services Boards, whether through conversion of underutilized general hospital beds or development of new beds.

F. The number of intermediate care substance disorder abuse treatment beds needed in a planning district with existing intermediate care substance abuse disorder treatment beds will be determined as follows:

$$((UR \times PROJ.POP.)/365)/.75$$

Where UR = the use rate of the planning district expressed as the average intermediate care substance abuse disorder treatment patient days per population reported for the most recent three-year period; and

PROJ.POP. = the projected population of the planning district three years from the current year as reported in the most recent published projections of the Virginia Employment Commission.

G. Subject to the provisions of 12 VAC 5-230-80, no additional intermediate care substance abuse disorder treatment beds should be authorized for a planning district with existing intermediate care substance abuse disorder treatment beds if the existing inventory of such beds is greater than the need identified. No beds in facilities operated by DMHMRSAS will be included in the inventory of intermediate care substance abuse disorder beds.

However, consideration will be given to the addition of intermediate care substance abuse disorder treatment beds by existing medical care facilities in planning districts with an excess supply of beds when such addition can be justified on the basis of facility-specific utilization or geographic remoteness, i.e., driving time of 60 minutes or more one way under normal conditions, to alternate acute care facilities. If

the facility with the institutional need for beds is part of a hospital network, underutilized beds at the other facilities within the network should be relocated to the facility with the institutional need if possible.

H. No existing intermediate care substance abuse disorder treatment beds should be relocated from one site to another unless it can be reasonably projected that the relocation will not have a negative impact on the ability of existing intermediate care substance abuse disorder treatment providers to continue to provide historic levels of service to indigent patients.

I. The number of intermediate care substance abuse disorder treatment beds needed in a planning district without existing intermediate care substance abuse disorder treatment beds will be determined as follows:

$$((UR \times PROJ.POP.)/365)/.75$$

Where UR = the use rate of the health planning region in which the planning district is located expressed as the average intermediate care substance abuse disorder treatment patient days per population reported for the most recent three-year period;

PROJ.POP. = the projected population of the planning district three years from the current year as reported in the most recent published projections of the Virginia Employment Commission.

J. Preference will be given to the development of needed intermediate care substance abuse disorder treatment beds through the conversion of underutilized general hospital beds.

Article 2. Mental Retardation.

12 VAC 5-230-630. Availability.

The establishment of new ICF/MR facilities should not be authorized unless the following conditions are met:

1. Alternatives to the proposed service are not available in the area to be served by the new facility;
2. There is a documented source of referrals for the proposed new facility;
3. The manner in which the proposed new facility fits into the continuum of care for the mentally retarded is identified;
4. There are distinct and unique geographic, socioeconomic, cultural, transportation, or other factors affecting access to care that require development of a new ICF/MR;
5. Alternatives to the development of a new ICF/MR consistent with the Medicaid waiver program have been considered and can be reasonably discounted in evaluating the need for the new facility.
6. The proposed new facility is consistent with the current DMHMRSAS Comprehensive Plan and the mental retardation service priorities for the catchment area identified in the plan;

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7. Ancillary and supportive services needed for the new facility are available; and

8. Service alternatives for residents of the proposed new facility who are ready for discharge from the ICF/MR setting are available.

12 VAC 5-230-640. Continuity; integration.

Each facility should have a written transfer agreement with one or more hospitals for the transfer of emergency cases if such hospitalization becomes necessary.

12 VAC 5-230-650. Acceptability.

Mental retardation facilities should meet all applicable licensure standards as specified in 12 VAC 35-105, Rules and Regulations of the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services.

PART XIII. PERINATAL SERVICES.

Article 1.

Criteria and Standards for Obstetrical Services.

12 VAC 5-230-660. Accessibility.

Obstetrical services should be located within 30 minutes driving time one way, under normal conditions, of 95% of the population in rural areas and within 30 minutes driving time one way, under normal conditions, in urban and suburban areas.

12 VAC 5-230-670. Availability.

A. Proposals to establish new obstetrical services in rural areas should demonstrate that obstetrical volumes within the travel times listed in 12 VAC 5-230-660 will not be negatively affected.

B. Proposals to establish new obstetrical services in urban and suburban areas should demonstrate that a minimum of 2,500 deliveries will be performed annually by the second year of operation and that obstetrical volumes of existing providers located within the travel times listed in 12 VAC 5-230-660 will not be negatively affected.

C. Applications to improve existing obstetrical services, and to reduce costs through consolidation of two obstetrical services into a larger, more efficient service will be given preference over the addition of new services or the expansion of single service providers.

12 VAC 5-230-680. Continuity.

A. Perinatal service capacity should be developed and sized to provide routine newborn care to infants delivered in the associated obstetrics service, and shall have the capability to stabilize and prepare for transport those infants requiring the care of a neonatal special care services unit.

B. The application should identify the primary and secondary neonatal special care center nearest the proposed service and provide travel time one way, under normal conditions, to those centers.

Article 2. Neonatal Special Care Services.

12 VAC 5-230-690. Accessibility.

Neonatal special care services should be located within an average of 45 minutes driving time one way, under normal conditions, in urban and suburban areas of hospitals providing general-level newborn services.

12 VAC 5-230-700. Availability.

A. Existing neonatal special care units located within the travel times listed in 12 VAC 5-230-660 should achieve 65% average annual occupancy before new services can be added to the planning region.

B. Preference will be given to the expansion of existing services rather than the creation of new services.

12 VAC 5-230-710. Neonatal services.

The application should identify the service area, levels of service, and capacity of the current general-level newborn service hospitals to be served within the identified area.

VA.R. Doc. No. R03-117; Filed September 13, 2004, 3:51 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

DEPARTMENT OF HEALTH PROFESSIONS

Title of Regulation: **18 VAC 76-20. Regulations Governing the Prescription Monitoring Program (amending 18 VAC 76-20-60).**

Statutory Authority: §§ 54.1-2505 and 54.1-2520 of the Code of Virginia.

Public Hearing Date: October 18, 2004 - 11 a.m.

Public comments may be submitted until December 3, 2004.

(See Calendar of Events section for additional information)

Agency Contact: Ralph Orr, Program Manager, Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9921, FAX (804) 662-9943, or e-mail ralph.orr@dhp.virginia.gov.

Basis: The regulation is promulgated under the legal authority of § 54.1-2505, stating the powers and duties of the Director of the Department of Health Professions and § 54.1-2520, which requires the director to promulgate such regulations as are necessary to implement the prescription monitoring program. The Code section that sets out the statutory requirements for disclosure is § 54.1-2523.

Purpose: The Prescription Monitoring Program (PMP) contains information about Schedule II drugs dispensed in Health Planning Region III (the Western District of Virginia). Prescribers are permitted to request information about a

specific patient, provided the prescriber holds a license issued by the appropriate regulatory board in the Commonwealth and provided the request is for the purpose of establishing the treatment history of the specific patient when that patient is either under care and treatment by the prescriber or the prescriber is initiating treatment. The law further requires that the prescriber obtain written consent to such disclosure from the patient.

Prescribers report that the requirement for sending a copy of the written consent is an impediment to requesting information from the program. While there has been some increase in the number of inquiries from prescribers to the PMP since its inception, the advisory committee believes the numbers could increase with the amended regulation.

	December 2003	January 2004	February 2004	March 2004	April 2004	May 2004
Prescribers	53	33	86	107	89	78

Deaths related to prescription drugs continue to be a major problem in that region, as verified by the medical examiner. In 2003, there were 213 drug deaths in the Western District - of those deaths, there were findings of methadone in 85, hydrocodone in 47, and oxycodone in 44. In 1994, there were findings of methadone in one case, hydrocodone in zero cases, and oxycodone in zero cases. The majority of the deaths a decade ago related to cocaine, whereas today, prescription drugs (sometimes in combination with cocaine) represent a serious problem. There is a need to facilitate access to information by prescribers, so it can be determined whether a patient is "doctor-shopping" or the recipient of multiple prescriptions. Prescription drug abuse and drug deaths in that region have created a significant threat to public health and safety. The program was intended to provide one strategy for addressing that problem, and the requirement to submit the consent form has been an impediment to its full utilization.

Substance: The amended regulation would eliminate the requirement for submitting a copy of the consent and allow the prescriber to attest to having obtained written consent from the recipient. In addition, the written consent for disclosure must be maintained as part of the patient record.

Issues: The primary advantage to the public of the Prescription Monitoring Program, as established by legislation in the Code of Virginia, is the potential for curtailment of abuse and diversion of Schedule II drugs. The impetus for such a program was precipitated by the problem in Southwest Virginia with the over-prescribing and abuse of Oxycontin, with devastating results on families and communities. For the residents in Health Planning District III, this program should be a deterrent to those who would engage in such practices. Prescribers are required to obtain written consent from patients before the system can be queried about the patient's prescription history, so there are no disadvantages to the public. Consent will still be required, and a copy of such consent maintained in the patient record.

There are no disadvantages to the agency or the Commonwealth. To the extent queries from prescribers may deter prescribing for abusers of Schedule II controlled

substances, there would be advantages to the Commonwealth in general.

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 Prescription Monitoring Program (program) requires pharmacies to send reports to the Department of Health Professions (department) on the prescriptions they fill that have a very high potential for abuse. Dispensers¹ send reports to the department on the Schedule II prescriptions² they fill on a semi-monthly basis. The program is aimed at giving police better ways to investigate "doctor shopping," a practice in which drug abusers fake illness or injury to obtain prescriptions from multiple physicians. It is also intended to help identify the doctors who keep abusers in supply.

The program regulations specify criteria for discretionary disclosure of information from the program database. Under the current regulations, the director of the department may disclose information from the database to a prescriber for the purpose of establishing a treatment history, provided the request is accompanied by the prescriber's license number, the prescriber's signature, and a copy of written consent obtained from the recipient. According to the department, the requirement to submit a copy of the written consent for disclosure has been viewed as burdensome and unnecessary. The department proposes to allow prescribers to attest that they have obtained written consent in lieu of providing a copy of the written consent in order to receive information on a patient's prescription history for Schedule II drugs. The prescriber must keep the written consent separate and distinct from any other consent documents required by the practitioner and shall maintain it as part of the patient record.

Estimated economic impact. Allowing prescribers to attest to having obtained written consent rather than sending a copy of the written consent will save the prescribers and their staff a small amount of time since they can just send a standard form saying they have consent instead of spending the time to

¹ Section 54.1-2519 of the Code of Virginia: "Dispenser" means a person or entity that (i) is authorized by law to dispense a covered substance or to maintain a stock of covered substances for the purpose of dispensing, and (ii) dispenses the covered substance to a citizen of the Commonwealth regardless of the location of the dispenser, or who dispenses such covered substance from a location in Virginia regardless of the location of the recipient.

² Schedule II drugs are those considered highly addictive, such as morphine, OxyContin and methadone. The U.S. Food and Drug Administration maintains the list of Schedule II drugs.

Proposed Regulations

search for the original consent form, copying it, and sending the copy. It is standard for new patients to give consent when they fill out new patient forms. Reducing the staff time needed to request a prescription history from the program may encourage prescribers to request prescription histories more often. More frequent requests may increase the number of times that prescribers find out that a prospective patient has had Schedule II drugs proscribed recently and repeatedly, indicating abuse. In these cases the prescriber can make a more appropriate decision as to what if any drug to prescribe.

On the other hand, allowing prescribers to attest to having obtained written consent rather than sending a copy of the written consent will increase the probability that prescribers will mistakenly believe and claim that the patient has given consent when he actually has not. With the requirement that the prescriber provide a copy of written consent, the prescriber or his staff must actually find and see the written consent. Under the proposed requirement that the prescriber attest to having received written consent, she may mistakenly believe that written consent was obtained and wrongly attest to its having been received. The cost associated with the increased probability that prescribers will mistakenly believe and claim that the patient has given consent when he actually has not depends on three factors:

1. First, how much patients are injured by their prescription history being distributed against their wishes. Having one's legal rights violated does produce some difficult to measure cost for affected individuals.
2. Second, how much the public may benefit from the distribution of the prescription history. If by obtaining a prescription history the prescriber determines that the patient has misrepresented his prescription history, the prescriber may be able to make a more appropriate decision as to what if any drug to prescribe.
3. The magnitude of the increased probability.

Information is not readily available for any of the three factors. Thus, an accurate comparison cannot be made between the magnitude of the benefit of the proposed amendment (reduced staff time and prescribers perhaps making better-informed decisions) with the cost of an increased probability of prescribers mistakenly believing and claiming that the patient has given consent when he actually has not. In any case, since the time saved from sending a standard form indicating that consent has been received rather than sending a copy of the original consent form is quite small, the proposed amendment will not likely result in a large increase in prescription history requests.

Businesses and entities affected. The proposed regulations affect prescribers of Schedule II drugs, such as the 29,106 doctors of medicine, 1,085 doctors of osteopathic medicine, 488 doctors of podiatry, 2,750 interns and residents, and 5,338 dentists in the Commonwealth.³

Localities particularly affected. The proposed regulations particularly affect the part of Virginia where there has been an

epidemic of abuse of the prescription painkiller OxyContin. According to department, this has been in State Health Planning Region III, which consists of the following localities: Lee County, Scott County, Wise County, City of Norton, Dickenson County, Buchanan County, Russell County, Tazewell County, Washington County, Smyth County, Grayson County, Carroll County, Wythe County, Bland County, City of Bristol, City of Galax, Giles County, Pulaski County, Floyd County, Montgomery County, City of Radford, Alleghany County, Craig County, Botetourt County, Roanoke County, City of Clifton Forge, City of Covington, City of Salem, Roanoke City, Bedford County, Amherst County, Campbell County, Appomattox County, City of Lynchburg, City of Bedford, Amherst County, Campbell County, Franklin County, Patrick County, Henry County, Pittsylvania County, City of Martinsville, and City of Danville.

Projected impact on employment. The proposed regulations will not significantly affect employment levels.

Effects on the use and value of private property. The proposal to allow prescribers to attest that they have obtained written consent in lieu of providing a copy of the written consent in order to receive information on a patient's prescription history for Schedule II drugs will save prescribers and their staff a small amount of labor time. This will increase the value of prescribers' practices by a very small amount.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Health Professions concurs with the analysis of the Department of Planning and Budget for the proposed regulation, 18 VAC 76-20, Regulations Governing the Prescription Monitoring Program, relating to prescriber submission of patient consent forms.

Summary:

The proposed amendments (i) eliminate the requirement for submitting a copy of the patient's written consent for disclosure; (ii) require the prescriber to attest to having obtained written consent from the patient; and (iii) require that the written consent for disclosure be maintained as part of the patient record.

18 VAC 76-20-60. Criteria for discretionary disclosure of information by the director.

A. In accordance with § 54.1-2523 C of the Code of Virginia, the director may disclose information in the program to certain persons provided the request is made in writing on a form provided by the department.

B. The director may disclose information to:

1. The recipient of the dispensed drugs, provided the request is accompanied by a copy of a valid photo identification issued by a government agency of any jurisdiction in the United States verifying that the recipient is over the age of 18 and includes a notarized signature of the requesting party. The report shall be mailed to the address on the license or delivered to the recipient at the department.

2. The prescriber for the purpose of establishing a treatment history, provided the request is accompanied by the

³ Source: Department of Health Professions.

prescriber's license number issued by the department, the signature of the prescriber, and ~~a copy of the attestation of having obtained~~ written consent obtained from the recipient. Such written consent shall be separate and distinct from any other consent documents required by the practitioner and shall be maintained as part of the patient record.

3. Another regulatory authority conducting an investigation or disciplinary proceeding or making a decision on the granting of a license or certificate, provided the request is related to an allegation of a possible controlled substance violation and that it is accompanied by the signature of the chief executive officer who is authorized to certify orders or to grant or deny licenses.

4. Governmental entities charged with the investigation and prosecution of a dispenser, prescriber or recipient participating in the Virginia Medicaid program, provided the request is accompanied by the signature of the official within the Office of the Attorney General responsible for the investigation.

C. In each case, the request must be complete and provide sufficient information to ensure the correct identity of the prescriber, recipient and/or dispenser. Such request shall be submitted in writing by mail, private delivery service, in person at the department offices or by facsimile.

D. Except as provided in ~~subsection~~ *subdivision* B 1 of this section, the request form shall be signed with an attestation that the prescription data will not be further disclosed and only used for the purposes stated in the request and in accordance with the law.

<p>NOTICE: The forms used in administering 18 VAC 76-20, Regulations Governing the Prescription Monitoring Program, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.</p>

FORMS

Request for Waiver of Reporting Requirements for Prescription Monitoring Program (eff. ~~3/03~~ 11/03).

Request to Register as an Authorized Agent to Receive Information from the Virginia Prescription Monitoring Program (eff. 3/03).

Request for Disclosure of Information from Prescription Monitoring Program (eff. ~~7/03~~ 3/04).

~~Recipient~~ *Patient* Request for Discretionary Disclosure of Information from Prescription Monitoring Program (eff. ~~7/03~~ 12/03).

Prescriber Request for Discretionary Disclosure of Information from Prescription Monitoring Program (eff. ~~7/03~~ 9/04).

Regulatory Authority Request for Discretionary Disclosure of Information from Prescription Monitoring Program (eff. ~~7/03~~ 12/03).

Investigation under Virginia Medicaid Program; Request for Discretionary Disclosure of Information from Prescription Monitoring Program (eff. ~~7/03~~ 12/03).

	<p>COMMONWEALTH OF VIRGINIA Department of Health Professions Prescription Monitoring Program 6603 West Broad Street, 6th Floor Richmond, VA 23230-1712 Phone: (804) 662-9129 Fax: (804) 662-9240</p>
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**REQUEST FOR WAIVER OF REPORTING REQUIREMENTS FOR
 PRESCRIPTION MONITORING PROGRAM**

Please provide the information requested below. (Print or Type) Use full name not initials		
Name of Pharmacy or Permitted Practitioner	Permit Number	
Street Address	City	
State	Zip Code	Area Code and Telephone Number
Name of PIC (Pharmacy only)	Virginia License Number of PIC (Pharmacy only)	
Signature:	Date:	
Reason for waiver request: (Check one box below)		
<input type="checkbox"/> Hardship created by a natural disaster or other emergency beyond the control of the permit holder. Please provide description:		
<input type="checkbox"/> Dispensing in a controlled research project approved by a regionally accredited institution of higher education or under the supervision of a governmental agency. Please attach a description of the research project.		
<input type="checkbox"/> This pharmacy or practitioner dispenses no Schedule II controlled substances.		
<input type="checkbox"/> Other: Please provide description below or attach on a separate piece of paper.		

For Department Use Only			
Date Received	<input type="checkbox"/> Approved <input type="checkbox"/> Disapproved	Director or Designee Signature	Date of action

Revised 11/2003



COMMONWEALTH OF VIRGINIA

Department of Health Professions

Prescription Monitoring Program

6603 West Broad Street, 6th Floor

Richmond, VA 23230-1712

Phone: (804) 662-9129

Fax: (804) 662-9240

REQUEST FOR DISCLOSURE OF INFORMATION FROM PRESCRIPTION MONITORING PROGRAM

Please provide the information requested below. (Print or Type) Use full name not initials		
Authorized Agent registered with the Board	Case Identifier Number	
Agency Name	Agent Registration Number	
Street Address	City	
State	Zip Code	Area Code and Telephone Number
Purpose of Request:		
Specific time period to be covered in report:		
<input type="checkbox"/> Patient: (DDU Use Only)	Date of Birth:	Address:
<input type="checkbox"/> Prescriber: Name:	Virginia License Number:	Address:
Prescriber's DEA Registration #(s)		Comments:
<input type="checkbox"/> Dispenser: Name:	Virginia License Number:	Address:
I hereby attest that the requested information will not be further disclosed and will only be used for the purposes stated in the request and in accordance with the law.		
Signature: _____		Date: _____
For Department Use Only		
Date Received	Date of action	

Revised 3/11/04



COMMONWEALTH OF VIRGINIA
Department of Health Professions
Prescription Monitoring Program

6603 West Broad Street, 6th Floor

Richmond, VA 23230-1712

Phone: (804) 662-9129

Fax: (804) 662-9240

**PATIENT REQUEST FOR DISCRETIONARY DISCLOSURE OF INFORMATION FROM
PRESCRIPTION MONITORING PROGRAM**

Please provide the information requested below. (Print or Type) Use full name not initials	
Full Name	Street Address
City	State
Zip Code	Area Code and Telephone Number
Specific time period to be covered in report:	
Request must be accompanied by a copy of a valid photo identification issued by a government agency of any jurisdiction in the United States verifying that the recipient is over the age of 18.	
<i>Request form must include a notarized signature.</i>	
Subscribed and sworn to me, a notary public in and for the Commonwealth of Virginia at large, on this _____ day of _____, _____. My commission expires on the _____ day of _____, _____.	
_____ Notary Public	
For Department Use Only	
Date Received	Date of action

Revised 12/31/03



COMMONWEALTH OF VIRGINIA
Department of Health Professions
Prescription Monitoring Program

6603 West Broad Street, 6th Floor

Richmond, VA 23230-1712

Phone: (804) 662-9129

Fax: (804) 662-9240

**PRESCRIBER REQUEST FOR DISCRETIONARY DISCLOSURE OF INFORMATION FROM
 PRESCRIPTION MONITORING PROGRAM**

Please provide the information requested below. (Print or Type) Use full name not initials

Patient's Full Name		Date of Birth	
Street Address		City	
State		Zip Code	
Purpose of Request:			
Specific time period to be covered in report:			
Prescriber information:	Virginia License	Address:	
Name:			
Phone Number:		FAX NUMBER	
I hereby attest that I have received written consent to request this information and that the requested information will not be further disclosed and will only be used for the purposes stated in the request and in accordance with the law.			
Signature: _____		Date: _____	
For Department Use Only			
Date Received	Date of action		

Draft 9/4/04



COMMONWEALTH OF VIRGINIA
Department of Health Professions
Prescription Monitoring Program

6603 West Broad Street, 6th Floor
 Richmond, VA 23230-1712
 Phone: (804) 662-9129
 Fax: (804) 662-9240

**REGULATORY AUTHORITY REQUEST FOR DISCRETIONARY DISCLOSURE OF INFORMATION FROM
 PRESCRIPTION MONITORING PROGRAM**

Please provide the information requested below. (Print or Type) Use full name not initials

Full Name		Case Identifier Number	
Agency Name (If applicable)		Street Address	
City		State	
Zip Code	Area Code and Telephone Number	Area Code and Fax Number	

Purpose of Request:

Specific time period to be covered in report:

<input type="checkbox"/> Patient information:	Address:	Date of Birth
Name:		
<input type="checkbox"/> Prescriber:	Virginia License Number:	Address:
Name:		
<input type="checkbox"/> Dispenser:	Virginia License Number:	Address:
Name:		

I hereby attest that the requested information will not be further disclosed and will only be used for the purposes stated in the request and in accordance with the law.

Signature: _____ Date: _____

Additional signature for regulatory authority requesting information.

Executive Officer: _____
 (Print Name)

Signature: _____ Date: _____

For Department Use Only

Date Received	Date of action
---------------	----------------

Revised 12/31/03

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 6. CRIMINAL JUSTICE AND CORECTIONS

CRIMINAL JUSTICE SERVICES BOARD

REGISTRAR'S NOTICE: The Criminal Justice Services Board is claiming an exemption from the Administrative Process Act pursuant to (i) § 2.2-4006 A 2, which excludes regulations that establish or prescribe agency organization, internal practice or procedures, including delegations of authority; and (ii) § 2.2-4006 A 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The Criminal Justice Services Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 6 VAC 20-190. Regulations for Breath Alcohol Testing (amending 6 VAC 20-190-10, 6 VAC 20-190-50, 6 VAC 20-190-150 and 6 VAC 20-190-160).

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

Effective Date: November 3, 2004.

Agency Contact: Judy Kirkendall, Regulatory Coordinator, Department of Criminal Justice Services, 805 East Broad Street, Richmond, VA 23219, telephone (804) 786-8003, FAX (804) 786-0410 or e-mail jkirkendall@dcjs.state.va.us.

Summary:

The amendments make stylistic and technical corrections to the regulations and clarify breath test administrative procedures and required forms and records.

6 VAC 20-190-10. Definitions.

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

"Agency" means any town, city, county, or state law-enforcement agency under whose auspices breath tests are performed.

"Blood alcohol concentration" means percent by weight of alcohol in a person's blood based upon grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

"Breath test device" means an instrument designed to perform a quantitative chemical test for alcohol on a sample of breath of a person subject to the provisions of §§ 18.2-268.1 through 18.2-268.3, 18.2-268.9, 29.1-738.2, 46.2-341.26:1 through 46.2-341.26:3 or 46.2-341.26:9 of the Code of Virginia or a parallel local ordinance.

"Chemical test" or "chemical analysis" means a quantitative test for alcohol using infrared, or fuel cell methodologies or a combination thereof performed on a sample or samples of breath of a person subject to the provisions of §§ 18.2-267, 18.2-268.1 through 18.2-268.3, 18.2-268.9, 29.1-738.1, 29.1-738.2, 46.2-341.25, 46.2-341.26:1 through 46.2-341.26:3 or 46.2-341.26:9 of the Code of Virginia or a parallel local ordinance.

"Division" means the Division of Forensic Science.

"Licensee" means a person holding a valid license from the division to perform a breath test of the type set forth within these regulations under the provisions of § 18.2-268.9, § 29.1-738.2 or § 46.2-341.26:9 of the Code of Virginia or a parallel local ordinance.

"Preliminary breath test device" means an instrument designed to perform a quantitative chemical test for alcohol on a sample of breath of a person suspected of an offense subjecting such person to the provisions of § 18.2-267, 29.1-738.1 or 46.2-341.25 of the Code of Virginia.

"Supplies and accessories" means any item, device, chemical, reagent, tube, mouthpiece, replacement part, or glassware, whether or not reusable, which is used in conjunction with a breath test device to determine the blood alcohol concentration of any person subject to the provisions of §§ 18.2-268.1 through 18.2-268.3, 18.2-268.9, 29.1-738.2, 46.2-341.26:1 through 46.2-341.26:3 or 46.2-341.26:9 of the Code of Virginia or a parallel local ordinance.

6 VAC 20-190-50. Care.

Proper care shall be taken at all times to ensure that the breath test device shall be is kept free from excessive moisture, excessive heat and dust, as well as any unintentional jars, knocks or falls that may damage the internal mechanism.

6 VAC 20-190-150. Log Records.

A. For each breath test device assigned to an agency, a permanent log of all completed, evidential tests and simulator solution changes administered by the licensees of that agency or other agencies shall be kept. This log shall be provided by the division and must be kept in the same location with the breath test device. The log shall be subject to periodic inspection by the division at any time. At least once each month, a copy of the log entries for the preceding month shall be submitted to the division to be kept on file for at least three years.

B. For each breath test device assigned to an agency, The division shall download by modem, at least once each month, data also recorded on the breath testing log from each breath test device assigned to an agency. The division shall keep this data on file for at least three years.

Final Regulations

6 VAC 20-190-160. Checklist.

~~A. For each breath test device assigned to an agency, A preventive maintenance checklist provided by the division shall be completed at least once each month for each breath test device assigned to an agency. A signed copy of this preventative preventive maintenance checklist shall be submitted to the division to be kept on file for at least three years.~~

~~B. For each breath test device assigned to an agency, the division shall download by modem, at least once each month, data also recorded on the preventive maintenance checklist. The division shall keep this data on file for at least three years.~~

VA.R. Doc. No. R05-18; Filed September 10, 2004, 12:37 p.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The State Water Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 9 VAC 25-31. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (amending 9 VAC 25-31-10, 9 VAC 25-31-30, 9 VAC 25-31-100, 9 VAC 25-31-130, 9 VAC 25-31-170 and 9 VAC 25-31-200).

Statutory Authority: § 62.1-44.15 of the Code of Virginia and § 402 of the Clean Water Act (40 CFR Parts 122, 123, 124, 403 and 503).

Effective Date: November 3, 2004.

Agency Contact: Neil Zahradka, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4102, FAX (804) 698-4032, or e-mail nrzahradka@deq.virginia.gov.

Summary:

The existing Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9 VAC 25-31) has been amended, where applicable, to reflect changes to 40 CFR Parts 9, 122, 123, and 412 as published in the Federal Register Volume 68, No. 29, dated February 12, 2003.

The VPDES permit regulation governs the authorization to manage pollutants from various sources, including concentrated animal feeding operations (CAFOs). The

State Water Control Board has the authority to administer the federal National Pollutant Discharge Elimination System program within the Commonwealth, and as such, the program is called the Virginia Pollutant Discharge Elimination System (VPDES). Operations that meet the federal definition of CAFO found in 40 CFR 122.23(b) must seek coverage under a NPDES permit. CAFOs are currently regulated in Virginia under the Virginia Pollution Abatement (VPA) Permit Regulation (9 VAC 25-32), the VPA General Permit Regulation for Animal Feeding Operations (9 VAC 25-192), and the VPA General Permit Regulation for Poultry Waste Management (9 VAC 25-630). CAFO's currently permitted under these regulations will be required to be permitted under the VPDES permit regulation (9 VAC 25-31) or VPDES general permit regulation (9 VAC 25-191).

9 VAC 25-31-10. Definitions.

"Administrator" means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

"Animal feeding operation" or "AFO" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met: (i) animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and (ii) crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

~~"Animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.~~

"Applicable standards and limitations" means all state, interstate, and federal standards and limitations to which a discharge, a sewage sludge use or disposal practice, or a related activity is subject under the Clean Water Act (CWA) (33 USC § 1251 et seq.) and the law, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, pretreatment standards, and standards for sewage sludge use or disposal under §§ 301, 302, 303, 304, 306, 307, 308, 403 and 405 of CWA.

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

"Approved POTW Pretreatment Program" or "Program" or "POTW Pretreatment Program" means a program administered by a POTW that meets the criteria established in Part VII (9 VAC 25-31-730 et seq.) of this chapter and which has been approved by the director or by the administrator in accordance with 9 VAC 25-31-830.

"Approved program" or "approved state" means a state or interstate program which has been approved or authorized by EPA under 40 CFR Part 123 (2000).

"Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

"Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

"Average weekly discharge limitation" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

"Best management practices (BMPs)" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters. BMPs also include treatment requirements, operating procedures, and practices to control plant site run-off, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Board" means the Virginia State Water Control Board or State Water Control Board.

"Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

"Class I sludge management facility" means any POTW identified under Part VII (9 VAC 25-31-730 et seq.) of this chapter as being required to have an approved pretreatment program and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the regional administrator, in conjunction with the director, because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

~~"Concentrated animal feeding operation" means an animal feeding operation which meets the criteria of this definition, or which the board designates under 9 VAC 25-31-130.~~

~~An animal feeding operation is a concentrated animal feeding operation if either of the following criteria are met:~~

~~1. More than the number of animals specified in any of the following categories are confined:~~

- ~~a. 1,000 slaughter and feeder cattle;~~
- ~~b. 700 mature dairy cattle (whether milked or dry cows);~~
- ~~c. 2,500 swine each weighing over 25 kilograms (approximately 55 pounds);~~
- ~~d. 500 horses;~~
- ~~e. 10,000 sheep or lambs;~~
- ~~f. 55,000 turkeys;~~
- ~~g. 100,000 laying hens or broilers (if the facility has continuous overflow watering);~~

~~h. 30,000 laying hens or broilers (if the facility has a liquid manure system);~~

~~i. 5,000 ducks; or~~

~~j. 1,000 animal units.~~

~~2. More than the following number and types of animals are confined:~~

~~a. 300 slaughter or feeder cattle;~~

~~b. 200 mature dairy cattle (whether milked or dry cows);~~

~~c. 750 swine each weighing over 25 kilograms (approximately 55 pounds);~~

~~d. 150 horses;~~

~~e. 3,000 sheep or lambs;~~

~~f. 16,500 turkeys;~~

~~g. 30,000 laying hens or broilers (if the facility has continuous overflow watering);~~

~~h. 9,000 laying hens or broilers (if the facility has a liquid manure handling system);~~

~~i. 1,500 ducks; or~~

~~j. 300 animal units; and either one of the following conditions are met: pollutants are discharged into navigable waters through a manmade ditch, flushing system or other similar manmade device; or pollutants are discharged directly into surface waters which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.~~

~~However, no animal feeding operation is a concentrated animal feeding operation as defined in this definition if such animal feeding operation discharges only in the event of a 25-year, 24-hour storm event.~~

~~"Concentrated animal feeding operation" or "CAFO" means an AFO that is defined as a Large CAFO or as a Medium CAFO, or that is designated as a Medium CAFO or a Small CAFO. Any AFO may be designated as a CAFO by the director in accordance with the provisions of 9 VAC 25-31-130 B.~~

~~1. "Large CAFO." An AFO is defined as a Large CAFO if it stables or confines as many or more than the numbers of animals specified in any of the following categories:~~

~~a. 700 mature dairy cows, whether milked or dry;~~

~~b. 1,000 veal calves;~~

~~c. 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;~~

~~d. 2,500 swine each weighing 55 pounds or more;~~

~~e. 10,000 swine each weighing less than 55 pounds;~~

~~f. 500 horses;~~

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g. 10,000 sheep or lambs;

h. 55,000 turkeys;

i. 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;

j. 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;

k. 82,000 laying hens, if the AFO uses other than a liquid manure handling system;

l. 30,000 ducks, if the AFO uses other than a liquid manure handling system; or

m. 5,000 ducks if the AFO uses a liquid manure handling system.

2. "Medium CAFO." The term Medium CAFO includes any AFO with the type and number of animals that fall within any of the ranges below that has been defined or designated as a CAFO. An AFO is defined as a Medium CAFO if:

a. The type and number of animals that it stables or confines falls within any of the following ranges:

(1) 200 to 699 mature dairy cattle, whether milked or dry;

(2) 300 to 999 veal calves;

(3) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;

(4) 750 to 2,499 swine each weighing 55 pounds or more;

(5) 3,000 to 9,999 swine each weighing less than 55 pounds;

(6) 150 to 499 horses;

(7) 3,000 to 9,999 sheep or lambs;

(8) 16,500 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;

(9) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;

(10) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;

(11) 10,000 to 29,999 ducks, if the AFO uses other than a liquid manure handling system;

(12) 1,500 to 4,999 ducks, if the AFO uses a liquid manure handling system; and

b. Either one of the following conditions are met:

(1) Pollutants are discharged into surface waters of the state through a manmade ditch, flushing system, or other similar manmade device; or

(2) Pollutants are discharged directly into surface waters of the state that originate outside of and pass

over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

3. "Small CAFO." An AFO that is designated as a CAFO and is not a Medium CAFO.

"Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria of this definition, or which the board designates under 9 VAC 25-31-140. A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility if it contains, grows, or holds aquatic animals in either of the following categories:

1. Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year but does not include:

a. Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and

b. Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding; or

2. Warm water fish species or other warm water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year, but does not include:

a. Closed ponds which discharge only during periods of excess run-off; or

b. Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.

Cold water aquatic animals include, but are not limited to, the Salmonidae family of fish (e.g., trout and salmon).

Warm water aquatic animals include, but are not limited to, the Ictaluridae, Centrarchidae and Cyprinidae families of fish (e.g., respectively, catfish, sunfish and minnows).

"Contiguous zone" means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (37 FR 11906).

"Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

"Co-permittee" means a permittee to a VPDES permit that is only responsible for permit conditions relating to the discharge for which it is the operator.

"CWA" means the Clean Water Act (33 USC § 1251 et seq.) (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117.

"CWA and regulations" means the Clean Water Act (CWA) and applicable regulations promulgated thereunder. For the purposes of this chapter, it includes state program requirements.

"Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

"Department" means the Virginia Department of Environmental Quality.

"Designated project area" means the portions of surface within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan or operation (including, but not limited to, physical confinement) which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

"Direct discharge" means the discharge of a pollutant.

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

"Discharge," when used without qualification, means the discharge of a pollutant.

"Discharge," when used in Part VII (9 VAC 25-31-730 et seq.) of this chapter, means "indirect discharge" as defined in this section.

"Discharge of a pollutant" means:

1. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into surface waters from: surface run-off which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

"Discharge Monitoring Report (DMR)" means the form supplied by the department or an equivalent form developed by the permittee and approved by the board, for the reporting of self-monitoring results by permittees.

"Draft permit" means a document indicating the board's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination is not a draft permit. A proposed permit is not a draft permit.

"Effluent limitation" means any restriction imposed by the board on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into surface waters, the waters of the contiguous zone, or the ocean.

"Effluent limitations guidelines" means a regulation published by the administrator under § 304(b) of the CWA to adopt or revise effluent limitations.

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

"Existing source" means any source which is not a new source or a new discharger.

"Facilities or equipment" means buildings, structures, process or production equipment or machinery which form a permanent part of a new source and which will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the new source or water pollution treatment for the new source.

"Facility or activity" means any VPDES point source or treatment works treating domestic sewage or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the VPDES program.

"General permit" means a VPDES permit authorizing a category of discharges under the CWA and the law within a geographical area.

"Hazardous substance" means any substance designated under the Code of Virginia and 40 CFR Part 116 (2000) pursuant to § 311 of the CWA.

"Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a VPDES permit (other than the VPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.

"Incorporated place" means a city, town, township, or village that is incorporated under the Code of Virginia.

"Indian country" means (i) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (ii) all dependent Indian communities with the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and (iii) all Indian allotments,

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the Indian titles to which have not been extinguished, including rights-of-way running through the same.

"Indirect discharge" means the introduction of pollutants into a POTW from any nondomestic source regulated under § 307(b), (c) or (d) of the CWA and the law.

"Indirect discharger" means a nondomestic discharger introducing pollutants to a POTW.

"Individual control strategy" means a final VPDES permit with supporting documentation showing that effluent limits are consistent with an approved wasteload allocation or other documentation that shows that applicable water quality standards will be met not later than three years after the individual control strategy is established.

"Industrial user" or "user" means a source of indirect discharge.

"Interference" means an indirect discharge which, alone or in conjunction with an indirect discharge or discharges from other sources, both: (i) inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and therefore (ii) is a cause of a violation of any requirement of the POTW's VPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA) (42 USC § 6901 et seq.), and including state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA) the Clean Air Act (42 USC § 701 et seq.), the Toxic Substances Control Act (15 USC § 2601 et seq.), and the Marine Protection, Research and Sanctuaries Act (33 USC § 1401 et seq.).

"Interstate agency" means an agency of two or more states established by or under an agreement or compact approved by Congress, or any other agency of two or more states having substantial powers or duties pertaining to the control of pollution as determined and approved by the administrator under the CWA and regulations.

"Land application area" means land under the control of an AFO owner or operator, that is owned, rented, or leased to which manure, litter or process wastewater from the production area may be applied.

"Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 250,000 or more as determined by the latest decennial census by the Bureau of Census (40 CFR Part 122 Appendix F (2000));
2. Located in the counties listed in 40 CFR Part 122 Appendix H (2000), except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties;

3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the board as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the board may consider the following factors:

- a. Physical interconnections between the municipal separate storm sewers;
- b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;
- c. The quantity and nature of pollutants discharged to surface waters;
- d. The nature of the receiving waters; and
- e. Other relevant factors.

4. The board may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in this definition.

"Log sorting" and "log storage facilities" means facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held in self-contained bodies of water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs (wet decking).

"Major facility" means any VPDES facility or activity classified as such by the regional administrator in conjunction with the board.

"Major municipal separate storm sewer outfall (or major outfall)" means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive storm water from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of two acres or more).

"Manmade" means constructed by man and used for the purpose of transporting wastes.

"Manure" means manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.

"Maximum daily discharge limitation" means the highest allowable daily discharge.

"Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the latest decennial census by the Bureau of Census (40 CFR Part 122 Appendix G (2000));

2. Located in the counties listed in 40 CFR Part 122 Appendix I (2000), except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties;

3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the board as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the board may consider the following factors:

- a. Physical interconnections between the municipal separate storm sewers;

- b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;

- c. The quantity and nature of pollutants discharged to surface waters;

- d. The nature of the receiving waters; or

- e. Other relevant factors.

4. The board may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in subdivisions 1, 2 and 3 of this definition.

"Municipal separate storm sewer" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):

1. Owned or operated by a state, city, town, county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters;

2. Designed or used for collecting or conveying storm water;

3. Which is not a combined sewer; and

4. Which is not part of a publicly owned treatment works (POTW).

"Municipal separate storm sewer system" or "MS4" means storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems, or designated under 9 VAC 25-31-120 A 1.

"Municipality" means a city, town, county, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the CWA.

"National Pollutant Discharge Elimination System (NPDES)" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under §§ 307, 402, 318, and 405 of the CWA. The term includes an approved program.

"National pretreatment standard," "pretreatment standard," or "standard," when used in Part VII (9 VAC 25-31-730 et seq.) of this chapter, means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with § 307(b) and (c) of the CWA, which applies to industrial users. This term includes prohibitive discharge limits established pursuant to 9 VAC 25-31-770.

"New discharger" means any building, structure, facility, or installation:

1. From which there is or may be a discharge of pollutants;

2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;

3. Which is not a new source; and

4. Which has never received a finally effective VPDES permit for discharges at that site.

This definition includes an indirect discharger which commences discharging into surface waters after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a site for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979.

"New source," except when used in Part VII of this chapter, means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

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(a) After promulgation of standards of performance under § 306 of the CWA which are applicable to such source; or

(b) After proposal of standards of performance in accordance with § 306 of the CWA which are applicable to such source, but only if the standards are promulgated in accordance with § 306 of the CWA within 120 days of their proposal.

"New source," when used in Part VII of this chapter, means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under § 307(c) of the CWA which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:

1. a. The building, structure, facility or installation is constructed at a site at which no other source is located;

b. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

c. The production of wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

2. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of subdivision 1 b or c of this definition but otherwise alters, replaces, or adds to existing process or production equipment.

3. Construction of a new source as defined under this subdivision has commenced if the owner or operator has:

a. Begun, or caused to begin, as part of a continuous on-site construction program:

(1) Any placement, assembly, or installation of facilities or equipment; or

(2) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design

studies do not constitute a contractual obligation under this subdivision.

"Outfall," when used in reference to municipal separate storm sewers, means a point source at the point where a municipal separate storm sewer discharges to surface waters and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other surface waters and are used to convey surface waters.

"Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not disturbed by mining operations.

"Owner" means the Commonwealth or any of its political subdivisions including, but not limited to, sanitation district commissions and authorities, and any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of § 62.1-44.5 of the Code of Virginia.

"Owner" or "operator" means the owner or operator of any facility or activity subject to regulation under the VPDES program.

"Pass through" means a discharge which exits the POTW into state waters in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's VPDES permit (including an increase in the magnitude or duration of a violation).

"Permit" means an authorization, certificate, license, or equivalent control document issued by the board to implement the requirements of this chapter. Permit includes a VPDES general permit. Permit does not include any permit which has not yet been the subject of final agency action, such as a draft permit or a proposed permit.

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

"Point source" means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water run-off.

"Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

1. Sewage from vessels; or
2. Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well if the well used either to facilitate production or for disposal purposes is approved by the board, and if the board determines that the injection or disposal will not result in the degradation of ground or surface water resources.

"POTW treatment plant" means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

"Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited in Part VII of this chapter. Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with Part VII of this chapter.

"Pretreatment requirements" means any requirements arising under Part VII of this chapter including the duty to allow or carry out inspections, entry or monitoring activities; any rules, regulations, or orders issued by the owner of a publicly owned treatment works; or any reporting requirements imposed by the owner of a publicly owned treatment works or by the regulations of the board. Pretreatment requirements do not include the requirements of a national pretreatment standard.

"Primary industry category" means any industry category listed in the NRDC settlement agreement (Natural Resources Defense Council et al. v. Train, 8 E.R.C. 2120 (D.D.C. 1976), modified 12 E.R.C. 1833 (D.D.C. 1979)); also listed in 40 CFR Part 122 Appendix A (2000).

"Privately owned treatment works (PVOTW)" means any device or system which is (i) used to treat wastes from any facility whose operator is not the operator of the treatment works and (ii) not a POTW.

"Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with

or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product. *Process wastewater from an AFO means water directly or indirectly used in the operation of the AFO for any of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of the animals; or dust control. Process wastewater from an AFO also includes any water that comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.*

"Production area" means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage areas includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions that separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

"Proposed permit" means a VPDES permit prepared after the close of the public comment period (and, when applicable, any public hearing and administrative appeals) which is sent to EPA for review before final issuance. A proposed permit is not a draft permit.

"Publicly owned treatment works (POTW)" means a treatment works as defined by § 212 of the CWA, which is owned by a state or municipality (as defined by § 502(4) of the CWA). This definition includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in § 502(4) of the CWA, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

"Recommencing discharger" means a source which recommences discharge after terminating operations.

"Regional administrator" means the Regional Administrator of Region III of the Environmental Protection Agency or the authorized representative of the regional administrator.

"Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap.

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"Run-off coefficient" means the fraction of total rainfall that will appear at a conveyance as run-off.

"Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the law, the CWA and regulations.

"Secondary industry category" means any industry category which is not a primary industry category.

"Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

"Septage" means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

"Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

"Sewage from vessels" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under § 312 of CWA.

"Sewage sludge" means any solid, semisolid, or liquid residue removed during the treatment of municipal waste water or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced waste water treatment, scum, domestic septage, portable toilet pumpings, type III marine sanitation device pumpings, and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

"Sewage sludge use" or "disposal practice" means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

"Significant industrial user," except as provided in subdivision 3 of this definition, means:

1. All industrial users subject to Categorical Pretreatment Standards under 9 VAC 25-31-780 and incorporated by reference in 9 VAC 25-31-30; and
2. Any other industrial user that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5.0% or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the Control Authority, as defined in 9 VAC 25-31-840 A, on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

3. Upon a finding that an industrial user meeting the criteria in subdivision 2 of this definition has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the control authority may at any time, on its own initiative or in response to a petition received from an industrial user or POTW, and in accordance with Part VII (9 VAC 25-31-730 et seq.) of this chapter, determine that such industrial user is not a significant industrial user.

"Significant materials" means, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under § 101(14) of CERCLA (42 USC § 9601(14)); any chemical the facility is required to report pursuant to § 313 of Title III of SARA (42 USC § 11023); fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

"Silvicultural point source" means any discernible, confined and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into surface waters. The term does not include nonpoint source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural run-off. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a CWA § 404 permit.

"Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

"Sludge-only facility" means any treatment works treating domestic sewage whose methods of sewage sludge use or disposal are subject to regulations promulgated pursuant to the law and § 405(d) of the CWA, and is required to obtain a VPDES permit.

"Small municipal separate storm sewer system" or "small MS4" means all separate storm sewers that are (i) owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters and (ii) not defined as "large" or "medium" municipal separate storm sewer systems or designated under 9 VAC 25-31-120 A 1. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at

military bases, large hospital or prison complexes, and highway and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

"Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

"Standards for sewage sludge use or disposal" means the regulations promulgated pursuant to the law and § 405(d) of the CWA which govern minimum requirements for sludge quality, management practices, and monitoring and reporting applicable to sewage sludge or the use or disposal of sewage sludge by any person.

"State" means the Commonwealth of Virginia.

"State/EPA agreement" means an agreement between the regional administrator and the state which coordinates EPA and state activities, responsibilities and programs including those under the CWA and the law.

"State Water Control Law" or "Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

"Storm water" means storm water run-off, snow melt run-off, and surface run-off and drainage.

"Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the VPDES program. For the categories of industries identified in this definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this definition, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product, or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, state, or municipally owned or operated that meet the description of the facilities listed in subdivisions 1 through 11 of this definition) include those facilities designated under the provisions of 9 VAC 25-31-120 A 1 e.

The following categories of facilities are considered to be engaging in industrial activity for purposes of this subsection:

1. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards (except facilities with toxic pollutant effluent standards which are exempted under category 11);
2. Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373;
3. Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(1) (2000) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, by-products, or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);
4. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA (42 USC § 6901 et seq.);
5. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under Subtitle D of RCRA (42 USC § 6901 et seq.);
6. Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;
7. Steam electric power generating facilities, including coal handling sites;
8. Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing

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operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under subdivisions 1 through 7 or 9 through 11 of this definition are associated with industrial activity;

9. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with § 405 of the CWA;

10. Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more; and

11. Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221-25.

"Storm water discharge associated with small construction activity" means the discharge of storm water from:

1. Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The board may waive the otherwise applicable requirements in a general permit for a storm water discharge from construction activities that disturb less than five acres where storm water controls are not needed based on a "total maximum daily load" (TMDL) approved or established by EPA that addresses the pollutant(s) of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this

subdivision, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the board that the construction activity will take place, and storm water discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

2. Any other construction activity designated by the either the board or the EPA regional administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to surface waters.

"Submission" means: (i) a request by a POTW for approval of a pretreatment program to the regional administrator or the director; (ii) a request by POTW to the regional administrator or the director for authority to revise the discharge limits in categorical pretreatment standards to reflect POTW pollutant removals; or (iii) a request to the EPA by the director for approval of the Virginia pretreatment program.

"Surface waters" means:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - a. Which are or could be used by interstate or foreign travelers for recreational or other purposes;
 - b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - c. Which are used or could be used for industrial purposes by industries in interstate commerce.
4. All impoundments of waters otherwise defined as surface waters under this definition;
5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;
6. The territorial sea; and
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA and the law, are not surface waters. Surface waters do not

include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other agency, for the purposes of the Clean Water Act, the final authority regarding the Clean Water Act jurisdiction remains with the EPA.

"Total dissolved solids" means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136 (2000).

"Toxic pollutant" means any pollutant listed as toxic under § 307(a)(1) of the CWA or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing § 405(d) of the CWA.

"Treatment facility" means only those mechanical power driven devices necessary for the transmission and treatment of pollutants (e.g., pump stations, unit treatment processes).

"Treatment works" means any devices and systems used for the storage, treatment, recycling or reclamation of sewage or liquid industrial waste, or other waste or necessary to recycle or reuse water, including intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions, or alterations thereof; and any works, including land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; or any other method or system used for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined sewer water and sanitary sewer systems.

"Treatment works treating domestic sewage" means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, domestic sewage includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works.

"TWTDS" means treatment works treating domestic sewage.

"Uncontrolled sanitary landfill" means a landfill or open dump, whether in operation or closed, that does not meet the requirements for run-on or run-off controls established pursuant to subtitle D of the Solid Waste Disposal Act (42 USC § 6901 et seq.).

"Upset," except when used in Part VII of this chapter, means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment

facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Variance" means any mechanism or provision under §§ 301 or § 316 of the CWA or under 40 CFR Part 125 (2000), or in the applicable effluent limitations guidelines which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the CWA. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors or on §§ 301(c), 301(g), 301(h), 301(i), or 316(a) of the CWA.

"Virginia Pollutant Discharge Elimination System (VPDES) permit" means a document issued by the board pursuant to this chapter authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters and the use or disposal of sewage sludge. Under the approved state program, a VPDES permit is equivalent to an NPDES permit.

"VPDES application" or "application" means the standard form or forms, including any additions, revisions or modifications to the forms, approved by the administrator and the board for applying for a VPDES permit.

"Wastewater," when used in Part VII of this chapter, means liquid and water carried industrial wastes and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities and institutions, whether treated or untreated, which are contributed to the POTW.

"Wastewater works operator" means any individual employed or appointed by any owner, and who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include testing or evaluation to control wastewater works operations. Not included in this definition are superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of wastewater works.

"Water Management Division Director" means the director of the Region III Water Management Division of the Environmental Protection Agency or this person's delegated representative.

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

"Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

9 VAC 25-31-30. Federal effluent guidelines.

A. The following federal regulations are hereby incorporated by reference:

Aluminum Forming 40 CFR Part 467 (2000)

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Asbestos Manufacturing 40 CFR Part 427 (2000)
Battery Manufacturing 40 CFR Part 461 (2000)
Canned and Preserved Fruits and Vegetables 40 CFR Part 407 (2000)
Canned and Preserved Seafood 40 CFR Part 408 (2000)
Carbon Black Manufacturing 40 CFR Part 458 (2000)
Cement Manufacturing 40 CFR Part 411 (2000)
Centralized Waste Treatment 40 CFR Part 437 (2000)
Coal Mining 40 CFR Part 434 (2000)
Coil Coating 40 CFR Part 465 (2000)
Copper Forming 40 CFR Part 468 (2000)
Dairy Products 40 CFR Part 405 (2000)
Electrical and Electronic Components 40 CFR Part 469 (2000)
Electroplating 40 CFR Part 413 (2000)
Explosives Manufacturing 40 CFR Part 457 (2000)
Feedlots 40 CFR Part 412 (2000 2002)
Ferrous Alloy Manufacturing 40 CFR Part 424 (2000)
Fertilizer Manufacturing 40 CFR Part 418 (2000)
Glass Manufacturing 40 CFR Part 426 (2000)
Grain Mills 40 CFR Part 406 (2000)
Gum and Wood Chemicals Manufacturing 40 CFR Part 454 (2000)
Hospitals 40 CFR Part 460 (2000)
Ink Formulating 40 CFR Part 447 (2000)
Inorganic Chemicals Manufacturing 40 CFR Part 415 (2000)
Iron and Steel Manufacturing 40 CFR Part 420 (2000)
Landfills 40 CFR Part 445 (2000)
Leather Tanning and Finishing 40 CFR Part 425 (2000)
Meat Products 40 CFR Part 432 (2000)
Metal Finishing 40 CFR Part 433 (2000)
Metal Molding and Casting 40 CFR Part 464 (2000)
Mineral Mining and Processing 40 CFR Part 436 (2000)
Nonferrous Metals 40 CFR Part 421 (2000)
Nonferrous Metal Forming 40 CFR Part 471 (2000)
Oil and Gas Extraction 40 CFR Part 435 (2000)
Ore Mining and Dressing 40 CFR Part 440 (2000)
Organic Chemicals, Plastics and Synthetic Fibers 40 CFR Part 414 (2000)
Paint Formulating 40 CFR Part 446 (2000)

Paving and Roofing Materials 40 CFR Part 443 (2000)
Pesticide Chemicals 40 CFR Part 455 (2000)
Petroleum Refining 40 CFR Part 419 (2000)
Pharmaceutical Manufacturing 40 CFR Part 439 (2000)
Phosphate Manufacturing 40 CFR Part 422 (2000)
Photographic Processing 40 CFR Part 459 (2000)
Plastics Molding and Forming 40 CFR Part 463 (2000)
Porcelain Enameling 40 CFR Part 466 (2000)
Pulp, Paper and Paperboard 40 CFR Part 430 (2000)
Rubber Processing 40 CFR Part 428 (2000)
Secondary Treatment 40 CFR Part 133 (2000)
Soaps and Detergents 40 CFR Part 417 (2000)
Steam Electric Power Generation 40 CFR Part 423 (2000)
Sugar Processing 40 CFR Part 409 (2000)
Textile Mills 40 CFR Part 410 (2000)
Timber Products 40 CFR Part 429 (2000)
Toxic Pollutant Effluent Standards 40 CFR Part 129 (2000)
Transportation Equipment Cleaning 40 CFR Part 442 (2000)
Waste Combustors 40 CFR Part 444 (2000)

B. The director shall be responsible for identifying any subsequent changes in the regulations incorporated in the previous subsection or the adoption or the modification of any new national standard. Upon identifying any such federal change or adoption, the director shall initiate a regulation adopting proceedings by preparing and filing with the Registrar of Regulations the notice required by § 2.2-4006 A 4 c of the Code of Virginia or a notice of a public hearing pursuant to § 2.2-4007 C of the Code of Virginia.

9 VAC 25-31-100. Application for a permit.

A. Duty to apply. Any person who discharges or proposes to discharge pollutants or who owns or operates a sludge-only facility whose sewage sludge use or disposal practice is regulated by 9 VAC 25-31-420 through 9 VAC 25-31-720 and who does not have an effective permit, except persons covered by general permits, excluded from the requirement for a permit by this chapter, or a user of a privately owned treatment works unless the board requires otherwise, shall submit a complete application to the department in accordance with this section. *All concentrated animal feeding operations have a duty to seek coverage under a VPDES permit.*

B. Who applies. When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.

C. Time to apply.

1. Any person proposing a new discharge, shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the board. Facilities proposing a new discharge of storm water associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of storm water associated with that industrial activity. Storm water discharges from construction activities included in subdivision 10 of the definition of storm water associated with industrial activity and storm water discharges associated with small construction activities shall submit applications at least 90 days before the date on which construction is to commence. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 90 or 180 day requirements to avoid delay. New discharges composed entirely of storm water, other than those dischargers identified in 9 VAC 25-31-120 A 1, shall apply for and obtain a permit according to the application requirements in 9 VAC 25-31-120 F.

2. All TWTDS whose sewage sludge use or disposal practices are regulated by 9 VAC 25-31-420 through 9 VAC 25-31-720 must submit permit applications according to the applicable schedule in subdivision 2 a or b of this subsection.

a. A TWTDS with a currently effective VPDES permit must submit a permit application at the time of its next VPDES permit renewal application. Such information must be submitted in accordance with subsection D of this section.

b. Any other TWTDS not addressed under subdivision 2 a of this subsection must submit the information listed in subdivisions 2 b (1) through (5) of this subsection to the department within one year after publication of a standard applicable to its sewage sludge use or disposal practice(s), using a form provided by the department. The board will determine when such TWTDS must submit a full permit application.

(1) The TWTDS's name, mailing address, location, and status as federal, state, private, public or other entity;

(2) The applicant's name, address, telephone number, and ownership status;

(3) A description of the sewage sludge use or disposal practices. Unless the sewage sludge meets the requirements of subdivision P 8 d of this section, the description must include the name and address of any facility where sewage sludge is sent for treatment or disposal and the location of any land application sites;

(4) Annual amount of sewage sludge generated, treated, used or disposed (estimated dry weight basis); and

(5) The most recent data the TWTDS may have on the quality of the sewage sludge.

c. Notwithstanding subdivision 2 a or b of this subsection, the board may require permit applications from any TWTDS at any time if the board determines that a permit is necessary to protect public health and the environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge.

d. Any TWTDS that commences operations after promulgation of an applicable standard for sewage sludge use or disposal shall submit an application to the department at least 180 days prior to the date proposed for commencing operations.

D. Duty to reapply. All permittees with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

E. Completeness.

1. The board shall not issue a permit before receiving a complete application for a permit except for VPDES general permits. An application for a permit is complete when the board receives an application form and any supplemental information which are completed to its satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity.

2. No application for a VPDES permit to discharge sewage into or adjacent to state waters from a privately owned treatment works serving, or designed to serve, 50 or more residences shall be considered complete unless the applicant has provided the department with notification from the State Corporation Commission that the applicant is incorporated in the Commonwealth and is in compliance with all regulations and relevant orders of the State Corporation Commission.

3. No application for a new individual VPDES permit authorizing a new discharge of sewage, industrial wastes, or other wastes shall be considered complete unless it contains notification from the county, city, or town in which the discharge is to take place that the location and operation of the discharging facility are consistent with applicable ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia. The county, city or town shall inform in writing the applicant and the board of the discharging facility's compliance or noncompliance not more than 30 days from receipt by the chief administrative officer, or his agent, of a request from the applicant. Should the county, city or town fail to provide such written notification within 30 days, the requirement for such notification is waived. The provisions of this subsection shall not apply to any discharge for which a valid VPDES permit had been issued prior to March 10, 2000.

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4. A permit application shall not be considered complete if the board has waived application requirements under subsection J or P of this section and the EPA has disapproved the waiver application. If a waiver request has been submitted to the EPA more than 210 days prior to permit expiration and the EPA has not disapproved the waiver application 181 days prior to permit expiration, the permit application lacking the information subject to the waiver application shall be considered complete.

F. Information requirements. All applicants for VPDES permits, other than POTWs and other TWTDS, shall provide the following information to the department, using the application form provided by the department (additional information required of applicants is set forth in subsections G through K of this section).

1. The activities conducted by the applicant which require it to obtain a VPDES permit;
2. Name, mailing address, and location of the facility for which the application is submitted;
3. Up to four SIC codes which best reflect the principal products or services provided by the facility;
4. The operator's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity;
5. Whether the facility is located on Indian lands;
6. A listing of all permits or construction approvals received or applied for under any of the following programs:
 - a. Hazardous Waste Management program under RCRA (42 USC § 6921);
 - b. UIC program under SDWA (42 USC § 300h);
 - c. VPDES program under the CWA and the law;
 - d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act (42 USC § 4701 et seq.);
 - e. Nonattainment program under the Clean Air Act (42 USC § 4701 et seq.);
 - f. National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act (42 USC § 4701 et seq.);
 - g. Ocean dumping permits under the Marine Protection Research and Sanctuaries Act (33 USC § 14 et seq.);
 - h. Dredge or fill permits under § 404 of the CWA; and
 - i. Other relevant environmental permits, including state permits.
7. A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are

injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area; and

8. A brief description of the nature of the business.

G. Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers. Existing manufacturing, commercial mining, and silvicultural dischargers applying for VPDES permits, except for those facilities subject to the requirements of 9 VAC 25-31-100 H, shall provide the following information to the department, using application forms provided by the department.

1. The latitude and longitude of each outfall to the nearest 15 seconds and the name of the receiving water.
2. A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under subdivision 3 of this subsection. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined (for example, for certain mining activities), the applicant may provide instead a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.
3. A narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, and storm water run-off; the average flow which each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations, or production areas may be described in general terms (for example, dye-making reactor, distillation tower). For a privately owned treatment works, this information shall include the identity of each user of the treatment works. The average flow of point sources composed of storm water may be estimated. The basis for the rainfall event and the method of estimation must be indicated.
4. If any of the discharges described in subdivision 3 of this subsection are intermittent or seasonal, a description of the frequency, duration and flow rate of each discharge occurrence (except for storm water run-off, spillage or leaks).
5. If an effluent guideline promulgated under § 304 of the CWA applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline. The reported measure must reflect the actual production of the facility.

6. If the applicant is subject to any present requirements or compliance schedules for construction, upgrading or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates.

7. a. Information on the discharge of pollutants specified in this subdivision (except information on storm water discharges which is to be provided as specified in 9 VAC 25-31-120). When quantitative data for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136 (2000). When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the board may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in e and f of this subdivision that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, for discharges other than storm water discharges, the board may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four grab samples will be a representative sample of the effluent being discharged.

b. For storm water discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50% from the average or median rainfall event in that area. For all applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a storm water discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of 15 minutes (applicants submitting permit applications for storm water discharges under 9 VAC 25-31-120 D may collect flow-weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the approval of the board).

However, a minimum of one grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For storm water discharge samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first 30 minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in 9 VAC 25-31-120 C 1. For all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in 9 VAC 25-31-120 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The board may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rain fall), protocols for collecting samples under 40 CFR Part 136 (2000), and additional time for submitting data on a case-by-case basis. An applicant is expected to know or have reason to believe that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water run-off from the facility.)

c. Every applicant must report quantitative data for every outfall for the following pollutants:

Biochemical oxygen demand (BOD₅)

Chemical oxygen demand

Total organic carbon

Total suspended solids

Ammonia (as N)

Temperature (both winter and summer)

pH

d. The board may waive the reporting requirements for individual point sources or for a particular industry category for one or more of the pollutants listed in subdivision 7 c of this subsection if the applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

e. Each applicant with processes in one or more primary industry category (see 40 CFR Part 122 Appendix A (2000)) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater:

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(1) The organic toxic pollutants in the fractions designated in Table I of 40 CFR Part 122 Appendix D (2000) for the applicant's industrial category or categories unless the applicant qualifies as a small business under subdivision 8 of this subsection. Table II of 40 CFR Part 122 Appendix D (2000) lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas chromatography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes; and

(2) The pollutants listed in Table III of 40 CFR Part 122 Appendix D (2000) (the toxic metals, cyanide, and total phenols).

f. (1) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table IV of 40 CFR Part 122 Appendix D (2000) (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged which is not so limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

(2) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Table II or Table III of 40 CFR Part 122 Appendix D (2000) (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under subdivision 7 e of this subsection, is discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater the applicant must report quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, in concentrations less than 100 ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under subdivision 8 of this subsection is not required to analyze for pollutants listed in Table II of 40 CFR Part 122 Appendix D (2000) (the organic toxic pollutants).

g. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table V of 40 CFR Part 122 Appendix D (2000)

(certain hazardous substances and asbestos) are discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.

h. Each applicant must report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

(1) Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

(2) Knows or has reason to believe that TCDD is or may be present in an effluent.

8. An applicant which qualifies as a small business under one of the following criteria is exempt from the requirements in subdivision 7 e (1) or 7 f (1) of this subsection to submit quantitative data for the pollutants listed in Table II of 40 CFR Part 122 Appendix D (2000) (the organic toxic pollutants):

a. For coal mines, a probable total annual production of less than 100,000 tons per year; or

b. For all other applicants, gross total annual sales averaging less than \$100,000 per year (in second quarter 1980 dollars).

9. A listing of any toxic pollutant which the applicant currently uses or manufactures as an intermediate or final product or by-product. The board may waive or modify this requirement for any applicant if the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant and the board has adequate information to issue the permit.

10. Reserved.

11. An identification of any biological toxicity tests which the applicant knows or has reason to believe have been made within the last three years on any of the applicant's discharges or on a receiving water in relation to a discharge.

12. If a contract laboratory or consulting firm performed any of the analyses required by subdivision 7 of this subsection, the identity of each laboratory or firm and the analyses performed.

13. In addition to the information reported on the application form, applicants shall provide to the board, at its request, such other information, including pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board, as the board may reasonably require to assess the discharges of the facility and to determine whether to issue a VPDES permit. The

additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of the toxicity.

H. Application requirements for manufacturing, commercial, mining and silvicultural facilities which discharge only nonprocess wastewater. Except for storm water discharges, all manufacturing, commercial, mining and silvicultural dischargers applying for VPDES permits which discharge only nonprocess wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the following information to the department using application forms provided by the department:

1. Outfall number, latitude and longitude to the nearest 15 seconds, and the name of the receiving water;
2. Date of expected commencement of discharge;
3. An identification of the general type of waste discharged, or expected to be discharged upon commencement of operations, including sanitary wastes, restaurant or cafeteria wastes, or noncontact cooling water. An identification of cooling water additives (if any) that are used or expected to be used upon commencement of operations, along with their composition if existing composition is available;
4. a. Quantitative data for the pollutants or parameters listed below, unless testing is waived by the board. The quantitative data may be data collected over the past 365 days, if they remain representative of current operations, and must include maximum daily value, average daily value, and number of measurements taken. The applicant must collect and analyze samples in accordance with 40 CFR Part 136 (2000). Grab samples must be used for pH, temperature, oil and grease, total residual chlorine, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. New dischargers must include estimates for the pollutants or parameters listed below instead of actual sampling data, along with the source of each estimate. All levels must be reported or estimated as concentration and as total mass, except for flow, pH, and temperature.

- (1) Biochemical oxygen demand (BOD₅).
- (2) Total suspended solids (TSS).
- (3) Fecal coliform (if believed present or if sanitary waste is or will be discharged).
- (4) Total residual chlorine (if chlorine is used).
- (5) Oil and grease.
- (6) Chemical oxygen demand (COD) (if noncontact cooling water is or will be discharged).
- (7) Total organic carbon (TOC) (if noncontact cooling water is or will be discharged).
- (8) Ammonia (as N).
- (9) Discharge flow.

(10) pH.

(11) Temperature (winter and summer).

b. The board may waive the testing and reporting requirements for any of the pollutants or flow listed in subdivision 4 a of this subsection if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of a permit can be obtained through less stringent requirements.

c. If the applicant is a new discharger, he must submit the information required in subdivision 4 a of this subsection by providing quantitative data in accordance with that section no later than two years after commencement of discharge. However, the applicant need not submit testing results which he has already performed and reported under the discharge monitoring requirements of his VPDES permit.

d. The requirements of subdivisions 4 a and 4 c of this subsection that an applicant must provide quantitative data or estimates of certain pollutants do not apply to pollutants present in a discharge solely as a result of their presence in intake water. However, an applicant must report such pollutants as present. Net credit may be provided for the presence of pollutants in intake water if the requirements of 9 VAC 25-31-230 G are met;

5. A description of the frequency of flow and duration of any seasonal or intermittent discharge (except for storm water run-off, leaks, or spills);

6. A brief description of any treatment system used or to be used;

7. Any additional information the applicant wishes to be considered, such as influent data for the purpose of obtaining net credits pursuant to 9 VAC 25-31-230 G;

8. Signature of certifying official under 9 VAC 25-31-110; and

9. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

I. Application requirements for new and existing concentrated animal feeding operations and aquatic animal production facilities. New and existing concentrated animal feeding operations and concentrated aquatic animal production facilities shall provide the following information to the department, using the application form provided by the department:

1. For concentrated animal feeding operations:

~~a. The type and number of animals in open confinement and housed under roof;~~

~~b. The number of acres used for confinement feeding; and~~

~~c. The design basis for the run-off diversion and control system, if one exists, including the number of acres of~~

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~~contributing drainage, the storage capacity, and the design safety factor; and~~

- a. *The name of the owner or operator;*
- b. *The facility location and mailing address;*
- c. *Latitude and longitude of the production area (entrance to the production area);*
- d. *A topographic map of the geographic area in which the CAFO is located showing the specific location of the production area, in lieu of the requirements of subdivision F 7 of this section;*
- e. *Specific information about the number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);*
- f. *The type of containment and storage (anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, other) and total capacity for manure, litter, and process wastewater storage (tons/gallons);*
- g. *The total number of acres under control of the applicant available for land application of manure, litter, or process wastewater;*
- h. *Estimated amounts of manure, litter, and process wastewater generated per year (tons/gallons); and*
- i. *For CAFOs that must seek coverage under a permit after December 31, 2006, certification that a nutrient management plan has been completed and will be implemented upon the date of coverage.*

2. For concentrated aquatic animal production facilities:

- a. The maximum daily and average monthly flow from each outfall;
- b. The number of ponds, raceways, and similar structures;
- c. The name of the receiving water and the source of intake water;
- d. For each species of aquatic animals, the total yearly and maximum harvestable weight;
- e. The calendar month of maximum feeding and the total mass of food fed during that month; and
- f. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

J. Application requirements for new and existing POTWs and treatment works treating domestic sewage. Unless otherwise indicated, all POTWs and other dischargers designated by the board must provide to the department, at a minimum, the information in this subsection using an application form provided by the department. Permit

applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the department. The board may waive any requirement of this subsection if it has access to substantially identical information. The board may also waive any requirement of this subsection that is not of material concern for a specific permit, if approved by the regional administrator. The waiver request to the regional administrator must include the board's justification for the waiver. A regional administrator's disapproval of the board's proposed waiver does not constitute final agency action but does provide notice to the board and permit applicant(s) that the EPA may object to any board-issued permit issued in the absence of the required information.

1. All applicants must provide the following information:

- a. Name, mailing address, and location of the facility for which the application is submitted;
- b. Name, mailing address, and telephone number of the applicant and indication as to whether the applicant is the facility's owner, operator, or both;
- c. Identification of all environmental permits or construction approvals received or applied for (including dates) under any of the following programs:
 - (1) Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA), Subpart C;
 - (2) Underground Injection Control program under the Safe Drinking Water Act (SDWA);
 - (3) NPDES program under the Clean Water Act (CWA);
 - (4) Prevention of Significant Deterioration (PSD) program under the Clean Air Act;
 - (5) Nonattainment program under the Clean Air Act;
 - (6) National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;
 - (7) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act;
 - (8) Dredge or fill permits under § 404 of the CWA; and
 - (9) Other relevant environmental permits, including state permits;
- d. The name and population of each municipal entity served by the facility, including unincorporated connector districts. Indicate whether each municipal entity owns or maintains the collection system and whether the collection system is separate sanitary or combined storm and sanitary, if known;
- e. Information concerning whether the facility is located in Indian country and whether the facility discharges to a receiving stream that flows through Indian country;

f. The facility's design flow rate (the wastewater flow rate the plant was built to handle), annual average daily flow rate, and maximum daily flow rate for each of the previous three years;

g. Identification of type(s) of collection system(s) used by the treatment works (i.e., separate sanitary sewers or combined storm and sanitary sewers) and an estimate of the percent of sewer line that each type comprises; and

h. The following information for outfalls to surface waters and other discharge or disposal methods:

(1) For effluent discharges to surface waters, the total number and types of outfalls (e.g., treated effluent, combined sewer overflows, bypasses, constructed emergency overflows);

(2) For wastewater discharged to surface impoundments:

(a) The location of each surface impoundment;

(b) The average daily volume discharged to each surface impoundment; and

(c) Whether the discharge is continuous or intermittent;

(3) For wastewater applied to the land:

(a) The location of each land application site;

(b) The size of each land application site, in acres;

(c) The average daily volume applied to each land application site, in gallons per day; and

(d) Whether land application is continuous or intermittent;

(4) For effluent sent to another facility for treatment prior to discharge:

(a) The means by which the effluent is transported;

(b) The name, mailing address, contact person, and phone number of the organization transporting the discharge, if the transport is provided by a party other than the applicant;

(c) The name, mailing address, contact person, phone number, and VPDES permit number (if any) of the receiving facility; and

(d) The average daily flow rate from this facility into the receiving facility, in millions of gallons per day; and

(5) For wastewater disposed of in a manner not included in subdivisions 1 h (1) through (4) of this subsection (e.g., underground percolation, underground injection):

(a) A description of the disposal method, including the location and size of each disposal site, if applicable;

(b) The annual average daily volume disposed of by this method, in gallons per day; and

(c) Whether disposal through this method is continuous or intermittent;

2. All applicants with a design flow greater than or equal to 0.1 mgd must provide the following information:

a. The current average daily volume of inflow and infiltration, in gallons per day, and steps the facility is taking to minimize inflow and infiltration;

b. A topographic map (or other map if a topographic map is unavailable) extending at least one mile beyond property boundaries of the treatment plant, including all unit processes, and showing:

(1) Treatment plant area and unit processes;

(2) The major pipes or other structures through which wastewater enters the treatment plant and the pipes or other structures through which treated wastewater is discharged from the treatment plant. Include outfalls from bypass piping, if applicable;

(3) Each well where fluids from the treatment plant are injected underground;

(4) Wells, springs, and other surface water bodies listed in public records or otherwise known to the applicant within 1/4 mile of the treatment works' property boundaries;

(5) Sewage sludge management facilities (including on-site treatment, storage, and disposal sites); and

(6) Location at which waste classified as hazardous under RCRA enters the treatment plant by truck, rail, or dedicated pipe;

c. Process flow diagram or schematic.

(1) A diagram showing the processes of the treatment plant, including all bypass piping and all backup power sources or redundancy in the system. This includes a water balance showing all treatment units, including disinfection, and showing daily average flow rates at influent and discharge points, and approximate daily flow rates between treatment units; and

(2) A narrative description of the diagram; and

d. The following information regarding scheduled improvements:

(1) The outfall number of each outfall affected;

(2) A narrative description of each required improvement;

(3) Scheduled or actual dates of completion for the following:

(a) Commencement of construction;

(b) Completion of construction;

(c) Commencement of discharge; and

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(d) Attainment of operational level; and

(4) A description of permits and clearances concerning other federal or state requirements;

3. Each applicant must provide the following information for each outfall, including bypass points, through which effluent is discharged, as applicable:

a. The following information about each outfall:

(1) Outfall number;

(2) State, county, and city or town in which outfall is located;

(3) Latitude and longitude, to the nearest second;

(4) Distance from shore and depth below surface;

(5) Average daily flow rate, in million gallons per day;

(6) The following information for each outfall with a seasonal or periodic discharge:

(a) Number of times per year the discharge occurs;

(b) Duration of each discharge;

(c) Flow of each discharge; and

(d) Months in which discharge occurs; and

(7) Whether the outfall is equipped with a diffuser and the type (e.g., high-rate) of diffuser used.

b. The following information, if known, for each outfall through which effluent is discharged to surface waters:

(1) Name of receiving water;

(2) Name of watershed/river/stream system and United States Soil Conservation Service 14-digit watershed code;

(3) Name of State Management/River Basin and United States Geological Survey 8-digit hydrologic cataloging unit code; and

(4) Critical flow of receiving stream and total hardness of receiving stream at critical low flow (if applicable).

c. The following information describing the treatment provided for discharges from each outfall to surface waters:

(1) The highest level of treatment (e.g., primary, equivalent to secondary, secondary, advanced, other) that is provided for the discharge for each outfall and:

(a) Design biochemical oxygen demand (BOD₅ or CBOD₅) removal (percent);

(b) Design suspended solids (SS) removal (percent); and, where applicable,

(c) Design phosphorus (P) removal (percent);

(d) Design nitrogen (N) removal (percent); and

(e) Any other removals that an advanced treatment system is designed to achieve.

(2) A description of the type of disinfection used, and whether the treatment plant dechlorinates (if disinfection is accomplished through chlorination).

4. Effluent monitoring for specific parameters.

a. As provided in subdivisions 4 b through j of this subsection, all applicants must submit to the department effluent monitoring information for samples taken from each outfall through which effluent is discharged to surface waters, except for CSOs. The board may allow applicants to submit sampling data for only one outfall on a case-by-case basis, where the applicant has two or more outfalls with substantially identical effluent. The board may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone.

b. All applicants must sample and analyze for the following pollutants:

(1) Biochemical oxygen demand (BOD₅ or CBOD₅);

(2) Fecal coliform;

(3) Design flow rate;

(4) pH;

(5) Temperature; and

(6) Total suspended solids.

c. All applicants with a design flow greater than or equal to 0.1 mgd must sample and analyze for the following pollutants:

(1) Ammonia (as N);

(2) Chlorine (total residual, TRC);

(3) Dissolved oxygen;

(4) Nitrate/Nitrite;

(5) Kjeldahl nitrogen;

(6) Oil and grease;

(7) Phosphorus; and

(8) Total dissolved solids.

Facilities that do not use chlorine for disinfection, do not use chlorine elsewhere in the treatment process, and have no reasonable potential to discharge chlorine in their effluent may delete chlorine.

d. All POTWs with a design flow rate equal to or greater than one million gallons per day, all POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program, and other POTWs, as required by the board must sample and analyze for the pollutants listed in Table 2 of 40 CFR Part 122 Appendix J (2000), and for any other pollutants for which the board or EPA have established

water quality standards applicable to the receiving waters.

e. The board may require sampling for additional pollutants, as appropriate, on a case-by-case basis.

f. Applicants must provide data from a minimum of three samples taken within 4-1/2 years prior to the date of the permit application. Samples must be representative of the seasonal variation in the discharge from each outfall. Existing data may be used, if available, in lieu of sampling done solely for the purpose of this application. The board may require additional samples, as appropriate, on a case-by-case basis.

g. All existing data for pollutants specified in subdivisions 4 b through e of this subsection that is collected within 4-1/2 years of the application must be included in the pollutant data summary submitted by the applicant. If, however, the applicant samples for a specific pollutant on a monthly or more frequent basis, it is only necessary, for such pollutant, to summarize all data collected within one year of the application.

h. Applicants must collect samples of effluent and analyze such samples for pollutants in accordance with analytical methods approved under 40 CFR Part 136 (2000) unless an alternative is specified in the existing VPDES permit. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. For a composite sample, only one analysis of the composite of aliquots is required.

i. The effluent monitoring data provided must include at least the following information for each parameter:

(1) Maximum daily discharge, expressed as concentration or mass, based upon actual sample values;

(2) Average daily discharge for all samples, expressed as concentration or mass, and the number of samples used to obtain this value;

(3) The analytical method used; and

(4) The threshold level (i.e., method detection limit, minimum level, or other designated method endpoints) for the analytical method used.

j. Unless otherwise required by the board, metals must be reported as total recoverable.

5. Effluent monitoring for whole effluent toxicity.

a. All applicants must provide an identification of any whole effluent toxicity tests conducted during the 4-1/2 years prior to the date of the application on any of the applicant's discharges or on any receiving water near the discharge.

b. As provided in subdivisions 5 c through i of this subsection, the following applicants must submit to the department the results of valid whole effluent toxicity

tests for acute or chronic toxicity for samples taken from each outfall through which effluent is discharged to surface waters, except for combined sewer overflows:

(1) All POTWs with design flow rates greater than or equal to one million gallons per day;

(2) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;

(3) Other POTWs, as required by the board, based on consideration of the following factors:

(a) The variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of treatment plant, and types of industrial contributors);

(b) The ratio of effluent flow to receiving stream flow;

(c) Existing controls on point or nonpoint sources, including total maximum daily load calculations for the receiving stream segment and the relative contribution of the POTW;

(d) Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a coastal water, or a water designated as an outstanding natural resource water; or

(e) Other considerations (including, but not limited to, the history of toxic impacts and compliance problems at the POTW) that the board determines could cause or contribute to adverse water quality impacts.

c. Where the POTW has two or more outfalls with substantially identical effluent discharging to the same receiving stream segment, the board may allow applicants to submit whole effluent toxicity data for only one outfall on a case-by-case basis. The board may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone.

d. Each applicant required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide:

(1) Results of a minimum of four quarterly tests for a year, from the year preceding the permit application; or

(2) Results from four tests performed at least annually in the 4-1/2 year period prior to the application, provided the results show no appreciable toxicity using a safety factor determined by the board.

e. Applicants must conduct tests with multiple species (no less than two species, e.g., fish, invertebrate, plant) and test for acute or chronic toxicity, depending on the

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range of receiving water dilution. The board recommends that applicants conduct acute or chronic testing based on the following dilutions: (i) acute toxicity testing if the dilution of the effluent is greater than 100:1 at the edge of the mixing zone or (ii) chronic toxicity testing if the dilution of the effluent is less than or equal to 100:1 at the edge of the mixing zone.

f. Each applicant required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide the number of chronic or acute whole effluent toxicity tests that have been conducted since the last permit reissuance.

g. Applicants must provide the results using the form provided by the department, or test summaries if available and comprehensive, for each whole effluent toxicity test conducted pursuant to subdivision 5 b of this subsection for which such information has not been reported previously to the department.

h. Whole effluent toxicity testing conducted pursuant to subdivision 5 b of this subsection must be conducted using methods approved under 40 CFR Part 136 (2000), as directed by the board.

i. For whole effluent toxicity data submitted to the department within 4-1/2 years prior to the date of the application, applicants must provide the dates on which the data were submitted and a summary of the results.

j. Each POTW required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide any information on the cause of toxicity and written details of any toxicity reduction evaluation conducted, if any whole effluent toxicity test conducted within the past 4-1/2 years revealed toxicity.

6. Applicants must submit the following information about industrial discharges to the POTW:

a. Number of significant industrial users (SIUs) and categorical industrial users (CIUs) discharging to the POTW; and

b. POTWs with one or more SIUs shall provide the following information for each SIU, as defined in 9 VAC 25-31-10, that discharges to the POTW:

- (1) Name and mailing address;
- (2) Description of all industrial processes that affect or contribute to the SIU's discharge;
- (3) Principal products and raw materials of the SIU that affect or contribute to the SIU's discharge;
- (4) Average daily volume of wastewater discharged, indicating the amount attributable to process flow and nonprocess flow;
- (5) Whether the SIU is subject to local limits;
- (6) Whether the SIU is subject to categorical standards and, if so, under which category and subcategory; and

(7) Whether any problems at the POTW (e.g., upsets, pass through, interference) have been attributed to the SIU in the past 4-1/2 years.

c. The information required in subdivisions 6 a and b of this subsection may be waived by the board for POTWs with pretreatment programs if the applicant has submitted either of the following that contain information substantially identical to that required in subdivisions 6 a and b of this subsection:

- (1) An annual report submitted within one year of the application; or
- (2) A pretreatment program.

7. Discharges from hazardous waste generators and from waste cleanup or remediation sites. POTWs receiving Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or RCRA Corrective Action wastes or wastes generated at another type of cleanup or remediation site must provide the following information:

a. If the POTW receives, or has been notified that it will receive, by truck, rail, or dedicated pipe any wastes that are regulated as RCRA hazardous wastes pursuant to 40 CFR Part 261 (2000), the applicant must report the following:

- (1) The method by which the waste is received (i.e., whether by truck, rail, or dedicated pipe); and
- (2) The hazardous waste number and amount received annually of each hazardous waste.

b. If the POTW receives, or has been notified that it will receive, wastewaters that originate from remedial activities, including those undertaken pursuant to CERCLA and § 3004(u) or 3008(h) of RCRA, the applicant must report the following:

- (1) The identity and description of the site or facility at which the wastewater originates;
- (2) The identities of the wastewater's hazardous constituents, as listed in Appendix VIII of 40 CFR Part 261 (2000), if known; and
- (3) The extent of treatment, if any, the wastewater receives or will receive before entering the POTW.

c. Applicants are exempt from the requirements of subdivision 7 b of this subsection if they receive no more than 15 kilograms per month of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e) (2000).

8. Each applicant with combined sewer systems must provide the following information:

a. The following information regarding the combined sewer system:

- (1) A map indicating the location of the following:

- (a) All CSO discharge points;
 - (b) Sensitive use areas potentially affected by CSOs (e.g., beaches, drinking water supplies, shellfish beds, sensitive aquatic ecosystems, and outstanding national resource waters); and
 - (c) Waters supporting threatened and endangered species potentially affected by CSOs; and
- (2) A diagram of the combined sewer collection system that includes the following information:
- (a) The location of major sewer trunk lines, both combined and separate sanitary;
 - (b) The locations of points where separate sanitary sewers feed into the combined sewer system;
 - (c) In-line and off-line storage structures;
 - (d) The locations of flow-regulating devices; and
 - (e) The locations of pump stations.
- b. The following information for each CSO discharge point covered by the permit application:
- (1) The following information on each outfall:
- (a) Outfall number;
 - (b) State, county, and city or town in which outfall is located;
 - (c) Latitude and longitude, to the nearest second;
 - (d) Distance from shore and depth below surface;
 - (e) Whether the applicant monitored any of the following in the past year for this CSO: (i) rainfall, (ii) CSO flow volume, (iii) CSO pollutant concentrations, (iv) receiving water quality, or (v) CSO frequency; and
 - (f) The number of storm events monitored in the past year;
- (2) The following information about CSO overflows from each outfall:
- (a) The number of events in the past year;
 - (b) The average duration per event, if available;
 - (c) The average volume per CSO event, if available; and
 - (d) The minimum rainfall that caused a CSO event, if available, in the last year;
- (3) The following information about receiving waters:
- (a) Name of receiving water;
 - (b) Name of watershed/stream system and the United States Soil Conservation Service watershed (14-digit) code, if known; and
 - (c) Name of State Management/River Basin and the United States Geological Survey hydrologic cataloging unit (8-digit) code, if known; and
- (4) A description of any known water quality impacts on the receiving water caused by the CSO (e.g., permanent or intermittent beach closings, permanent or intermittent shellfish bed closings, fish kills, fish advisories, other recreational loss, or exceedance of any applicable state water quality standard).
9. All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility.
10. All applications must be signed by a certifying official in compliance with 9 VAC 25-31-110.
11. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.
- K. Application requirements for new sources and new discharges. New manufacturing, commercial, mining and silvicultural dischargers applying for VPDES permits (except for new discharges of facilities subject to the requirements of subsection H of this section or new discharges of storm water associated with industrial activity which are subject to the requirements of 9 VAC 25-31-120 C 1 and this subsection (except as provided by 9 VAC 25-31-120 C 1 b) shall provide the following information to the department, using the application forms provided by the department:
- 1. The expected outfall location in latitude and longitude to the nearest 15 seconds and the name of the receiving water;
 - 2. The expected date of commencement of discharge;
 - 3. a. Description of the treatment that the wastewater will receive, along with all operations contributing wastewater to the effluent, average flow contributed by each operation, and the ultimate disposal of any solid or liquid wastes not discharged;
 - b. A line drawing of the water flow through the facility with a water balance as described in subdivision G 2;
 - c. If any of the expected discharges will be intermittent or seasonal, a description of the frequency, duration and maximum daily flow rate of each discharge occurrence (except for storm water run-off, spillage, or leaks); and
 - 4. If a new source performance standard promulgated under § 306 of the CWA or an effluent limitation guideline applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's expected actual production reported in the units used in the applicable effluent guideline or new source performance standard for each of the first three years. Alternative estimates may also be submitted if production is likely to vary;
 - 5. The requirements in subdivisions H 4 a, b, and c of this section that an applicant must provide estimates of certain pollutants expected to be present do not apply to pollutants present in a discharge solely as a result of

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their presence in intake water; however, an applicant must report such pollutants as present. Net credits may be provided for the presence of pollutants in intake water if the requirements of 9 VAC 25-31-230 G are met. All levels (except for discharge flow, temperature, and pH) must be estimated as concentration and as total mass.

a. Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants or parameters. The board may waive the reporting requirements for any of these pollutants and parameters if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of the permit can be obtained through less stringent reporting requirements.

- (1) Biochemical oxygen demand (BOD).
- (2) Chemical oxygen demand (COD).
- (3) Total organic carbon (TOC).
- (4) Total suspended solids (TSS).
- (5) Flow.
- (6) Ammonia (as N).
- (7) Temperature (winter and summer).
- (8) pH.

b. Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants, if the applicant knows or has reason to believe they will be present or if they are limited by an effluent limitation guideline or new source performance standard either directly or indirectly through limitations on an indicator pollutant: all pollutants in Table IV of 40 CFR Part 122 Appendix D (2000) (certain conventional and nonconventional pollutants).

c. Each applicant must report estimated daily maximum, daily average and source of information for the following pollutants if he knows or has reason to believe that they will be present in the discharges from any outfall:

- (1) The pollutants listed in Table III of 40 CFR Part 122 Appendix D (2000) (the toxic metals, in the discharge from any outfall, Total cyanide, and total phenols);
- (2) The organic toxic pollutants in Table II of 40 CFR Part 122 Appendix D (2000) (except bis (chloromethyl) ether, dichlorofluoromethane and trichlorofluoromethane). This requirement is waived for applicants with expected gross sales of less than \$100,000 per year for the next three years, and for coal mines with expected average production of less than 100,000 tons of coal per year.

d. The applicant is required to report that 2,3,7,8 Tetrachlorodibenzo-P-Dioxin (TCDD) may be discharged if he uses or manufactures one of the

following compounds, or if he knows or has reason to believe that TCDD will or may be present in an effluent:

- (1) 2,4,5-trichlorophenoxy acetic acid (2,4,5-T) (CAS #93-76-5);
- (2) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP) (CAS #93-72-1);
- (3) 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS #136-25-4);
- (4) 0,0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel) (CAS #299-84-3);
- (5) 2,4,5-trichlorophenol (TCP) (CAS #95-95-4); or
- (6) Hexachlorophene (HCP) (CAS #70-30-4);

e. Each applicant must report any pollutants listed in Table V of 40 CFR Part 122 Appendix D (2000) (certain hazardous substances) if he believes they will be present in any outfall (no quantitative estimates are required unless they are already available).

f. No later than two years after the commencement of discharge from the proposed facility, the applicant is required to submit the information required in subsection G of this section. However, the applicant need not complete those portions of subsection G of this section requiring tests which he has already performed and reported under the discharge monitoring requirements of his VPDES permit;

6. Each applicant must report the existence of any technical evaluation concerning his wastewater treatment, along with the name and location of similar plants of which he has knowledge;

7. Any optional information the permittee wishes to have considered;

8. Signature of certifying official under 9 VAC 25-31-110; and

9. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

L. Variance requests by non-POTWs. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in this subsection:

1. Fundamentally different factors.

a. A request for a variance based on the presence of fundamentally different factors from those on which the effluent limitations guideline was based shall be filed as follows:

- (1) For a request from best practicable control technology currently available (BPT), by the close of the public comment period for the draft permit; or
- (2) For a request from best available technology economically achievable (BAT) and/or best

conventional pollutant control technology (BCT), by no later than:

(a) July 3, 1989, for a request based on an effluent limitation guideline promulgated before February 4, 1987, to the extent July 3, 1989, is not later than that provided under previously promulgated regulations; or

(b) 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.

b. The request shall explain how the requirements of the applicable regulatory or statutory criteria have been met.

2. A request for a variance from the BAT requirements for CWA § 301(b)(2)(F) pollutants (commonly called nonconventional pollutants) pursuant to § 301(c) of the CWA because of the economic capability of the owner or operator, or pursuant to § 301(g) of the CWA (provided however that a § 301(g) variance may only be requested for ammonia; chlorine; color; iron; total phenols (when determined by the Administrator to be a pollutant covered by § 301(b)(2)(F) of the CWA) and any other pollutant which the administrator lists under § 301(g)(4) of the CWA) must be made as follows:

a. For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

(1) Submitting an initial request to the regional administrator, as well as to the department, stating the name of the discharger, the permit number, the outfall number(s), the applicable effluent guideline, and whether the discharger is requesting a §§ 301(c) or 301(g) of the CWA modification, or both. This request must have been filed not later than 270 days after promulgation of an applicable effluent limitation guideline; and

(2) Submitting a completed request no later than the close of the public comment period for the draft permit demonstrating that: (i) all reasonable ascertainable issues have been raised and all reasonably available arguments and materials supporting their position have been submitted; and (ii) that the applicable requirements of 40 CFR Part 125 (2000) have been met. Notwithstanding this provision, the complete application for a request under § 301(g) of the CWA shall be filed 180 days before EPA must make a decision (unless the Regional Division Director establishes a shorter or longer period); or

b. For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with subdivision 2 a (2) of this subsection and need not be preceded by an initial request under subdivision 2 a (1) of this subsection.

3. A modification under § 302(b)(2) of the CWA of requirements under § 302(a) of the CWA for achieving water quality related effluent limitations may be requested no later than the close of the public comment period for the draft permit on the permit from which the modification is sought.

4. A variance for alternate effluent limitations for the thermal component of any discharge must be filed with a timely application for a permit under this section, except that if thermal effluent limitations are established on a case-by-case basis or are based on water quality standards the request for a variance may be filed by the close of the public comment period for the draft permit. A copy of the request shall be sent simultaneously to the department.

M. Variance requests by POTWs. A discharger which is a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory provisions as specified in this paragraph:

1. A request for a modification under § 301(h) of the CWA of requirements of § 301(b)(1)(B) of the CWA for discharges into marine waters must be filed in accordance with the requirements of 40 CFR Part 125, Subpart G (2000).

2. A modification under § 302(b)(2) of the CWA of the requirements under § 302(a) of the CWA for achieving water quality based effluent limitations shall be requested no later than the close of the public comment period for the draft permit on the permit from which the modification is sought.

N. Expedited variance procedures and time extensions.

1. Notwithstanding the time requirements in subsections L and M of this section, the board may notify a permit applicant before a draft permit is issued that the draft permit will likely contain limitations which are eligible for variances. In the notice the board may require the applicant as a condition of consideration of any potential variance request to submit a request explaining how the requirements of 40 CFR Part 125 (2000) applicable to the variance have been met and may require its submission within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

2. A discharger who cannot file a timely complete request required under subdivisions L 2 a (2) or L 2 b of this section may request an extension. The extension may be granted or denied at the discretion of the board. Extensions shall be no more than six months in duration.

O. Recordkeeping. Except for information required by subdivision C 2 of this section, which shall be retained for a period of at least five years from the date the application is signed (or longer as required by Part VI (9 VAC 25-31-420 et seq.) of this chapter), applicants shall keep records of all data used to complete permit applications and any

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supplemental information submitted under this section for a period of at least three years from the date the application is signed.

P. Sewage sludge management. All TWTDS subject to subdivision C 2 a of this section must provide the information in this subsection to the department using an application form approved by the department. New applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the department. The board may waive any requirement of this subsection if it has access to substantially identical information. The board may also waive any requirement of this subsection that is not of material concern for a specific permit, if approved by the regional administrator. The waiver request to the regional administrator must include the board's justification for the waiver. A regional administrator's disapproval of the board's proposed waiver does not constitute final agency action, but does provide notice to the board and the permit applicant that the EPA may object to any board issued permit issued in the absence of the required information.

1. All applicants must submit the following information:
 - a. The name, mailing address, and location of the TWTDS for which the application is submitted;
 - b. Whether the facility is a Class I Sludge Management Facility;
 - c. The design flow rate (in million gallons per day);
 - d. The total population served;
 - e. The TWTDS's status as federal, state, private, public, or other entity;
 - f. The name, mailing address, and telephone number of the applicant; and
 - g. Indication whether the applicant is the owner, operator, or both.
2. All applicants must submit the facility's VPDES permit number, if applicable, and a listing of all other federal, state, and local permits or construction approvals received or applied for under any of the following programs:
 - a. Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA);
 - b. UIC program under the Safe Drinking Water Act (SDWA);
 - c. NPDES program under the Clean Water Act (CWA);
 - d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act;
 - e. Nonattainment program under the Clean Air Act;
 - f. National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;

- g. Dredge or fill permits under § 404 of the CWA;
 - h. Other relevant environmental permits, including state or local permits.
3. All applicants must identify any generation, treatment, storage, land application, or disposal of sewage sludge that occurs in Indian country.
 4. All applicants must submit a topographic map (or other map if a topographic map is unavailable) extending one mile beyond property boundaries of the facility and showing the following information:
 - a. All sewage sludge management facilities, including on-site treatment, storage, and disposal sites; and
 - b. Wells, springs, and other surface water bodies that are within 1/4 mile of the property boundaries and listed in public records or otherwise known to the applicant.
 5. All applicants must submit a line drawing and/or a narrative description that identifies all sewage sludge management practices employed during the term of the permit, including all units used for collecting, dewatering, storing, or treating sewage sludge; the destination(s) of all liquids and solids leaving each such unit; and all processes used for pathogen reduction and vector attraction reduction.
 6. The applicant must submit sewage sludge monitoring data for the pollutants for which limits in sewage sludge have been established in Part VI (9 VAC 25-31-420 et seq.) of this chapter for the applicant's use or disposal practices on the date of permit application with the following conditions:
 - a. The board may require sampling for additional pollutants, as appropriate, on a case-by-case basis.
 - b. Applicants must provide data from a minimum of three samples taken within 4-1/2 years prior to the date of the permit application. Samples must be representative of the sewage sludge and should be taken at least one month apart. Existing data may be used in lieu of sampling done solely for the purpose of this application.
 - c. Applicants must collect and analyze samples in accordance with analytical methods specified in 9 VAC 25-31-490 unless an alternative has been specified in an existing sewage sludge permit.
 - d. The monitoring data provided must include at least the following information for each parameter:
 - (1) Average monthly concentration for all samples (mg/kg dry weight), based upon actual sample values;
 - (2) The analytical method used; and
 - (3) The method detection level.
 7. If the applicant is a person who prepares sewage sludge, as defined in 9 VAC 25-31-500, the applicant must provide the following information:

a. If the applicant's facility generates sewage sludge, the total dry metric tons per 365-day period generated at the facility.

b. If the applicant's facility receives sewage sludge from another facility, the following information for each facility from which sewage sludge is received:

(1) The name, mailing address, and location of the other facility;

(2) The total dry metric tons per 365-day period received from the other facility; and

(3) A description of any treatment processes occurring at the other facility, including blending activities and treatment to reduce pathogens or vector attraction characteristics.

c. If the applicant's facility changes the quality of sewage sludge through blending, treatment, or other activities, the following information:

(1) Whether the Class A pathogen reduction requirements in 9 VAC 25-31-710 A or the Class B pathogen reduction requirements in 9 VAC 25-31-710 B are met, and a description of any treatment processes used to reduce pathogens in sewage sludge;

(2) Whether any of the vector attraction reduction options of 9 VAC 25-31-720 B 1 through 8 are met, and a description of any treatment processes used to reduce vector attraction properties in sewage sludge; and

(3) A description of any other blending, treatment, or other activities that change the quality of sewage sludge.

d. If sewage sludge from the applicant's facility meets the ceiling concentrations in 9 VAC 25-31-540 B 1, the pollutant concentrations in 9 VAC 25-31-540 B 3, the Class A pathogen requirements in 9 VAC 25-31-710 A, and one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through 8, and if the sewage sludge is applied to the land, the applicant must provide the total dry metric tons per 365-day period of sewage sludge subject to this subsection that is applied to the land.

e. If sewage sludge from the applicant's facility is sold or given away in a bag or other container for application to the land, and the sewage sludge is not subject to subdivision 7 d of this subsection, the applicant must provide the following information:

(1) The total dry metric tons per 365-day period of sewage sludge subject to this subsection that is sold or given away in a bag or other container for application to the land; and

(2) A copy of all labels or notices that accompany the sewage sludge being sold or given away.

f. If sewage sludge from the applicant's facility is provided to another person who prepares sewage

sludge, as defined in 9 VAC 25-31-500, and the sewage sludge is not subject to subdivision 7 d of this subsection, the applicant must provide the following information for each facility receiving the sewage sludge:

(1) The name and mailing address of the receiving facility;

(2) The total dry metric tons per 365-day period of sewage sludge subject to this subsection that the applicant provides to the receiving facility;

(3) A description of any treatment processes occurring at the receiving facility, including blending activities and treatment to reduce pathogens or vector attraction characteristic;

(4) A copy of the notice and necessary information that the applicant is required to provide the receiving facility under 9 VAC 25-31-530 G; and

(5) If the receiving facility places sewage sludge in bags or containers for sale or give-away to application to the land, a copy of any labels or notices that accompany the sewage sludge.

8. If sewage sludge from the applicant's facility is applied to the land in bulk form and is not subject to subdivision 7 d, e or f of this subsection, the applicant must provide the following information:

a. The total dry metric tons per 365-day period of sewage sludge subject to this subsection that is applied to the land.

b. If any land application sites are located in states other than the state where the sewage sludge is prepared, a description of how the applicant will notify the permitting authority for the state(s) where the land application sites are located.

c. The following information for each land application site that has been identified at the time of permit application:

(1) The name (if any), and location for the land application site;

(2) The site's latitude and longitude to the nearest second, and method of determination;

(3) A topographic map (or other map if a topographic map is unavailable) that shows the site's location;

(4) The name, mailing address, and telephone number of the site owner, if different from the applicant;

(5) The name, mailing address, and telephone number of the person who applies sewage sludge to the site, if different from the applicant;

(6) Whether the site is agricultural land, forest, a public contact site, or a reclamation site, as such site types are defined in 9 VAC 25-31-500;

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- (7) The type of vegetation grown on the site, if known, and the nitrogen requirement for this vegetation;
- (8) Whether either of the vector attraction reduction options of 9 VAC 25-31-720 B 9 or 10 is met at the site, and a description of any procedures employed at the time of use to reduce vector attraction properties in sewage sludge; and
- (9) Other information that describes how the site will be managed, as specified by the board.
- d. The following information for each land application site that has been identified at the time of permit application, if the applicant intends to apply bulk sewage sludge subject to the cumulative pollutant loading rates in 9 VAC 25-31-540 B 2 to the site:
- (1) Whether the applicant has contacted the permitting authority in the state where the bulk sewage sludge subject to 9 VAC 25-31-540 B 2 will be applied, to ascertain whether bulk sewage sludge subject to 9 VAC 25-31-540 B 2 has been applied to the site on or since July 20, 1993, and if so, the name of the permitting authority and the name and phone number of a contact person at the permitting authority;
- (2) Identification of facilities other than the applicant's facility that have sent, or are sending, sewage sludge subject to the cumulative pollutant loading rates in 9 VAC 25-31-540 B 2 to the site since July 20, 1993, if, based on the inquiry in subdivision 8 d (1) of this subsection, bulk sewage sludge subject to cumulative pollutant loading rates in 9 VAC 25-31-540 B 2 has been applied to the site since July 20, 1993.
- e. If not all land application sites have been identified at the time of permit application, the applicant must submit a land application plan that, at a minimum:
- (1) Describes the geographical area covered by the plan;
- (2) Identifies the site selection criteria;
- (3) Describes how the site(s) will be managed;
- (4) Provides for advance notice to the board of specific land application sites and reasonable time for the board to object prior to land application of the sewage sludge; and
- (5) Provides for advance public notice of land application sites in a newspaper of general circulation in the area of the land application site.
9. If sewage sludge from the applicant's facility is placed on a surface disposal site, the applicant must provide the following information:
- a. The total dry metric tons of sewage sludge from the applicant's facility that is placed on surface disposal sites per 365-day period.
- b. The following information for each surface disposal site receiving sewage sludge from the applicant's facility that the applicant does not own or operate:
- (1) The site name or number, contact person, mailing address, and telephone number for the surface disposal site; and
- (2) The total dry metric tons from the applicant's facility per 365-day period placed on the surface disposal site.
- c. The following information for each active sewage sludge unit at each surface disposal site that the applicant owns or operates:
- (1) The name or number and the location of the active sewage sludge unit;
- (2) The unit's latitude and longitude to the nearest second, and method of determination;
- (3) If not already provided, a topographic map (or other map if a topographic map is unavailable) that shows the unit's location;
- (4) The total dry metric tons placed on the active sewage sludge unit per 365-day period;
- (5) The total dry metric tons placed on the active sewage sludge unit over the life of the unit;
- (6) A description of any liner for the active sewage sludge unit, including whether it has a maximum permeability of 1×10^{-7} cm/sec;
- (7) A description of any leachate collection system for the active sewage sludge unit, including the method used for leachate disposal, and any federal, state, and local permit number(s) for leachate disposal;
- (8) If the active sewage sludge unit is less than 150 meters from the property line of the surface disposal site, the actual distance from the unit boundary to the site property line;
- (9) The remaining capacity (dry metric tons) for the active sewage sludge unit;
- (10) The date on which the active sewage sludge unit is expected to close, if such a date has been identified;
- (11) The following information for any other facility that sends sewage sludge to the active sewage sludge unit:
- (a) The name, contact person, and mailing address of the facility; and
- (b) Available information regarding the quality of the sewage sludge received from the facility, including any treatment at the facility to reduce pathogens or vector attraction characteristics;
- (12) Whether any of the vector attraction reduction options of 9 VAC 25-31-720 B 9 through 11 is met at

the active sewage sludge unit, and a description of any procedures employed at the time of disposal to reduce vector attraction properties in sewage sludge;

(13) The following information, as applicable to any groundwater monitoring occurring at the active sewage sludge unit:

(a) A description of any groundwater monitoring occurring at the active sewage sludge unit;

(b) Any available groundwater monitoring data, with a description of the well locations and approximate depth to groundwater;

(c) A copy of any groundwater monitoring plan that has been prepared for the active sewage sludge unit;

(d) A copy of any certification that has been obtained from a qualified groundwater scientist that the aquifer has not been contaminated; and

(14) If site-specific pollutant limits are being sought for the sewage sludge placed on this active sewage sludge unit, information to support such a request.

10. If sewage sludge from the applicant's facility is fired in a sewage sludge incinerator, the applicant must provide the following information:

a. The total dry metric tons of sewage sludge from the applicant's facility that is fired in sewage sludge incinerators per 365-day period.

b. The following information for each sewage sludge incinerator firing the applicant's sewage sludge that the applicant does not own or operate:

(1) The name and/or number, contact person, mailing address, and telephone number of the sewage sludge incinerator; and

(2) The total dry metric tons from the applicant's facility per 365-day period fired in the sewage sludge incinerator.

11. If sewage sludge from the applicant's facility is sent to a municipal solid waste landfill (MSWLF), the applicant must provide the following information for each MSWLF to which sewage sludge is sent:

a. The name, contact person, mailing address, location, and all applicable permit numbers of the MSWLF;

b. The total dry metric tons per 365-day period sent from this facility to the MSWLF;

c. A determination of whether the sewage sludge meets applicable requirements for disposal of sewage sludge in a MSWLF, including the results of the paint filter liquids test and any additional requirements that apply on a site-specific basis; and

d. Information, if known, indicating whether the MSWLF complies with criteria set forth in the Virginia

Solid Waste Management Regulations, 9 VAC 20-80-10 et seq.

12. All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility related to sewage sludge generation, treatment, use, or disposal.

13. At the request of the board, the applicant must provide any other information necessary to determine the appropriate standards for permitting under Part VI (9 VAC 25-31-420 et seq.) of this chapter, and must provide any other information necessary to assess the sewage sludge use and disposal practices, determine whether to issue a permit, or identify appropriate permit requirements; and pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

14. All applications must be signed by a certifying official in compliance with 9 VAC 25-31-110.

Note 1: Until further notice subdivision G 7 e (1) of this section and the corresponding portions of the VPDES application Form 2C are suspended as they apply to coal mines.

Note 2: Until further notice subdivision G 7 e (1) of this section and the corresponding portions of Item V-C of the VPDES application Form 2C are suspended as they apply to:

a. Testing and reporting for all four organic fractions in the Greige Mills Subcategory of the Textile Mills industry (subpart C-Low water use processing of 40 CFR Part 410 (2000)), and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.

b. Testing and reporting for the volatile, base/neutral and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry (subpart B of 40 CFR Part 440 (2000)), and testing and reporting for all four fractions in all other subcategories of this industrial category.

c. Testing and reporting for all four GC/MS fractions in the Porcelain Enameling industry.

Note 3: Until further notice subdivision G 7 e (1) of this section and the corresponding portions of Item V-C of the VPDES application Form 2C are suspended as they apply to:

a. Testing and reporting for the pesticide fraction in the Tall Oil Rosin Subcategory (subpart D) and Rosin-Based Derivatives Subcategory (subpart F) of the Gum and Wood Chemicals industry (40 CFR Part 454 (2000)), and testing and reporting for the pesticide and base-neutral fractions in all other subcategories of this industrial category.

b. Testing and reporting for the pesticide fraction in the leather tanning and finishing, paint and ink formulation, and photographic supplies industrial categories.

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c. Testing and reporting for the acid, base/neutral and pesticide fractions in the petroleum refining industrial category.

d. Testing and reporting for the pesticide fraction in the Papergrade Sulfite Subcategories (subparts J and U) of the Pulp and Paper industry (40 CFR Part 430 (2000)); testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink (subpart Q), Dissolving Kraft (subpart F), and Paperboard from Waste Paper (subpart E); testing and reporting for the volatile, base/neutral and pesticide fractions in the following subcategories: BCT Bleached Kraft (subpart H), Semi-Chemical (subparts B and C), and Nonintegrated-Fine Papers (subpart R); and testing and reporting for the acid, base/neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft (subpart I), Dissolving Sulfite Pulp (subpart K), Groundwood-Fine Papers (subpart O), Market Bleached Kraft (subpart G), Tissue from Wastepaper (subpart T), and Nonintegrated-Tissue Papers (subpart S).

e. Testing and reporting for the base/neutral fraction in the Once-Through Cooling Water, Fly Ash and Bottom Ash Transport Water process wastestreams of the Steam Electric Power Plant industrial category.

9 VAC 25-31-130. Concentrated animal feeding operations.

A. Permit requirements requirement for CAFOs.

~~1. Concentrated animal feeding operations are point sources subject to the VPDES permit program. Provided, however, that no animal feeding operation is a concentrated animal feeding operation, as defined in this chapter, if such animal feeding operation discharges only in the event of a 25-year, 24-hour or greater storm event.~~

1. Concentrated animal feeding operations are point sources that require VPDES permits for discharges or potential discharges. Once an operation is defined as a CAFO, the VPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter and process wastewater generated by those animals or the production of those animals, regardless of the type of animal.

2. Two or more animal feeding operations under common ownership are considered, for the purposes of this chapter, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

B. Case-by-case designations. The board may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of pollution to surface waters.

1. In making this designation the board shall consider the following factors:

a. The size of the animal feeding operation and the amount of wastes reaching surface waters;

b. The location of the animal feeding operation relative to surface waters;

c. The means of conveyance of animal wastes and process wastewaters into surface waters;

d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewaters into surface waters; and

e. Other relevant factors.

2. No animal feeding operation with less than the numbers of animals set forth in the definition of ~~concentrated animal feeding operation~~ *Medium CAFO* in this regulation shall be designated as a concentrated animal feeding operation unless:

a. Pollutants are discharged into surface waters through a manmade ditch, flushing system, or other similar manmade device; or

b. Pollutants are discharged directly into surface waters which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

3. A permit application shall not be required from a concentrated animal feeding operation designated under this subsection until the board has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the VPDES permit program.

C. Who must seek coverage under a VPDES permit?

1. All CAFO owners or operators must apply for a permit. All CAFO owners or operators must seek coverage under a VPDES permit, except as provided in subdivision 2 of this subsection. Specifically, the CAFO owner or operator must either apply for an individual VPDES permit or apply for coverage under a VPDES general permit. If there is no VPDES general permit available to the CAFO, the CAFO owner or operator must submit an application for an individual permit to the board.

2. Exception. An owner or operator of a Large CAFO does not need to seek coverage under a VPDES permit if the owner or operator has received a notice from the board of a determination under 9 VAC 25-31-130 C 5 that the CAFO has "no potential to discharge" manure, litter or process wastewater.

3. Information to submit with permit application. A permit application for an individual permit must include the information specified in 9 VAC 25-31-100 I. A notice of intent for a general permit must include the information specified in 9 VAC 25-31-100 I and 9 VAC 25-31-170.

4. Land application discharges from a CAFO are subject to VPDES requirements. The discharge of manure, litter or process wastewater to surface waters from a CAFO as the result of the application of that manure, litter or process wastewater by the CAFO to land areas under its

control is a discharge from that CAFO subject to VPDES requirements, except where it is an agricultural storm water discharge as provided in 33 USC § 1362(14). For purposes of this subdivision, where the manure, litter or process wastewater has been applied in accordance with a nutrient management plan approved by the Department of Conservation and Recreation and in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater, as specified in 9 VAC 25-31-200 F, a discharge of manure, litter or process wastewater from land areas under the control of a CAFO is an agricultural storm water discharge.

5. "No potential to discharge" determinations for Large CAFOs.

a. *Determination by the board.* The board, upon request, may make a case-specific determination that a Large CAFO has "no potential to discharge" pollutants to surface waters. In making this determination, the board must consider the potential for discharges from both the production area and any land application areas. The board must also consider any record of prior discharges by the CAFO. In no case may the CAFO be determined to have "no potential to discharge" if it has had a discharge within the five years prior to the date of the request submitted under subdivision C 5 b of this section. For purposes of this section, the term "no potential to discharge" means that there is no potential for any CAFO manure, litter or process wastewater to be added to surface waters under any circumstance or climatic condition. A determination that there is "no potential to discharge" for purposes of this section only relates to the discharges of manure, litter and process wastewater covered by this section.

b. *Information to support a "no potential to discharge" request.* In requesting a determination of "no potential to discharge," the CAFO owner or operator must submit any information that would support such a determination within the time frame provided by the board and in accordance with subdivisions 6 and 7 of this subsection. Such information must include all the information specified in 9 VAC 25-31-100 F and 9 VAC 25-31-100 I 1. The board has discretion to require additional information to supplement the request, and may also gather additional information through onsite inspection of the CAFO.

c. *Process for making a "no potential to discharge" determination.* Before making a final decision to grant a "no potential to discharge" determination, the board must issue a notice to the public stating that a "no potential to discharge" request has been received. This notice must be accompanied by a fact sheet that includes, when applicable: a brief description of the type of facility or activity that is the subject of the "no potential to discharge" determination; a brief summary of the factual basis, upon which the request is based, for granting the "no potential to discharge" determination; and a description of the procedures for

reaching a final decision on the "no potential to discharge" determination.

The board must base the decision to grant a "no potential to discharge" determination on the administrative record, which includes all information submitted in support of a "no potential to discharge" determination and any other supporting data gathered by the board. The board must notify any CAFO seeking a "no potential to discharge" determination of its final determination within 90 days of receiving the request.

d. *Deadline for requesting a "no potential to discharge" determination.* The owner or operator must request a "no potential to discharge" determination by the applicable permit application date specified in subdivision C 6 of this subsection.

e. The "no potential to discharge" determination does not relieve the CAFO from the consequences of an actual discharge. Any unpermitted CAFO that discharges pollutants into surface waters is in violation of State Water Control Law even if it has received a "no potential to discharge" determination from the board. Any CAFO that has received a determination of "no potential to discharge", but that anticipates changes in circumstances that could create the potential for a discharge, should contact the Department of Environmental Quality, and apply for and obtain permit authorization prior to the change of circumstances.

6. When a CAFO must seek coverage under a VPDES permit.

a. *Operations defined as CAFOs prior to April 14, 2003.* For operations that are defined as CAFOs under regulations that are in effect prior to April 14, 2003, the owner or operator must have or seek to obtain coverage under a VPDES permit as of April 14, 2003, and comply with all applicable VPDES requirements, including the duty to maintain permit coverage in accordance with subdivision 7 of this subsection.

b. *Operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOs prior to that date.* For all CAFOs, the owner or operator of the CAFO must seek to obtain coverage under a VPDES permit by January 1, 2006.

c. *Operations that become defined as CAFOs after April 14, 2003, but that are not new sources.* For newly constructed AFOs and CAFOs that make changes to their operations that result in becoming defined as CAFOs for the first time, after April 14, 2003, but are not new sources, the owner or operator must seek to obtain coverage under a VPDES permit, as follows:

(1) For newly constructed operations not subject to effluent limitation guidelines, 180 days prior to the time the CAFO commences operation; or

(2) For other operations (e.g., resulting from an increase in the number of animals), as soon as

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possible, but no later than 90 days after becoming defined as a CAFO; except that

(3) If an operational change that makes the operation a CAFO would not have made it a CAFO prior to April 14, 2003, the operation has at least until April 14, 2006.

d. New sources. New sources must seek to obtain coverage under a permit at least 180 days prior to the time the CAFO commences operation.

e. Operations that are designated CAFOs. For operations designated as a CAFO in accordance with subsection B of this section, the owner or operator must seek to obtain coverage under a VPDES permit no later than 90 days after receiving notice of the designation.

f. "No potential to discharge." Notwithstanding any other provision of this section, a CAFO that has received a "no potential to discharge" determination in accordance with subdivision 5 of this subsection is not required to seek coverage under a VPDES permit. If circumstances materially change at a CAFO that has received a "no potential to discharge" determination, such that the CAFO has a potential for a discharge, the CAFO has a duty to immediately notify the board and seek coverage under a VPDES permit within 30 days after the change in circumstances.

7. Duty to maintain permit coverage. No later than 180 days before the expiration of the permit, the permittee must submit an application to renew its permit, in accordance with 9 VAC 25-31-100. However, the permittee need not continue to seek continued permit coverage or reapply for a permit if:

a. The facility has ceased operation or is no longer a CAFO; and

b. The permittee has demonstrated to the satisfaction of the board that there is no remaining potential for a discharge of manure, litter or associated process wastewater that was generated while the operation was a CAFO, other than agricultural storm water from application areas.

9 VAC 25-31-170. General permits.

A. The board may issue a general permit in accordance with the following:

1. The general permit shall be written to cover one or more categories or subcategories of discharges or sludge use or disposal practices or facilities described in the permit under subdivision 2 b of this subsection, except those covered by individual permits, within a geographic area. The area should correspond to existing geographic or political boundaries, such as:

a. Designated planning areas under §§ 208 and 303 of CWA;

b. Sewer districts or sewer authorities;

c. City, county, or state political boundaries;

d. State highway systems;

e. Standard metropolitan statistical areas as defined by the Office of Management and Budget;

f. Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202 (May 1, 1974); or

g. Any other appropriate division or combination of boundaries.

2. The general permit may be written to regulate one or more categories or subcategories of discharges or sludge use or disposal practices or facilities, within the area described in subdivision 1 of this subsection, where the sources within a covered subcategory of discharges are either:

a. Storm water point sources; or

b. One or more categories or subcategories of point sources other than storm water point sources, or one or more categories or subcategories of treatment works treating domestic sewage, if the sources or treatment works treating domestic sewage within each category or subcategory all:

(1) Involve the same or substantially similar types of operations;

(2) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;

(3) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal;

(4) Require the same or similar monitoring; and

(5) In the opinion of the board, are more appropriately controlled under a general permit than under individual permits.

3. Where sources within a specific category of dischargers are subject to water quality-based limits imposed pursuant to 9 VAC 25-31-220, the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations.

4. The general permit must clearly identify the applicable conditions for each category or subcategory of dischargers or treatment works treating domestic sewage covered by the permit.

5. The general permit may exclude specified sources or areas from coverage.

B. Administration.

1. General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of this chapter.

2. Authorization to discharge, or authorization to engage in sludge use and disposal practices.

a. Except as provided in subdivisions 2 e and 2 f of this subsection, dischargers (or treatment works treating

domestic sewage) seeking coverage under a general permit shall submit to the department a written notice of intent to be covered by the general permit. A discharger (or treatment works treating domestic sewage) who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge, (or in the case of a sludge disposal permit, to engage in a sludge use or disposal practice), under the terms of the general permit unless the general permit, in accordance with subdivision 2 e of this subsection, contains a provision that a notice of intent is not required or the board notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with subdivision 2 f of this subsection. A complete and timely notice of intent (NOI) to be covered in accordance with general permit requirements fulfills the requirements for permit applications for the purposes of this chapter.

b. The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving stream or streams. General permits for storm water discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfills occurring on federal lands where an operator cannot be identified may contain alternative notice of intent requirements. *Notices of intent for coverage under a general permit for concentrated animal feeding operations must include the information specified in 9 VAC 25-31-100 I 1, including a topographic map.* All notices of intent shall be signed in accordance with 9 VAC 25-31-110.

c. General permits shall specify the deadlines for submitting notices of intent to be covered and the date or dates when a discharger is authorized to discharge under the permit.

d. General permits shall specify whether a discharger (or treatment works treating domestic sewage) that has submitted a complete and timely notice of intent to be covered in accordance with the general permit and that is eligible for coverage under the permit, is authorized to discharge, (or in the case of a sludge disposal permit, to engage in a sludge use or disposal practice), in accordance with the permit either upon receipt of the notice of intent by the department, after a waiting period specified in the general permit, on a date specified in the general permit, or upon receipt of notification of inclusion by the board. Coverage may be terminated or revoked in accordance with subdivision 3 of this subsection.

e. Discharges other than discharges from publicly owned treatment works, combined sewer overflows, municipal separate storm sewer systems, primary industrial facilities, and storm water discharges associated with industrial activity, may, at the

discretion of the board, be authorized to discharge under a general permit without submitting a notice of intent where the board finds that a notice of intent requirement would be inappropriate. In making such a finding, the board shall consider: the type of discharge; the expected nature of the discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges; other means of identifying discharges covered by the permit; and the estimated number of discharges to be covered by the permit. The board shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

f. The board may notify a discharger (or treatment works treating domestic sewage) that it is covered by a general permit, even if the discharger (or treatment works treating domestic sewage) has not submitted a notice of intent to be covered. A discharger (or treatment works treating domestic sewage) so notified may request an individual permit under subdivision 3 c of this subsection.

3. Requiring an individual permit.

a. The board may require any discharger authorized by a general permit to apply for and obtain an individual VPDES permit. Any interested person may request the board to take action under this subdivision. Cases where an individual VPDES permit may be required include the following:

(1) The discharger or treatment works treating domestic sewage is not in compliance with the conditions of the general VPDES permit;

(2) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;

(3) Effluent limitation guidelines are promulgated for point sources covered by the general VPDES permit;

(4) A water quality management plan containing requirements applicable to such point sources is approved;

(5) Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;

(6) Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general VPDES permit; or

(7) The discharge(s) is a significant contributor of pollutants. In making this determination, the board may consider the following factors:

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- (a) The location of the discharge with respect to surface waters;
- (b) The size of the discharge;
- (c) The quantity and nature of the pollutants discharged to surface waters; and
- (d) Other relevant factors;

b. Permits required on a case-by-case basis.

(1) The board may determine, on a case-by-case basis, that certain concentrated animal feeding operations, concentrated aquatic animal production facilities, storm water discharges, and certain other facilities covered by general permits that do not generally require an individual permit may be required to obtain an individual permit because of their contributions to water pollution.

(2) Whenever the board decides that an individual permit is required under this subsection, except as provided in subdivision 3 b (3) of this subsection, the board shall notify the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice. The discharger must apply for a permit within 60 days of notice, unless permission for a later date is granted by the board. The question whether the designation was proper will remain open for consideration during the public comment period for the draft permit and in any subsequent public hearing.

(3) Prior to a case-by-case determination that an individual permit is required for a storm water discharge under this subsection, the board may require the discharger to submit a permit application or other information regarding the discharge under the law and § 308 of the CWA. In requiring such information, the board shall notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a permit under 9 VAC 25-31-120 A 1 within 60 days of notice or under 9 VAC 25-31-120 A 9 within 180 days of notice, unless permission for a later date is granted by the board. The question whether the initial designation was proper will remain open for consideration during the public comment period for the draft permit and in any subsequent public hearing.

c. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under 9 VAC 25-31-100 with reasons supporting the request. The request shall be processed under the applicable parts of this chapter. The request shall be granted by issuing of an individual permit if the reasons cited by the owner or operator are adequate to support the request.

d. When an individual VPDES permit is issued to an owner or operator otherwise subject to a general

VPDES permit, the applicability of the general permit to the individual VPDES permittee is automatically terminated on the effective date of the individual permit.

e. A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

9 VAC 25-31-200. Additional conditions applicable to specified categories of VPDES permits.

The following conditions, in addition to those set forth in 9 VAC 25-31-190, apply to all VPDES permits within the categories specified below:

A. Existing manufacturing, commercial, mining, and silvicultural dischargers. All existing manufacturing, commercial, mining, and silvicultural dischargers must notify the department as soon as they know or have reason to believe:

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following notification levels:

- a. One hundred micrograms per liter (100 µg/l);
- b. Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
- c. Five times the maximum concentration value reported for that pollutant in the permit application; or
- d. The level established by the board in accordance with 9 VAC 25-31-220 F.

2. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following notification levels:

- a. Five hundred micrograms per liter (500 µg/l);
- b. One milligram per liter (1 mg/l) for antimony;
- c. Ten times the maximum concentration value reported for that pollutant in the permit application; or
- d. The level established by the board in accordance with 9 VAC 25-31-220 F.

B. Publicly and privately owned treatment works. All POTWs and PVOTWs must provide adequate notice to the department of the following:

1. Any new introduction of pollutants into the POTW or PVOTW from an indirect discharger which would be

subject to §§ 301 or § 306 of the CWA and the law if it were directly discharging those pollutants; and

2. Any substantial change in the volume or character of pollutants being introduced into that POTW or PVOTW by a source introducing pollutants into the POTW or PVOTW at the time of issuance of the permit.

3. For purposes of this subsection, adequate notice shall include information on (i) the quality and quantity of effluent introduced into the POTW or PVOTW, and (ii) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW or PVOTW.

4. When the monthly average flow influent to a POTW or PVOTW reaches 95% of the design capacity authorized by the VPDES permit for each month of any three-month period, the owner shall within 30 days notify the department in writing and within 90 days submit a plan of action for ensuring continued compliance with the terms of the permit.

a. The plan shall include the necessary steps and a prompt schedule of implementation for controlling any current problem, or any problem which could be reasonably anticipated, resulting from high influent flows.

b. Upon receipt of the owner's plan of action, the board shall notify the owner whether the plan is approved or disapproved. If the plan is disapproved, such notification shall state the reasons and specify the actions necessary to obtain approval of the plan.

c. Failure to timely submit an adequate plan shall be deemed a violation of the permit.

d. Nothing herein shall in any way impair the authority of the board to take enforcement action under §§ 62.1-44.15, 62.1-44.23, or 62.1-44.32 of the Code of Virginia.

C. Municipal separate storm sewer systems. The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the board under 9 VAC 25-31-120 A 1 e must submit an annual report by a date specified in the permit for such system. The report shall include:

1. The status of implementing the components of the storm water management program that are established as permit conditions;

2. Proposed changes to the storm water management programs that are established as permit condition. Such proposed changes shall be consistent with 9 VAC 25-31-120 C 2 d;

3. Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application;

4. A summary of data, including monitoring data, that is accumulated throughout the reporting year;

5. Annual expenditures and budget for year following each annual report;

6. A summary describing the number and nature of enforcement actions, inspections, and public education programs; and

7. Identification of water quality improvements or degradation.

D. Wastewater works operator requirements.

1. The permittee shall employ or contract at least one wastewater works operator who holds a current wastewater license appropriate for the permitted facility. The license shall be issued in accordance with Title 54.1 of the Code of Virginia and the regulations of the Board for Waterworks and Wastewater Works Operators (18 VAC 160-20-40 ~~et seq.~~). Notwithstanding the foregoing requirement, unless the discharge is determined by the board on a case-by-case basis to be a potential contributor of pollution, no licensed operator is required for wastewater treatment works:

a. That have a design hydraulic capacity equal to or less than 0.04 mgd;

b. That discharge industrial waste or other waste from coal mining operations; or

c. That do not utilize biological or physical/chemical treatment.

2. In making this case-by-case determination, the board shall consider the location of the discharge with respect to state waters, the size of the discharge, the quantity and nature of pollutants reaching state waters and the treatment methods used at the wastewater works.

3. The permittee shall notify the department in writing whenever he is not complying, or has grounds for anticipating he will not comply with the requirements of subdivision 1 of this subsection. The notification shall include a statement of reasons and a prompt schedule for achieving compliance.

E. Lake level contingency plans. Any VPDES permit issued for a surface water impoundment whose primary purpose is to provide cooling water to power generators shall include a lake level contingency plan to allow specific reductions in the flow required to be released when the water level above the dam drops below designated levels due to drought conditions, and such plan shall take into account and minimize any adverse effects of any release reduction requirements on downstream users. This subsection shall not apply to any such facility that addresses releases and flow requirements during drought conditions in a Virginia Water Protection Permit.

F. Concentrated Animal Feeding Operations (CAFOs). The activities of the CAFO shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law. There shall be no point source discharge of manure, litter or process wastewater to surface waters of the state except in the case of a storm event greater than the 25-year, 24-hour storm, except that for swine, poultry, and veal calf operations constructed after April 14, 2003, in the case of a storm event greater than the 100-year, 24-hour storm.

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Agricultural storm water discharges are permitted. Domestic sewage or industrial waste shall not be managed under the Virginia Pollutant Discharge Elimination System General Permit for CAFOs (9 VAC 25-191). Any permit issued to a CAFO must include:

1. Requirements to develop and implement a nutrient management plan. At a minimum, a nutrient management plan must include best management practices and procedures necessary to implement applicable effluent limitations and standards. Permitted CAFOs must have their nutrient management plans developed and implemented by December 31, 2006. CAFOs that seek to obtain coverage under a permit after December 31, 2006, must have a nutrient management plan developed and implemented upon the date of permit coverage. The nutrient management plan must, to the extent applicable:

- a. Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;*
- b. Ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;*
- c. Ensure that clean water is diverted, as appropriate, from the production area;*
- d. Prevent direct contact of confined animals with surface waters of the state;*
- e. Ensure that chemicals and other contaminants handled onsite are not disposed of in any manure, litter, process wastewater, or stormwater storage or treatment system unless specifically designed to treat such chemicals and other contaminants;*
- f. Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to surface waters of the state;*
- g. Identify protocols for appropriate testing of manure, litter, process wastewater and soil;*
- h. Establish protocols to land apply manure, litter or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater; and*
- i. Identify specific records that will be maintained to document the implementation and management of the minimum elements described above.*

2. Recordkeeping requirements. The permittee must create, maintain for five years, and make available to the director upon request the following records:

- a. All applicable records identified pursuant to subdivision 1 i of this subsection;*

- b. In addition, all CAFOs subject to EPA Effluent Guidelines for Feedlots (40 CFR Part 412) must comply with recordkeeping requirements as specified in 40 CFR 412.37(b) and (c) and 40 CFR 412.47(b) and (c);*

A copy of the CAFO's site-specific nutrient management plan must be maintained on site and made available to the director upon request.

3. Requirements relating to transfer of manure or process wastewater to other persons. Prior to transferring manure, litter or process wastewater to other persons, large CAFOs must provide the recipient of the manure, litter or process wastewater with the most current nutrient analysis. The analysis provided must be consistent with the requirements of EPA Effluent Guidelines for Feedlots (40 CFR Part 412). Large CAFOs must retain for five years records of the date, recipient name and address and approximate amount of manure, litter or process wastewater transferred to another person.

4. Annual reporting requirements for CAFOs. The permittee must submit an annual report to the director. The annual report must include:

- a. The number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);*
- b. Estimated amount of total manure, litter and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);*
- c. Estimated amount of total manure, litter and process wastewater transferred to other persons by the CAFO in the previous 12 months (tons/gallons);*
- d. Total number of acres for land application covered by the nutrient management plan developed in accordance with subdivision 1 of this subsection;*
- e. Total number of acres under control of the CAFO that were used for land application of manure, litter and process wastewater in the previous 12 months;*
- f. Summary of all manure, litter and process wastewater discharges from the production area that occurred in the previous 12 months including date, time and approximate volume; and*
- g. A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner.*

VA.R. Doc. No. R05-27; Filed September 15, 2004, 11:17 a.m.

REGISTRAR'S NOTICE: The State Water Control Board has claimed an exemption from the Administrative Process Act in accordance with § 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 or the appropriation act where no agency discretion is involved. The State Water Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 9 VAC 25-71. Regulations Governing the Discharge of Sewage and Other Wastes from Boats (amending 9 VAC 25-71-10 and 9 VAC 25-71-60).

Statutory Authority: § 62.1-44.33 of the Code of Virginia and § 312 of the federal Clean Water Act.

Effective Date: November 3, 2004.

Summary:

The amendments clarify boaters' responsibilities in No Discharge Zones, provide a requirement to assist law-enforcement officers in determining compliance, and require marinas to notify patrons of the discharge restrictions.

Agency Contact: Michael B. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4065, FAX (804) 698-4032 or e-mail mbgregory@deq.virginia.gov.

9 VAC 25-71-10. Definitions.

For the purposes of this chapter, the following definitions apply:

"Act" means the Clean Water Act (33 USC § 1251 et seq.) and standards and regulations promulgated thereunder.

"Board" means the State Water Control Board.

"Container seal" means a tamper-evident plastic or wire security device.

"Discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

"Discharges incidental to the normal operation of a vessel" means discharges of graywater (galley, bath and shower water), bilge water, cooling water, weather deck runoff, ballast water, oil water separator effluent, and any other discharge from a properly functioning marine engine or propulsion system, shipboard maneuvering system, crew habitability system, or installed major equipment, such as an aircraft carrier elevator or catapult, or from a protective, preservative, or adsorptive application to the hull of a vessel, or a discharge in connection with the testing, maintenance, and repair of a system described above whenever the vessel is waterborne. It does not include a discharge of rubbish, trash, garbage, other such material discharged overboard or pollution.

"Houseboat" means a vessel that is used primarily as a residence and is not used primarily as a means of transportation.

"Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture, trade or business, or from the development of natural resources.

"Macerator pump valve" means a valve in a vessel's sewage piping that in the open position allows an overboard discharge of sewage via a through-hull fitting.

"Marina" means any installation, operating under public or private ownership, that provides dockage or moorage for boats (exclusive of paddle or rowboats) and provides, through sale, rental or fee basis, any equipment, supply or service (fuel, electricity or water) for the convenience of the public or its lessee, renters or users of its facilities.

"Marine sanitation device" means any equipment installed on a boat or vessel and that is designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage.

"No Discharge Zone" means an area where a state has received an affirmative determination from the U.S. Environmental Protection Agency that there are adequate facilities for the removal of sewage from vessels (holding tank pump-out facilities) in accordance with § 312(f)(3) of the Act, and where federal approval has been received allowing a complete prohibition of all treated or untreated discharges of sewage from all vessels;

"Other waste" means decayed wood, sawdust, shavings, bark, lime, garbage, refuse, ashes, offal, tar, oil, chemicals, and all other substances, except industrial waste and sewage, which may cause pollution in any state waters.

"Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution" for the terms and purposes of this chapter.

"Pump-out facility" means any device, equipment or method of removing sewage from a marine sanitation device. Also it shall include any holding tanks either portable, movable or permanently installed, and any sewage treatment method or disposable equipment used to treat, or ultimately dispose of, sewage removed from boats.

"Sewage" means human body wastes, the wastes from toilets and other receptacles intended to receive or retain human wastes, and liquid-carried human wastes together

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VA.R. Doc. No. R05-15; Filed September 9, 2004, 9:11 a.m.

with such industrial wastes and other liquid as may be present.

"State" means the Commonwealth of Virginia.

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

"Vessel" means every description of watercraft or other artificial contrivance used, or capable of being used on the waters of the state, including boats and houseboats regardless of size, means of propulsion or place of registry.

"Y-valve" means a valve in a vessel's sewage piping that in the open position allows an overboard discharge of sewage via a through-hull fitting, and in the closed position prevents an overboard discharge and retains sewage in a holding tank.

9 VAC 25-71-60. No discharge zones.

The following requirements apply in designated No Discharge Zones:

1. All discharge of sewage, whether treated or not, and other wastes from all vessels into designated no discharge zones is prohibited. A listing of designated no discharge zones within the state appears at 9 VAC 25-71-70.
2. Vessels without installed toilets shall dispose of any collected sewage from portable toilets or other containment devices at facilities approved by the Virginia Department of Health for collection of sewage wastes, or otherwise dispose of sewage in a manner that complies with state law.
3. Vessels with installed toilets shall have a marine sanitation device to allow sewage holding capacity unless the toilets are rendered inoperable.
4. Houseboats having installed toilets shall have a holding tank with the capability of collecting and holding sewage and disposing of collected sewage at a pump-out facility or other facility approved by the Virginia Department of Health for collection of sewage wastes; if a houseboat lacks such capability, the installed toilet shall be removed.
5. Y-valves, macerator pump valves, or any other through-hull fitting valves capable of allowing a discharge of sewage from marine sanitation devices shall be secured in the closed position by a device that is not readily removable, including, but not limited to, a numbered container seal, such that through-hull sewage discharge capability is rendered inoperable.
6. Every owner or operator of a marina within a designated No Discharge Zone shall notify boat patrons leasing slips of the sewage discharge restriction in the No Discharge Zone. As a minimum, notification shall consist of No Discharge Zone information in the slip rental contract and a sign indicating the area is a designated No Discharge Zone.

<p>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 Water Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.</p>
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Title of Regulation: 9 VAC 25-101. Tank Vessel Oil Discharge Contingency Plan and Financial Responsibility Regulation (amending 9 VAC 25-101-30, 9 VAC 25-101-40, 9 VAC 25-101-50, 9 VAC 25-101-60 and 9 VAC 25-101-70; adding 9 VAC 25-101-35 and 9 VAC 101-45).

Statutory Authority: §§ 62.1-44.15, 62.1-34:16 and 62.1-44.34:21 of the Code of Virginia.

Effective Date: November 3, 2004.

Agency Contact: Janet Queisser, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4268, FAX (804) 698-4266 or e-mail jcqueisser@deq.virginia.gov.

Summary:

The amendments to the regulation incorporate statutory changes as a result of the 2004 Session of the General Assembly that eliminate the regulatory burden of application and board approval for most tank vessel operators. The changes to the regulation (i) describe the acceptance of an approved U. S. Coast Guard Vessel Response Plan as meeting state requirements; (ii) describe the process to obtain approval for a tank vessel Oil Discharge Contingency Plan in lieu of having an approved U. S. Coast Guard Vessel Response Plan; (iii) delete requirements that described submittal of a U. S. Coast Guard Vessel Response Plan approval letter with a state application; (iv) insert a new section, 9 VAC 25-101-45, to describe the acceptance of a valid U. S. Coast Guard Certificate of Financial Responsibility as meeting state requirements; (v) describe the process to obtain approval of evidence of financial responsibility in lieu of having a U. S. Coast Guard Certificate of Financial Responsibility; (vi) delete requirements that described the submittal of a U. S. Coast Guard Certificate of Financial Responsibility with a state application; and (vii) allow for consideration of petitions at any time with respect to revision of this regulation.

9 VAC 25-101-30. Purpose.

~~The purpose of This chapter is to provide guidance implements the requirement of § 62.1-44.34:15 of the Code of Virginia for the development of tank vessel contingency plans and to establish requirements for financial~~

~~responsibility on the part of~~ by operators of tank vessels transporting or transferring oil as cargo upon state waters. Contingency plans must address concerns for the effect of oil discharges on the environment as well as considerations of public health and safety. The oil discharge contingency plans will ensure that the applicant can take such steps as are necessary to protect environmentally sensitive areas; to respond to the threat of an oil discharge; and to contain, clean up and mitigate an oil discharge within the shortest feasible time. This chapter *also* provides acceptable means of demonstrating the ~~required~~ level of financial responsibility *required by § 62.1-44.34:16 of the Code of Virginia*, therefore providing the Commonwealth with the ~~necessary~~ assurance that an operator of a tank vessel has the necessary financial stability to conduct a proper response to a discharge of oil.

9 VAC 25-101-35. Oil discharge contingency plan and vessel response plan requirements for state waters.

No operator of a tank vessel shall cause or permit a tank vessel to transport or transfer oil in state waters unless an oil discharge contingency plan applicable to the tank vessel is filed with and approved by the board in accordance with 9 VAC 25-101-40 or a Vessel Response Plan applicable to the tank vessel has been approved by the United States Coast Guard pursuant to § 4202 of the federal Oil Pollution Act of 1990, Pub. L. No. 101-380, 33 USC §1321(j).

9 VAC 25-101-40. Board oil discharge contingency plan review and approval.

A. Tank vessel oil discharge contingency plans shall provide for the use of the best available technology (economically feasible, proven effective and reliable and compatible with the safe operation of the vessel) at the time the plan is submitted for approval, be written in English, and, in order to be approvable, shall contain, at a minimum, the following ~~requirements~~ *information*:

1. The vessel name, country of registry, identification number, date of build and certificated route of the vessel.
2. The names of the vessel operators including address and phone number.
3. If applicable, name of local agent, address and phone number.
4. A copy of the material safety data sheet (MSDS) or its equivalent for each oil, or groups of oil with similar characteristics, transported or transferred by the tank vessel. To be equivalent, the submission must contain the following:
 - a. Generic or chemical name of the oil;
 - b. Hazards involved in handling the oil; and
 - c. A list of firefighting procedures and extinguishing agents effective with fires involving each oil or groups of oil demonstrating similar hazardous properties which require the same firefighting procedures.

5. A complete listing, including 24-hour phone numbers, of all federal, state and local agencies required to be notified in event of a discharge.

6. The position title of the ~~individuals~~ *individual(s)* responsible for making the required notifications and a copy of the notification check-off list. ~~This individual~~ *The individual(s)* must be fluent in English.

7. The position title, address and phone number of the ~~individuals~~ *individual(s)* authorized to act on behalf of the operator to implement containment and cleanup actions. ~~This individual~~ *The individual(s)* must be fluent in English and shall be available on a 24-hour basis to ensure the appropriate containment and cleanup actions are initiated.

8. The position title of the ~~individuals~~ *individual(s)* designated by the operator to ensure compliance during containment and cleanup of a discharge, with applicable federal, state and local requirements for disposal of both solid and liquid wastes.

9. A copy of the valid evidence of financial responsibility ~~approved by the board~~ pursuant to ~~9 VAC 25-101-50~~ *9 VAC 25-101-45*.

10. A complete description of the vessel including vessel drawings providing a complete view of the location of all cargo tanks as well as the location of fuels and other oils carried in bulk by the vessel.

11. A complete description of each oil transfer system on the vessel, including:

- a. A line diagram of the vessel's oil transfer piping, including the location of each valve, pump, control device, vent, safety device and overflow;
- b. The location of the shutoff valve or other isolation device that separates any bilge or ballast system from the oil transfer system; and,
- c. The maximum pressure for each oil transfer system.

12. Identification and ensurance by contract, or other means acceptable to the board, of the availability of private personnel and equipment necessary to remove to the maximum extent practicable the worst case discharge and to mitigate or prevent a substantial threat of such a discharge. This contract or agreement shall ensure a certain response within the shortest feasible time. The department will accept a letter of understanding between the operator and response contractors which attests to this capability being readily available. Membership in a cleanup cooperative or other response organization is also acceptable. A listing of contractor or cooperative capabilities, including an inventory of the equipment and specification of the other information required by subdivision 14 of this subsection shall be included unless these capabilities are already on file with the department.

13. Assessment of the worst case discharge, including measures to limit the outflow of oil, response strategy and operational plan. For the purpose of this chapter,

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the worst case discharge for a tank vessel is a discharge in adverse weather conditions of its entire cargo.

14. Inventory of onboard containment equipment, including specification of quantity, type, location, time limits for gaining access to the equipment, and, if applicable, identification of tank vessel personnel trained in its use.

15. If applicable, a copy of the United States Coast Guard approved oil transfer procedures and International Oil Pollution Prevention Certificate (IOPP).

16. A description of training, equipment testing, and periodic unannounced oil discharge drills conducted by the operator to mitigate or prevent the discharge, or the substantial threat of a discharge.

17. The tank vessel's cargo inventory control procedures. Tank vessel operators shall ensure that this control procedure is capable of providing for the detection of a discharge of oil within the shortest feasible time in accordance with recognized engineering practices and industry measurement standards.

18. A post discharge review procedure to assess the discharge response in its entirety.

B. 4. All nonexempt tank vessel operators shall file with the department the Application for Approval of a Tank Vessel Contingency Plan form available from the department for approval of the contingency plan. This form identifies the tank vessel operator by name and address and provides information on the tank vessel or vessels and shall be submitted with the required contingency plan and shall be completed as far as it pertains to the tank vessel. The operator must sign and date the certification statement on the application form which certifies to the board that the information is true and accurate. If the operator is a corporation, the application form must be signed by an authorized corporate official; if the operator is a municipality, state, federal or other public agency, the application form must be signed by an authorized executive officer or ranking elected official; if the operator is a partnership or sole proprietorship, the application form must be signed by a general partner or the sole proprietor.

~~2. A tank vessel operator who seeks approval of the contingency plan in accordance with subsection J of this section must complete and sign the Application for Approval of a Tank Vessel Contingency Plan form available from the department upon the effective date of this chapter or upon expiration of any contingency plan approval previously issued by the department.~~

~~3. Tank vessel operators may delegate signatory authority to an agent for notification of significant changes to the contingency plan and any notifications in accordance with subsection J of this section by completing and signing the Tank Vessel Agent Designation form available from the department. This form identifies the tank vessel operator, the designated agent by name and address, and the respective tank vessel or vessels covered by this designation.~~

C. Contingency plans must be filed with and approved by the board. A signed original shall be submitted to the department at the address specified in subsection F of this section. A copy of the original with the tank vessel specific information and the approval letter shall be retained on the tank vessel and shall be readily available for inspection. An operator of a tank vessel whose normal operating route does not include entry into state waters shall certify to the board, within 24 hours of entering state waters, that the operator has ensured by contract or other means acceptable to the board, the availability of personnel and equipment necessary to remove to the maximum extent practicable the worst case discharge and to mitigate or prevent the discharge or the substantial threat of a discharge. The operator shall submit a contingency plan to the board for approval in accordance with this chapter prior to the next entry of the tank vessel into state waters.

D. An operator of multiple tank vessels may submit a single fleet contingency plan. The plan shall contain vessel specific information required by this section for each vessel. The vessel specific information shall be included in appendices to the plan. This plan shall be separate from any required facility contingency plan.

E. Oil discharge contingency plans shall be reviewed, updated if necessary, and resubmitted to the board for approval every 60 months unless significant changes occur sooner. Operators must notify the department of significant changes and make appropriate amendments to the contingency plan within 30 days of the occurrence. For the purpose of this chapter, a significant change includes the following:

1. A change of operator of the tank vessel or individual authorized to act on behalf of the operator;
2. A substantial increase in the maximum storage or handling capacity of the tank vessel;
3. A material decrease in the availability of private personnel or equipment necessary to remove to the maximum extent practicable the worst case discharge and to mitigate or prevent a substantial threat of such a discharge;
4. A change in the type of product transported or transferred in or by any tank vessel covered by the plan for which a MSDS or its equivalent has not been submitted; or
5. The addition of a tank vessel to a single fleet contingency plan provided this requirement can be met by submittal of a new or amended appendix to the plan.

Renewals for expiring plans shall be submitted to the board for review and approval not less than 90 days prior to expiration of the current plan.

~~F. Updated plans shall be submitted to the board for review and approval not less than 90 days prior to expiration of the current plan. All applications and written communications concerning changes, submissions and updates of plans required by this chapter including copies of any subsequently reissued or renewed Vessel Response Plan~~

~~(VRP) approval letters submitted in accordance with subsection J of this section, with the exception of applications and submissions accompanied by fees addressed in subsection K J of this section, shall be addressed as follows:~~

Mailing Address:

Virginia Department of Environmental Quality
Office of Spill Response and Remediation
P.O. Box 10009
Richmond, VA 23240

Location Address:

Virginia Department of Environmental Quality
Office of Spill Response and Remediation
629 East Main Street
Richmond, VA 23219

All applications and submissions accompanied by fees as addressed in subsection K J of this section shall be sent to the addressed listed in subdivision K J 2.

G. An oil discharge exercise may be required by the board to demonstrate the tank vessel's ability to implement the contingency plan. The department will consult with the operator of the vessel prior to initiating an exercise. Where appropriate, the department will ensure coordination with federal agencies prior to initiation of an exercise.

H. The board may, after notice and opportunity for a conference pursuant to ~~§ 9-6-14:14 2.2-4019~~ of the Code of Virginia, deny or modify its approval of an oil discharge contingency plan if it determines that:

1. The plan as submitted fails to provide sufficient information for the department to process, review and evaluate the plan or fails to ensure the applicant can take such steps as are necessary to protect environmentally sensitive areas, to respond to the threat of a discharge, and to contain and cleanup an oil discharge within the shortest feasible time;
2. A significant change has occurred in the operation of the tank vessel covered by the plan;
3. The tank vessel's discharge experience or its inability to implement its plan in an oil spill discharge exercise demonstrates a necessity for modification; or
4. There has been a significant change in the best available technology since the plan was approved.

I. The board, after notice and opportunity for hearing, may revoke its approval of an oil discharge contingency plan if it determines that:

1. Approval was obtained by fraud or misrepresentation;
2. The plan cannot be implemented as approved;
3. A term or condition of approval or of this chapter has been violated; or
4. The tank vessel is no longer in operation.

~~J. Where an operator of a tank vessel has applied for and received from the United States Coast Guard an approval of a Vessel Response Plan (VRP), pursuant to § 4202 of the federal Oil Pollution Act of 1990, Pub. L. No. 101-380, 33 USCS § 2716 (1996), and its implementing regulations found in 33 CFR Part 155 (1997), such VRP shall be sufficient to meet the requirements of § 62-1-44.34:15 of the Code of Virginia and this section while the VRP approval is valid. The operator shall submit to the department an application listing the vessel or vessels for which the approval is sought and a copy of the currently valid VRP approval letter for each tank vessel. The tank vessel operator submitting the application for contingency plan approval in accordance with this subsection shall be the same entity which has applied for and received approval of the VRP from the United States Coast Guard. Each time VRP approval is renewed or reissued, for any reason, for a tank vessel subject to this chapter, the operator shall submit a copy of such renewed or reissued VRP approval letter to the department.~~

~~K. J.~~ An application for approval of an oil discharge contingency plan will be accepted only when the fee established by this section has been paid.

1. Fees shall be paid by operators of tank vessels subject to this chapter upon initial submittal of an oil discharge contingency plan *to the board*. Renewals, additions, deletions or changes to the plan are not subject to the administrative fee. ~~Operators of tank vessels subject to this chapter but meeting the provisions of subsection J of this section shall not be subject to administrative fees for the approval of an oil discharge contingency plan.~~

2. Fees shall be paid in United States currency by check, draft or postal money order made payable to the Treasurer of Virginia. All applications and submissions accompanying fees shall be sent to:

Mailing Address:

Virginia Department of Environmental Quality
Office of Financial Management
P.O. Box 10150
Richmond, VA 23240

Location Address:

Virginia Department of Environmental Quality
Office of Financial Management
629 East Main Street
Richmond, VA 23219

3. Application fees for approval of tank vessel contingency plans are as follows:

- a. For a tank vessel with a maximum storage, handling or transporting capacity of 15,000 gallons and up to and including 250,000 gallons of oil the fee is \$718;
- b. For a tank vessel with a maximum storage, handling or transporting capacity ~~between~~ *greater than* 250,000 gallons and up to and including 1,000,000 gallons of oil the fee is \$2,155; and

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c. For a tank vessel with a maximum storage, handling or transporting capacity greater than ~~one million~~ 1,000,000 gallons of oil the fee is \$3,353.

4. The fee for approval of contingency plans encompassing more than one tank vessel, as authorized by subsection ~~E~~ D of this section, shall be based on the aggregate capacity of the tank vessels.

5. Application fees are refundable upon receipt of a written request *for withdrawal of the plan and fee refund* no later than 30 days after submittal and prior to approval *of the plan*.

6. Overpayments of application fees are refundable upon written request. Overpayments not refunded will be credited for the applicant's future use under this section.

9 VAC 25-101-45. Demonstration of financial responsibility.

The operator of any tank vessel entering upon state waters shall have a Certificate of Financial Responsibility, approved by the United States Coast Guard pursuant to § 4202 of the federal Oil Pollution Act of 1990, or shall deposit with the board cash or its equivalent in the amount of \$500 per gross ton of such vessel in accordance with 9 VAC 25-101-50.

9 VAC 25-101-50. Board financial responsibility requirements demonstration.

A. The operator of any tank vessel entering upon state waters shall deposit with the board cash or its equivalent in the amount of \$500 per gross ton of such vessel. If the operator owns or operates more than one tank vessel, evidence of financial responsibility need be established only to meet the maximum liability applicable to the vessel having the greatest maximum liability.

1. All documents submitted shall be in English and all monetary terms shall be in United States currency.

2. A copy of the board's acceptance of the required evidence of financial responsibility shall be kept on the tank vessel and readily available for inspection.

B. If the board determines that oil has been discharged in violation of applicable state law or there is a substantial threat of such discharge from a vessel for which a cash deposit has been made, any amount held in escrow may be used to pay any fines, penalties or damages imposed under such law.

C. Operators of tank vessels may obtain exemption from the cash deposit requirement if evidence of financial responsibility is provided in an amount equal to the cash deposit required for such tank vessel pursuant to § 62.1-44.34:16 of the Code of Virginia and subsection A of this section. The following means of providing such evidence, or any combination thereof, will be acceptable:

1. Self-insurance. Any operator demonstrating financial responsibility by self-insurance shall provide evidence of such self-insurance in a manner that is satisfactory to the board. An operator demonstrating self-insurance shall:

a. Maintain, in the United States, working capital and net worth each in the amount required by § 62.1-44.34:16 of the Code of Virginia and subsection A of this section.

(1) Maintenance of the required working capital and net worth shall be demonstrated by submitting with the application form an annual, current nonconsolidated balance sheet and an annual, current nonconsolidated statement of income and surplus certified by an independent certified public accountant. Those financial statements shall be for the operator's last fiscal year preceding the date of application and shall be accompanied by an additional statement from the operator's treasurer (or equivalent official) certifying to both the amount of current assets and the amount of total assets included in the accompanying balance sheet which are located in the United States and are acceptable for purposes of this chapter.

(2) If the balance sheet and statement of income and surplus cannot be submitted in nonconsolidated form, consolidated statements may be submitted if accompanied by an additional statement by the involved certified public accountant certifying to the amount by which the operator's assets, located in the United States and acceptable under this subsection C, exceed total liabilities and that current assets, located in the United States and acceptable under this subsection C, exceed its current liabilities.

(3) When the operator's demonstrated net worth is not at least 10 times the required amount, an affidavit shall be filed by the operator's treasurer (or equivalent official) covering the first six months of the operator's fiscal year. Such affidavits shall state that neither the working capital nor the net worth have fallen below the required amounts during the first six months.

(4) Additional financial information shall be submitted upon request by the department; or

b. Provide evidence in the form of a marine insurance broker's certificate of insurance, certificate of entry, or other proof satisfactory to the board that the operator has obtained oil pollution liability coverage through an operator's membership in a Protection & Indemnity (P&I) Club that is a member of the international group of P&I clubs or through coverage provided by a pool of marine underwriters in an amount sufficient to meet the requirements of § 62.1-44.34:16 of the Code of Virginia and subsection A of this section.

2. Insurance. Any operator demonstrating evidence of financial responsibility by insurance shall provide evidence of insurance issued by an insurer licensed, approved, or otherwise authorized to do business in the Commonwealth of Virginia. The amount of insurance shall be sufficient to cover the amount required by § 62.1-44.34:16 of the Code of Virginia and subsection A of this section. The operator shall provide evidence of such coverage in the form of a marine insurance broker's

certificate of insurance or by utilizing a form worded identically to the Insurance Form Furnished as Evidence of Financial Responsibility in Respect of Liability for Discharge of Oil available from the department. The insurer must also comply with all requirements in the form available from the department.

3. Surety. Any operator demonstrating financial responsibility through a surety bond shall file a surety bond utilizing a form worded identically to the surety form available from the department. The surety company issuing the bond must be licensed to operate as a surety in the Commonwealth of Virginia and must possess an underwriting limitation at least equal to the amount required by § 62.1-44.34:16 of the Code of Virginia and subsection A of this section. The surety must also comply with all requirements in the Surety Bond Form Furnished as Evidence of Financial Responsibility in Respect of Liability for Discharge of Oil available from the department.

4. Guaranty. An operator demonstrating financial responsibility through a guaranty shall submit the guaranty worded identically to the form available from the department. The guarantor shall comply with all provisions of subdivision 1 of this subsection for self-insurance and also comply with all requirements in the Guaranty Form Furnished as Evidence of Financial Responsibility in Respect of Liability for Discharge of Oil available from the department.

D. To obtain exemption from the cash deposit requirements:

1. The operator shall ~~appoint~~ *have and maintain* an agent for service of process in the Commonwealth;

2. ~~The~~ Any insurer, guarantor, or surety shall ~~appoint~~ *have and maintain* an agent for service of process in the Commonwealth;

3. Any insurer must be authorized by the Commonwealth of Virginia to engage in the insurance business; and

4. Any instrument of insurance, guaranty or surety must provide that actions may be brought on such instrument of insurance, guaranty or surety directly against the insurer, guarantor or surety for any violation by the operator of Article 11 (§ 62.1-33.34:14 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia up to, but not exceeding, the amount insured, guaranteed or otherwise pledged.

5. All forms of evidence of financial responsibility shall be accompanied by an endorsement that certifies that the insurance policy, evidence of self-insurance, surety or guaranty provides liability coverage for the tank vessels in the amount required by § 62.1-44.34:16 of the Code of Virginia and subsection A of this section.

6. Subdivisions 2, 3 and 4 of this subsection do not apply to operators providing evidence of financial responsibility in accordance with subdivision C 1 of this section.

E. Any operator whose financial responsibility is accepted under this chapter shall notify the board at least 30 days

before the effective date of a change, expiration or cancellation of any instrument of insurance, guaranty or surety.

F. ~~Acceptance~~ *The board's approval* of evidence of financial responsibility shall expire:

1. One year from the date that the board exempts an operator from the cash deposit requirement based on acceptance of evidence of self-insurance;

2. On the effective date of any change in the operator's instrument of insurance, guaranty or surety; or

3. Upon the expiration or cancellation of any instrument of insurance, guaranty or surety.

G. ~~4.~~ All nonexempt tank vessel operators shall file with the board the Application for Approval of Evidence of Tank Vessel Financial Responsibility which identifies the tank vessel operator and agent for service of process by name and address, provides identifying information on the tank vessel or vessels and certifies to the board that the information is true and accurate for approval of the evidence of financial responsibility. This form is available. This form shall be submitted with the required evidence of financial responsibility (cash deposit, proof of insurance, self-insurance, guaranty or surety), ~~except as permitted in subdivision 2 of this subsection~~ and shall be completed as far as it pertains to the tank vessel. The operator must sign and date the certification statement on the application form. If the operator is a corporation, the application form must be signed by an authorized corporate official; if the operator is a municipality, state, federal or other public agency, the application form must be signed by an authorized executive officer or ranking elected official; if the operator is a partnership or sole proprietorship, the application form must be signed by a general partner or the sole proprietor.

~~2. A tank vessel operator who seeks approval of the evidence of financial responsibility in accordance with subsection K of this section must complete and sign the application required in subdivision 1 of this subsection upon the effective date of this chapter or upon expiration of any tank vessel financial responsibility approval previously issued by the department.~~

~~3. A tank vessel operator who seeks renewal of the approval of the evidence of financial responsibility in accordance with subsection K of this section, upon expiration of the approval of the evidence of the financial responsibility issued by the department, must complete and sign the Annual Certification of Tank Vessel Financial Responsibility form available from the department to renew approval of the evidence of financial responsibility and to certify that there have been no significant changes to the previously submitted application form.~~

~~4. Tank vessel operators may delegate signatory authority to an agent for the annual certification form required in subdivision 3 of this subsection or submittal of any notifications in accordance with subsection K of this section by completing and signing the Tank Vessel Agent Designation form available from the department. This~~

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~~form identifies the tank vessel operator, the designated agent by name and address, and the respective tank vessel or vessels covered by this designation.~~

H. Application for renewal of approval of tank vessel financial responsibility shall be filed with the board 30 days prior to the date of expiration.

I. All applications and written communications concerning changes, submissions and updates required by this chapter, with the exception of applications and submissions accompanied by fees as addressed in subsection ~~L~~ K of this section, shall be addressed as follows:

Mailing Address:

Virginia Department of Environmental Quality
Office of Spill Response and Remediation
P.O. Box 10009
Richmond, VA 23240

Location Address:

Virginia Department of Environmental Quality
Office of Spill Response and Remediation
629 East Main Street
Richmond, VA 23219

All applications and submissions accompanied by fees as addressed in subsection ~~L~~ K of this section shall be sent to the address listed in subdivision ~~L~~ K 2.

J. The board, after notice and opportunity for hearing, may revoke its acceptance of evidence of financial responsibility if it determines that:

1. Acceptance has been procured by fraud or misrepresentation; or
2. A change in circumstances has occurred that would warrant denial of acceptance of evidence of financial responsibility.

~~K. Where an operator of a tank vessel has applied for and received from the United States Coast Guard a Certificate of Financial Responsibility (COFR), pursuant to § 1016 of the federal Oil Pollution Act of 1990, Pub. L. No. 101-380, 33 USCS § 2716 (1996), and its implementing regulations found at 33 CFR Part 138, such COFR shall be sufficient to meet the requirements of § 62.1-44.34:16 of the Code of Virginia, and this section while such COFR is valid. The operator shall submit to the department an application listing the vessel or vessels for which the approval is sought and a copy of the currently valid COFR for each tank vessel. The tank vessel operator submitting the application for approval of the evidence of financial responsibility in accordance with this subsection shall be the same entity which has applied for and received the COFR from the United States Coast Guard. If an operator has received a Master COFR or a Fleet COFR from the United States Coast Guard, the operator shall submit a listing, including any changes to such listing, of the vessels to which the Master COFR or Fleet COFR applies which are subject to this chapter. Each time a COFR is renewed or reissued for any reason for a tank vessel subject to this chapter, the~~

~~operator shall submit a copy of such renewed or reissued COFR to the department.~~

~~L~~ K. An application for approval of the demonstration of financial responsibility will be accepted only when the fees established by this section have been paid.

1. Fees shall only be paid upon initial submittal of the demonstration of financial responsibility by an operator to the board. Renewals or changes are not subject to the administrative fee. ~~Operators of tank vessels subject to this chapter but meeting the provisions of subsection K of this section shall not be subject to administrative fees for the approval of the demonstration of financial responsibility.~~

2. Fees shall be paid in United States currency by check, draft or postal money order made payable to Treasurer of Virginia. All fees and accompanying applications and submissions shall be sent to:

Mailing Address:

Virginia Department of Environmental Quality
Office of Financial Management
P.O. Box 10150
Richmond, VA 23240

Location Address:

Virginia Department of Environmental Quality
Office of Financial Management
629 East Main Street
Richmond, VA 23219

3. Application fees for approval of evidence of financial responsibility for tank vessels are as follows:

- a. Applicants shall pay an application fee of \$120.
- b. Applicants shall pay a fee of \$30 for each additional tank vessel requiring a copy of the accepted evidence of financial responsibility.

4. Application fees are refundable upon receipt of a written *notice of withdrawal; of the proffer of financial responsibility and a request for refund* received by the department no later than 30 days after submittal and prior to approval.

5. Overpayments of application fees are refundable upon written request. Overpayments not refunded will be credited for the applicant's future use under this section.

9 VAC 25-101-60. Delegation of authority.

The executive Director of the Department of Environmental Quality, or his designee, may perform any act of the board under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

9 VAC 25-101-70. Evaluation of the chapter.

A. The department will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

B. 1. Within three years after the effective date of this chapter, the department shall perform an analysis on this chapter and provide the board with a report on the results. The analysis shall include (i) the purpose and need for the chapter; (ii) alternatives which would achieve the stated purpose of this chapter in a less burdensome and less intrusive manner; (iii) an assessment of the effectiveness of this chapter; (iv) the results of a review of the current state and federal statutory and regulatory requirements, including identification and justification of the requirements of this chapter which are more stringent than federal requirements; and (v) the results of a review as to whether this chapter is clearly written and easily understood by affected entities.

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

NOTICE: The forms used in administering 9 VAC 25-101, Tank Vessel Oil Discharge Contingency Plan and Financial Responsibility Regulation, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the 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

Application for Approval of a Tank Vessel Oil Discharge Contingency Plan (ODCP), DEQ101-1 (4/98).

~~Agent Designation Form for Commonwealth of Virginia Tank Vessel Oil Discharge Contingency Plan (ODCP) and Financial Responsibility Requirements, DEQ101-2 (4/98).~~

Insurance Form Furnished as Evidence of Financial Responsibility in Respect of Liability for Discharge of Oil Under § 62.1-44.34:16 of the Code of Virginia and 9 VAC 25-101-50 A, DEQ101-3 (3/98).

Surety Bond Form Furnished as Evidence of Financial Responsibility of Liability for Discharge of Oil Under § 62.1-44.34:16 of the Code of Virginia and 9 VAC 25-101-50 A, DEQ101-4 (3/98).

Guaranty Form Furnished as Evidence of Financial Responsibility in Respect of Liability for Discharge of Oil Under § 62.1-44.34:16 of the Code of Virginia and 9 VAC 25-101-50 A, DEQ101-5 (3/98).

Application for Approval of Evidence of Tank Vessel Financial Responsibility (TVFR), DEQ101-6 (4/98).

~~Annual Certification of Evidence of Tank Vessel Financial Responsibility, DEQ101-7 (4/98).~~

VA.R. Doc. No. R05-16; Filed September 9, 2004, 9:11 a.m.

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The State Water Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9 VAC 25-151. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Storm Water Discharges Associated with Industrial Activity (amending 9 VAC 25-151-140, 9 VAC 25-151-150, 9 VAC 25-151-160, 9 VAC 25-151-180, 9 VAC 25-151-230 and 9 VAC 25-151-280).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia and § 402 of the Clean Water Act (40 CFR Parts 122, 123 and 124).

Effective Date: November 3, 2004.

Summary:

The amendments insert parameters that were inadvertently omitted in the previous revision to the regulation. Typographical errors are also corrected.

Agency Contact: Burt Tuxford, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4086, FAX (804) 698-4032 or e-mail brtuxford@deq.virginia.gov.

9 VAC 25-151-140. Sector F--Primary metals.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from the following types of facilities in the primary metal industry, and generally described by the SIC code shown:

1. Steel works, blast furnaces, and rolling and finishing mills, including: steel wire drawing and steel nails and spikes; cold-rolled steel sheet, strip, and bars; and steel pipes and tubes (SIC Code 331).
2. Iron and steel foundries, including: gray and ductile iron, malleable iron, steel investment, and steel foundries not elsewhere classified (SIC Code 332).
3. Primary smelting and refining of nonferrous metals, including: primary smelting and refining of copper, and primary production of aluminum (SIC Code 333).
4. Secondary smelting and refining of nonferrous metals (SIC Code 334).
5. Rolling, drawing, and extruding of nonferrous metals, including: rolling, drawing, and extruding of copper; rolling, drawing and extruding of nonferrous metals except copper and aluminum; and drawing and insulating of nonferrous wire (SIC Code 335).
6. Nonferrous foundries (castings), including: aluminum die-castings, nonferrous die-castings, except aluminum,

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aluminum foundries, copper foundries, and nonferrous foundries, except copper and aluminum (SIC Code 336).

7. Miscellaneous primary metal products, not elsewhere classified, including: metal heat treating, and primary metal products, not elsewhere classified (SIC Code 339).

Activities covered include, but are not limited to, storm water discharges associated with coking operations, sintering plants, blast furnaces, smelting operations, rolling mills, casting operations, heat treating, extruding, drawing, or forging of all types of ferrous and nonferrous metals, scrap, and ore.

B. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the plan shall include, at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify where any of the following activities may be exposed to precipitation/surface runoff: storage or disposal of wastes such as spent solvents/baths, sand, slag/dross; liquid storage tanks/drums; processing areas including pollution control equipment (e.g., baghouses); and storage areas of raw materials such as coal, coke, scrap, sand, fluxes, refractories, or metal in any form. In addition, indicate sources where an accumulation of significant amounts of particulate matter could occur from such sources as furnace or oven emissions, losses from coal/coke handling operations, etc., and that could result in a discharge of pollutants to surface waters.

b. Inventory of exposed materials. The inventory of materials handled at the site that potentially may be exposed to precipitation/runoff should include areas where deposition of particulate matter from process air emissions or losses during material handling activities are possible.

2. Storm water controls.

a. Good housekeeping. The SWPPP should consider implementation of the following measures, or equivalent measures, where applicable.

(1) Establishment of a cleaning/maintenance program for all impervious areas of the facility where particulate matter, dust, or debris may accumulate, especially areas where material loading/unloading, storage, handling, and processing occur.

(2) The paving of areas where vehicle traffic or material storage occur, but where vegetative or other stabilization methods are not practicable. Sweeping programs shall be instituted in these areas as well.

(3) For unstabilized areas of the facility where sweeping is not practical, the permittee should consider using storm water management devices such as sediment traps, vegetative buffer strips, filter fabric fence, sediment filtering boom, gravel outlet protection, or other equivalent measures, that effectively trap or remove sediment.

b. Routine facility inspections. Inspections shall be conducted at least quarterly, and shall address all potential sources of pollutants, including (if applicable):

(1) Air pollution control equipment (e.g., baghouses, electrostatic precipitators, scrubbers, and cyclones) should be inspected for any signs of degradation (e.g., leaks, corrosion, or improper operation) that could limit their efficiency and lead to excessive emissions. The permittee should consider monitoring air flow at inlets/outlets, or equivalent measures, to check for leaks (e.g., particulate deposition) or blockage in ducts; (2) All process or material handling equipment (e.g., conveyors, cranes, and vehicles) should be inspected for leaks, drips, or the potential loss of materials; and

(3) Material storage areas (e.g., piles, bins or hoppers for storing coke, coal, scrap, or slag, as well as chemicals stored in tanks/drums) should be examined for signs of material losses due to wind or storm water runoff.

C. Benchmark monitoring and reporting requirements. Primary metals facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 140 below.

Table 140.
Sector F - Benchmark Monitoring Requirements.

Pollutants of Concern	Monitoring Cut-Off Concentration
Steel Works, Blast Furnaces, and Rolling and Finishing Mills (SIC 3312-3317)	
Total Recoverable Aluminum	750 ug/L
Total Recoverable Zinc	120 ug/L
Iron and Steel Foundries (SIC 3321-3325)	
Total Recoverable Aluminum	750 ug/L
Total Suspended Solids (TSS)	100 mg/L
Total Recoverable Copper	18 ug/L
Total Recoverable Iron	1 mg/L
Total Recoverable Zinc	120 ug/L
Rolling, Drawing, and Extruding of Nonferrous Metals (SIC 3351-3357)	
Total Recoverable Copper	18 ug/L
Total Recoverable Zinc	120 ug/L
Nonferrous Foundries (SIC 3363-3369)	
Total Recoverable Copper	18 ug/L
Total Recoverable Zinc	120 ug/L

9 VAC 25-151-150. Sector G--Metal mining (ore mining and dressing).

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from active, temporarily inactive and inactive metal mining and ore dressing facilities including mines abandoned on federal lands, as classified under SIC Major Group 10. Coverage is required for facilities that discharge storm water that has come into contact with, or is contaminated by, any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of the operation. SIC Major Group 10 includes establishments primarily engaged in mining of ores, developing mines, or exploring for metallic minerals (ores) and also includes ore dressing and beneficiating operations, whether performed at colocated, dedicated mills or at separate mills, such as custom mills. For the purposes of this section, the term "metal mining" includes any of the separate activities listed above. Covered discharges include:

1. All storm water discharges from inactive metal mining facilities; and
2. Storm water discharges from the following areas of active and temporarily inactive metal mining facilities: waste rock/overburden piles if composed entirely of storm water and not combining with mine drainage; topsoil piles; off-site haul/access roads; on-site haul/access roads constructed of waste rock/overburden if composed entirely of storm water and not combining with mine drainage; on-site haul/access roads not constructed of waste rock/overburden/spent ore except if mine drainage is used for dust control; runoff from tailings dams/dikes when not constructed of waste rock/tailings and no process fluids are present; runoff from tailings dams/dikes when constructed of waste rock/tailings and no process fluids are present if composed entirely of storm water and not combining with mine drainage; concentration building if no contact with material piles; mill site if no contact with material piles; office/administrative building and housing if mixed with storm water from industrial area; chemical storage area; docking facility if no excessive contact with waste product that would otherwise constitute mine drainage; explosive storage; fuel storage; vehicle/equipment maintenance area/building; parking areas (if necessary); power plant; truck wash areas if no excessive contact with waste product that would otherwise constitute mine drainage; unreclaimed, disturbed areas outside of active mining area; reclaimed areas released from reclamation bonds prior to December 17, 1990; and partially/inadequately reclaimed areas or areas not released from reclamation bonds.

B. Limitations on coverage. Storm water discharges from active metal mining facilities that are subject to the effluent limitation guidelines for the Ore Mining and Dressing Point Source Category (40 CFR Part 440 (2002)) are not authorized by this permit.

Note: Discharges that come in contact with overburden/waste rock are subject to 40 CFR Part 440 (2002), providing: the discharges drain to a point source (either naturally or as a result of intentional diversion), and they combine with mine drainage that is otherwise regulated under 40 CFR Part 440 (2002). Discharges from overburden/waste rock can be covered under this permit if they are composed entirely of storm water and do not combine with sources of mine drainage that are subject to 40 CFR Part 440 (2002).

C. Special Conditions. Prohibition of nonstorm water discharges. In addition to the general prohibition of nonstorm water discharges in Part I B 1, the following discharges are not covered by this permit: adit drainage or contaminated springs or seeps.

D. Special definitions. The following definitions are only for this section of the general permit:

"Active metal mining facility" means a place where work or other related activity to the extraction, removal, or recovery of metal ore is being conducted. For surface mines, this definition does not include any land where grading has returned the earth to a desired contour and reclamation has begun.

"Active phase" means activities including each step from extraction through production of a salable product.

"Exploration and construction phase" entails exploration and land disturbance activities to determine the financial viability of a site. Construction includes the building of site access roads and removal of overburden and waste rock to expose mineable minerals.

"Inactive metal mining facility" means a site or portion of a site where metal mining and/or milling occurred in the past but is not an active facility as defined in this permit, and where the inactive portion is not covered by an active mining permit issued by the applicable (federal or state) governmental agency.

"Mining operation" typically consists of three phases, any one of which individually qualifies as a "mining activity." The phases are the exploration and construction phase, the active phase, and the reclamation phase.

"Reclamation phase" means activities intended to return the land to its premining use.

"Temporarily inactive metal mining facility" means a site or portion of a site where metal mining and/or milling occurred in the past but currently are not being actively undertaken, and the facility is covered by an active mining permit issued by the applicable (federal or state) government agency.

E. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the plan shall include, at a minimum, the following items.

1. SWPPP requirements for active and temporarily inactive metal mining facilities.
 - a. Site description.

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(1) Activities at the facility. A description of the mining and associated activities taking place at the site that can potentially affect storm water discharges covered by this permit. The description shall include the total acreage within the mine site; an estimate of the number of acres of disturbed land; an estimate of the total amount of land proposed to be disturbed throughout the life of the mine and a general description of the location of the site relative to major transportation routes and communities.

(2) Site map. The site map shall identify the locations of the following, as appropriate: mining/milling site boundaries; access and haul roads; an outline of the drainage areas of each storm water outfall within the facility, and an indication of the types of discharges from the drainage areas; equipment storage, fueling and maintenance areas; materials handling areas; outdoor manufacturing, storage or material disposal areas; storage areas for chemicals and explosives; areas used for storage of overburden, materials, soils or wastes; location of mine drainage (where water leaves mine) or any other process water; tailings piles/ponds, both proposed and existing; heap leach pads; points of discharge from the property for mine drainage/process water; surface waters; and boundary of tributary areas that are subject to effluent limitations guidelines.

b. Summary of potential pollutant sources. For each area of the mine/mill site where storm water discharges associated with industrial activities occur, the types of pollutants likely to be present in significant amounts must be identified (e.g., heavy metals, sediment). The following factors must be considered: the mineralogy of the ore and waste rock (e.g., acid forming); toxicity and quantity of chemicals used, produced or discharged; the likelihood, if any, of contact with storm water; vegetation of site; history of significant leaks/spills of toxic or hazardous pollutants. A summary of any existing ore or waste rock/overburden characterization data and test results for potential generation of acid rock shall also be included. If the ore or waste rock/overburden characterization data are updated due to a change in the ore type being mined, the SWPPP shall be updated with the new data.

c. Storm water controls.

(1) Nonstructural BMPs.

(a) Routine facility inspections. Active mining sites must be inspected at least monthly. Temporarily inactive sites must be inspected at least quarterly unless adverse weather conditions make the site inaccessible.

(b) Employee training. Employee training shall be conducted at least annually at active mining and temporarily inactive sites.

(2) Structural BMPs. Each of the following BMPs shall be considered in the SWPPP. The potential

pollutants identified in subpart E 1 b above shall determine the priority and appropriateness of the BMPs selected. If it is determined that one or more of these BMPs are not appropriate for the facility, the plan must explain why it is not appropriate. If BMPs are implemented or planned but are not listed here (e.g., substituting a less toxic chemical for a more toxic one), descriptions of them must be included in the SWPPP.

(a) Sediment and erosion control. The measures to consider include: diversion of flow away from areas susceptible to erosion (measures such as interceptor dikes and swales, diversion dikes, curbs and berms); stabilization methods to prevent or minimize erosion (such as temporary or permanent seeding; vegetative buffer strips; protection of trees; topsoiling; soil conditioning; contouring; mulching; geotextiles (matting, netting, or blankets); riprap; gabions; and retaining walls); and structural methods for controlling sediment (such as check dams; rock outlet protection; level spreaders; gradient terraces; straw bale barriers; silt fences; gravel or stone filter berms; brush barriers; sediment traps; grass swales; pipe slope drains; earth dikes; other controls such as entrance stabilization, waterway crossings or wind breaks; or other equivalent measures).

(b) Storm water diversion. A description of how and where storm water will be diverted away from potential pollutant sources to prevent storm water contamination. BMP options may include the following: interceptor dikes and swales; diversion dikes, curbs and berms; pipe slope drains; subsurface drains; drainage/storm water conveyance systems (channels or gutters, open top box culverts and waterbars; rolling dips and road sloping; roadway surface water deflector and culverts) or equivalent measures.

(c) Management of runoff. The potential pollutant sources given in 9 VAC 25-151-150 E 1 b must be considered when determining reasonable and appropriate measures for managing runoff.

(d) Capping. Where capping of a contaminant source is necessary, the source being capped and materials and procedures used to cap the contaminant source must be identified.

(e) Treatment. If treatment of a storm water discharge is necessary to protect water quality, include a description of the type and location of storm water treatment that will be used. Storm water treatments include the following: chemical or physical systems; oil/water separators; artificial wetlands; etc.

(f) Certification of discharge testing. The permittee must test or evaluate for the presence of specific mining-related nonstorm water discharges such as seeps or adit discharges or discharges subject to effluent limitations guidelines, such as mine

drainage or process water. Alternatively (if applicable), the permittee may certify in the SWPPP that a particular discharge comprised of commingled storm water and nonstorm water is covered under a separate VPDES permit; and that permit subjects the nonstorm water portion to effluent limitations prior to any commingling. This certification shall identify the nonstorm water discharges, the applicable VPDES permit(s), the effluent limitations placed on the nonstorm water discharge by the permit(s), and the points at which the limitations are applied.

2. SWPPP requirements for inactive metal mining facilities.

a. Site description.

(1) Activities at the facility. The SWPPP shall briefly describe the mining and associated activities that took place at the site that can potentially affect the storm water discharges covered by this permit. The following must be included: approximate dates of operation; total acreage within the mine and/or processing site; estimate of acres of disturbed earth; activities currently occurring on-site (e.g., reclamation); a general description of site location with respect to transportation routes and communities.

(2) Site map. The site map shall identify the locations of the following, as appropriate: mining/milling site boundaries; access and haul roads; an outline of the drainage areas of each storm water outfall within the facility, and an indication of the types of discharges from the drainage areas; equipment storage, fueling and maintenance areas; materials handling areas; outdoor manufacturing, storage or material disposal areas; storage areas for chemicals and explosives; areas used for storage of overburden, materials, soils or wastes; location of mine drainage (where water leaves mine) or any other process water; tailings piles/ponds, both proposed and existing; heap leach pads; points of discharge from the property for mine drainage/process water; surface waters; and boundary of tributary areas that are subject to effluent limitations guidelines.

b. Summary of potential pollutant sources. For each area of the mine/mill site where storm water discharges associated with industrial activities occur, the types of pollutants likely to be present in significant amounts must be identified (e.g., heavy metals, sediment). The following factors must be considered: the mineralogy of the ore and waste rock (e.g., acid forming); toxicity and quantity of chemicals used, produced or discharged; the likelihood, if any, of contact with storm water; vegetation of site; history of significant leaks/spills of toxic or hazardous pollutants. A summary of any existing ore or waste rock/overburden characterization data and test results for potential generation of acid rock shall also be included. If the ore or waste

rock/overburden characterization data are updated due to a change in the ore type being mined, the SWPPP shall be updated with the new data.

c. Storm water controls.

(1) Nonstructural BMPs. The nonstructural controls in the general requirements at Part III B 6 b 1 are not required for inactive facilities.

(2) Structural BMPs. Each of the following BMPs shall be considered in the SWPPP. The potential pollutants identified in subpart E 2 b above shall determine the priority and appropriateness of the BMPs selected. If it is determined that one or more of these BMPs are not appropriate for the facility, the plan must explain why it is not appropriate. If BMPs are implemented or planned but are not listed here (e.g., substituting a less toxic chemical for a more toxic one), descriptions of them must be included in the SWPPP.

(a) Sediment and erosion control. The measures to consider include: diversion of flow away from areas susceptible to erosion (measures such as interceptor dikes and swales, diversion dikes, curbs and berms); stabilization methods to prevent or minimize erosion (such as temporary or permanent seeding; vegetative buffer strips; protection of trees; topsoiling; soil conditioning; contouring; mulching; geotextiles (matting; netting; or blankets); riprap; gabions; and retaining walls; and structural methods for controlling sediment (such as check dams; rock outlet protection; level spreaders; gradient terraces; straw bale barriers; silt fences; gravel or stone filter berms; brush barriers; sediment traps; grass swales; pipe slope drains; earth dikes; other controls such as entrance stabilization, waterway crossings or wind breaks; or other equivalent measures).

(b) Storm water diversion. A description of how and where storm water will be diverted away from potential pollutant sources to prevent storm water contamination. BMP options may include the following: interceptor dikes and swales; diversion dikes, curbs and berms; pipe slope drains; subsurface drains; drainage/storm water conveyance systems (channels or gutters, open top box culverts and waterbars; rolling dips and road sloping; roadway surface water deflector and culverts) or equivalent measures.

(c) Management of runoff. The potential pollutant sources given in 9 VAC 25-151-150 E 2 b must be considered when determining reasonable and appropriate measures for managing runoff.

(d) Capping. Where capping of a contaminant source is necessary, the source being capped and materials and procedures used to cap the contaminant source must be identified.

(e) Treatment. If treatment of a storm water discharge is necessary to protect water quality,

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include a description of the type and location of storm water treatment that will be used. Storm water treatments include the following: chemical or physical systems; oil/water separators; artificial wetlands; etc.

d. Comprehensive site compliance evaluation. Annual site compliance evaluations may be impractical for inactive mining sites due to remote location/inaccessibility of the site, in which case the permittee must conduct the evaluation at least once every three years. The SWPPP must be documented to explain why annual compliance evaluations are not possible. If the evaluations will be conducted more often than every three years, the frequency of evaluations must be specified.

F. Benchmark monitoring and reporting requirements.

1. Copper ore mining and dressing facilities. Active copper ore mining and dressing facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 150-1 below.

2. Discharges from waste rock and overburden piles at active ore mining and dressing facilities. Active ore mining and dressing facilities with discharges from waste rock and overburden piles must perform analytic monitoring for the parameters listed in Table 150-1. Facilities must also monitor for the parameters listed in Table 150-2. However, the director may notify the facility that additional monitoring must be performed to accurately characterize the quality and quantity of pollutants discharged from the waste rock/overburden piles. Monitoring requirements for discharges from waste rock and overburden piles are not eligible for the waiver in Part I A 3 b.

Table 150-1.

Sector G - Benchmark Monitoring Requirements.

Pollutants of Concern	Monitoring Cut-Off Concentration
Active Copper Ore Mining and Dressing Facilities (SIC 1021)	
Total Suspended Solids (TSS)	100 $\mu\text{g/L}$ /mg/L
Discharges From Waste Rock and Overburden Piles From Active Ore Mining or Dressing Facilities Iron Ores; Copper Ores; Lead and Zinc Ores; Gold and Silver Ores; Ferroalloy Ores Except Vanadium; Miscellaneous Metal Ores (SIC Codes 1011, 1021, 1031, 1041, 1044, 1061, 1081, 1094, 1099)	
Total Suspended Solids (TSS)	100 mg/L
Turbidity (NTUs)	5 NTUs above background
PH	6.0 - 9.0 s.u.
Hardness (as CaCO ₃)	no benchmark value
Total Recoverable Antimony	640 $\mu\text{g/L}$
Total Recoverable Arsenic	50 $\mu\text{g/L}$
Total Recoverable Beryllium	130 $\mu\text{g/L}$

Total Recoverable Cadmium	3.9 $\mu\text{g/L}$
Total Recoverable Copper	18 $\mu\text{g/L}$
Total Recoverable Iron	1.0 mg/L
Total Recoverable Lead	120 $\mu\text{g/L}$
Total Recoverable Manganese	1.0 mg/L
Total Recoverable Mercury	2.4 $\mu\text{g/L}$
Total Recoverable Nickel	1.4 mg/L
Total Recoverable Selenium	20 $\mu\text{g/L}$
Total Recoverable Silver	4.1 $\mu\text{g/L}$
Total Recoverable Zinc	120 $\mu\text{g/L}$

Table 150-2.

Sector G - Additional Monitoring Requirements for Discharges From Waste Rock and Overburden Piles From Active Ore Mining or Dressing Facilities.

Type of Ore Mined	Pollutants of Concern		
	TSS (mg/L)	pH	Metals, Total Recoverable
Tungsten Ore	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Zinc (H).
Nickel Ore	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Zinc (H).
Aluminum Ore	X	X	Iron.
Mercury Ore	X	X	Nickel (H).
Iron Ore	X	X	Iron (Dissolved).
Platinum Ore			Cadmium (H), Copper (H), Mercury, Lead (H), Zinc (H).
Titanium Ore	X	X	Iron, Nickel (H), Zinc (H).
Vanadium Ore	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Zinc (H).
Copper, Lead, Zinc, Gold, Silver and Molybdenum	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Mercury, Zinc (H).
Uranium, Radium and Vanadium	X	X	Chemical Oxygen Demand, Arsenic, Radium (Dissolved and Total Recoverable), Uranium, Zinc (H).

Note: (H) indicates that hardness must also be measured when this pollutant is measured.

9 VAC 25-151-160. Sector H--Coal mines and coal mining-related facilities.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from coal mining-related areas (SIC Major Group 12) if (i) they are not subject to effluent limitations guidelines under 40 CFR Part 434 (2002) or (ii) they are not subject to the standards of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) (30 USC § 1201 et seq.) and the Virginia Department of Mines, Minerals and Energy's individual permit requirements. The requirements of this section shall apply to storm water discharges from coal mining-related activities exempt from SMCRA, including the public financed exemption, the 16-2/3% exemption, the private use exemption, the under 250 tons exemption, the nonincidental tippie exemption, and the exemption for coal piles and preparation plants associated with the end user. Storm water discharges from the following portions of eligible coal mines and coal mining related facilities may be eligible for this permit: haul roads (nonpublic roads on which coal or coal refuse is conveyed), access roads (nonpublic roads providing light vehicular traffic within the facility property and to public roadways), railroad spurs, sidings, and internal haulage lines (rail lines used for hauling coal within the facility property and to off-site commercial railroad lines or loading areas); conveyor belts, chutes, and aerial tramway haulage areas (areas under and around coal or refuse conveyor areas, including transfer stations); and equipment storage and maintenance yards, coal handling buildings and structures, coal tipples, coal loading facilities and inactive coal mines and related areas (abandoned and other inactive mines, refuse disposal sites and other mining-related areas).

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general prohibition of nonstorm water discharges in Part I B 1, the following discharges are not covered by this permit: discharges from pollutant seeps or underground drainage from inactive coal mines and refuse disposal areas that do not result from precipitation events and discharges from floor drains in maintenance buildings and other similar drains in mining and preparation plant areas.

C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify where any of the following may be exposed to precipitation/surface runoff:

- (1) Drainage direction and discharge points from all applicable mining-related areas described in 9 VAC 25-151-160 A;
- (2) Acidic spoil, refuse or unreclaimed disturbed areas; and
- (3) Liquid storage tanks containing pollutants such as caustics, hydraulic fluids and lubricants.

b. Summary of potential pollutant sources. A description of the potential pollutant sources from the following activities: truck traffic on haul roads and resulting generation of sediment subject to runoff and dust generation; fuel or other liquid storage; pressure lines containing slurry, hydraulic fluid or other potential harmful liquids; and loading or temporary storage of acidic refuse/spoil.

2. Storm water controls.

a. Good housekeeping. As part of the facility's good housekeeping program, the permittee should consider the following: using sweepers, covered storage, and watering of haul roads to minimize dust generation; and conservation of vegetation (where possible) to minimize erosion.

b. Preventive maintenance. The ~~permittee~~ permittee shall also perform inspections of storage tanks and pressure lines for fuels, lubricants, hydraulic fluid or slurry to prevent leaks due to deterioration or faulty connections; or other equivalent measures.

3. Comprehensive site compliance evaluation. The evaluation program shall also include inspections for pollutants entering the drainage system from activities located on or near coal mining-related areas. Among the areas to be inspected: haul and access roads; railroad spurs, sliding and internal hauling lines; conveyor belts, chutes and aerial tramways; equipment storage and maintenance yards; coal handling buildings/structures; and inactive mines and related areas.

D. Benchmark monitoring and reporting requirements. Coal mining facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 160.

Table 160.
Sector H - Benchmark Monitoring Requirements.

Pollutants of Concern	Monitoring Cut-Off Concentration
Coal Mines and Related Areas (SIC 1221-1241)	
Total Recoverable Aluminum	750 ug/L
Total Recoverable Iron	1 mg/L
Total Suspended Solids (TSS)	100 mg/L

9 VAC 25-151-180. Sector K--Hazardous waste treatment, storage, or disposal facilities.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from facilities that treat, store, or dispose of hazardous wastes, including those that are operating under interim status or a permit under subtitle C of RCRA (Industrial Activity Code "HZ"). Disposal facilities that have been properly closed and capped, and have no significant materials exposed to storm water, are considered inactive and do not require permits.

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B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general prohibition of nonstorm water discharges in Part I B 1, the following discharges are not covered by this permit: leachate, gas collection condensate, drained free liquids, contaminated ground water, laboratory-derived wastewater and contact washwater from washing truck and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.

C. Definitions.

"Contaminated storm water" means storm water that comes in direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater as defined in this section. Some specific areas of a landfill that may produce contaminated storm water include, but are not limited to: the open face of an active landfill with exposed waste (no cover added); the areas around wastewater treatment operations; trucks, equipment or machinery that has been in direct contact with the waste; and waste dumping areas.

"Drained free liquids" means aqueous wastes drained from waste containers (e.g., drums, etc.) prior to landfilling.

"Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.

"Landfill" means an area of land or an excavation in which wastes are placed for permanent disposal, that is not a land application or land treatment unit, surface impoundment, underground injection well, waste pile, salt dome formation, a salt bed formation, an underground mine or a cave as these terms are defined in 40 CFR 257.2 (2002), 40 CFR 258.2 (2002) and 40 CFR 260.10 (2002).

"Landfill wastewater" as defined in 40 CFR Part 445 (2002) (Landfills Point Source Category) means all wastewater associated with, or produced by, landfilling activities except for sanitary wastewater, noncontaminated storm water, contaminated ground water, and wastewater from recovery pumping wells. Landfill wastewater includes, but is not limited to, leachate, gas collection condensate, drained free liquids, laboratory derived wastewater, contaminated storm water and contact washwater from washing truck, equipment, and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.

"Leachate" means liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

"Noncontaminated storm water" means storm water that does not come into direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater as defined above. Noncontaminated storm water includes storm water that flows off the cap, cover, intermediate cover, daily cover, and/or final cover of the landfill.

"Pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

"Surface impoundment" means a facility or part of a facility that is a natural topographic depression, man-made excavation or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds and lagoons.

D. Numeric effluent limitations. As set forth at 40 CFR Part 445 Subpart A (2002), the numeric limitations in Table 180-1 apply to contaminated storm water discharges from hazardous waste landfills subject to the provisions of RCRA Subtitle C at 40 CFR Parts 264 (Subpart N) (2002) and 265 (Subpart N) (2002) except for any of the facilities described in subdivisions 1 through 4 of this subsection:

1. Landfills operated in conjunction with other industrial or commercial operations when the landfill only receives wastes generated by the industrial or commercial operation directly associated with the landfill;
2. Landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes generated by the industrial or commercial operation directly associated with the landfill and also receives other wastes provided the other wastes received for disposal are generated by a facility that is subject to the same provisions in 40 CFR Subchapter N (2002) as the industrial or commercial operation or the other wastes received are of similar nature to the wastes generated by the industrial or commercial operation;
3. Landfills operated in conjunction with Centralized Waste Treatment (CWT) facilities subject to 40 CFR Part 437 (2002) so long as the CWT facility commingles the landfill wastewater with other nonlandfill wastewater for discharge. A landfill directly associated with a CWT facility is subject to this part if the CWT facility discharges landfill wastewater separately from other CWT wastewater or commingles the wastewater from its landfill only with wastewater from other landfills; or
4. Landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes from public service activities so long as the company owning the landfill does not receive a fee or other remuneration for the disposal service.

Table 180-1.
Sector K - Numeric Effluent Limitations.

Parameter	Effluent Limitations	
	Maximum Daily	Maximum Monthly Average
Hazardous Waste Treatment, Storage, or Disposal Facilities (Industrial Activity Code "HZ") Subject to the Provisions of 40 CFR Part 445 Subpart A (2002).		
Biochemical Oxygen Demand (BOD ₅)	220 mg/L	56 mg/L
Total Suspended Solids (TSS)	88 mg/L	27 mg/L
Ammonia	10 mg/L	4.9 mg/L
Alpha Terpineol	0.042 mg/L	0.019 mg/L
Aniline	0.024 mg/L	0.015 mg/L
Benzoic Acid	0.119 mg/L	0.073 mg/L
Naphthalene	0.059 mg/L	0.022 mg/L
p-Cresol	0.024 mg/L	0.015 mg/L
Phenol	0.048 mg/L	0.029 mg/L
Pyridine	0.072 mg/L	0.025 mg/L
Arsenic (Total)	1.1 mg/L	0.54 mg/L
Chromium (Total)	1.1 mg/L	0.46 mg/L
Zinc (Total)	0.535 mg/L	0.296 mg/L
pH	Within the range of 6.0 - 9.0 s.u.	

E. Benchmark monitoring and reporting requirements. Permittees with hazardous waste treatment, storage, or disposal facilities (TSDFs) are required to monitor their storm water discharges for the pollutants of concern listed in Table 180-2. These benchmark monitoring cutoff concentrations apply to storm water discharges associated with industrial activity other than contaminated storm water discharges from landfills subject to the numeric effluent limitations set forth in Table 180-1.

Table 180-2.
Sector K - Benchmark Monitoring Requirements.

Pollutants of Concern	Monitoring Cut-Off Concentration
Hazardous Waste Treatment, Storage, or Disposal Facilities (Industrial Activity Code "HZ")	
Total Kjeldahl Nitrogen (TKN)	1.5 mg/L
Total Suspended Solids (TSS)	100 mg/L
Total Organic Carbon (TOC)	110 mg/L
Total Recoverable Arsenic	50 ug/L
Total Recoverable Cadmium	3.9 ug/L
Total Cyanide	22 ug/L
Total Recoverable Lead	120 ug/L

Total Recoverable Mercury	2.4 ug/L
Total Recoverable Selenium	20 ug/L
Total Recoverable Silver	4.1 ug/L

9 VAC 25-151-230. Sector P--Land transportation and warehousing.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from ground transportation facilities and rail transportation facilities (generally identified by SIC Codes 40, 41, 42, 43, and 5171), that have vehicle and equipment maintenance shops (vehicle and equipment rehabilitation, mechanical repairs, painting, fueling and lubrication) and/or equipment cleaning operations. Also covered under this section are facilities found under SIC Codes 4221 through 4225 (public warehousing and storage) that do not have vehicle and equipment maintenance shops and/or equipment cleaning operations.

B. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description. Site Map. The site map shall identify the locations of any of the following activities or sources: fueling stations; vehicle/equipment maintenance or cleaning areas; storage areas for vehicle/equipment with actual or potential fluid leaks; loading/unloading areas; areas where treatment, storage or disposal of wastes occur; liquid storage tanks; processing areas; storage areas; and all monitoring areas.

2. Summary of potential pollutant sources. The plan shall describe and assess the potential for the following to contribute pollutants to storm water discharges: on-site waste storage or disposal; dirt/gravel parking areas for vehicles awaiting maintenance; and fueling areas.

3. Storm water controls.

a. Good housekeeping.

(1) Vehicle and equipment storage areas. The storage of vehicles and equipment awaiting maintenance with actual or potential fluid leaks must be confined to designated areas (delineated on the site map). The permittee shall consider the following measures (or their equivalents): the use of drip pans under vehicles and equipment; indoor storage of vehicles and equipment; installation of berms or dikes; use of absorbents; roofing or covering storage areas; and cleaning pavement surface to remove oil and grease.

(2) Fueling areas. The permittee shall describe and implement measures that prevent or minimize contamination of the storm water runoff from fueling areas. The permittee shall consider the following measures (or their equivalents): covering the fueling area; using spill/overflow protection and cleanup equipment; minimizing storm water runoff to the fueling area; using dry cleanup methods; and

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treating and/or recycling collected storm water runoff.

(3) Material storage areas. Storage vessels of all materials (e.g., for used oil/oil filters, spent solvents, paint wastes, hydraulic fluids) must be maintained in good condition, so as to prevent contamination of storm water, and plainly labeled (e.g., "used oil," "spent solvents," etc.). The permittee shall consider the following measures (or their equivalents): indoor storage of the materials; installation of berms/dikes around the areas, minimizing runoff of storm water to the areas; using dry cleanup methods; and treating and/or recycling the collected storm water runoff.

(4) Vehicle and equipment cleaning areas. The permittee shall describe and implement measures that prevent or minimize contamination of storm water runoff from all areas used for vehicle/equipment cleaning. The permittee shall consider the following measures (or their equivalents): performing all cleaning operations indoors; covering the cleaning operation; ensuring that all washwaters drain to a proper collection system (i.e., not the storm water drainage system unless VPDES permitted); and treating and/or recycling the collected storm water runoff. Note: the discharge of vehicle/equipment wash waters, including tank cleaning operations, are not authorized by this permit and must be covered under a separate VPDES permit or discharged to a sanitary sewer in accordance with applicable industrial pretreatment requirements.

(5) Vehicle and equipment maintenance areas. The permittee shall describe and implement measures that prevent or minimize contamination of the storm water runoff from all areas used for vehicle/equipment maintenance. The permittee shall consider the following measures (or their equivalents): performing maintenance activities indoors; using drip pans; keeping an organized inventory of materials used in the shop; draining all parts of fluids prior to disposal; prohibiting wet clean up practices where the practices would result in the discharge of pollutants to storm water drainage systems; using dry cleanup methods; treating and/or recycling collected storm water runoff; and minimizing runoff of storm water to maintenance areas.

(6) Locomotive sanding (loading sand for traction) areas. The plan must describe measures that prevent or minimize contamination of the storm water runoff from areas used for locomotive sanding. The permittee shall consider the following measures (or their equivalents): covering sanding areas; minimizing storm water runoff; or appropriate sediment removal practices to minimize the off-site transport of sanding material by storm water.

b. Routine facility inspections. The following areas/activities shall be included in all inspections:

storage area for vehicles/equipment awaiting maintenance; fueling areas; indoor and outdoor vehicle/equipment maintenance areas; material storage areas; vehicle/equipment cleaning areas; and loading/unloading areas.

c. Employee training. Employee training shall take place, at a minimum, annually (once per calendar year). Employee training must address the following as applicable: used oil and spent solvent management; fueling procedures; general good housekeeping practices; proper painting procedures; and used battery management.

d. Nonstorm water discharges. For facilities that discharge vehicle and equipment washwaters to the sanitary sewer system, the operator of the sanitary system and associated treatment plant must be notified. In such cases, a copy of the notification letter must be attached to the plan. If an industrial user permit is issued under a pretreatment program, a reference to that permit must be in the plan. In all cases, any permit conditions or pretreatment requirements must be considered in the plan. If the washwaters are handled in another manner (e.g., hauled off-site), the disposal method must be described and all pertinent documentation (e.g., frequency, volume, destination, etc.) must be attached to the plan.

9 VAC 25-151-280. Sector U--Food and kindred products.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from food and kindred products processing facilities (commonly identified by SIC Code 20), including: meat products; dairy products; canned, frozen and preserved fruits, vegetables, and food specialties; grain mill products; bakery products; sugar and confectionery products; fats and oils; beverages; and miscellaneous food preparations and kindred products and tobacco products manufacturing (SIC Code 21).

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general nonstorm water prohibition in Part I B 1, the following discharges are not covered by this permit: boiler blowdown, cooling tower overflow and blowdown, ammonia refrigeration purging, and vehicle washing/clean-out operations.

C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify the locations of the following activities if they are exposed to precipitation/surface runoff: vents/stacks from cooking, drying, and similar operations; dry product vacuum transfer lines; animal holding pens; spoiled product; and broken product container storage areas.

b. Summary of potential pollutant sources. In addition to food and kindred products processing-related industrial activities, the plan must also describe application and storage of pest control chemicals (e.g., rodenticides, insecticides, fungicides, etc.) used on plant grounds.

2. Storm water controls.

a. Routine facility inspections. At a minimum, the following areas, where the potential for exposure to storm water exists, must be inspected: loading and unloading areas for all significant materials; storage areas, including associated containment areas; waste management units; vents and stacks emanating from industrial activities; spoiled product and broken product container holding areas; animal holding pens; staging areas; and air pollution control equipment.

b. Employee training. The employee training program must also address pest control.

D. Benchmark monitoring and reporting requirements. Grain mills and fats and oils products facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 280.

Table 280.

Sector U - Benchmark Monitoring Requirements.

Pollutants of Concern	Monitoring Cut-Off Concentration
Grain Mill Products (SIC 2041-2048)	
Total Kjeldahl Nitrogen (TKN)	1.5 mg/L
Total Suspended Solids (TSS)	100 mg/L
Fats and Oils Products (SIC 2074-2079)	
Biochemical Oxygen Demand (BOD ₅)	30 mg/L
Total Nitrogen	2.2 mg/L
Total Suspended Solids (TSS)	100 mg/L

VA.R. Doc. No. R05-17; Filed September 9, 2004, 9:12 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 25-191. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Concentrated Animal Feeding Operations (adding 9 VAC 25-191-10 through 9 VAC 25-191-50).

Statutory Authority: §§ 62.1-44.15 and 62.1-44.17:1 of the Code of Virginia; 40 CFR Parts 9, 122, 123, and 412.

Effective Date: November 3, 2004.

Agency Contact: Neil Zahradka, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4102, FAX (804) 698-4032, or e-mail nrzahradka@deq.virginia.gov.

Summary:

This action adopts a general permit regulation to comply with the provisions of 40 CFR Parts 9, 122, 123, and 412 as published in the Federal Register, Volume 68, No. 29, dated February 12, 2003. The general permit regulation governs the authorization to manage pollutants from concentrated animal feeding operations, including storage and land application of animal waste.

The State Water Control Board has the authority to administer the federal National Pollutant Discharge Elimination System (NPDES) program within the Commonwealth, and as such, the program is called the Virginia Pollutant Discharge Elimination System (VPDES). Operations that meet the federal definition of Concentrated Animal Feeding Operation (CAFO) found in 40 CFR 122.23 must seek coverage under a NPDES permit. This action will result in the promulgation of a VPDES general permit that will allow those operations to obtain this type of permit. CAFOs are currently regulated in Virginia under the Virginia Pollution Abatement (VPA) permit regulation in 9 VAC 25-32, the VPA General Permit Regulation for CAFOs in 9 VAC 25-192, and the VPA General Permit Regulation for Poultry Waste Management in 9 VAC 25-630. Affected operations currently permitted under these regulations will be required to be permitted under this new VPDES general permit regulation.

CHAPTER 191.
 VIRGINIA [POLLUTION POLLUTANT] DISCHARGE
 ELIMINATION SYSTEM (VPDES) GENERAL PERMIT
 FOR CONCENTRATED ANIMAL FEEDING
 OPERATIONS.

9 VAC 25-191-10. Definitions.

The words and terms used in this regulation shall have the meanings defined in the State Water Control Law and 9 VAC 25-31 (VPDES Permit Regulation) unless the context clearly indicates otherwise, except that for the purposes of this regulation:

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["Agricultural storm water" means storm water that is not the sole result of land application of manure, litter or process wastewater. Where manure, litter or process wastewater has been applied in accordance with a nutrient management plan approved by the Virginia Department of Conservation and Recreation and in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater, a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of an animal feeding operation is an agricultural storm water discharge.]

"Animal feeding operation" or "AFO" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

1. Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and
2. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

Two or more animal feeding operations under common ownership are a single animal feeding operation for the purposes of determining the number of animals at an operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

"Best Management Practices" or "BMPs" means structural improvements, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, or drainage from raw material storage.

"Concentrated animal feeding operation" or "CAFO" means an animal feeding operation that is defined as a "Large CAFO" or as a "Medium CAFO," or that is designated as a "Medium CAFO" or a "Small CAFO." Any AFO may be designated as a CAFO by the director in accordance with the provisions of 40 CFR 122.23 (April 14, 2003).

1. "Large CAFO." An AFO is defined as a Large CAFO if it stables or confines as many as or more than the numbers of animals specified in any of the following categories:

- a. 700 mature dairy cattle, whether milked or dry;
- b. 1,000 veal calves;
- c. 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls, and cow-calf pairs;
- d. 2,500 swine each weighing 55 pounds or more;
- e. 10,000 swine each weighing less than 55 pounds;
- f. 500 horses;
- g. 10,000 sheep or lambs;
- h. 55,000 turkeys;

- i. 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;
- j. 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
- k. 82,000 laying hens, if the AFO uses other than a liquid manure handling system;
- l. 30,000 ducks, if the AFO uses other than a liquid manure handling system; or
- m. 5,000 ducks, if the AFO uses a liquid manure handling system.

2. "Medium CAFO." The term "Medium CAFO" includes any AFO that has the type and number of animals found within any of the ranges below and that has been defined or designated as a CAFO. An AFO is defined as a Medium CAFO if:

a. The type and number of animals it stables or confines falls within any of the following ranges:

- (1) 200 to 699 mature dairy cattle (whether milked or dry cows);
- (2) 300 to 999 veal calves;
- (3) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls, and cow-calf pairs;
- (4) 750 to 2,499 swine (each weighing 55 pounds or more);
- (5) 3,000 to 9,999 swine (each weighing less than 55 pounds);
- (6) 150 to 499 horses;
- (7) 3,000 to 9,999 sheep or lambs;
- (8) 16,500 to 54,999 turkeys;
- (9) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;
- (10) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
- (11) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;
- (12) 10,000 to 29,999 ducks, if the AFO uses other than a liquid manure handling system; or
- (13) 1,500 to 4,999 ducks, if the AFO uses a liquid manure handling system; and

b. Either one of the following conditions are met:

- (1) Pollutants are discharged into [~~waters of the United States~~ surface waters of the state] through a man-made ditch, flushing system, or other similar man-made device; or
- (2) Pollutants are discharged directly into [~~waters of the United States~~ surface waters of the state] that originate outside of and pass over, across, or

through the facility or otherwise come into direct contact with the animals confined in the operation.

The term "man-made" means constructed by man and used for the purpose of transporting wastes.

3. "Small CAFO." An AFO that is designated as a CAFO and is not a Medium CAFO.

"Director" means the Director of the [Virginia] Department of Environmental Quality, or his designee.

"Operator" means any owner or operator (individual, partnership, corporation, or association) of an AFO or CAFO in this state that is eligible to be certified under the provisions of this general permit.

"Permittee" means any operator (individual, partnership, corporation, or association) in the Commonwealth of Virginia that is certified to be covered under the provisions of this general permit.

"Process wastewater" means water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water that comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.

"Production area" means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, baryards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions that separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

"Setback" means a specified distance from surface waters or potential conduits to surface waters where manure, litter, and process wastewater may not be land applied. Examples of conduits to surface waters include but are not limited to open tile line intake structures, sinkholes, and agricultural well heads.

"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Vegetated buffer" means a permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the

purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.

9 VAC 25-191-20. Purpose; delegation of authority; effective date of the permit.

A. This general permit regulation governs the pollutant management activities of animal wastes and process wastewater at concentrated animal feeding operations. These concentrated animal feeding operations may operate and maintain treatment works for waste storage, treatment or recycling and may perform land application of manure, litter, process wastewater, compost, biosolids, or sludges.

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

C. This general permit will become effective on [~~November 16, 2004~~ January 1, 2006], and will expire five years from the effective date.

9 VAC 25-191-30. Authorization to discharge.

A. Any owner or operator governed by this general permit is hereby authorized to discharge animal wastes and process wastewater at concentrated animal feeding operations to surface waters of the Commonwealth of Virginia provided that the owner submits a complete registration statement of 9 VAC 25-191-40 and receives notification of coverage by the board, and has complied with the following conditions:

1. The owner has not been required to obtain an individual permit according to 9 VAC 25-31;

[~~2. The owner has filed any required permit fee;~~]

[~~3. 2.~~] The owner has complied or will comply with the effluent limitations and other requirements of 9 VAC 25-191-50;

[~~4. 3.~~] The activities of the concentrated animal feeding operation shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law. There shall be no point source discharge of manure, litter or process wastewater [to surface waters of the state] except in the case of a storm event greater than the 25-year, 24-hour storm, except that for swine, poultry, and veal calf operations constructed after April 14, 2003, in the case of a storm event greater than the 100-year, 24-hour storm. [Agricultural storm water discharges are permitted.] Domestic sewage or industrial waste shall not be managed under this general permit;

[~~5. 4.~~] Confined poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit by a permittee for routine disposal of daily poultry mortalities shall be considered a violation of this permit. This prohibition shall not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.1-726 or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia; and

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[~~6.5.~~] *Adjoining property notification.*

a. The owner shall give notice of the registration statement to all owners or residents of property that adjoins the property on which the animal feeding operation will be located. Such notice shall include (i) the types and maximum number of animals that will be maintained at the facility and (ii) the address and phone number of the appropriate department regional office to which comments relevant to the permit may be submitted. This notice requirement is waived whenever registration is for the purpose of renewing coverage under a permit and no expansion is proposed and the department has not issued any special or consent order relating to violations under the existing permit. This notice is also waived for poultry operations except those that propose construction of new poultry growing houses after December 1, 2000.

b. Any person may submit written comments on the proposed operation to the department within 30 days of the date of the filing of the registration statement. If, on the basis of such written comments or his review, the director determines that the proposed operation will not be capable of complying with the provisions of the general permit, the director shall require the owner to obtain an individual permit for the operation. Any such determination by the director shall be made in writing and received by the owner not more than 45 days after the filing of the registration statement or, if in the director's sole discretion additional time is necessary to evaluate comments received from the public, not more than 60 days after the filing of the registration statement.

B. The owner shall not be authorized by this general permit to discharge to state waters specifically named in other board regulations or policies that prohibit such discharges.

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

9 VAC 25-191-40. Registration statement.

A. In order to be covered under the general permit, the owner shall file a complete VPDES Concentrated Animal Feeding Operation General Permit registration statement [or a VPA Animal Feeding Operation General Permit registration statement]. The registration statement [submitted] shall include the following information:

1. The name, location, and mailing address of the facility;
2. The latitude and longitude of the production area (entrance to production area);
3. The name, mailing address, and telephone number of the owner and operator;
4. The name and telephone number of a contact person other than the operator, if applicable;
5. The best time of day and day of the week to contact the operator or contact person;

6. If the facility has an existing VPA or VPDES permit, the permit number;

7. The method of mortality management;

8. A topographic map of the geographic area in which the CAFO is located showing the specific location of the production area;

9. Specific information about the maximum number [, average weight] of and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);

10. The type of containment and storage (anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, other) and total capacity for manure, litter, and process wastewater storage (tons/gallons);

11. The total number of acres under control of the applicant available for land application of manure, litter, or process wastewater;

12. Estimated amounts of manure, litter, and process wastewater generated per year (tons/gallons); and

13. Estimated amounts of poultry waste transferred to other persons per year (tons).

B. The applicant shall attach to the registration statement a copy of the [facility's approved nutrient management plan and a] letter from the Department of Conservation and Recreation certifying approval of the facility's nutrient management plan and [a copy of the approved nutrient management plan if the nutrient management plan was written after December 31, 2005, that the facility's nutrient management plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia].

C. The registration statement shall include the following certification: "I certify that notice of the registration statement has been given to all owners or residents of property that adjoins the property on which the [~~confined~~ concentrated] animal feeding operation will be located. This notice included the types and numbers of animals that will be maintained at the facility and the address and phone number of the appropriate Department of Environmental Quality regional office to which comments relevant to the permit may be submitted. (The preceding certification is waived if the registration is for renewing coverage under a permit and no expansion of the operation is proposed and the department has not issued any special or consent order relating to violations under the existing permit. This notice is also waived for poultry operations except those that propose construction of new poultry growing houses after December 1, 2000.) I certify under penalty of law that all the requirements of the board for the general permit are being met and 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."

D. Where to submit. The registration statement shall be submitted to the DEQ Regional Office that serves the area where the concentrated animal feeding operation is located.

9 VAC 25-191-50. Contents of the general permit.

Any CAFO whose registration statement is accepted by the board will receive the following general permit and shall comply with the requirements therein and be subject to the VPDES Permit Regulation, 9 VAC 25-31.

General Permit No.: VAG01
Effective Date: [January 1, 2006]
Expiration Date: [December 31, 2010]

GENERAL PERMIT FOR CONCENTRATED ANIMAL FEEDING OPERATIONS

AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND

THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of concentrated animal feeding operations are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in board regulations or policies that prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Part I - Pollutant Management and Monitoring Requirements, Part II - Best Management Practices, Nutrient Management, and Special Conditions, and Part III - Conditions Applicable to All VPDES Permits, as set forth herein.

PART I

POLLUTANT MANAGEMENT AND MONITORING REQUIREMENTS

A. Pollutant management authorization. During the period beginning with the date of coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to manage pollutants at the [~~permitted site~~ location or locations identified in the registration statement and the facility's approved nutrient management plan].

B. Monitoring requirements.

1. [~~Ground water monitoring wells shall be installed at earthen liquid waste storage facilities constructed after November 17, 2004, to an elevation below the seasonal~~

~~high water table or within one foot thereof. A minimum of one up gradient and one down gradient well shall be installed at each new earthen waste storage facility. At earthen liquid waste storage facilities constructed after December 1, 1998, to an elevation below the seasonal high water table or within one foot thereof, ground water monitoring wells shall be installed. A minimum of one up gradient and one down gradient well shall be installed at each earthen waste storage facility that requires ground water monitoring.] Existing wells may be utilized to meet this requirement if properly located and constructed.~~

2. All facilities previously covered under a VPA permit that required ground water monitoring shall continue monitoring consistent with the requirements listed below regardless of where they are located relative to the seasonal high water table.

3. At facilities where ground water monitoring is required, the following conditions apply:

- One data set shall be collected from each well prior to any waste being placed in the storage facility.
- The static water level shall be measured prior to bailing well water for sampling.
- At least three well volumes of ground water shall be withdrawn immediately prior to sampling each monitoring well.

4. In accordance with subdivisions 2 and 3 of this subsection, the ground water shall be monitored by the permittee at the monitoring wells as specified below. Additional ground water monitoring may be required in the facility's approved nutrient management plan.

GROUND WATER MONITORING

PARAMETER	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Static Water Level	NL	ft	1/3 years	Measured
Ammonia Nitrogen	NL	[mg/l-mg/L]	1/3 years	Grab
Nitrate Nitrogen	NL	[mg/l mg/L]	1/3 years	Grab
pH	NL	SU	1/3 years	Grab
Conductivity	NL	umhos/cm	1/3 years	Grab

NL = No limit, this is a monitoring requirement only.

5. Soil at the land application sites shall be monitored as specified below. Additional soils monitoring may be required in the facility's approved nutrient management plan.

SOILS MONITORING

PARAMETER	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
pH	NL	SU	1/3 years	Composite
Phosphorus	NL	ppm or lbs/ac	1/3 years	Composite

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Potash	NL	ppm or lbs/ac	1/3 years	Composite
Calcium	NL	ppm or lbs/ac	1/3 years	Composite
Magnesium	NL	ppm or lbs/ac	1/3 years	Composite

NL = No limit, this is a monitoring requirement only.
 SU = Standard Units

6. Soil monitoring shall be conducted at a depth of between 0-6 inches, unless otherwise specified in the facility's approved nutrient management plan.

7. Waste shall be monitored as specified below. Additional waste monitoring may be required in the facility's approved nutrient management plan.

WASTE MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Total Kjeldahl Nitrogen	NL	*	1/year	Composite
Ammonia Nitrogen	NL	*	1/year	Composite
Total Phosphorus	NL	*	1/year	Composite
Total Potassium	NL	*	1/year	Composite
Calcium**	NL	*	1/year	Composite
Magnesium**	NL	*	1/year	Composite
Moisture Content	NL	%	1/year	Composite

NL = No limit, this is a monitoring requirement only.

* Parameters for waste may be reported as a percent, as lbs/ton or lbs/1000 gallons, or as ppm where appropriate.

** Calcium and magnesium monitoring not required for poultry waste.

8. Analysis of soil and waste shall be according to methods specified in the facility's approved nutrient management plan.

9. All monitoring data collected as required by this section and any additional monitoring data shall be maintained on site for a period of five years and shall be made available to department personnel upon request.

PART II

WASTE STORAGE FACILITY DESIGN, OPERATION, AND MAINTENANCE; RECORDKEEPING AND REPORTING; NUTRIENT MANAGEMENT; SPECIAL CONDITIONS

A. Waste storage facility design, operation and maintenance.

1. Any manure, litter, or process wastewater storage facility shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm; or for swine, poultry, and veal calf operations constructed after April 14, 2003, in the case of a storm event greater than the 100-year, 24-hour storm, and (ii) provide adequate waste storage capacity to accommodate periods when the ground is frozen or

saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.

2. Waste storage facilities constructed after April 14, 2003, shall not be located on a 100-year floodplain, except that dry poultry waste storage facilities may be constructed on the 100-year floodplain, when the following conditions are met:

- When the poultry operation has no land outside the floodplain on which to construct the facility; and
- The facility is constructed so that the poultry waste is stored above the 100-year flood elevation or otherwise protected from floodwaters through the construction of berms or similar best management flood control structures.

New, expanded or replacement poultry growing houses that are constructed after December 1, 2000, shall not be located within a 100-year floodplain unless they are part of an existing, ongoing confined poultry feeding operation and are constructed so that the poultry and poultry litter are housed above the 100-year flood elevation or otherwise protected from floodwaters through construction of berms or similar best management flood control structures.

3. [New] Earthen liquid waste storage facilities [constructed after December 1, 1998,] shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one-foot thickness with a maximum permeability rating of 0.0014 inches per hour. A licensed professional engineer, an employee of the Natural Resources Conservation Service of the United States Department of Agriculture with appropriate engineering approval authority, or an employee of a soil and water conservation district with appropriate engineering approval authority shall certify that the siting, design and construction of the waste storage facility comply with the requirements of this permit. This certification shall be maintained on site.

4. At earthen liquid waste storage facilities constructed below the seasonal high water table, the top surface of the waste shall be maintained at a level of at least two feet above the water table.

5. All liquid waste storage facilities shall maintain [~~one foot of freeboard at all times, up to and including~~ at least one foot of freeboard at all times, except in the case of a storm event greater than] a 25-year, 24-hour storm. Liquid waste storage facilities at swine, poultry, and veal calf operations constructed after April 14, 2003, shall maintain [~~one foot of freeboard at all times, up to and including~~ at least one foot of freeboard at all times, except in the case of a storm event greater than] a 100-year, 24-hour storm.

6. All equipment needed for the proper operation of the permitted facilities shall be maintained in good working order. The manufacturer's operating and maintenance

manuals shall be retained for references to allow for timely maintenance and prompt repair of equipment when appropriate. The operator shall periodically inspect for leaks on equipment used for land application of manure, litter, or process wastewater.

7. All open surface liquid impoundments shall have a depth marker that clearly indicates the minimum capacity necessary to contain the runoff and direct precipitation of the 25-year, 24-hour rainfall event; or in the case of swine, poultry, and veal calf operations constructed after April 14, 2003, the runoff and direct precipitation from a 100-year, 24-hour rainfall event.

8. When any waste storage facility is no longer needed, the permittee shall close it in a manner that (i) minimizes the need for further maintenance and (ii) controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, the post-closure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the ground water, surface water or the atmosphere. At closure, the permittee shall remove all waste from the waste storage facility. At waste storage facilities without permanent covers and impermeable ground barriers, all residual waste shall be removed from the surface below the stockpile when the waste is taken out of storage. Removed waste materials shall be utilized according to the nutrient management plan.

9. Poultry waste shall be stored according to the nutrient management plan and in a manner that prevents contact with surface water and ground water. Dry poultry waste that is stockpiled outside of the growing house for more than 14 days shall be kept in a facility that provides adequate storage.

Adequate storage shall, at a minimum, include the following:

- a. Poultry waste shall be covered to protect it from precipitation and wind;
- b. Storm water shall not run onto or under the stored poultry waste; and
- c. A minimum of two feet separation distance shall be maintained to the seasonal high water table or an impermeable barrier shall be used under the stored poultry waste. All dry poultry waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. Seasonal high water table means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers shall be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a

minimum permeability rating of 0.0014 inches per hour (1×10^{-6} centimeters per second).

10. Mortalities shall not be disposed of in any liquid manure or process wastewater system, and the permittee shall record methods of mortality management and practices used by the CAFO to prevent the discharge of pollutants to surface water. Confined poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit for routine disposal of daily poultry mortalities by a permittee shall be considered a violation of this permit. This prohibition does not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.1-726 or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.

B. Recordkeeping and reporting.

1. The permittee shall maintain records documenting the following visual inspections:

- a. Weekly inspections of all storm water diversion devices, runoff diversion structures, and devices channelling contaminated storm water to any wastewater or manure storage structure;
- b. Daily inspection of water lines, including drinking water or cooling water lines; and
- c. Weekly inspections of the manure, litter, and process wastewater storage structures; the inspection shall record the level in liquid impoundments as indicated by a depth marker.

The permittee shall also document any actions taken to correct deficiencies found during the visual inspections; deficiencies not corrected within 30 days shall be accompanied by an explanation of the factors preventing immediate correction;

2. The permittee shall maintain records documenting the current design of any manure or litter storage structures, including volume for solids accumulation, design treatment volume, total design volume, and approximate number of days of storage capacity;

3. The permittee shall maintain records of the date, time, and estimated volume of any overflow from a waste or process wastewater storage structure;

4. Records shall be maintained to demonstrate:

- a. What fields under the ownership or operational control of the CAFO received waste;
- b. At what rate waste has been applied;
- c. That the application schedule has been followed;
- d. The method used to apply the waste;
- e. What crops have been planted;
- f. The weather conditions at the time of application and for 24 hours prior to and following application;

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g. What nutrients from sources other than manure, litter or process wastewater have been applied to each field; and

h. The date or dates of manure application equipment inspection.

These records shall be maintained on site for a period of five years after recorded application is made and shall be made available to department personnel upon request.

5. The permittee shall submit an annual report to the director by February 15 of each year for the previous calendar year or part thereof since covered by this general permit. The annual report shall include:

a. The number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);

b. Estimated amount of total manure, litter and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);

c. Estimated amount of poultry waste transferred to other persons by the CAFO in the previous 12 months (tons);

d. Total number of acres for land application covered by the facility's approved nutrient management plan;

e. Total number of acres under control of the CAFO that were used for land application of manure, litter and process wastewater in the previous 12 months;

f. Summary of all manure, litter and process wastewater discharges from the production area that entered or could be expected to enter state waters in the previous 12 months, including date, time, and approximate volume; and

g. A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner.

6. The permittee shall create, maintain for five years, and make available to the director, upon request, any records that will document the implementation and management of the minimum elements described below:

a. Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;

b. Ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;

c. Ensure that clean water is diverted, as appropriate, from the production area;

d. Prevent direct contact of confined animals with [~~waters of the United States~~ surface waters of the state];

e. Ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants;

f. Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to [~~waters of the United States~~ surface waters of the state];

g. Identify protocols for appropriate testing of manure, litter, process wastewater, and soil;

h. Establish protocols to land apply manure, litter or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater.

C. Nutrient management.

1. All CAFO owners or operators shall [~~develop and~~] implement a nutrient management plan (NMP) approved by the Department of Conservation and Recreation [~~that~~]. All NMP's written after December 31, 2005, shall be developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia. The NMP] shall be maintained on site. All NMPs developed for poultry operations shall be developed with respect to existing state law and regulation. The NMP shall address the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen [~~and phosphorus~~] loss to ground and surface waters. [NMP's written after December 31, 2025, and NMP's implemented after December 31, 2006, shall also include provisions to minimize phosphorus loss to ground and surface waters according to the most current standards and criteria development by the Department of Conservation and Recreation at the time the plan is written.] The NMP shall be enforceable through this permit. The NMP shall contain at a minimum the following information:

a. Site map indicating the location of the waste storage facilities and the fields where waste will be applied, unless exempted in Part II D;

b. Site evaluation and assessment of soil types and potential productivities;

c. Nutrient management sampling including soil and waste monitoring;

d. Storage and land area requirements;

e. Calculation of waste application rates;

f. Waste application schedules; and

g. A plan for waste utilization in the event the operation is discontinued.

2. Buffer zones shall be maintained as follows:

a. Distance from occupied dwellings not on the owner's property - 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);

b. Distance from water supply wells or springs -100 feet;

c. Distance from surface water courses:

(1) 100 feet (without a vegetated buffer); [or]

(2) 35-foot wide vegetated buffer; or

(3) Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer, or 35-foot wide vegetated buffer.

d. Distance from rock outcroppings (except limestone) - 25 feet;

e. Distance from limestone outcroppings - 50 feet;

f. Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.

D. Special conditions.

1. Poultry waste may be transferred from a permitted poultry grower to another person or broker without the requirement for the identification of fields where such waste will be applied in the facility's approved nutrient management plan if the following conditions are met:

~~[a. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry grower shall provide that person a copy of the most recent nutrient analysis for the poultry waste and a fact sheet approved by the department, in consultation with the Department of Conservation and Recreation, that includes appropriate practices for proper storage and management of the waste. The person receiving the waste shall provide the poultry grower his name and address and acknowledge in writing receipt of the waste, the nutrient analysis and the fact sheet. If the person receiving the waste is a poultry waste broker, then he shall also certify in writing that he will provide a copy of the nutrient analysis and fact sheet to each end user to whom he transfers poultry waste.~~

~~b. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry grower shall keep a record of the amount of poultry waste received by the person, the date of the transaction, the nutrient content of the waste, the locality in which the recipient intends to utilize the waste (i.e., nearest town or city and zip code), the name of the stream or waterbody known to the recipient that is nearest to the waste utilization site,~~

~~and the signed waste transfer acknowledgement. These records shall be maintained on site for five years after the transaction and shall be made available to department personnel upon request.~~

a. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry grower shall provide that person a copy of the most recent nutrient analysis for the poultry waste and a fact sheet approved by the department, in consultation with the Department of Conservation and Recreation, that includes appropriate practices for proper storage and management of the waste. The person or broker receiving the waste shall provide the poultry grower:

(1) His name and address,

(2) Written acknowledgement of receipt of the waste,

(3) The nutrient analysis of the waste, and

(4) The fact sheet.

If the person receiving the waste is a poultry waste broker, then he shall also certify in writing that he will provide a copy of the nutrient analysis and fact sheet to each end user to whom he transfers poultry waste.

b. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry grower shall keep a record of the following:

(1) The amount of poultry waste received by the person,

(2) The date of the transaction,

(3) The nutrient analysis of the waste,

(4) The locality in which the recipient intends to utilize the waste (i.e., nearest town or city and zip code),

(5) The name of the stream or waterbody known to the recipient that is nearest to the waste utilization site, and

(6) The signed waste transfer acknowledgement.

These records shall be maintained on site for five years after the transaction and shall be made available to department personnel upon request.

c. Poultry waste generated by this facility shall not be applied to fields owned by or under the operational control of either the poultry grower or a legal entity in which the poultry grower has an ownership interest unless the fields are included in the facility's approved nutrient management plan.]

2. The permittee shall notify the department's regional office at least 14 days prior to:

a. Animals being initially placed in the facility; or

b. Utilization of any new waste storage facilities.

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3. Each operator of a facility covered by this general permit shall have completed the training program offered or approved by the Department of Conservation and Recreation in the two years prior to submitting the registration statement for general permit coverage, or shall complete such training within one year after submitting the registration statement for general permit coverage. All operators shall complete the training program at least once every three years.

PART III

CONDITIONS APPLICABLE TO ALL VPDES PERMITS

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.
2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 (2001) or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.
3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that ensure accuracy of measurements.

B. Records.

1. Records of monitoring information shall include:
 - a. The date, exact place, and time of sampling or measurements;
 - b. The individual or individuals who performed the sampling or measurements;
 - c. The dates [~~and times~~] analyses were performed;
 - d. The individual or individuals who performed the analyses;
 - e. The analytical techniques or methods used; and
 - f. The results of such analyses.
2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the tenth day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department.

3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 (2001) or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.

4. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information that the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department upon request, copies of records required to be kept by this permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized discharges. Except in compliance with this permit, or another permit issued by the board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part III F or who discharges or causes or allows a discharge that

may reasonably be expected to enter state waters in violation of Part III F, shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long is it expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part III I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the treatment works; and
4. Flooding or other acts of nature.

I. Reports of noncompliance. The permittee shall report any noncompliance that may adversely affect state waters or may endanger public health.

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under this subdivision:

- a. Any unanticipated bypass; and
- b. Any upset that causes a discharge to surface waters.

2. A written report shall be submitted within five days and shall contain:

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
- c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under Part III I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report all instances of noncompliance not reported under Parts III I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part III I 2.

NOTE: The immediate (within 24 hours) reports required in Parts III G, H and I may be made to the department's regional office. Reports may be made by telephone or by fax. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

- a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(1) After promulgation of standards of performance under § 306 of the Clean Water Act that are applicable to such source; or

(2) After proposal of standards of performance in accordance with § 306 of the Clean Water Act that are applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal;

- b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or

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c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this subsection, a responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this subsection, a principal executive officer of a public agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, etc. All reports required by permits, and other information requested by the board shall be signed by a person described in Part III K 1, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part III K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation

of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part III K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part III K 2 shall be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Parts III K 1 or 2 shall make the following certification:

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

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under § 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 90 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by, § 510 of the Clean Water Act. Except as provided in permit conditions on "bypassing" (Part III U), and "upset" (Part III V), nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

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

Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts III U 2 and U 3.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible at least ten days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part III I.

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under Part III U 2.

b. The board may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed above in Part III U 3 a.

V. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Part III V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence, that:

a. An upset occurred and that the permittee can identify the causes of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in Part III I; and

d. The permittee complied with any remedial measures required under Part III S.

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3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director or an authorized representative, upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or parameters at any location.

For purposes of this subsection, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department. Except as provided in Part III Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the State Water Control Law and the Clean Water Act.

2. As an alternative to transfers under Part III Y 1, this permit may be automatically transferred to a new permittee if:

a. The current permittee notifies the department at least two days in advance of the proposed transfer of the title to the facility or property;

b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

c. The board does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If this notice is not

received, the transfer is effective on the date specified in the agreement mentioned in Part III Y 2 b.

Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

<p>NOTICE: The form used in administering 9 VAC 25-191, Virginia Pollutant Discharge Elimination System (VPDES), is listed below. The amended form is published following the listing.</p>

FORMS

Virginia [~~Pollution~~ Pollutant] Discharge [Elimination] General Permit Registration Statement for Concentrated Animal Feeding Operations [, eff. 11/04].

COMMONWEALTH of VIRGINIA
 DEPARTMENT OF ENVIRONMENTAL QUALITY
 VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM
 GENERAL PERMIT REGISTRATION STATEMENT
 FOR CONCENTRATED ANIMAL FEEDING OPERATIONS

1. Facility Name: _____
 Address: _____ City: _____ State: _____ Zip Code: _____
2. Provide latitude and longitude of the production area (entrance to production area):
 Latitude _____ ° _____ ' _____ " Longitude _____ ° _____ ' _____ "
- 3a. Owner Name: _____
 Address: _____ City: _____ State: _____ Zip Code: _____
 Phone: _____
- 3b. Operator Name: _____
 Address: _____ City: _____ State: _____ Zip Code: _____
 Phone: _____
4. Facility Contact Person other than operator (if applicable): _____
 Phone: _____
5. Best Time to Contact Operator or Contact Person (day and time): _____
6. If the facility has an existing VPA or VPDES permit number, provide number: _____
7. Identify the method of mortality management: _____
8. Topographic map attached (check one) Yes _____ No _____ (a topographic map of the geographic area in which the facility is located identifying the specific location of the production area must be attached)
9. Indicate the maximum number of the type(s) of animal(s) that will be maintained at your facility:

Animal Type	Maximum Number	Average Weight
Mature Dairy Cows (whether milked or dry cows)	_____	_____
Veal Calves	_____	_____
Cattle other than Mature Dairy Cows or Veal Calves (includes but is not limited to heifers, steers, bulls, and cow-calf pairs)	_____	_____
Swine weighing 55 pounds or more	_____	_____
Swine weighing less than 55 pounds	_____	_____
Horses	_____	_____
Sheep or Lambs	_____	_____
Turkeys	_____	_____
Laying Hens or Broilers	_____	_____
specify if liquid manure handling system (yes/no)	_____	_____
Chickens (other than Laying Hens)	_____	_____
specify if liquid manure handling system (yes/no)	_____	_____
Ducks	_____	_____
Other _____	_____	_____
- 10a. Indicate the type(s) of containment and storage (anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, other (specify)
 Type of containment: _____
- 10b. Total capacity for manure, litter, and process wastewater storage (tons and/or gallons): _____

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11. Indicate the total number of acres under control of the applicant available for land application of manure, litter, or process wastewater: _____ acres

12. Estimate the amounts of manure, litter, and process wastewater generated per year (gallons/tons):

	<u>Amount</u>	<u>Units (gallons or tons)</u>
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Manure	_____	_____
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Litter	_____	_____
--------	-------	-------

Process Wastewater	_____	_____
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13. Estimate the amounts of poultry waste transferred to other persons per year in tons: _____

14. The owner of the pollutant management activities must attach to the registration statement the following:

- a) a copy of the facility's approved nutrient management plan,
- b) a letter from the Department of Conservation and Recreation certifying approval of the facility's nutrient management plan, and
- c) a letter from the Department of Conservation and Recreation certifying that the facility's nutrient management plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia, if the nutrient management plan was written after December 31, 2005.

15. **Certification:**

"I certify that notice of the registration statement has been given to all owners or residents of property that adjoins the property on which the concentrated animal feeding operation will be located. This notice included the types and numbers of animals which will be maintained at the facility and the address and phone number of the appropriate Department of Environmental Quality regional office to which comments relevant to the permit may be submitted. (The preceding certification is waived if the registration is for renewing coverage under a permit and no expansion of the operation is proposed and the Department has not issued any special or consent order relating to violations under the existing permit. This notice is also waived for poultry operations except those that propose construction of new poultry growing houses after December 1, 2000) I certify under penalty of law that all the requirements of the Board for the general permit are being met and 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."

Print Name: _____ Title: _____

Signature: _____ Date: _____

Title of Regulation: 9 VAC 25-192. Virginia Pollution Abatement (VPA) General Permit Regulation for Animal Feeding Operations (amending 9 VAC 25-192-10, 9 VAC 25-192-20, 9 VAC 25-192-50, 9 VAC 25-192-60 and 9 VAC 25-192-70; repealing 9 VAC 25-192-30 and 9 VAC 25-192-40).

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

Effective Date: November 3, 2004.

Agency Contact: Neil Zahradka, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4102, FAX (804) 698-4032, or e-mail nrzahradka@deq.virginia.gov.

Summary:

This action reissues the existing Virginia Pollution Abatement (VPA) General Permit for Animal Feeding Operations. This action will also amend the regulation, where applicable, to reflect changes to 40 CFR Parts 9, 122, 123, and 412, as published in the Federal Register, Volume 68, No. 29, dated February 12, 2003. The current VPA general permit expires November 16, 2004. This VPA general permit regulation for animal feeding operations (9 VAC 25-192) governs the management of pollutants at concentrated animal feeding operations (CAFOs) with 300 or more animal units utilizing a liquid manure collection and storage system. A new general permit regulation, 9 VAC 25-191, is amended in accordance with § 62.1-44.17:1 of the Code of Virginia to regulate certain CAFOs under the Virginia Pollutant Discharge Elimination System (VDPES) as required by the federal CAFO rule, which became effective April 14, 2003. 9 VAC 25-191 affects a subset of CAFOs currently regulated by 9 VAC 25-192. This action is being taken to amend 9 VAC 25-192 to exclude those CAFOs that will be regulated by 9 VAC 25-191 and to make it consistent with the requirements of the regulation.

CHAPTER 192.

VIRGINIA POLLUTION ABATEMENT (VPA) GENERAL PERMIT REGULATION FOR ~~CONFINED~~ ANIMAL FEEDING OPERATIONS.

9 VAC 25-192-10. 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 Permit Regulation (9 VAC 25-30-10 et seq. 9 VAC 25-32) unless the context clearly indicates otherwise, except that for the purposes of this chapter:

["Agricultural storm water" means storm water that is not the sole result of land application of manure, litter or process wastewater. Where manure, litter or process wastewater has been applied in accordance with a nutrient management plan approved by the Virginia Department of Conservation and Recreation and in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater, a precipitation-related discharge of manure, litter,

or process wastewater from land areas under the control of an animal feeding operation is an agricultural storm water discharge.]

"~~Confined~~ Animal feeding operation" means a lot or facility, ~~together with any associated treatment works,~~ (other than an aquatic animal production facility) where ~~both~~ of the following conditions are met:

1. Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and
2. Crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the operation of the lot or facility.

Two or more animal feeding operations under common ownership are a single animal feeding operation for the purposes of determining the number of animals at an operation, if they adjoin each other, or if they use a common area or system for the disposal of wastes.

"Confined animal feeding operation," for the purposes of this regulation, has the same meaning as an "animal feeding operation."

"Department" means the Virginia Department of Environmental Quality.

"Director" means the Director of the Virginia Department of Environmental Quality or his designee.

"Operator" means any person who owns or operates an animal feeding operation.

"Permittee" means the owner whose ~~confined~~ animal feeding operation is covered under this general permit.

"Waste storage facility" means a waste holding pond or tank used to store manure prior to land application, or a lagoon or treatment facility used to digest or reduce the solids or nutrients.

"Vegetated buffer" means a permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.

["300 animal units" means 300,000 pounds of live animal weight, or the following numbers and types of animals:

- a. 300 slaughter and feeder cattle;
- b. 200 mature dairy cattle (whether milked or dry cows);
- c. 750 swine each weighing over 25 kilograms (approximately 55 pounds);
- d. 150 horses;
- e. 3,000 sheep or lambs;
- f. 16,500 turkeys;
- g. 30,000 laying hens or broilers.]

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9 VAC 25-192-20. Purpose; delegation of authority; effective date of permit.

A. This general permit regulation governs the pollutant management activities of animal wastes at ~~confined~~ animal feeding operations ~~not covered by a Virginia [Pollution Pollutant] Discharge Elimination System (VPDES) permit, and~~ having 300 or more animal units utilizing a liquid manure collection and storage system. These ~~confined~~ animal feeding operations may operate and maintain treatment works for waste storage, treatment or recycle and may perform land application of *manure, wastewater, compost, or sludges.*

B. *The Director of the Department of Environmental Quality, 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 general permit will become effective on November 16, 2004. This general permit will expire 10 years from the effective date.*

9 VAC 25-192-30. Delegation of authority. (Repealed.)

~~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.~~

9 VAC 25-192-40. Effective date of the permit. (Repealed.)

~~This general permit will become effective on November 16, 1994. This general permit was modified to comply with Chapters 805 and 863 of the 1998 Acts of the General Assembly. The effective date of the modification is December 1, 1998. This general permit will expire 10 years from the effective date. Any covered owner is authorized to manage pollutants, that are not point source discharges to state waters, under this general permit upon compliance with all the provisions of 9 VAC 25-192-50 and 9 VAC 25-192-60 and the receipt of this general permit.~~

9 VAC 25-192-50. Authorization to manage pollutants.

A. Any owner governed by this general permit is hereby authorized to manage pollutants at ~~confined~~ animal feeding operations provided that the owner files the registration statement of 9 VAC 25-192-60, complies with the requirements of 9 VAC 25-192-70, and provided that:

1. ~~The owner shall not have been required to obtain an individual permit as may be required in the Permit Regulation. Currently permitted operations may submit a registration statement for operation under the general permit and be authorized under this general permit provided that the criteria of the general permit are met. The operator has not been required to obtain a VPDES permit or an individual permit according to [9 VAC 25-35-260-B 9 VAC 25-32-260 B];~~

2. The operation of the ~~facilities of the owner~~ animal feeding operation shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law. There shall be no point source discharge of wastewater [*to surface waters of the state*] except in the case of a storm event greater than the 25-year, 24-hour storm. [*Agricultural stormwater discharges*

are permitted.] Domestic sewage or industrial waste shall not be managed under this general permit.

3. The owner of any proposed pollutant management activities or those which have not previously been issued a valid Virginia [Pollution] Abatement (VPA) permit or Industrial Waste No Discharge (IW-ND) Certificate Virginia [Pollution Pollutant] Discharge Elimination System (VPDES) permit must attach to the registration statement a notification from the governing body of the county, city or town where the operation is located that the operation is consistent with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia.

4. ~~A Nutrient Management Plan (NMP) for the facility must be approved by The Department of Conservation and Recreation (DCR) must approve a nutrient management plan for the animal feeding operation prior to the submittal of the registration statement. The owner of the pollutant management activities operator shall attach to the registration statement a copy of the approved Nutrient Management Plan and a copy of the letter from the Department of Conservation and Recreation certifying approval of the Nutrient Management Plan [, and if the plan was written after December 31, 2005, that the plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia] . The operator shall implement the approved nutrient management plan.~~

5. [a.] The ~~owner~~ operator shall give notice of the registration statement to all owners or residents of property that adjoins the property on which the ~~confined~~ animal feeding operation will be located. Such notice shall include (i) the types and maximum number of animals which will be maintained at the facility and (ii) the address and phone number of the appropriate department regional office to which comments relevant to the permit may be submitted. This notice requirement is waived whenever registration is for the purpose of renewing coverage under the permit and no expansion is proposed and the department has not issued any special or consent order relating to violations under the existing permit.

[b. Any person may submit written comments on the proposed operation to the department within 30 days of the date of the filing of the registration statement. If, on the basis of such written comments or his review, the director determines that the proposed operation will not be capable of complying with the provisions of the general permit, the director shall require the owner to obtain an individual permit for the operation. Any such determination by the director shall be made in writing and received by the owner not more than 45 days after the filing of the registration statement or, if in the director's sole discretion additional time is necessary to evaluate comments received from the public, not more than 60 days after the filing of the registration statement.]

6. Each operator of a facility covered by this general permit ~~on July 1, 1999, shall, by January 1, 2000, complete shall have completed~~ the training program offered or approved by

the Department of Conservation and Recreation. ~~Each operator of a facility permitted after July 1, 1999, in the two years prior to submitting the registration statement for general permit coverage, or shall complete such training within one year after the registration statement has been submitted for general permit coverage. Thereafter, All operators shall complete the training program at least once every three years.~~

B. Receipt of this general permit does not relieve any ~~owner~~ operator of the responsibility to comply with any other applicable federal, state or local statute, ordinance, or regulation.

9 VAC 25-192-60. Registration statement.

~~The owner~~ A. In order to be covered under the general permit, the operator shall file a complete VPA General Permit Registration Statement for the management of pollutants at ~~confined~~ animal feeding operations in accordance with this chapter. ~~The registration statement shall [contain be deemed complete for registration under the VPA General Permit if it contains] the following information:~~

1. The animal feeding operation operator's name, mailing address and telephone number;
2. The location of the animal feeding operation;
3. The name and telephone number of a contact person other than the operator, if necessary;
4. The best time of day and day of the week to contact the operator or the contact person;
5. If the facility has an existing VPA permit number, the permit number;
6. The type or types of animals (dairy cattle, slaughter and feeder cattle, swine, other) and the maximum number and average weight of the type or types of animals to be maintained at the animal feeding operation;

~~Any owner proposing a new pollutant management activity shall file a complete registration statement. Any owner with an existing pollutant management activity covered by an individual VPA permit who is proposing to be covered by this general permit shall file a complete registration statement.~~

~~The required registration statement shall be in the following form:~~

COMMONWEALTH of VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY
VIRGINIA POLLUTION ABATEMENT GENERAL PERMIT
REGISTRATION
STATEMENT FOR
CONFINED ANIMAL FEEDING OPERATIONS

1. Facility Name:
Address:
City: _____ State: _____ Zip Code: _____
2. Owner Name:
Address:
City: _____ State: _____ Zip Code: _____
3. Operator Name
Address

City: _____ State: _____ Zip Code: _____

Phone: _____
Facility Contact:
Phone: _____

Best Time to Contact (day time): _____

4. Does this facility have an existing VPA permit or IW ND Certificate?

Yes _____ No _____

If yes, list the existing VPA permit number or IW ND Certificate number: _____

5. Indicate the maximum number and average weight of the type(s) of animal which will be maintained at your facility:

Animal Type	Maximum Number	Average Weight
_____	_____	_____
_____	_____	_____

Dairy Cattle _____

Slaughter and Feeder Cattle _____

Swine _____

Other _____

~~6- 7. The owner operator of any proposed pollutant management activities or those which have not previously been issued a valid VPA permit or IW ND Certificate Virginia Pollutant Discharge Elimination System (VPDES) permit must attach to the registration statement the notification from the governing body of the county, city or town where the operation is located that the operation is consistent with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia;~~

~~7. The owner of the pollutant management activities must attach to the registration statement a copy of the letter from the Department of Conservation and Recreation certifying approval of the Nutrient Management Plan and a copy of the approved Nutrient Management Plan.~~

~~8. A copy of the nutrient management plan approved by the Department of Conservation and Recreation and a copy of the letter certifying approval of the plan [, and if the plan was written after December 31, 2005, that the plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia]; and~~

~~8- 9. The following certification: "I certify that notice of the registration statement has been given to all owners or residents of property that adjoins the property on which the confined animal feeding operation will be located. This notice included the types and numbers of animals which will be maintained at the facility and the address and phone number of the appropriate Department of Environmental Quality regional office to which comments relevant to the permit may be submitted. (The preceding certification is waived if the registration is for renewing coverage under the general permit and no expansion of the operation is proposed and the department has not issued any special or consent order relating to violations under the existing permit.) I certify under penalty of law that all the requirements of the board for the general permit are being met and that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel~~

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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."

Print Name:

Title:

Signature: _____ Date:

B. The registration statement shall be signed in accordance with 9 VAC 25-32-50.

9 VAC 25-192-70. Contents of the general permit.

Any ~~owner who submits a complete operator whose~~ registration statement ~~is accepted by the board~~ will receive the following general permit and shall comply with the requirements therein and be subject to the VPA permit regulation, 9 VAC 25-32.

General Permit No.: VPG1

Effective Date: [November 16, 2004]

Modification Date:

Expiration Date: [November 15, 2014]

GENERAL PERMIT FOR POLLUTANT MANAGEMENT ACTIVITIES FOR ~~CONFINED~~ ANIMAL FEEDING OPERATIONS AUTHORIZATION TO MANAGE POLLUTANTS UNDER THE VIRGINIA POLLUTION ABATEMENT PROGRAM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the State Water Control Law and State Water Control Board regulations adopted pursuant thereto, owners of ~~confined~~ animal feeding operations having 300 or more animal units utilizing a liquid manure collection and storage system are authorized to manage pollutants within the boundaries of the Commonwealth of Virginia, except where board regulations or policies prohibit such activities.

The authorized pollutant management activities shall be in accordance with the registration statement, supporting ~~data~~ documents submitted to the Department of Environmental Quality, ~~Water Division~~, this cover page, Part I, Part II, and Part III, as set forth herein.

Part I

A. Pollutant management and monitoring requirements.

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to manage pollutants at the ~~permitted site location or locations identified in the registration statement and the facility's approved nutrient management plan.~~

2. [~~Groundwater monitoring wells shall be installed at new earthen liquid waste storage facilities constructed after November 17, 2004, to an elevation below the seasonal high water table or within one foot of it. A minimum of one~~

~~up gradient and one down gradient well shall be installed at each new earthen waste storage facility. At earthen liquid waste storage facilities constructed after December 1, 1998, to an elevation below the seasonal high water table or within one foot thereof, ground water monitoring wells shall be installed. A minimum of one up gradient and one down gradient well shall be installed at each earthen waste storage facility that requires ground water monitoring.~~ Existing wells may be utilized to meet this requirement if properly located and constructed.

3. All facilities previously covered under a VPA permit that required groundwater monitoring shall continue monitoring consistent with the requirements listed below regardless of where they are located relative to the seasonal high water table.

~~4. In accordance with A 2 and A 3 above, the groundwater shall be monitored by the permittee at the monitoring wells as specified below:~~

4. At facilities where groundwater monitoring is required, the following conditions apply:

a. One data set shall be collected from each well prior to any waste being placed in the storage facility.

b. The static water level shall be measured prior to bailing well water for sampling.

c. At least three well volumes of ground water shall be withdrawn immediately prior to sampling each monitoring well.

5. In accordance with subdivisions 2 and 3 of this subsection, the ground water shall be monitored by the permittee at the monitoring wells as specified below. Additional groundwater monitoring may be required in the facility's approved nutrient management plan.

GROUNDWATER MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Static Water Level	NL	Ft	1/3 years	Measured
Ammonia Nitrogen	NL	[mg/l mg/L]	1/3 years	Grab
Nitrate Nitrogen	NL	[mg/l mg/L]	1/3 years	Grab
pH	NL	SU	1/3 years	Grab
Conductivity	NL	umhos/cm	1/3 years	Grab

NL = No limit, this is a monitoring requirement only.

~~5. Soil monitoring shall be performed as specified below along with any additional parameters specified in the approved Nutrient Management Plan.~~

~~6. The soils at the facility shall be monitored by the permittee as specified below:~~

6. Soil at the land application sites shall be monitored as specified below. Additional soils monitoring may be required in the facility's approved nutrient management plan.

SOILS MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
pH	NL	SU	1/3 years	Composite
Phosphorus	NL	ppm or lbs/ac	1/3 years	Composite
Potash	NL	ppm or lbs/ac	1/3 years	Composite
Calcium	NL	ppm or lbs/ac	1/3 years	Composite
Magnesium	NL	ppm or lbs/ac	1/3 years	Composite
Nitrate	NL	ppm	1/3 years	Composite

NL = No limit, this is a monitoring requirement only.
 SU = Standard Units

7. Soil monitoring ~~should~~ shall be conducted at a depth of between 0-6 inches, *unless otherwise specified in the facility's approved nutrient management plan. The Nitrate test is required at a soil depth of 0-12 inches on those sites planted in corn or small grains.*

8. ~~Waste monitoring shall be performed as specified below along with any additional parameters specified in the approved Nutrient Management Plan.~~

9. ~~The waste at the facility shall be monitored by the permittee as specified below:~~

8. *Waste shall be monitored as specified below. Additional waste monitoring may be required in the facility's approved nutrient management plan.*

WASTE MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Total Kjeldahl Nitrogen	NL	*	1/year	Composite
Ammonia Nitrogen	NL	*	1/year	Composite
Total Phosphorus	NL	*	1/year	Composite
Total Potassium	NL	*	1/year	Composite
Calcium	NL	*	1/year	Composite
Magnesium	NL	*	1/year	Composite
Moisture Content	NL	%	1/year	Composite

NL = No limit, this is a monitoring requirement only.

**Parameters for waste may be reported as a percent, as lbs/ton or lbs/1000 gallons, or as ppm where appropriate.*

9. *Analysis of soil and waste shall be according to methods specified in the facility's approved nutrient management plan.*

10. All monitoring data collected as required by ~~Part I A~~ *this section and any additional monitoring shall be maintained on site in accordance with Part II C for a period of five years and shall be made available to department personnel upon request.*

11. ~~The following recommendations will assist the permittee in performing proper monitoring. The Department of~~

~~Environmental Quality may be contacted for additional guidance on monitoring procedures.~~

~~a. A minimum of one up gradient and one down gradient well should be installed at each new earthen waste storage facility.~~

~~b. One data set should be collected from each well prior to any waste being placed in the storage facility.~~

~~c. The static water level should be measured prior to bailing well water for sampling.~~

~~d. At least three well volumes of groundwater should be withdrawn immediately prior to sampling each monitoring well.~~

~~e. Soil monitoring should be conducted at a depth of between 0-6 inches.~~

~~f. The nitrate test should be conducted at a soil depth of 0-12 inches on those sites planted in corn or small grains.~~

12. The department encourages the permittee to conduct additional monitoring. All additional monitoring, if any, should be conducted under the oversight of the department. If the permittee conducts additional monitoring in response to a written request from another person, the permittee may request that the person making the request bear the cost of the additional monitoring.

B. Other requirements or special conditions.

1. ~~The~~ Any liquid manure collection and storage facility shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is frozen or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.

2. ~~New~~ Waste storage facilities *constructed after [November 17, 2004 December 1, 1998]*, shall not be located on a 100-year floodplain.

3. ~~New~~ Earthen waste storage facilities *constructed after [November 17, 2004 December 1, 1998]*, shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A licensed professional engineer, an employee of the Natural Resources Conservation Service of the United States Department of Agriculture with appropriate engineering approval authority, or an employee of a soil and water conservation district with appropriate engineering approval authority shall certify that the siting, design and construction of the waste storage facility comply with the requirements of this permit. This certification shall be maintained on site.

4. At earthen waste storage facilities constructed below the seasonal high water table, the top surface of the waste must

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be maintained at a level of at least two feet above the water table.

5. All liquid waste storage facilities shall maintain [~~a freeboard of one foot~~] of freeboard at all times, up to and including [~~, plus the runoff and direct precipitation from a 25-year, 24-hour storm event at all times at least one foot of freeboard at all times, except in the case of a storm event greater than a 25-year, 24-hour storm~~].

6. All equipment needed for the proper operation of the permitted facilities shall be maintained in good working order. The manufacturer's operating and maintenance manuals shall be retained for references to allow for timely maintenance and prompt repair of equipment when appropriate. *The operator shall periodically inspect for leaks on equipment used for land application of waste.*

7. ~~The "Nutrient Management Plan" (NMP) approved by the Department of Conservation and Recreation (DCR) shall be implemented and maintained on site. The operator shall implement a nutrient management plan (NMP) approved by the Department of Conservation and Recreation. All NMPs written after December 31, 2005, shall be developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia. The NMP shall be maintained on site.]~~ *The NMP shall address the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus loss to ground and surface waters. [NMPs written after December 31, 2005, and NMPs implemented after December 31, 2006, shall also include provisions to minimize phosphorus loss to ground and surface waters according to the most current standards and criteria developed by DCR at the time the plan is written.]* The NMP shall be enforceable through this permit. The NMP shall contain at a minimum the following information:

- a. Site map indicating the location of the waste storage facilities and the fields where waste will be applied;
- b. Site evaluation and assessment of soil types and potential productivities;
- c. Nutrient management sampling including soil and waste monitoring;
- d. Storage and land area requirements;
- e. Calculation of waste application rates;
- f. Waste application schedules; and
- g. A plan for waste utilization in the event the operation is discontinued.

8. Buffer zones shall be maintained as follows:

- a. Distance from occupied dwellings *not on the owner's property*.....200 feet
(unless the occupant of the dwelling signs a waiver of the buffer zone)
- b. Distance from water supply wells or springs.....100 feet

c. Distance from surface water courses

by surface application).....50 feet

(by subsurface application).....25 feet

(1) 100 feet (without a vegetated buffer); [or]

(2) 35-foot wide vegetated buffer; or

(3) *Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer, or 35-foot wide vegetated buffer.*

d. Distance from rock outcropping (except limestone).....25 feet

e. Distance from limestone outcroppings.....50 feet

f. Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.

9. Records shall be maintained to demonstrate where and at what rate waste has been applied, that the application schedule has been followed, and what crops have been planted. These records shall be maintained on site for a period of five years after recorded application is made and shall be made available to department personnel upon request.

10. The permittee shall notify the department's regional office at least 14 days prior to: (i) animals being *initially* placed in the confined facility or (ii) *utilization of any new waste storage facilities.*

11. Each operator of a facility covered by this general permit ~~on July 1, 1999, shall, by January 1, 2000, complete~~ *shall have completed* the training program offered or approved by the Department of Conservation and Recreation. ~~Each operator of a facility permitted after July 1, 1999 in the two years prior to submitting the registration statement for general permit coverage, or shall complete such training within one year after the registration statement has been submitted for general permit coverage. Thereafter, All operators shall complete the training program at least once every three years.~~

Part II

A. Sampling and analysis methods.

1. Samples and measurements taken as required by this permit shall be representative of the volume and nature of the monitored activity.

2. Unless otherwise specified in this permit all sample preservation methods, maximum holding times and analysis methods for pollutants shall comply with requirements set forth in Guidelines Establishing Test Procedures for the Analysis of Pollutants (40 CFR 136 (4994 2001)).

3. The sampling and analysis program to demonstrate compliance with the permit shall at a minimum, conform to Part I of this permit.

4. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ~~insure~~ ensure accuracy of measurements.

B. Recording of results. For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:

1. The date, exact place and time of sampling or measurements;
2. The persons who performed the sampling or measurements;
3. The dates analyses were performed;
4. The persons who performed each analysis;
5. The analytical techniques or methods used; and
6. The results of such analyses and measurements.

C. Records retention. All records and information resulting from the monitoring activities required by this permit, including all records of analyses performed and calibration and maintenance of instrumentation and recording from continuous monitoring instrumentation shall be retained on site for five years from the date of the sample, measurement or report. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the director.

D. Additional monitoring by permittee. If the permittee monitors any pollutant at the locations designated herein more frequently than required by this permit, using approved analytical methods as specified above, the results of such monitoring shall be included in the calculation and reporting of the values required in the project report. Such increased frequency shall also be reported.

E. Reporting requirements.

1. If, for any reason, the permittee does not comply with one or more limitations, standards, monitoring or management requirements specified in this permit, the permittee shall submit to the department at least the following information:

- a. A description and cause of noncompliance;
- b. The period of noncompliance, including exact dates and times or the anticipated time when the noncompliance will cease; and
- c. Actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncompliance. Whenever such noncompliance may adversely affect state waters or may endanger public health, the permittee shall submit the above required information by oral report within 24 hours from the time the permittee becomes aware of the circumstances and by written report within five days. The director may waive the written report requirement on a case-by-case basis if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

2. The permittee shall report any unpermitted, unusual or extraordinary discharge which enters or could be expected to enter state waters. The permittee shall provide information, specified in Part II E 1 a through c, regarding each such discharge immediately, that is, as quickly as possible upon discovery, however, in no case later than 24 hours. A written submission covering these points shall be provided within five days of the time the permittee becomes aware of the circumstances covered by this paragraph. ~~If the department's regional office cannot be reached, the department maintains a 24-hour telephone service in Richmond (804-527-5200) to which the report required above is to be made.~~

NOTE: The immediate (within 24 hours) reports required in Parts II E 1 and 2 may be made to the department's regional office. Reports may be made by telephone or by fax. For reports outside normal working hours, a message shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

F. Signatory requirements. Any registration statement or certification required by this permit shall be signed as follows:

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

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

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

Part III

A. Change in management of pollutants.

1. All pollutant management activities authorized by this permit shall be made in accordance with the terms and conditions of the permit. The permittee shall submit a new registration statement 30 days prior to all expansions, production increases, or process modifications, that will result in the management of new or increased pollutants. The management of any pollutant at a level greater than that identified and authorized by this permit, shall constitute a violation of the terms and conditions of this permit.

2. The permittee shall promptly provide written notice of the following:

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a. Any new introduction of pollutant or pollutants, into treatment works or pollutant management activities which represents a significant increase in the management of pollutant or pollutants which may interfere with, pass through, or otherwise be incompatible with such works or activities, from an establishment or treatment works, if such establishment, treatment works has the potential to discharge pollutants to state waters; and

b. Any substantial change, whether permanent or temporary, in the volume or character of pollutants being introduced into such treatment works by an establishment, treatment works, or pollutant management activity that was introducing pollutants into such treatment works at the time of issuance of the permit.

Such notice shall include information on: (i) the characteristics and quantity of pollutants to be introduced into or from such treatment works or pollutant management activities; (ii) any anticipated impact of such change in the quantity and characteristics of the pollutants to be managed at a pollutant management activity; and (iii) any additional information that may be required by the director.

B. Treatment works operation and quality control.

1. Design and operation of facilities or treatment works and disposal of all wastes shall be in accordance with the registration statement filed with the department. The permittee has the responsibility of designing and operating the facility in a reliable and consistent manner to meet the facility performance requirements in the permit. If facility deficiencies, design or operational, are identified in the future which could affect the facility performance or reliability, it is the responsibility of the permittee to correct such deficiencies.

2. All waste collection, control, treatment, management of pollutant activities and disposal facilities shall be operated in a manner consistent with the following:

a. At all times, all facilities and pollutant management activities shall be operated in a prudent and workmanlike manner.

b. The permittee shall provide an adequate operating staff to carry out the operation, maintenance and testing functions required to ensure compliance with the conditions of this permit.

c. Maintenance of treatment facilities or pollutant management activities shall be carried out in such a manner that the monitoring and limitation requirements are not violated.

d. Collected solids shall be stored and utilized as specified in the approved Nutrient Management Plan in such a manner as to prevent entry of those wastes (or runoff from the wastes) into state waters.

C. Adverse impact. The permittee shall take all feasible steps to minimize any adverse impact to state waters resulting from noncompliance with any limitation or limitations or conditions specified in this permit, and shall perform and report such accelerated or additional monitoring as is necessary to

determine the nature and impact of the noncomplying limitation or limitations or conditions.

D. Duty to halt, reduce activity or to mitigate.

1. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

2. The permittee shall take all reasonable steps to minimize, correct or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Structural stability. The structural stability of any of the units or parts of the facilities herein permitted is the sole responsibility of the permittee and the failure of such structural units or parts shall not relieve the permittee of the responsibility of complying with all terms and conditions of this permit.

F. Compliance with state law. Compliance with this permit during its term constitutes compliance with the State Water Control Law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation.

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

H. Severability. The provisions of this permit are severable.

I. Duty to reregister. If the permittee wishes to continue to operate under a general permit after the expiration date of this permit, the permittee must submit a new registration statement at least 30 days prior to the expiration date of this permit.

J. Right of entry. The permittee shall allow, or secure necessary authority to allow, authorized state representatives, upon the presentation of credentials:

1. To enter upon the permittee's premises on which the establishment, treatment works, pollutant management activities, or discharge or discharges is located or in which any records are required to be kept under the terms and conditions of this permit;

2. To have access to inspect and copy at reasonable times any records required to be kept under the terms and conditions of this permit;

3. To inspect at reasonable times any monitoring equipment or monitoring method required in this permit;

4. To sample at reasonable times any waste stream, process stream, raw material or by-product; and

5. To inspect at reasonable times any collection, treatment, or pollutant management activities required under this permit. For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours,

and whenever the facility is discharging or involved in managing pollutants. Nothing contained here shall make an inspection time unreasonable during an emergency.

K. Transferability of permits. This permit may be transferred to a new owner by a permittee if:

1. The current permittee notifies the department 30 days in advance of the proposed transfer of the title to the facility or property;
2. The notice to the department includes a written agreement between the existing and proposed new permittee containing a specific date of transfer of permit responsibility, coverage and liability between them; and
3. The department does not within the 30-day time period notify the existing permittee and the proposed permittee of the board's intent to modify or revoke and reissue the permit. Such a transferred permit shall, as of the date of the transfer, be as fully effective as if it had been issued directly to the new permittee.

L. Permit modification. The permit may be modified when any of the following developments occur:

1. When a change is made in the promulgated standards or regulations on which the permit was based; or
2. When the level of management of a pollutant, not limited in the permit, exceeds applicable Water Quality Standards or the level which can be achieved by technology-based treatment requirements appropriate to the permittee.

M. Permit termination. After public notice and opportunity for a hearing, the general permit may be terminated for cause.

N. When an individual permit may be required. The director may require any permittee authorized to manage pollutants under this permit to apply for and obtain an individual permit. Cases where an individual permit may be required include, but are not limited to, the following:

1. The pollutant management activities violate the terms or conditions of this permit;
2. When additions or alterations have been made to the affected facility which require the application of permit conditions that differ from those of the existing permit or are absent from it; and
3. When new information becomes available about the operation or pollutant management activities covered by this permit which were not available at permit issuance and would have justified the application of different permit conditions at the time of permit issuance.

This permit may be terminated as to an individual permittee for any of the reasons set forth above after appropriate notice and an opportunity for a hearing.

O. When an individual permit may be requested. Any permittee operating under this permit may request to be excluded from the coverage of this permit by applying for an individual permit. When an individual permit is issued to a permittee the applicability of this general permit to the

individual permittee is automatically terminated on the effective date of the individual permit.

P. Civil and criminal liability. Nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance with the terms of this permit.

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

R. Unauthorized discharge of pollutants. Except in compliance with this permit, it shall be unlawful for any permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses.

NOTICE: The forms used in administering 9 VAC 25-192, Virginia Pollution Abatement (VPA) General Permit Regulation for Animal Feeding Operations, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

FORMS

Virginia Pollution Abatement General Permit Registration Statement for [~~Confined~~] Animal Feeding Operations [~~with instructions (rev. 2/99)~~ (rev. 8/04.)]

Local Government Ordinance Form (eff. 11/94).

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COMMONWEALTH of VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY

VIRGINIA POLLUTION ABATEMENT GENERAL PERMIT REGISTRATION STATEMENT
FOR ANIMAL FEEDING OPERATIONS

1. Facility Name: _____
Address: _____ City: _____ State: _____ Zip Code: _____
2. Owner Name: _____
Address: _____ City: _____ State: _____ Zip Code: _____
Phone: _____
3. Operator Name: _____
Address: _____ City: _____ State: _____ Zip Code: _____
Phone: _____
4. Facility Contact Person other than operator (if applicable): _____
Phone: _____
5. Best Time to Contact Operator or Contact Person (day and time): _____
If the facility has an existing VPA or VPDES permit number, provide number: _____
6. Indicate the maximum number of the type(s) of animal(s) that will be maintained at your facility:

Animal Type	Maximum Number	Average Weight
Mature Dairy Cattle (whether milked or dry cows)	_____	_____
Slaughter and Feeder Cattle	_____	_____
Swine	_____	_____
Other _____	_____	_____
7. The owner of any proposed pollutant management activities or those which have not previously been issued a valid VPA permit or VPDES permit must attach to the Registration Statement the notification from the governing body of the county, city or town where the operation is located that the operation is consistent with all ordinances adopted pursuant to Chapter 22 (§15.2-2200 et seq.) of Title 15.2 of the Code of Virginia.
8. The owner of the pollutant management activities must attach to the registration statement the following:
 - a) a copy of the facility's approved nutrient management plan,
 - b) a letter from the Department of Conservation and Recreation certifying approval of the facility's nutrient management plan, and
 - c) a letter from the Department of Conservation and Recreation certifying that the facility's nutrient management plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia, if the nutrient management plan was developed after December 31, 2005.

The additional information on page 2., lines 9-16 must be completed if this VPA general permit registration statement is to serve as registration for coverage under the Virginia Pollutant Discharge Elimination System (VPDES) general permit.

The certification on page 3, line 17 must be completed by all registrants.

Information required for registration for coverage under the Virginia Pollutant Discharge Elimination System (VPDES) general permit.

9. Indicate the maximum number of the type(s) of animal(s) that will be maintained at your facility:
- | Animal Type | Maximum Number | Average Weight |
|---|----------------|----------------|
| Veal Calves | _____ | _____ |
| Cattle other than Mature Dairy Cows or Veal Calves
(includes but is not limited to heifers, steers, bulls, and cow-calf pairs) | _____ | _____ |
| Swine weighing 55 pounds or more | _____ | _____ |
| Swine weighing less than 55 pounds | _____ | _____ |
| Horses | _____ | _____ |
| Sheep or Lambs | _____ | _____ |
| Turkeys | _____ | _____ |
| Laying Hens or Broilers | _____ | _____ |
| specify if liquid manure handling system (yes/no) | _____ | _____ |
| Chickens (other than Laying Hens) | _____ | _____ |
| specify if liquid manure handling system (yes/no) | _____ | _____ |
| Ducks | _____ | _____ |
| Other _____ | _____ | _____ |
10. Provide latitude and longitude of the production area (entrance to production area):
Latitude _____° _____' _____" Longitude _____° _____' _____"
11. Identify the method of mortality management: _____
12. Topographic map attached (check one) Yes _____ No _____ (a topographic map of the geographic area in which the facility is located identifying the specific location of the production area must be attached)
- 13a. Indicate the type(s) of containment and storage (anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, other (specify)
Type of containment: _____
- 13b. Total capacity for manure, litter, and process wastewater storage (tons and/or gallons):

14. Indicate the total number of acres under control of the applicant available for land application of manure, litter, or process wastewater: _____ acres
15. Estimate the amounts of manure, litter, and process wastewater generated per year (gallons/tons):
- | | Amount | Units (gallons or tons) |
|--------------------|--------|-------------------------|
| Manure | _____ | _____ |
| Litter | _____ | _____ |
| Process Wastewater | _____ | _____ |
16. Estimate the amounts of poultry waste transferred to other persons per year in tons: _____

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17. **Certification:**

"I certify that notice of the registration statement has been given to all owners or residents of property that adjoins the property on which the confined animal feeding operation will be located. This notice included the types and numbers of animals which will be maintained at the facility and the address and phone number of the appropriate Department of Environmental Quality regional office to which comments relevant to the permit may be submitted. (The preceding certification is waived if the registration is for renewing coverage under the general permit and no expansion of the operation is proposed and the Department has not issued any special or consent order relating to violations under the existing permit.) I certify under penalty of law that all the requirements of the Board for the general permit are being met and 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."

Print Name: _____ Title: _____

Signature: _____ Date: _____

Title of Regulation: 9 VAC 25-630. Virginia Pollution Abatement General Permit Regulation for Poultry Waste Management (amending 9 VAC 25-630-10, 9 VAC 25-630-20, 9 VAC 25-630-30 and 9 VAC 25-630-50).

Statutory Authority: §§ 62.1-44.15 and 62.1-44.17:1.1 of the Code of Virginia.

Effective Date: November 3, 2004.

Agency Contact: Neil Zahradka, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4102, FAX (804) 698-4032, or e-mail nrzahradka@deq.virginia.gov.

Summary:

This action amends the existing Virginia Pollution Abatement (VPA) General Permit for Poultry Waste Management, 9 VAC 25-630, where applicable, to reflect changes to 40 CFR Parts 9, 122, 123, and 412, as published in the Federal Register, Volume 68, No. 29, dated February 12, 2003. The current VPA general permit expires November 16, 2004. This general permit regulation governs the authority to manage pollutants from confined poultry feeding operations, including storage and land application of animal wastes. This VPA General Permit for Poultry Waste Management governs the management of poultry waste at confined poultry operations having 200 or more animal units. A new General Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Concentrated Animal Feeding Operations, 9 VAC 25-191 is amended in accordance with § 62.1-44.17:1 of the Code of Virginia to regulate concentrated animal feeding operations (CAFOs) under VPDES as required by the federal CAFO rule, which became effective April 14, 2003. The regulation 9 VAC 25-191 will affect a subset of the poultry operations regulated by 9 VAC 25-630. This action amends 9 VAC 25-630 to exclude poultry operations that will be regulated under the VPDES general permit regulation 9 VAC 25-191 and to make the requirements of the regulations consistent.

9 VAC 25-630-10. 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 VPA Permit Regulation (9 VAC 25-32 [~~10 et seq.~~]) unless the context clearly indicates otherwise, except that for the purposes of this chapter:

["Agricultural storm water" means storm water that is not the sole result of land application of manure, litter or process wastewater. Where manure, litter or process wastewater has been applied in accordance with a nutrient management plan approved by the Virginia Department of Conservation and Recreation and in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater, a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of an

animal feeding operation is an agricultural storm water discharge.]

"Animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where both of the following conditions are met:

- 1. Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and*
- 2. Crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the operation of the lot or facility.*

Two or more animal feeding operations under common ownership are a single animal feeding operation for the purpose of determining the number of animals at an operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

"Confined animal feeding operation," for the purposes of this regulation, has the same meaning as an "animal feeding operation."

"Confined poultry feeding operation" means any confined animal feeding operation with 200 or more animal units of poultry. This equates to 20,000 chickens or 11,000 turkeys. These numbers are established regardless of animal age or sex.

"Department" means the Virginia Department of Environmental Quality.

"Director" means the Director of the Virginia Department of Environmental Quality or his designee.

"Nutrient management plan" or "NMP" means a plan developed or approved by the Department of Conservation and Recreation that requires proper storage, treatment and management of poultry waste, including dry litter, and limits accumulation of excess nutrients in soils and leaching or discharge of nutrients into state waters.

"Permittee" means the poultry grower whose confined poultry feeding operation is covered under the general permit.

"Poultry grower" means any person who owns or operates a confined poultry feeding operation.

"Poultry waste" means dry poultry litter and composted dead poultry.

"Poultry waste broker" means a person, other than the poultry grower, who possesses more than 10 tons of poultry waste in any 365-day period and who transfers some or all of the waste to other persons.

"Vegetated buffer" means a permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.

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9 VAC 25-630-20. Purpose; delegation of authority; effective date of permit.

A. This general permit regulation governs the management of poultry waste at confined poultry feeding operations ~~having 200 or more animal units~~ *not covered by a Virginia Pollution Discharge Elimination System (VPDES) permit.* It establishes requirements for proper nutrient management, waste storage, and waste tracking and accounting of poultry waste.

B. The Director of the Department of Environmental Quality, 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 general permit will become effective on December 1, 2000. This general permit will expire 10 years from the effective date.

9 VAC 25-630-30. Authorization to manage pollutants.

A. Any poultry grower governed by this general permit is hereby authorized to manage pollutants at confined poultry feeding operations provided that the poultry grower files the registration statement of 9 VAC 25-630-40, complies with the requirements of 9 VAC 25-630-50, and provided that:

1. The poultry grower has not been required to obtain a *Virginia Pollution Discharge Elimination System (VPDES) permit* or an individual permit according to 9 VAC 25-32-260 B;

2. The activities of the confined poultry feeding operation shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law. There shall be no point source discharge of wastewater [*to surface waters of the state*] except in the case of a storm event greater than the 25-year, 24-hour storm. [*Agricultural storm water discharges are permitted.*] Domestic sewage or industrial waste shall not be managed under this general permit;

3. Confined poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit by a permittee for routine disposal of daily poultry mortalities shall be considered a violation of this permit. This prohibition shall not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.1-726 or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia;

4. The Department of Conservation and Recreation must approve a nutrient management plan for the confined poultry feeding operation prior to the submittal of the registration statement. The poultry grower shall attach to the registration statement a copy of the approved nutrient management plan and a copy of the letter from the Department of Conservation and Recreation certifying approval of the nutrient management plan [, *and if the plan was written after December 31, 2005, that the plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia*]. The poultry grower shall implement the approved nutrient management plan;

5. Adjoining property notification.

a. When a poultry grower files a general permit registration statement for a confined poultry feeding operation that proposes construction of poultry growing houses after December 1, 2000, the poultry grower shall also give notice to all owners or residents of property that adjoins the property on which the proposed confined poultry feeding operation will be located. Such notice shall include: (i) the types and maximum number of poultry which will be maintained at the facility and (ii) the address and phone number of the appropriate department regional office to which comments relevant to the permit may be submitted.

b. Any person may submit written comments on the proposed operation to the department within 30 days of the date of the filing of the registration statement. If, on the basis of such written comments or his review, the director determines that the proposed operation will not be capable of complying with the provisions of the general permit, the director shall require the owner to obtain an individual permit for the operation. Any such determination by the director shall be made in writing and received by the poultry grower not more than 45 days after the filing of the registration statement or, if in the director's sole discretion additional time is necessary to evaluate comments received from the public, not more than 60 days after the filing of the registration statement; and

6. Each poultry grower covered by this general permit shall complete the training program offered or approved by the Department of Conservation and Recreation within one year of filing the registration statement for general permit coverage.

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

9 VAC 25-630-50. Contents of the general permit.

Any poultry grower whose registration statement is accepted by the board will receive the following general permit and shall comply with the requirements therein and be subject to the VPA Permit Regulation, 9 VAC 25-32.

General Permit No. VPG2
Effective Date: [*December 1, 2000*]
Modification Date: [*January 1, 2006*]
Expiration Date: [*November 30, 2010*]

GENERAL PERMIT FOR POULTRY WASTE MANAGEMENT AT CONFINED POULTRY FEEDING OPERATIONS

AUTHORIZATION TO MANAGE POLLUTANTS UNDER THE VIRGINIA POLLUTION ABATEMENT PROGRAM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the State Water Control Law and State Water Control Board regulations adopted pursuant thereto, owners of confined poultry feeding operations having 200 or more animal units are authorized to manage pollutants within the boundaries of the

Commonwealth of Virginia, except where board regulations or policies prohibit such activities.

The authorized pollutant management activities shall be in accordance with the registration statement and supporting documents submitted to the Department of Environmental Quality; , *this cover page*, and Part I - Pollutant Management and Monitoring Requirements and Part II - Conditions Applicable to All VPA Permits, as set forth herein.

PART I POLLUTANT MANAGEMENT AND MONITORING REQUIREMENTS

A. Pollutant management authorization and monitoring requirements.

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to manage pollutants at the ~~location(s)~~ *location or locations* identified in the registration statement and the *facility's approved* nutrient management plan.
2. If poultry waste is land applied, it shall be applied at the rates specified in the *facility's approved* nutrient management plan.
3. Soil at the land application sites shall be monitored as specified below. Additional soils monitoring may be required in the *facility's approved* nutrient management plan.

SOILS MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
pH	NL	SU	1/3 years	Composite
Phosphorus	NL	ppm or lbs/ac	1/3 years	Composite
Potash	NL	ppm or lbs/ac	1/3 years	Composite
Calcium	NL	ppm or lbs/ac	1/3 years	Composite
Magnesium	NL	ppm or lbs/ac	1/3 years	Composite

NL = No limit, this is a monitoring requirement only.
SU = Standard Units

4. Poultry waste shall be monitored as specified below. Additional waste monitoring may be required in the *facility's approved* nutrient management plan.

WASTE MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Total Kjeldahl Nitrogen	NL	ppm *	1/3 years	Composite
Ammonia Nitrogen	NL	ppm *	1/3 years	Composite
Total Phosphorus	NL	ppm *	1/3 years	Composite
Total Potassium	NL	ppm *	1/3 years	Composite
Moisture Content	NL	%	1/3 years	Composite

NL = No limit, this is a monitoring requirement only.

* *Parameters for waste may be reported as a percent, as lbs/ton or lbs/1000 gallons, or as ppm where appropriate.*

5. Analysis of soil and waste shall be according to methods specified in ~~Reference Soil Test Methods for the Southern Region of the United States, Southern Cooperative Series Bulletin 289 (1983); or Reference Soil and Media Diagnostic Procedures for the Southern Region of the United States, Southern Cooperative Series Bulletin 374 (1992); or Laboratory Procedures, Virginia Tech Soil Testing and Plant Analysis Laboratory, Virginia Cooperative Extension, Publication 452-881 (1996).~~ Copies of these publications are available for public review at the department's regional offices *the facility's approved nutrient management plan.*

6. All monitoring data required by Part I A shall be maintained on site in accordance with Part II B. Reporting of results to the department is not required; however, the monitoring results shall be made available to department personnel upon request.

B. Other requirements or special conditions.

1. The confined poultry feeding operation shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is ice covered, snow covered or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.

2. Poultry waste shall be stored according to the nutrient management plan and in a manner that prevents contact with surface water and ground water. Poultry waste that is stockpiled outside of the growing house for more than 14 days shall be kept in a facility that provides adequate storage. Adequate storage shall, at a minimum, include the following:

- a. Poultry waste shall be covered to protect it from precipitation and wind;
- b. Storm water shall not run onto or under the stored poultry waste; and
- c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored poultry waste. All poultry waste storage facilities that use an impermeable barrier shall

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maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers must be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour (1×10^{-6} centimeters per second).

3. Poultry waste storage facilities constructed after December 1, 2000, shall not be located within a 100-year floodplain unless the poultry grower has no land outside the floodplain on which to construct the facility and the facility is constructed so that the poultry waste is stored above the 100-year flood elevation or otherwise protected from floodwaters through the construction of berms or similar best management flood control structures. New, expanded or replacement poultry growing houses that are constructed after December 1, 2000, shall not be located within a 100-year floodplain unless they are part of an existing, ongoing confined poultry feeding operation and are constructed so that the poultry and poultry litter are housed above the 100-year flood elevation or otherwise protected from floodwaters through construction of berms or similar best management flood control structures.

~~[4. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365 day period, the poultry grower shall provide that person a copy of the most recent nutrient analysis for the poultry waste and a fact sheet approved by the department, in consultation with the Department of Conservation and Recreation, that includes appropriate practices for proper storage and management of the waste. The person receiving the waste shall provide the poultry grower his name and address and acknowledge in writing receipt of the waste, the nutrient analysis and the fact sheet. If the person receiving the waste is a poultry waste broker, then he shall also certify in writing that he will provide a copy of the nutrient analysis and fact sheet to each end user to whom he transfers poultry waste.~~

~~5. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365 day period, the poultry grower shall keep a record of the amount of poultry waste received by the person, the date of the transaction, the nutrient content of the waste, the locality in which the recipient intends to utilize the waste (i.e., nearest town or city and zip code), the name of the stream or waterbody known to the recipient that is nearest to the waste utilization site, and the signed waste transfer acknowledgement. These records shall be maintained on site for three years after the transaction and shall be made available to department personnel upon request.~~

4. Poultry waste may be transferred from a permitted poultry grower to another person or broker without the requirement for the identification of fields where such waste will be

applied in the facility's approved nutrient management plan if the following conditions are met:

a. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry grower shall provide that person a copy of the most recent nutrient analysis for the poultry waste and a fact sheet approved by the department, in consultation with the Department of Conservation and Recreation, that includes appropriate practices for proper storage and management of the waste. The person or broker receiving the waste shall provide the poultry grower:

- (1) His name and address,*
- (2) Written acknowledgement of receipt of the waste,*
- (3) The nutrient analysis of the waste, and*
- (4) The fact sheet.*

If the person receiving the waste is a poultry waste broker, then he shall also certify in writing that he will provide a copy of the nutrient analysis and fact sheet to each end user to whom he transfers poultry waste.

b. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry grower shall keep a record of the following:

- (1) The amount of poultry waste received by the person,*
- (2) The date of the transaction,*
- (3) The nutrient analysis of the waste,*
- (4) The locality in which the recipient intends to utilize the waste (i.e. nearest town or city and zip code),*
- (5) The name of the stream or waterbody known to the recipient that is nearest to the waste utilization site, and*
- (6) The signed waste transfer acknowledgement.*

These records shall be maintained on site for three years after the transaction and shall be made available to department personnel upon request.

c. Poultry waste generated by this facility shall not be applied to fields owned by or under the operational control of either the poultry grower or a legal entity in which the poultry grower has an ownership interest unless the fields are included in the facility's approved nutrient management plan.]

~~[6. 5.] Confined poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit for routine disposal of daily poultry mortalities by a permittee shall be considered a violation of this permit. This prohibition does not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.1-726 or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.~~

~~[7. The Nutrient Management Plan (NMP) approved by the Department of Conservation and Recreation shall be~~

~~maintained on site. The NMP shall be implemented and is enforceable through this permit.~~ 6. *The poultry grower shall implement a nutrient management plan (NMP) approved by the Department of Conservation and Recreation and maintain the plan on site. All NMP's written after December 31, 2005, shall be developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia. The NMP shall be enforceable through this permit.*] The NMP shall contain at a minimum the following information:

- a. Site map indicating the location of the waste storage facilities and the fields where waste [*generated by this facility*] will be applied by the poultry grower. [*The location of fields as identified in Part I subdivision B 4 c shall also be included*];
- b. Site evaluation and assessment of soil types and potential productivities;
- c. Nutrient management sampling including soil and waste monitoring;
- d. Storage and land area requirements for the grower's poultry waste management activities;
- e. Calculation of waste application rates; and
- f. Waste application schedules.

[~~8-~~ 7.] When the poultry waste storage facility is no longer needed, the permittee shall close it in a manner that: (i) minimizes the need for further maintenance and (ii) controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the ground water, surface water or the atmosphere. At closure, the permittee shall remove all poultry waste residue from the waste storage facility. At waste storage facilities without permanent covers and impermeable ground barriers, all residual poultry waste shall be removed from the surface below the stockpile when the poultry waste is taken out of storage. Removed waste materials shall be utilized according to the ~~nutrient management plan~~ *NMP*.

[~~9-~~ 8.] Nitrogen application rates contained in the NMP shall not exceed crop nutrient needs as determined by the Department of Conservation and Recreation. The application of poultry waste shall be managed to minimize runoff, leachate, and volatilization losses, and reduce adverse water quality impacts from nitrogen.

[~~10-~~ 9.] For all NMPs developed after October 1, 2001, phosphorus application rates shall not exceed the greater of crop nutrient needs or crop nutrient removal as determined by the Department of Conservation and Recreation. For all NMPs developed after December 31, 2005, phosphorus application rates shall [*not exceed the greater of crop nutrient needs or crop nutrient removal as determined by the Department of Conservation and Recreation and shall*] be in accordance with the Department of Conservation and Recreation's regulatory criteria and standards in effect at the time the NMP is written. The application of poultry waste shall be managed to minimize runoff and leaching

and reduce adverse water quality impacts from phosphorous.

[~~14-~~ 10.] The timing of land application of poultry waste shall be according to the schedule contained in the NMP, except that no waste may be applied to ice or snow covered ground or to soils that are saturated. Poultry waste may be applied to frozen ground within the NMP scheduled times only under the following conditions:

- a. Slopes are not greater than 6.0%;
- b. A minimum of a 200-foot vegetative or adequate crop residue buffer is maintained between the application area and all surface water courses;
- c. Only those soils characterized by USDA as "well drained" with good infiltration are used; and
- d. At least 60% uniform cover by vegetation or crop residue is present in order to reduce surface runoff and the potential for leaching of nutrients to ground water.

[~~12-~~ 11.] Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

- a. Distance from occupied dwellings not on the permittee's property: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);
 - b. Distance from water supply wells or springs: 100 feet;
 - c. Distance from surface water courses: ~~50 feet (for surface application) or 25 feet (if by subsurface injection or same day soil incorporation);~~ *100 feet (without a permanent vegetated buffer) or 35 feet (if a permanent vegetated buffer exists).*
- Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer.*
- d. Distance from rock outcropping (except limestone): 25 feet;
 - e. Distance from limestone outcroppings: 50 feet; and
 - f. Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.

[~~13-~~ 12.] Records shall be maintained to demonstrate where and at what rate waste has been applied, that the application schedule has been followed, and what crops have been planted. These records shall be maintained on site for a period of three years after recorded application is made and shall be made available to department personnel upon request.

[~~14-~~ 13.] Each poultry grower covered by this general permit shall complete the training program offered or approved by the Department of Conservation and Recreation within one year of filing the registration statement has been submitted for general permit coverage.

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PART II CONDITIONS APPLICABLE TO ALL VPA PERMITS

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.
2. Monitoring shall be conducted according to procedures listed under 40 CFR Part 136 unless other procedures have been specified in this permit.
3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

B. Records.

1. Records of monitoring information shall include:
 - a. The date, exact place, and time of sampling or measurements;
 - b. The name of the individual(s) who performed the sampling or measurements;
 - c. The date(s) [~~and time(s)~~] analyses were performed;
 - d. The name of the individual(s) who performed the analyses;
 - e. The analytical techniques or methods used, with supporting information such as observations, readings, calculations and bench data; and
 - f. The results of such analyses.

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

C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after the monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.
2. Monitoring results shall be reported on forms provided or specified by the department.
3. If the permittee monitors the pollutant management activity, at a sampling location specified in this permit, for any pollutant more frequently than required by the permit using approved analytical methods, the permittee shall report the results of this monitoring on the monitoring report.
4. If the permittee monitors the pollutant management activity, at a sampling location specified in this permit, for any pollutant that is not required to be monitored by the

permit, and uses approved analytical methods, the permittee shall report the results with the monitoring report.

5. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information which the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the department, upon request, copies of records required to be kept by the permittee. Plans, specifications, maps, conceptual reports and other relevant information shall be submitted as requested by the board prior to commencing construction.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized discharges. Except in compliance with this permit, or another permit issued by the board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows (i) a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part II F or (ii) a discharge that may reasonably be expected to enter state waters in violation of Part II F shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part II I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the treatment works; and
4. Flooding or other acts of nature.

I. Reports of noncompliance. The permittee shall report any noncompliance which may adversely affect state waters or may endanger public health.

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information which shall be reported within 24 hours under this paragraph:
 - a. Any unanticipated bypass; and
 - b. Any upset which causes a discharge to surface waters.
2. A written report shall be submitted within five days and shall contain:
 - a. A description of the noncompliance and its cause;
 - b. The period of noncompliance, including exact dates and times, and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
 - c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under Part II I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report all instances of noncompliance not reported under Part II I 1 or 2 in writing at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part II I 2.

NOTE: The immediate (within 24 hours) reports required in Parts II F, G and H may be made to the department's regional office. For reports outside normal working hours, leave a

message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Services maintains a 24-hour telephone service at 1-800-468-8892.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the design or operation of the pollutant management activity.
2. The permittee shall give at least 10 days advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Applications. All permit applications shall be signed as follows:

- a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;
- b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
- c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes: (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, etc. All reports required by permits, and other information requested by the board shall be signed by a person described in Part II K 1, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- a. The authorization is made in writing by a person described in Part II K 1;
- b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, or a position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

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c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part II K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part II K 2 shall be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

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

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. Compliance with a permit during its term constitutes compliance, for purposes of enforcement, with the State Water Control Law.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit. All permittees with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit unless permission for a later date has been granted by the board. The board shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the federal Clean Water Act. Except as provided in permit conditions on bypassing (Part II U), and upset (Part II V), nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities,

liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. Proper operation and maintenance. The permittee shall be responsible for the proper operation and maintenance of all treatment works, systems and controls which are installed or used to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures.

R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any pollutant management activity in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. Prohibition. "Bypass" means intentional diversion of waste streams from any portion of a treatment works. A bypass of the treatment works is prohibited except as provided herein.

2. Anticipated bypass. If the permittee knows in advance of the need for a bypass, he shall notify the department promptly at least 10 days prior to the bypass. After considering its adverse effects, the board may approve an anticipated bypass if:

a. The bypass will be unavoidable to prevent loss of human life, personal injury, or severe property damage. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. "Severe property damage" does not mean economic loss caused by delays in production; and

b. There are no feasible alternatives to bypass such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment downtime. However, if bypass occurs during normal periods of equipment downtime or preventive maintenance and in the exercise of reasonable engineering judgment the permittee could have installed adequate backup equipment to prevent such bypass, this exclusion shall not apply as a defense.

3. Unplanned bypass. If an unplanned bypass occurs, the permittee shall notify the department as soon as possible, but in no case later than 24 hours, and shall take steps to

halt the bypass as early as possible. This notification will be a condition for defense to an enforcement action that an unplanned bypass met the conditions in paragraphs U 2 a and b and in light of the information reasonably available to the permittee at the time of the bypass.

V. Upset. A permittee may claim an upset as an affirmative defense to an action brought for noncompliance. In any enforcement proceedings a permittee shall have the burden of proof to establish the occurrence of any upset. In order to establish an affirmative defense of upset, the permittee shall present properly signed, contemporaneous operating logs or other relevant evidence that shows:

1. That an upset occurred and that the cause can be identified;
2. That the permitted facility was at the time being operated efficiently and in compliance with proper operation and maintenance procedures;
3. That the 24-hour reporting requirements to the department were met; and
4. That the permittee took all reasonable steps to minimize or correct any adverse impact on state waters resulting from noncompliance with the permit.

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

1. Enter upon any permittee's property, public or private and have access to records required by this permit;
2. Have access to, inspect and copy any records that must be kept as part of permit conditions;
3. Inspect any facility's equipment (including monitoring and control equipment) practices or operations regulated or required under the permit; and
4. Sample or monitor any substances or parameters at any locations for the purpose of assuring permit compliance or as otherwise authorized by the State Water Control Law.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is involved in managing pollutants. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause upon the request of the permittee or interested persons, or upon the board's initiative. If a permittee files a request for a permit modification, revocation, or termination, or files a notification of planned changes, or anticipated noncompliance, the permit terms and conditions shall remain effective until the request is acted upon by the board. This provision shall not be used to extend the expiration date of the effective VPA permit.

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department. The board may require modification or revocation and reissuance of the permit to

change the name of the permittee and to incorporate such other requirements as may be necessary. Except as provided in Part II Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified to reflect the transfer or has been revoked and reissued to the new owner or operator.

2. As an alternative to transfers under Part II Y 1, this permit shall be automatically transferred to a new permittee if:

- a. The current permittee notifies the department at least 30 days in advance of the proposed transfer of the title to the facility or property;
- b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
- c. The board does not, within the 30-day time period, notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit.

Z. Severability. The provisions of this permit are severable and, if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

NOTICE: The forms used in administering 9 VAC 25-630, Virginia Pollutant Abatement General Permit Regulation for Poultry Waste Management, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

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[~~Registration Statement, VPA General Permit for Poultry Waste Management, RS VPS2 (rev. 12/1/00).~~

Virginia Pollution Abatement General Permit Registration Statement for Animal Feeding Operation (eff. 11/04).]

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COMMONWEALTH of VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY

VIRGINIA POLLUTION ABATEMENT GENERAL PERMIT REGISTRATION STATEMENT
FOR ANIMAL FEEDING OPERATIONS

1. Facility Name: _____
Address: _____ City: _____ State: _____ Zip Code: _____
2. Owner Name: _____
Address: _____ City: _____ State: _____ Zip Code: _____
Phone: _____
3. Operator Name: _____
Address: _____ City: _____ State: _____ Zip Code: _____
Phone: _____
4. Facility Contact Person other than operator (if applicable): _____
Phone: _____
5. Best Time to Contact Operator or Contact Person (day and time): _____
If the facility has an existing VPA or VPDES permit number, provide number: _____
6. Indicate the maximum number of the type(s) of animal(s) that will be maintained at your facility:

Animal Type	Maximum Number	Average Weight
Mature Dairy Cattle (whether milked or dry cows)	_____	_____
Slaughter and Feeder Cattle	_____	_____
Swine	_____	_____
Other _____	_____	_____
7. The owner of any proposed pollutant management activities or those which have not previously been issued a valid VPA permit or VPDES permit must attach to the Registration Statement the notification from the governing body of the county, city or town where the operation is located that the operation is consistent with all ordinances adopted pursuant to Chapter 22 (§15.2-2200 et seq.) of Title 15.2 of the Code of Virginia.
8. The owner of the pollutant management activities must attach to the registration statement the following:
 - a) a copy of the facility's approved nutrient management plan,
 - b) a letter from the Department of Conservation and Recreation certifying approval of the facility's nutrient management plan, and
 - c) a letter from the Department of Conservation and Recreation certifying that the facility's nutrient management plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia, if the nutrient management plan was developed after December 31, 2005.

The additional information on page 2., lines 9-16 must be completed if this VPA general permit registration statement is to serve as registration for coverage under the Virginia Pollutant Discharge Elimination System (VPDES) general permit.

The certification on page 3, line 17 must be completed by all registrants.

Information required for registration for coverage under the Virginia Pollutant Discharge Elimination System (VPDES) general permit.

9. Indicate the maximum number of the type(s) of animal(s) that will be maintained at your facility:

Animal Type	Maximum Number	Average Weight
Veal Calves	_____	_____
Cattle other than Mature Dairy Cows or Veal Calves (includes but is not limited to heifers, steers, bulls, and cow-calf pairs)	_____	_____
Swine weighing 55 pounds or more	_____	_____
Swine weighing less than 55 pounds	_____	_____
Horses	_____	_____
Sheep or Lambs	_____	_____
Turkeys	_____	_____
Laying Hens or Broilers specify if liquid manure handling system (yes/no)	_____	_____
Chickens (other than Laying Hens) specify if liquid manure handling system (yes/no)	_____	_____
Ducks	_____	_____
Other _____	_____	_____

10. Provide latitude and longitude of the production area (entrance to production area):
Latitude _____° _____' _____" Longitude _____° _____' _____"

11. Identify the method of mortality management: _____

12. Topographic map attached (check one) Yes _____ No _____ (a topographic map of the geographic area in which the facility is located identifying the specific location of the production area must be attached)

13a. Indicate the type(s) of containment and storage (anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, other (specify)
Type of containment: _____

13b. Total capacity for manure, litter, and process wastewater storage (tons and/or gallons): _____

14. Indicate the total number of acres under control of the applicant available for land application of manure, litter, or process wastewater: _____ acres

15. Estimate the amounts of manure, litter, and process wastewater generated per year (gallons/tons):

	Amount	Units (gallons or tons)
Manure	_____	_____
Litter	_____	_____
Process Wastewater	_____	_____

16. Estimate the amounts of poultry waste transferred to other persons per year in tons: _____

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17. **Certification:**

"I certify that notice of the registration statement has been given to all owners or residents of property that adjoins the property on which the confined animal feeding operation will be located. This notice included the types and numbers of animals which will be maintained at the facility and the address and phone number of the appropriate Department of Environmental Quality regional office to which comments relevant to the permit may be submitted. (The preceding certification is waived if the registration is for renewing coverage under the general permit and no expansion of the operation is proposed and the Department has not issued any special or consent order relating to violations under the existing permit.) I certify under penalty of law that all the requirements of the Board for the general permit are being met and 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."

Print Name: _____ Title: _____

Signature: _____ Date: _____

VA.R. Doc. No. R03-179; Filed September 15, 2004, 11:19 a.m.



TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **12 VAC 30-90. Methods and Standards for Establishing Payment Rates for Long-Term Care (amending 12 VAC 30-90-29).**

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Effective Date: November 3, 2004.

Agency Contact: James Branham, Reimbursement Analyst, Division of Cost Settlement, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4587, FAX (804) 786-1680, or e-mail james.branham@dmas.virginia.gov.

Summary:

The exemption in this regulatory action enables small or nonchain nursing home providers (one or two health care facilities) to more easily sell their facilities and leave the nursing home business by allowing the purchaser of these facilities to benefit from the full fair rental value (FRV) methodology. Presently, the Nursing Home Payment System does not specify a particular period of ownership and nonchain affiliation as criteria for qualifying for the exemption from the transition methodology.

The amendment requires an eight-year period of ownership and operation by a nonchain or small-chain provider prior to the sale of that nursing facility in order for that facility, after the sale, to qualify for the exemption from the transition methodology of capital cost reimbursement and go immediately to the full FRV methodology of capital cost reimbursement.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

12 VAC 30-90-29. Transition to new capital payment methodology.

A. This section provides for a transition to a new capital payment methodology. The methodology that will be phased out for most facilities is described in Article 2 (12 VAC 30-90-30 et seq.) of this subpart. The methodology that will be phased in for most facilities is described in Article 3 (12 VAC 30-90-35 et seq.) of this subpart. The terms and timing of the transition are described in this section.

B. Nursing facilities enrolled in the Medicaid program prior to July 1, 2000, shall be paid for capital related costs under a transition policy from July 1, 2000, through June 30, 2012. Facilities and beds paid under the transition policy shall receive payments as follows:

1. During SFY 2001, each facility's capital per diem shall be the facility's capital per diem on June 30, 2000. The methodology under which this per diem is determined shall be the plant cost reimbursement methodology in effect as of June 30, 2000.

2. During SFY 2002, each facility subject to the transition policy shall be paid for capital costs under the methodology described in Article 2 (12 VAC 30-90-30 et seq.) of this subpart.

3. During SFY 2003 through SFY 2012, each facility subject to the transition policy shall have a capital per diem that is a percentage of the per diem described in Article 2 (12 VAC 30-90-30 et seq.) of this subpart plus a percentage of the per diem described in Article 3 (12 VAC 30-90-35 et seq.) of this subpart. The percentage associated with the per diem described in Article 2 shall be 90% for services provided in SFY 2003, 80% for services in SFY 2004, 70% for services in SFY 2005, and so on until the percentage is 0% for services in SFY 2012. The percentage associated with the per diem described in Article 3 shall be equal to 100% minus the percentage associated with the per diem described in Article 2. In SFY 2012, the capital per diem shall be based entirely on the per diem described in Article 3.

C. Return on equity (ROE) for leased facilities shall be phased out along with the methodology described in Article 2 (12 VAC 30-90-30 et seq.) of this subpart. Leased facilities shall be eligible for ROE after July 1, 2001, only if they were receiving ROE on June 30, 2000.

D. Effective July 1, 2001, newly constructed facilities and new and replacement beds of previously enrolled facilities completed after July 1, 2000, shall be paid entirely under the methodology described in Article 3 (12 VAC 30-90-35 et seq.) of this subpart without application of the transition policy. However, facilities and beds with COPN applications submitted as of June 30, 2000, shall be subject to the transition policy. Facilities changing ownership after June 30, 2000, shall be paid the per diem rate described in Article 3 if it has been owned by the selling owner for a period of eight years prior to the sale and during that period the facility being sold is has not been part of a chain organization, or if it is part of a chain organization consisting of no more than two health care facilities. For purposes of this provision, the number of facilities in a chain shall be determined by counting nursing facilities, hospitals, and any other health care facilities that are licensed to admit patients or residents, whether or not they participate in the Medicaid program. Facilities in Virginia and in other states shall be counted in determining the number of facilities in a chain. Facilities shall be considered to form a chain if there is common ownership of the physical assets, or a common operator, or both.

E. Emergency regulations effective July 1, 2000, provided for a facility specific fixed capital per diem applicable to services in SFY 2001 that is not to be adjusted at settlement. After SFY 2001, the per diem that would have been applicable to SFY 2001 under the methodology in Article 2 (12 VAC 30-90-30 et seq.) of this subpart shall be calculated. If there are two provider fiscal years that overlap SFY 2001, this per diem shall be a combination of the two applicable per diem amounts. If the per diem provided in the emergency regulations is lower than the per diem based on Article 2, the difference, multiplied by the days in SFY 2001, shall be paid to the facility. If the per diem provided in the emergency regulations is higher, the difference, multiplied by the days,

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shall be collected from the facility in the settlement of the provider year settled after the difference is calculated.

VA.R. Doc. No. R03-293; Filed September 13, 2004, 4:13 p.m.



FORMS

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF MINES, MINERALS AND ENERGY

EDITOR'S NOTICE: The following forms have been filed by the Department of Mines, Minerals and Energy. The forms are available for public inspection at the Department of Mines, Minerals and Energy, 202 North Ninth Street, Richmond, Virginia 23219, at the department's Big Stone Gap office, 3405 Mountain Empire Road, Big Stone Gap, VA 24219, or the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219. Copies of the forms may be obtained from Stephen A. Walz, Department of Mines, Minerals and Energy, 202 North Ninth Street, Richmond, Virginia 23219, telephone (804) 692-3200.

Title of Regulation: 4 VAC 25-130. Coal Surface Mining Reclamation Regulations.

FORMS

- Anniversary Notification, DMLR-PT-028 (eff. 9/99).
- Change Order Justification, DMLR-AML-065 (eff. 8/99).
- Ground Water Monitoring Report, DMLR-PT-101 (rev. 11/99).
- Application for Exemption Determination (Extraction of Coal Incidental to the Extraction Of Other Minerals), DMLR-211 (rev. 4/96).
- Applicant Violator System (AVS) Ownership Control Information, DMLR-AML-003 (rev. 1/95).
- Consent for Right of Entry-Exploratory, DMLR-AML-122 (rev. 3/98).
- Consent for Right of Entry-Construction, DMLR-AML-123 (rev. 3/98).
- Consent for Right of Entry-Construction Lien Waiver, DMLR-AML-174 (rev. 3/91).
- License for Performance--Acid Mine Drainage Investigations and Monitoring (Abandoned Mine Land Program), DMLR-AML-175c (11/96).
- License for Performance--Acid Mine Drainage Reclamation and Construction (Abandoned Mine Land Program), DMLR-AML-176c, (rev. 12/96).
- Consent for Right of Entry-Ingress/Egress, DMLR-AML-177 (rev. 3/98).
- Application for Recertification: DMLR Endorsement/Blaster's Certification, DMLR-BCME-03 (rev. 6/95).
- Application for DMLR Endorsement: Blaster's Certification (Coal Surface Mining Operation), DMLR-BCME-04 (rev. 6/95).
- Geology and Hydrology Information Part A through E, DMLR-CP-186 (rev. 3/86).
- Sediment and Pond Design Data Sheet, DMLR-CP-187 (rev. 12/85).
- Notice of Temporary Cessation, DMLR-ENF-220 (rev. 2/96).
- Application for Small Operator's Assistance, DMLR-OA-106 (rev. 12/85).
- Lands Unsuitable Petition, DMLR-OA-131 (rev. 12/85).
- Application for Permit for Coal Exploration and Reclamation Operations (which Remove More Than 250 Tons) and NPDES, DMLR-PS-062 (rev. 12/85).
- Chapter 19-Statement for Third Party-Certificate of Deposit, DMLR-PS-093 (rev. 12/85).
- Cognovit Note, Part I and II, DMLR-PS-095 (rev. 12/85).
- Application-Coal Surface Mining Reclamation Fund, DMLR-PS-162 (rev. 7/89).
- Application for Release of Bond-Estimated Cost, DMLR-PS-212 (rev. 3/88).
- Application for Release of Bond-Reclamation Fund, DMLR-PS-213 (rev. 3/88).
- Example-Waiver (300 Feet from Dwelling), DMLR-PT-223 (rev. 2/96).
- Analysis, Premining vs Postmining Productivity Comparison (Hayland/Pasture Land Use), DMLR-PT-012 (eff. 8/03).
- Surety Bond, DMLR-PT-013 ([~~rev. 8/03~~ rev. 9/04]).
- Surety Bond-Federal Lands, DMLR-PT-013A (rev. 10/95).
- Surety Bond Rider, DMLR-PT-013B ([~~eff. 8/03~~ rev. 9/04]).
- Map Legend, DMLR-PT-017 (rev. 10/00).
- Certificate of Deposit Example, DMLR-PT-026 ([~~eff. 8/03~~ rev. 9/04]).
- Form Letter From Banks Issuing a CD for Mining on Federal Lands, DMLR-PT-026A (rev. 8/03).
- Operator's Seeding Report, DMLR-PT-011 (rev. 4/96).
- Request for Relinquishment, DMLR-PT-027 (rev. 4/96).
- Water Supply Inventory List, DMLR-PT-030 (rev. 4/96).
- Application for Permit for Coal Surface Mining and Reclamation Operations and National Pollutant Discharge Elimination Systems (NPDES), DMLR-PT-034 (rev. 2/99).
- Application for Permit: Coal Surface Mining and Reclamation Operations, DMLR-PT-034D (rev. 8/98).
- Coal Exploration Notice, DMLR-PT-051 (rev. 11/98).
- Well Construction Data Sheet, DMLR-WCD-034D (rev. 5/04).
- Sediment Basin Design Data Sheet, DMLR-PT-086 (rev. 10/95).
- Impoundment Construction and Annual Certification, DMLR-PT-092 (rev. 10/95).
- Road Construction Certification, DMLR-PT-098 (rev. 10/95).
- Ground Water Monitoring Report, DMLR-PT-101 (rev. 2/95).
- Rainfall Monitoring Report, DMLR-PT-102 (rev. 8/98).

Forms

Pre-Blast Survey, DMLR-PT-104 (rev. 10/95).

Excess Spoil Fills and Refuse Embankments Construction Certification, DMLR-PT-105 (rev. 4/96).

Stage-Area Storage Computations, DMLR-PT-111 (rev. 10/95).

NPDES Discharge Monitoring Report, DMLR-PT-119 (rev. 2/95).

Water Monitoring Report-Electronic File/Printout Certification, DMLR-PT-119C (rev. 5/95; included in DMLR-PT-119).

Coal Surface Mining Reclamation Fund Application, DMLR-PT-162 (rev. 4/96).

Conditions-Coal Surface Mining Reclamation Fund, DMLR-PT-167 (rev. 10/95).

Coal Surface Mining Reclamation Fund Tax Reporting Form, DMLR-PT-178 (rev. 10/95).

Surface Water Monitoring Report, DMLR-PT-210 (rev. 8/98).

Application For Performance Bond Release, DMLR-PT-212 (rev. 4/96).

Public Notice: Application for Transfer, Assignment, or Sale of Permit Rights under Chapter 19 of Title 45.1 of the Code of Virginia, DMLR-PT-219 (8/96).

Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia-Cost Estimate, Phase I, DMLR-PT-225 (rev. 4/96).

Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia-Cost Estimate, Phase II, DMLR-PT-226 (rev. 4/96).

Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia-Cost Estimate, Phase III, DMLR-PT-227 (rev. 4/96).

Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia-Pool Bonding, Incremental Bond Reduction, DMLR-PT-228 (rev. 4/96).

Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia-Pool Bonding, Entire Permit Bond Reduction, DMLR-PT-229 (rev. 9/95).

Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia-Pool Bonding, Entire Permit Bond Release, DMLR-PT-230 (rev. 4/96).

Verification of Public Display of Application, DMLR-PT-236 (8/01).

Affidavit (Permit Application Information: Ownership and Control Information and Violation History Information), DMLR-PT-240 (rev. 12/98).

Stream Channel Diversion(s) Certification, DMLR-PT-233 (rev. 2/96).

Quarterly Acid-Base Monitoring Report, DMLR-PT-239 (rev. 6/95).

Affidavit (No Legal Change in a Company's Identity), DMLR-PT-250 (rev. 12/98).

Blasting Plan Data, DMLR-PT-103 (rev. 4/96).

Affidavit (Reclamation Fee Payment), DMLR-PT-244 (rev. 2/96).

Application-National Pollutant Discharge Elimination System (NPDES) Permit-Short Form C, DMLR-PT-128 (rev. 5/96).

National Pollutant Discharge Elimination System (NPDES) Short Form C-Instructions, DMLR-PT-128A (rev. 5/96).

Impoundment Inspection Report, DMLR-PT-251 (rev. 12/93).

Water Sample Tag, DMLR-TS-107 (rev. 3/83).

Surface Water Baseline Data Summary, DMLR-TS-114 (rev. 4/82).

Diversion Design Computation Sheet, DMLR-TS-120 (rev. 12/85).

Sediment Channel Design Data Sheet, DMLR-TS-127 (rev. 12/85).

Virginia Stream Survey, DMLR-TS-217 (rev. 1/87).

Line Transect-Forest Land Count, DMLR-PT-224 (rev. 2/96).

Applicant Violator System (AVS) Ownership & Control Information, DMLR-AML-003 (rev. 4/97).

Application for Permit Renewal Coal Surface Mining and Reclamation Operations, DMLR-PT-034R (eff. 6/97).

Application for Coal Exploration Permit and National Pollutant Discharge Elimination System Permit, DMLR-PT-062 (formerly DMLR-PS-062) (rev. 6/97).

Conditions-Coal Surface Mining Reclamation Fund, DMLR-PT-167 (rev. 10/95).

Vibration Observations, DMLR-ENF-032V (eff. 9/97).

Application for Small Operator Assistance, DMLR-PT-106 (formerly CP-106) (rev. 9/97).

Application-National Pollutant Discharge Elimination System Application Instructions, DMLR-PT-128 (rev. 9/97).

Blasting Plan Data, DMLR-PT-103 (rev. 10/97).

Request for Relinquishment, DMLR-PT-027 (rev. 1/98).

Written Findings, DMLR-PT-237 (rev. 1/98).

Irrevocable Standby Letter of Credit, DMLR-PT-255 ([~~rev. 8/03~~ rev. 9/04]).

Confirmation of Irrevocable Standby Letter of Credit, DMLR-PT-255A (eff. 8/03).

DMLR-AML-312, Affidavit (eff. 7/98).



Permit No:	
Bond Applied To:	
Bond No:	

COMMONWEALTH OF VIRGINIA
 DEPARTMENT OF MINES, MINERALS AND ENERGY
 DIVISION OF MINED LAND RECLAMATION
 P. O. DRAWER 900; BIG STONE GAP, VA 24219
 TELEPHONE: (276) 523-8100

SURETY BOND RIDER

____ Increase ____ Decrease **New Bond Amount: \$** _____

TO be attached to a form as part of Surety Company Bond No. _____
 written by _____ as SURETY, on behalf
 of _____ as PRINCIPAL, in the sum of
 _____ (\$) _____ Dollars, in
 favor of the COMMONWEALTH of VIRGINIA, DIRECTOR, DIVISION OF MINED LAND
 RECLAMATION as OBLIGEE executed on _____ 20 _____

WHEREAS, the OBLIGEE issued to the PRINCIPAL, Permit Number _____ dated on
 _____ pursuant to the application of the PRINCIPAL,

WHEREAS, said bond and rider shall cover any and all land affected or to be affected by the mining
 operation under the above-mentioned permit and revisions and renewals since the date of the issuance of the
 permit,

NOW, therefore, the amount of the bond is _____ increased by, _____ decreased by
 _____ (\$) _____ Dollars to a total sum of
 _____ (\$) _____ Dollars to cover the
 additional/reduced cost of reclaiming all affected lands.

It is further agreed that all other terms and conditions of this bond shall remain unchanged.

SIGNED AND SEALED THIS _____ DAY OF _____ 20 _____

Permit No:	
Bond No:	

I. BY COMPANY/PRINCIPAL:

Company /Principal (SEAL) By: _____
Company/Principal Official Signature

Title _____ Date _____

Subscribed and sworn/affirmed to before me by _____
this _____ day of _____ 20 _____, in the State of _____
in the City/County of _____

Notary Public Name (printed or typed) _____ Notary Public Signature _____ (Seal)

My Commission expires _____ 20 _____

II. BY SURETY: Attach copy bearing seal of Power of Attorney or documentation supporting Corporate Officer's authority to issue surety bond.

Surety Name (SEAL) By: _____
Attorney-in-Fact Signature

Date _____ Typed Name _____

Permit No: (DMLR use only)	
Bond Applied To: (DMLR use only)	



COMMONWEALTH OF VIRGINIA
 DEPARTMENT OF MINES, MINERALS AND ENERGY
 DIVISION OF MINED LAND RECLAMATION
 P. O. DRAWER 900; BIG STONE GAP, VA 24219
 TELEPHONE: (276) 523-8100

CERTIFICATE OF DEPOSIT

Re: Performance Bond for: _____

 Company/Principal Name

The accompanying instrument, Certificate of Deposit No. _____
 In the amount of _____ \$ _____ constitutes the performance bond for the
 aforementioned company under [CHECK ONE ONLY]: _____ Permit Application Number or
 _____ Permit Number _____ pursuant to § 45.1-241 of the Code of Virginia, as amended, and
 Subchapter VJ of the Virginia Coal Surface Mining Reclamation Regulations.

This letter certifies that the aforementioned instrument is not and will not be considered as, or used as,
 collateral for any other purpose by the undersigned institution.

Further, without the actual presentation of the original instrument to the undersigned institution, the
 institution shall not authorize the withdrawal of, encumbrance, transfer of funds from, or allow the redemption of
 said instrument without the expressed written consent of the Department of Mines, Minerals and Energy, Division
 of Mined Land Reclamation of the Commonwealth of Virginia (DMLR).

It is further certified that the undersigned institution shall notify the DMLR and the Permittee of any notice
 received or action filed alleging the insolvency or bankruptcy of the undersigned institution, or alleging any
 violations, which could result in the suspension or revocation of the institution's charter or license to do business.

By: _____ For: _____
 Name of Institution Official (printed or typed) Name of Institution

 Signature of Institution Official Title of Institution Official

Address: _____ Telephone Number: _____
 City: _____ State: _____ Zip: _____

Notarization:
 Subscribed and sworn to before me by, _____, this _____ day of
 _____, 20____, in the State of _____, in the City/County of _____
 _____ (Seal) _____, Notary Public
 Notary Public Name (printed or typed) Notary Public Signature
 My Commission Expires _____, 20____

Permit No: (DMLR use only)	
Bond Applied To: (DMLR use only)	

IRREVOCABLE STANDBY LETTER OF CREDIT

Irrevocable Standby Letter of Credit Number: _____ Date: _____

Commonwealth of Virginia
 Department of Mines, Minerals and Energy
 Division of Mined Land Reclamation
 Post Office Drawer 900
 Big Stone Gap, Virginia 24219

Bank Name

(Name
 Address
 &
 Telephone
 Number)

DMLR Representative:

In accordance with Section 45.1-241(C) of the Code of Virginia, we hereby issue our Irrevocable Letter of Credit (on certain designated funds) in your favor for the account of (must state the exact name that appears on the permit)

[CHECK ONE ONLY]: Permit Application Number or ___ Permit Number _____

for the sum or sums not to exceed a total of _____
 U.S. Dollars (\$ USD _____) available by your draft(s) on us at sight.

This Letter of Credit will expire at our counters on _____

It is a condition of this Letter of Credit that it will be automatically extended for additional periods of one (1) year from the present or each future expiration date unless we have notified you in writing, not less than thirty (30) days before the annual expiration date, that we elect not to renew this Letter of Credit. The Notice of such election shall be sent by registered mail, return receipt requested, and received by the Director of the Division of Mined Land Reclamation (hereafter referred to as "DMLR"), Post Office Drawer 900; Big Stone Gap, Virginia 24219 (or any change of address provided by the DMLR hereafter to us); or we may hand deliver the written Notice to, and obtain a written, dated receipt from the Director of DMLR at the DMLR's Big Stone Gap office.

This credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision) International Chamber of Commerce (Publication No. 500).

We further agree that unless expressly stated otherwise herein, the terms and obligations represented by this credit shall be governed by the Uniform Commercial Code of the Commonwealth of Virginia and/or any other pertinent Virginia law. We agree that the proper forum for trial of any dispute involving our liability to the Commonwealth of Virginia, Department of Mines, Minerals and Energy, Division of Mined Land Reclamation, on this Letter of Credit shall lie in the Wise County Circuit Court, Wise, Virginia pursuant to our intent hereby to do business in the Commonwealth of Virginia.

Attached hereto is a certified copy of the Corporation's Resolution authorizing the undersigned to execute this Letter of Credit on behalf of _____ (name of Bank).

All drafts drawn under this credit shall state that they are, "Drawn under Letter of Credit No. _____ dated _____ [CHECK ONE ONLY]: ___ Permit Application No. or ___ Permit No. _____"

We hereby agree that drafts drawn under and in compliance with the terms of the Irrevocable Letter of Credit will be duly honored on due presentation to the Drawee.

By: _____ Title: _____
 Signature of Person Executing Instrument

Notarization:

Subscribed and sworn to before me by, _____, this _____ day of _____, 20____, in the State of _____, in the City/County of _____

_____, Notary Public
 Notary Public Name (printed or typed) (Seal) Notary Public Signature

My Commission Expires _____, 20____

DMLR Approval Date: _____ By: _____

DMLR-PT-255
 REV 09/04

Permit No: (DMLR use only)	
Bond Applied To: (DMLR use only)	
Bond No:	



COMMONWEALTH OF VIRGINIA
 DEPARTMENT OF MINES, MINERALS AND ENERGY
 DIVISION OF MINED LAND RECLAMATION
 P. O. DRAWER 900; BIG STONE GAP, VA 24219
 TELEPHONE: (276) 523-8100

SURETY BOND

KNOW ALL MEN BY THESE PRESENTS, THAT THE UNDERSIGNED

_____ (hereafter **PRINCIPAL**),

whose principal place of business is _____

and who does business as a [CHECK ONE ONLY]: _____ Corporation; _____ Limited Partnership;
 _____ Limited Liability Company; _____ Partnership; or _____ Sole Proprietorship, acting herein as **PRINCIPAL**, and

_____ (hereafter **SURETY**),

whose principal business address is _____
 and who was organized and is existing under the laws of the State of _____
 and licensed to write and perform surety business in the Commonwealth of Virginia, are held and firmly bound unto the

COMMONWEALTH OF VIRGINIA,
DIRECTOR, DIVISION OF MINED LAND RECLAMATION
 (hereafter **OBLIGEE**),

in the sum of _____ Dollars for the payment of which sum the **PRINCIPAL** and **SURETY** bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE ABOVE OBLIGATION is such that:

WHEREAS, the **PRINCIPAL** proposes to commence coal surface mining to be known as

in _____ County(ies) of Virginia; and,

Permit No: (DMLR use only)	
Bond No:	

WHEREAS, the above-named **PRINCIPAL** has submitted [CHECK ONE ONLY]:

___ Permit Application Number or, ___ Permit Number _____ including a mining and reclamation plan, to conduct and reclaim a surface coal mining operation, as defined pursuant to the **VIRGINIA COAL SURFACE MINING CONTROL AND RECLAMATION ACT** (hereafter **ACT**), as amended, with its attendant regulations; and,

WHEREAS, the **PRINCIPAL** has chosen to file this performance bond as a guarantee that the reclamation of the land disturbed during this surface mining operation will be completed as required by the **ACT**, its attendant regulations, and as specified in the permit as issued; and,

WHEREAS, the **SURETY**, and their successors and assigns agree to guarantee the obligation and to indemnify, defend, and hold harmless **OBLIGEE** from any and all losses and expenses which **OBLIGEE** may sustain as a result of the **PRINCIPAL'S** failure to comply with the condition of the obligation;

WHEREAS, obligations guaranteed by this performance bond shall be in effect for the following described lands approved as the permit area or increment upon which initial or succeeding operations will be conducted:

NOW, if the **PRINCIPAL** faithfully completes all reclamation and abatement requirements set forth in the **ACT** and its Permit issued in reliance on this Surety Bond, including the mining and reclamation plan, then this obligation shall be void; otherwise, it shall remain in full force and effect beginning on the date of the approval and issuance of [CHECK ONE ONLY]:

___ Permit Application Number or, ___ Permit Number _____ pursuant to the **ACT** and continue until:

- (a) the permit has been completed to the satisfaction of the **OBLIGEE**, or
- (b) the bond is released pursuant to the **ACT**, or
- (c) in the event neither (a) or (b) above applies, for a minimum period of five (5) years for a general permit or two (2) years for an approved plan for reining. This shall be the minimum period of extended responsibility unless the bond is replaced in accordance with the **ACT**, or unless the permit has been sold, reassigned, or otherwise transferred in accordance with the **ACT**. It shall be further understood that if the **PRINCIPAL** performs any augmented seeding, fertilization, or other supplemental reclamation work on the site prior to bond release, the period of liability under this bond shall begin again subject to the exception found in the **ACT**

The failure of the **PRINCIPAL** to fulfill the obligations specified by the **ACT** and its permit shall result in a forfeiture of this performance bond according to the procedures described in the **ACT**.

The **SURETY** shall not cancel this bond at any time for any reason, including non-payment of premium or bankruptcy of the **PRINCIPAL** during the period of liability. The amount of the **SURETY'S** liability may be adjusted by the **OBLIGEE** pursuant to the **ACT** for lands covered by this bond.

The **SURETY** shall give prompt notice to the **PRINCIPAL** and to the **OBLIGEE** of any notice received or action filed alleging the insolvency or bankruptcy of the **SURETY** or of the **PRINCIPAL**, or alleging any violations or regulatory requirements which could result in suspension or revocation of the **SURETY'S** license to do business.

Forms

Permit No: (DMLR use only)	
Bond No:	

In the event the **SURETY** becomes unable to fulfill its obligations under the bond for any reason, notice shall be given immediately to the **PRINCIPAL** and to the **OBLIGEE**. Any proceeding, legal or equitable, under this bond must be instituted in a Virginia court of competent jurisdiction and shall be governed by the laws of the Commonwealth of Virginia.

Upon the incapacity of the **SURETY** by reason of bankruptcy, insolvency, or suspension or revocation of its license, the **PRINCIPAL** shall be deemed to be without bond coverage in violation of the **ACT** and subject to enforcement actions described in the **ACT**.

I. BY COMPANY/PRINCIPAL:	
_____ (SEAL) By: _____ Company /Principal	_____ Company/Principal Official
_____ Title	_____ Date
Subscribed and sworn/affirmed to before me by _____	
this _____ day of _____ 20 _____, in the State of _____	
in the City/County of _____	
_____ Notary Public Name (printed or typed)	_____ Notary Public Signature (Seal)
My Commission expires _____	20 _____

Permit No: (DMLR use only)	
Bond No:	

II. BY SURETY: Attach copy bearing seal of Power of Attorney or documentation supporting Corporate Officer's authority to issue surety bond.

Surety Name (SEAL) By: _____
Attorney-in-Fact

Date Attorney-in-Fact Name (printed or typed)

AFFIDAVIT AND ACKNOWLEDGEMENT OF ATTORNEY-IN-FACT
COMMONWEALTH OF VIRGINIA

(or, alternatively, Commonwealth or State of _____
CITY/COUNTY OF _____, to wit:

I, the undersigned notary public, do certify that _____
personally appeared before me in the jurisdiction aforesaid and made oath that he/she is the
attorney-in-fact of _____
the Surety, that he/she is duly authorized to execute on its behalf the foregoing Bond pursuant to the attached Power of
Attorney, and on behalf of said Surety acknowledged the aforesaid Bond(s) as its act and deed.

Given under my hand this _____ day of _____, 20 _____

Notary Public Name (printed or typed) Notary Public Signature (SEAL)

My Commission expires: _____, 20 _____

Permit No: (DMLR use only)	
Bond No:	

- III. BY ISSUING AGENT:
1. Attach copy of Agency License and Appointment Card from the Virginia Bureau of Insurance.
 2. Attach copy of Agent's License and Appointment Card from the Virginia Bureau of Insurance.

Insurance Agency Issuing Surety Bond (provide the following information):

Agency name: _____

Agency address: _____

Authorized agent: _____

Authorized agent address: _____

Office telephone number: _____

IV. DIVISION APPROVAL:

ACCEPTED: _____ Date: _____

Division of Mined Land Reclamation

GOVERNOR

EXECUTIVE ORDER NUMBER 75 (2004)

MANAGING THE COMMONWEALTH'S REAL ESTATE HOLDINGS

The Governor's Commission on Efficiency and Effectiveness recommended that the Commonwealth engage in an enterprise-wide review of its real estate management practices, with the aim of identifying savings opportunities and improving management practices.

In 2003, an independent study commissioned by the Department of General Services suggested numerous opportunities for cost savings for the Commonwealth through greater collaboration and portfolio management of state-owned real property.

The 2004 General Assembly enacted Chapters 750 and 997 relating to the management and use of state-owned real property. This legislation sets forth additional requirements for the management and cost-effective use of state-owned real property.

Therefore, in view of the importance of this issue and 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 direct the establishment of an integrated real estate portfolio management system for the agencies and institutions of the Executive Department.

Implementation

The Secretary of Administration shall direct a system-wide reengineering of the Commonwealth's real estate processes, including acquisitions, sales, easements and leases, with extensive collaboration with related agencies. A new unified and fully integrated real estate portfolio management system shall be established based on the following enterprise-wide goals: increase collocation and bargaining power, decrease total and per-person space allocations, reduce total costs, maintain agency security and operational needs, and augment or maintain agency functional space and real property services.

The new comprehensive real estate portfolio management program for leased and owned property shall include strategic planning, transaction management, project and construction management, lease administration, facilities and space management, and integrated management information and data systems. The Secretary of Administration shall submit a specific reengineering plan to me by December 15, 2004.

No later than July 23, 2004, every state agency and institution shall submit to the Secretary of Administration information on all current, pending, and proposed real estate assets, as directed by the Secretary of Administration. To support accurate analysis and strategic recommendations, the Secretary of Administration will develop a consolidated database of real estate information that has been verified and validated.

The Secretary of Administration shall also conduct an immediate examination of the state's leased property portfolio to identify specific cost-saving opportunities. The Secretary of

Administration shall provide quarterly progress reports to me beginning on September 1, 2004.

The Real Estate Agency Roundtable

I hereby establish the Real Estate Agency Roundtable, chaired by the Secretary of Administration, as a pivotal component of this real estate portfolio management initiative. It shall be comprised of the directors of major state agencies that lease or own real property, and representatives of smaller state agencies that are customers of state real estate services. The Roundtable will articulate the needs of these customer groups and provide input on alternative methodologies and systems of real estate management.

Each state agency and every state officer and state employee shall cooperate with, and provide assistance to, the Secretary of Administration in the implementation of this Executive Order.

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 22nd day of June 2004.

/s/ Mark R. Warner
Governor

EXECUTIVE ORDER NUMBER 77 (2004)

DECLARATION OF A STATE OF EMERGENCY FOR THE COMMONWEALTH OF VIRGINIA DUE TO THE THREAT OF SIGNIFICANT FLOODING AND WIND DAMAGE FROM HURRICANE CHARLEY

On August 14, 2004, I verbally declared a state of emergency to exist for the entire Commonwealth of Virginia based on current forecasts that indicate that Hurricane Charley could cause damaging high winds, flooding, and possible tornadoes throughout the state. The National Weather Service forecasts that Hurricane Charley will follow a Northeast track through Central and Eastern Virginia during the next 24 hours resulting in the potential for significant flooding, damaged structures and power outages in affected areas. In addition, Hurricane Charley may cause coastal flooding in southeastern Virginia and the Chesapeake Bay areas.

The health and general welfare of the citizens of the Commonwealth required that state action be taken to help prepare for and alleviate the conditions that may result from this situation. I also found that the potential effects of Hurricane Charley 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 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

Governor

ultimate authority and responsibility to act in such matters, I hereby confirm, ratify, and memorialize in writing my verbal orders issued August 14, 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 prepare for potential impacts of the storm, 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, prevent looting, 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 full implementation by agencies of the state and local governments of Volume 1 (Basic Plan), Volume 5 (Hurricane Emergency Response Plan) and Volume 2 (Disaster Recovery Plan) of the Virginia Emergency Operations Plan, as amended, along with other appropriate state agency plans.

B. Full activation of the Virginia Emergency Operations Center (VEOC) and State Emergency Response Team (SERT). Furthermore, I am directing that the VEOC and SERT 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 storm. 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 the Departments of State Police, Transportation and Motor Vehicles to grant temporary overweight, overwidth, registration, or license exemptions to carriers transporting essential emergency relief supplies into and through the Commonwealth in order to support the disaster response and recovery.

The axle and gross weights shown below are the maximum allowed, unless otherwise posted.

Any One Axle	24,000 Pounds
Tandem Axles (more than 40 inches but not more than 96 inches spacing between axle centers)	44,000 Pounds
Single Unit (2 Axles)	44,000 Pounds
Single Unit (3 Axles)	54,500 Pounds
Tractor-Semitrailer (4 Axles)	64,500 Pounds
Tractor-Semitrailer (5 or more Axles)	90,000 Pounds
Tractor-Twin Trailers (5 or more Axles)	90,000 Pounds
Other Combinations (5 or more Axles)	90,000 Pounds
Per Inch of Tire Width in Contact with Road Surface	850 Pounds

All overwidth loads, up to a maximum of 16 feet, must follow Virginia Department of Transportation (VDOT) hauling permit and safety guidelines.

In addition to described overweight/overwidth transportation privileges, carriers are also exempt from registration with the Department of Motor Vehicles. This includes the vehicles enroute and returning to their home base. The above-cited agencies shall communicate this information to all staff responsible for permit issuance and truck legalization enforcement.

This authorization shall apply to hours worked by any carrier when transporting passengers, property, equipment, food, fuel, construction materials and other critical supplies to or from any portion of the Commonwealth for purpose of providing relief or assistance as a result of this disaster, pursuant to § 52-8.4 of the Code of Virginia.

The foregoing overweight/overwidth transportation privileges as well as the regulatory exemption provided by § 52-8.4.A of the Code of Virginia, and implemented in § 19 VAC 30-20-40 B of the "Motor Carrier Safety Regulations," shall remain in effect for 30 days from the onset of the disaster, or until emergency relief is no longer necessary, as determined by the Secretary of Public Safety in consultation with the Secretary of Transportation, whichever is earlier.

G. The discontinuance of provisions authorized in paragraph F above may be implemented and disseminated by publication of administrative notice to all affected and interested parties by the authority I hereby delegate to the Secretary of Public Safety, after consultation with other affected Cabinet-level Secretaries.

H. 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.

I. The authorization of a maximum of \$100,000 for matching funds for the Individuals and Household Program, authorized by The Stafford Act (when presidentially authorized), to be paid from state funds.

J. 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.

K. 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), Radio Amateur Civil Emergency Services (RACES), 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 which 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 August 14, 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 16th day of August 2004.

/s/ Mark R. Warner
Governor

EXECUTIVE ORDER NUMBER 78 (2004)

ESTABLISHING THE GOVERNOR'S TASK FORCE ON WORKFORCE DEVELOPMENT IN THE CONSTRUCTION INDUSTRY

The Commonwealth of Virginia has a strong and dedicated workforce, and is committed to ensuring that all Virginians have an opportunity to contribute to its success. A key component of the state workforce is the construction industry, which faces unique challenges in recruiting, training, and maintaining high-quality workers in the 21st century.

In Virginia, more than 20,000 construction firms employ more than 214,000 Virginians at an average annual wage of \$35,000. Projections show that the growth in the construction industry will result in more than 4,300 new job openings per year by 2010. Without a strong effort now, Virginia runs the risk of having many of these good jobs go unfilled, or filled with less than qualified individuals, which would have serious negative consequences for the economy of the Commonwealth. It is imperative that the state begin planning now to ensure an adequate supply of properly skilled workers for the construction industry.

Establishment of the Task Force

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 Task Force on Workforce Development in the Construction Industry (the "Task Force").

The Task Force 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 Task Force shall be to address ways to prepare the Commonwealth's workforce to fill anticipated shortages in the construction industry as a result of high projected employment opportunities for the remainder of this decade.

The Task Force shall have 21 members appointed by the Governor and serving at his pleasure, including a chairman as designated by the Governor. In addition, the Secretary of Education, the Secretary of Commerce and Trade, and the Special Advisor for Workforce Development, or their designees, shall serve as non-voting, ex-officio members of the Task Force. Members of the Task Force shall serve without compensation. The Governor may add additional members to the Task Force at his discretion.

Duties of the Task Force

The Task Force shall:

1. Explore ways that the Commonwealth can expand the capacity to respond to pressing workforce needs in the construction industry;
2. Develop ways to integrate public and private resources, encompassing the K-12 sector as well as post-secondary, businesses, the Virginia Career Education Foundation, and apprentice-related entities;

3. Make recommendations on how to develop more effective career ladders for individuals to pursue careers in the construction industry; and

4. Make other recommendations to the Governor as may be appropriate.

The Task Force shall make its recommendations in a first report to the Governor by December 1, 2004, and a second report to the Governor by July 1, 2005.

Staff Support for the Task Force

Such staff support as is necessary for the conduct of the Task Force's work during the term of its existence shall be furnished by the Department of Labor and Industry, the Department of Business Assistance, the Virginia Community College System, the Department of Education, and such other executive agencies as the Governor may designate. An estimated 500 hours of staff time will be required to support the Task Force.

Such funding as is necessary for the term of the Task Force's existence shall be provided from sources, including both private and appropriated funds, contributed or appropriated for purposes related to the work of the Task Force, as authorized by Section 2.2-135(B) of the Code of Virginia. Direct expenditures for the Task Force'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 August 31, 2005, unless amended or rescinded by further executive order. Given under my hand and under the Seal of the Commonwealth of Virginia, this 1st day of September, 2004.

/s/ Mark R. Warner
Governor

EXECUTIVE ORDER NUMBER 79 (2004)

**DECLARATION OF A STATE OF EMERGENCY FOR
CENTRAL VIRGINIA DUE TO SIGNIFICANT
FLOODING CAUSED BY TROPICAL DEPRESSION
GASTON**

On August 30, 2004, I verbally declared a state of emergency to exist for the Central Virginia area based on confirmed reports of flash flooding and possible tornadoes throughout the central part of the Commonwealth. Downgraded from a tropical storm, Gaston moved into Virginia from the south during the morning of Monday, August 30, 2004. Although forecasts called for accumulations of 1"-3" in Central Virginia, the system slowed down over the Richmond metropolitan area and brought as much as 14" of rain in some areas. Local officials in the cities of Richmond, Hopewell, Colonial Heights, and Petersburg and the counties of Chesterfield, Dinwiddie, Henrico, Hanover, and Prince George report that homes, apartments, and businesses in low-lying areas have been flooded and many streets are impassable.

The health and general welfare of the citizens of the Commonwealth required that state action be taken to help alleviate the conditions caused by this situation. I also found that the potential effects of Tropical Depression Gaston

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 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 August 31, 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 prepare for potential impacts of the storm, 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, prevent looting, 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 full 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.

B. Full activation of the Virginia Emergency Operations Center (VEOC) and State Emergency Response Team (SERT). Furthermore, I am directing that the VEOC and SERT 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

Governor

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 storm. 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 the Departments of State Police, Transportation and Motor Vehicles to grant temporary overweight, overwidth, registration, or license exemptions to carriers transporting essential emergency relief supplies into and through the Commonwealth in order to support the disaster response and recovery.

The axle and gross weights shown below are the maximum allowed, unless otherwise posted.

Any One Axle	24,000 Pounds
Tandem Axles (more than 40 inches but not more than 96 inches spacing between axle centers)	44,000 Pounds
Single Unit (2 Axles)	44,000 Pounds
Single Unit (3 Axles)	54,500 Pounds
Tractor-Semitrailer (4 Axles)	64,500 Pounds
Tractor-Semitrailer (5 or more Axles)	90,000 Pounds
Tractor-Twin Trailers (5 or more Axles)	90,000 Pounds
Other Combinations (5 or more Axles)	90,000 Pounds
Per Inch of Tire Width in Contact with Road Surface	850 Pounds

All overwidth loads, up to a maximum of 16 feet, must follow Virginia Department of Transportation (VDOT) hauling permit and safety guidelines.

In addition to described overweight/overwidth transportation privileges, carriers are also exempt from registration with the Department of Motor Vehicles. This includes the vehicles enroute and returning to their home base. The above-cited agencies shall communicate this information to all staff responsible for permit issuance and truck legalization enforcement.

This authorization shall apply to hours worked by any carrier when transporting passengers, property, equipment, food, fuel, construction materials and other critical supplies to or from any portion of the Commonwealth for purpose of providing relief or assistance as a result of this disaster, pursuant to § 52-8.4 of the Code of Virginia.

The foregoing overweight/overwidth transportation privileges as well as the regulatory exemption provided by § 52-8.4.A of the Code of Virginia, and implemented in § 19 VAC 30-20-40.B of the "Motor Carrier Safety Regulations," shall remain in effect for 30 days from the onset of the disaster, or until emergency relief is no longer necessary, as determined by the Secretary of Public Safety in consultation with the Secretary of Transportation, whichever is earlier.

G. The discontinuance of provisions authorized in paragraph F above may be implemented and disseminated by publication of administrative notice to all affected and interested parties by the authority I hereby delegate to the Secretary of Public Safety, after consultation with other affected Cabinet-level Secretaries.

H. 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.

I. The authorization of a maximum of \$100,000 for matching funds for the Individuals and Household Program, authorized by The Stafford Act (when presidentially authorized), to be paid from state funds.

J. 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.

K. 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), Radio Amateur Civil Emergency Services (RACES), 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 which 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 August 30, 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.

Governor

Given under my hand and under the Seal of the Commonwealth of Virginia, this 31st day of August 2004.

/s/ Mark R. Warner
Governor

GENERAL NOTICES/ERRATA

DEPARTMENT OF CRIMINAL JUSTICE SERVICES

Approved Field Tests for Detection of Drugs

In accordance with 6 VAC 20-220-60 of the Regulations for the Approval of Field Tests for Detection of Drugs and under the authority of the Code of Virginia, the following field tests for detection of drugs are approved field tests:

O D V Incorporated
13386 International Parkway
Jacksonville, Florida 32218-2383

ODV NarcoPouch

<u>Drug or Drug Type</u>	<u>Manufacturer's Field Test</u>
Heroin	902 – Marquis Reagent
Amphetamine	902 – Marquis Reagent
Methamphetamine	902 – Marquis Reagent
3,4-Methylenedioxy-methamphetamine (MDMA)	902 – Marquis Reagent
Cocaine Hydrochloride	904B – Cocaine HCl and Base Reagent
Cocaine Base	904B – Cocaine HCl and Base Reagent
Barbiturates	905 – Dille-Koppanyi Reagent
Lysergic Acid Diethylamide (LSD)	907 – Ehrlich's (Modified) Reagent
Marijuana	908 – Duquenois – Levine Reagent
Hashish Oil	908 – Duquenois – Levine Reagent
Marijuana	909 – K N Reagent
Hashish Oil	909 – K N Reagent
Phencyclidine (PCP)	914 – PCP Methaqualone Reagent
Heroin	922 – Opiates Reagent
Methamphetamine	923 – Methamphetamine/ Ecstasy Reagent
3,4-Methylenedioxy-methamphetamine (MDMA)	923 – Methamphetamine/ Ecstasy Reagent
Heroin	924 – Mecke's (Modified) Reagent
Diazepam	925 – Valium/Ketamine Reagent
Ketamine	925 – Valium/Ketamine Reagent
Ephedrine	927 – Ephedrine Reagent
gamma - Hydroxybutyrate (GHB)	928 – GHB Reagent

ODV NarcoTest

<u>Drug or Drug Type</u>	<u>Manufacturer's Field Test</u>
Heroin	7602 – Marquis Reagent
Amphetamine	7602 – Marquis Reagent
Methamphetamine	7602 – Marquis Reagent
3,4-Methylenedioxy-methamphetamine (MDMA)	7602 – Marquis Reagent
Barbiturates	7605 – Dille-Koppanyi

Lysergic Acid Diethylamide (LSD)	Reagent 7607 – Ehrlich's (Modified) Reagent
Marijuana	7608 – Duquenois – Levine Reagent
Hashish Oil	7608 – Duquenois – Levine Reagent
Marijuana	7609 – K N Reagent
Hashish Oil	7609 – K N Reagent
Cocaine Hydrochloride	7613 – Scott (Modified) Reagent
Cocaine Base	7613 – Scott (Modified) Reagent
Phencyclidine (PCP)	7614 – PCP Methaqualone Reagent
Heroin	7622 – Opiates Reagent
Methamphetamine	7623 – Methamphetamine/Ecstasy Reagent
3,4-Methylenedioxy-methamphetamine (MDMA)	7623 – Methamphetamine/Ecstasy Reagent
Heroin	7624 – Mecke's Reagent
Diazepam	7625 – Valium/Ketamine Reagent
Ketamine	7625 – Valium/Ketamine Reagent
Ephedrine	7627 – Chen's Reagent - Ephedrine
gamma – Hydroxybutyrate (GHB)	7628 – GHB Reagent
Sirchie Fingerprint Laboratories 100 Hunter Place Youngsville, North Carolina 27596	

NARK

<u>Drug or Drug Type</u>	<u>Manufacturer's Field Test</u>
Narcotic Alkaloids	1 – Mayer's Reagent
Heroin	1 – Mayer's Reagent
Morphine	1 – Mayer's Reagent
Amphetamine	1 – Mayer's Reagent
Methamphetamine	1 – Mayer's Reagent
Opium Alkaloids	2 – Marquis Reagent
Heroin	2 – Marquis Reagent
Morphine	2 – Marquis Reagent
Amphetamine	2 – Marquis Reagent
Methamphetamine	2 – Marquis Reagent
3,4-Methylenedioxy-methamphetamine (MDMA)	2 – Marquis Reagent
Meperidine (Demerol) (Pethidine)	2 – Marquis Reagent
Heroin	3 – Nitric Acid
Morphine	3 – Nitric Acid
Cocaine Hydrochloride	4 – Cobalt Thiocyanate Reagent
Cocaine Base	4 – Cobalt Thiocyanate Reagent

General Notices/Errata

Procaine	4 – Cobalt Thiocyanate Reagent	Phencyclidine (PCP)	Reagent 09 – Phencyclidine Reagent
Tetracaine	4 – Cobalt Thiocyanate Reagent	Opiates	10 – Opiates Reagent
Barbiturates	5 – Dille-Koppanyi Reagent	Heroin	10 – Opiates Reagent
Heroin	6 – Mandelin Reagent	Morphine	10 – Opiates Reagent
Morphine	6 – Mandelin Reagent	Heroin	11 – Mecke's Reagent
Amphetamine	6 – Mandelin Reagent	3,4 - Methylendioxy-methamphetamine	11 – Mecke's Reagent
Methamphetamine	6 – Mandelin Reagent	Pentazocine	12 – Talwin/ Pentazocine Reagent
Lysergic Acid Diethylamide (LSD)	7 – Ehrlich's Reagent	Ephedrine	13 – Ephedrine Reagent
Marijuana	8 – Duquenois – Levine Reagent	Diazepam	14 – Valium Reagent
Hashish	8 – Duquenois – Levine Reagent	Methamphetamine	15 – Methamphetamine (Secondary Amines) Reagent
Hashish Oil	8 – Duquenois – Levine Reagent	Armor Holdings, Incorporated 13386 International Parkway Jacksonville, Florida 32218-2383	
Tetrahydrocannabinol (THC)	8 – Duquenois – Levine Reagent		
Marijuana	9 – NDB (Fast Blue B Salt) Reagent	NIK <u>Drug or Drug Type</u> Heroin	<u>Manufacturer's Field Test</u> Test A 6071 – Marquis Reagent
Hashish	9 – NDB (Fast Blue B Salt) Reagent	Amphetamine	Test A 6071 – Marquis Reagent
Hashish Oil	9 – NDB (Fast Blue B Salt) Reagent	Methamphetamine	Test A 6071 – Marquis Reagent
Tetrahydrocannabinol (THC)	9 – NDB (Fast Blue B Salt) Reagent	3,4 – Methylendioxy-methamphetamine (MDMA)	Test A 6071 – Marquis Reagent
Cocaine Base	13 – Cobalt Thiocyanate/Crack Test	Morphine	Test B 6072 – Nitric Acid Reagent
NARK II		Barbiturates	Test C 6073 – Dille-Koppanyi Reagent
<u>Drug or Drug Type</u>	<u>Manufacturer's Field Test</u>	Lysergic Acid Diethylamide (LSD)	Test D 6074 – LSD Reagent System
Narcotic Alkaloids	01 – Mayer's Reagent	Marijuana	Test E 6075 – Duquenois – Levine Reagent
Heroin	01 – Mayer's Reagent	Hashish Oil	Test E 6075 – Duquenois – Levine Reagent
Morphine	01 – Mayer's Reagent	Tetrahydrocannabinol	Test E 6075 – Duquenois – Levine Reagent
Amphetamine	01 – Mayer's Reagent	Cocaine Hydrochloride	Test G 6076 – Scott (Modified) Reagent
Methamphetamine	01 – Mayer's Reagent	Cocaine Base	Test G 6076 – Scott (Modified) Reagent
3,4 - Methylendioxy-methamphetamine	01 – Mayer's Reagent	Cocaine Hydrochloride	6501 – Cocaine ID Swab
Opiates	02 – Marquis Reagent	Cocaine Base	6501 – Cocaine ID Swab
Heroin	02 – Marquis Reagent	Phencyclidine (PCP)	Test J 6079 – PCP Reagent System
Morphine	02 – Marquis Reagent	Heroin	Test K 6080 – Opiates Reagent
Amphetamine	02 – Marquis Reagent	Heroin	Test L 6081 – Brown Heroin Reagent System
Methamphetamine	02 – Marquis Reagent	gamma – Hydroxybutyrate (GHB)	Test O 6090 – GHB Reagent
Meperidine (Demerol) (Pethidine)	02 – Marquis Reagent	Ephedrine	Test Q 6085 – Ephedrine Reagent
Barbiturates	03 – Dille-Koppanyi Reagent	Pseudoephedrine	Test Q 6085 – Ephedrine Reagent
Lysergic Acid Diethylamide (LSD)	04 – Ehrlich's Reagent		
Marijuana	05 – Duquenois – Levine Reagent		
Hashish	05 – Duquenois – Levine Reagent		
Hashish Oil	05 – Duquenois – Levine Reagent		
Tetrahydrocannabinol (THC)	05 – Duquenois – Levine Reagent		
Cocaine Hydrochloride	07 – Scott's (Modified) Reagent		
Cocaine Base	07 – Scott's (Modified) Reagent		

Diazepam	Test R 6085 – Valium Reagent
Methamphetamine	Test U 6087 – Methamphetamine Reagent
3,4 – Methylenedioxymethamphetamine (MDMA)	Test U 6087 – Methamphetamine Reagent
Methadone	Test W 6088 – Mandelin Reagent System

Mistral Security Incorporated
7910 Woodmont Avenue, Suite 820
Bethesda, Maryland 20814

<u>Drug or Drug Type</u>	<u>Manufacturer's Field Test</u>
Heroin	Detect 4 Drugs Aerosol
Amphetamine	Detect 4 Drugs Aerosol
Methamphetamine	Detect 4 Drugs Aerosol
Marijuana	Detect 4 Drugs Aerosol
Hashish Oil	Detect 4 Drugs Aerosol
Methamphetamine	Meth 1 and 2 Aerosol
Heroin	Herosol Aerosol
Marijuana	Cannabispray 1 and 2 Aerosol
Hashish Oil	Cannabispray 1 and 2 Aerosol
Cocaine Hydrochloride	Coca-Test Aerosol
Cocaine Base	Coca-Test Aerosol

DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice of Citizen Nomination of Surface Waters for Water Quality Monitoring

In accordance with § 62.1-44.19:5 F of the Code of Virginia, the Water Quality Monitoring Information and Restoration Act, the Virginia Department of Environmental Quality (DEQ) has developed guidance for requests from the public regarding specific segments that can be nominated for consideration to be included in the Virginia Department of Environmental Quality (DEQ) annual Water Quality Monitoring Plan.

Any citizen of the Commonwealth who wishes to nominate a water body or stream segment for inclusion in DEQ's Water Quality Monitoring Plan should refer to the guidance in preparation and submittal of their requests. All nominations must be received by December 31 to be considered for the upcoming state fiscal year. Copies of the guidance document and nomination form are available online at <http://www.deq.state.va.us/cmonitor/>.

For more information, please contact James Beckley, Water Quality Data Liaison, Virginia Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4025, or e-mail jbeckley@deq.virginia.gov.

Total Maximum Daily Loads (TMDLs) for Back Bay and North Landing River Watersheds

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation seek written and oral comments from interested persons on a water quality study that is beginning in the Back Bay and North Landing River watersheds. The purpose of the study will be to identify sources of bacteria in the watershed and to determine the reductions in bacteria loadings needed to allow various streams in the watershed to meet water quality goals. The study will result in Total Maximum Daily Loads (TMDLs) to address bacteria impairments on several waterways.

The affected streams were identified in Virginia's 1998 303(d) TMDL Priority List and Report and Virginia's 2002 303(d) Report on Impaired Waters as impaired due to violations of Virginia's water quality standards for fecal coliform bacteria. These streams are therefore not supporting the Primary Contact Recreation (swimmable) Designated Use. The impairments include: 3.29 miles of Milldam Creek, 0.06 sq. miles of Nawney Creek, and 0.03 sq. miles of West Neck Creek. These impaired waters are located in Virginia Beach.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for each pollutant causing a water quality problem, or impairment, in streams contained in Virginia's 303(d) Report on Impaired Waters.

The first public meeting has been scheduled for Wednesday, October 20 at 7 p.m. in the DEQ Tidewater Regional Office located at 5636 Southern Blvd., Virginia Beach. The purpose of the meeting is to discuss the TMDL development process and to share information on bacteria sources in the watershed. Anyone interested in attending this meeting should contact Jennifer Howell (contact information provided below). Information from this meeting will be made available on the DEQ TMDL web site at <http://www.deq.virginia.gov/tmdl/>.

Questions or information requests should be addressed to Jennifer Howell. The public comment period will end on November 20, 2004. Written comments regarding the water quality study and TMDL development should include the name, address, and telephone number of the person submitting the comments and should be sent to: Jennifer Howell, Virginia Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd, Virginia Beach, VA 23462, telephone (757) 518-2111, FAX (757) 518-2003, or e-mail jshowell@deq.virginia.gov.

Total Maximum Daily Loads (TMDLs) for Blackwater River Watershed

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation seek written and oral comments from interested persons on a water quality study that is beginning in the Blackwater River watershed. The purpose of the study will be to identify sources of bacteria in the watershed and to determine the reductions in bacteria loadings needed to allow various streams in the watershed to meet water quality goals. The study will result in Total

General Notices/Errata

Maximum Daily Loads (TMDLs) to address multiple bacteria impairments on tributaries to the Blackwater River.

The affected streams were identified in Virginia's 1998 303(d) TMDL Priority List and Report, the Virginia 2002 303(d) Report on Impaired Waters, and the 2004 VA Water Quality Assessment 305(b)/303(d) Integrated Report as impaired due to violations of Virginia's water quality standards for fecal coliform bacteria. The streams are therefore not supporting the Primary Contact Recreation (Swimmable) Designated Use. The impairments include 16.78 miles of Mill Swamp located in Isle of Wight and Surry Counties, 8.16 miles of Rattlesnake (Creek) Swamp located in Isle of Wight, and 17.1 miles of Cypress Swamp located in Surry County.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for each pollutant causing a water quality problem, or impairment, in streams contained in Virginia's 303(d) Report on Impaired Waters.

The first public meeting for the Blackwater River Tributaries TMDLs has been scheduled for Monday, October 25, 2004, at 7 p.m. at the Surry Community Center, 205 Enos Farm Drive in Surry, VA. The purpose of the meeting is to discuss the TMDL development process in the Blackwater Tributaries and to share information on bacteria sources in these watersheds. Anyone interested in attending this meeting should contact the regional TMDL coordinator, Chris French (contact information provided below). Information from this meeting will be made available on the DEQ TMDL web site at <http://www.deq.virginia.gov/tmdl/>.

A fact sheet on the water quality study and development of TMDLs is available upon request or can be viewed at the DEQ TMDL website at <http://www.deq.virginia.gov/tmdl>. The public comment period will end on November 24, 2004. Written comments regarding the water quality study and TMDL development should include the name, address, and telephone number of the person submitting the comments and should be sent to Chris French, Department of Environmental Quality, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804) 527-5106, or e-mail rcfrench@deq.virginia.gov.

Total Maximum Daily Load (TMDL) for Middlesex County

The Department of Environmental Quality (DEQ), Virginia Department of Health and the Department of Conservation and Recreation seek written and oral comments from interested persons on the development of a Total Maximum Daily Load (TMDL) for fecal coliform bacteria in shellfish propagation waters located in Middlesex County, Virginia.

All impaired segments are located wholly within Middlesex County with the exception of the Piankatank River segments, these are in part located in Mathews County. These areas are described in the following publications:

1) Growing Area 27 as described in Virginia Department of Health, Notice and Description of Shellfish Area Condemnation Numbers 90 and 202, Rappahannock River:

Mud and Parrotts Creek, effective 27 April 1989 and 8 October 1996, respectively.

2) Growing Area 28 as described in Virginia Department of Health, Notice and Description of Shellfish Area Condemnation Numbers 127 and 177, Rappahannock River: LaGrange and Robinson Creeks, effective 11 June 1996 and 28 May 1997, respectively.

3) Growing Area 29 as described in Virginia Department of Health, Notice and Description of Shellfish Area Condemnation Number 42, Rappahannock River: Urbanna Creek, effective 17 September 1993.

4) Growing Area 30 as described in Virginia Department of Health, Notice and Description of Shellfish Area Condemnation Numbers 51 and 179, Rappahannock River: Whiting and Meachin Creeks, effective 7 June 1994 and 9 December 1996, respectively.

5) Growing Area 34 as described in Virginia Department of Health, Notice and Description of Shellfish Area Condemnation Numbers 126, 129 and 170, Piankatank River, Lower, Wilton, Healy and Cobbs Creeks, effective 2 March 1993, 3 March 1997, and 2 March 1993, respectively.

The affected water body segments are identified in Virginia's 1998 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standard for fecal coliform bacteria in shellfish waters. Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's 303(d) TMDL Priority List and Report.

The first public meeting on the development of the fecal coliform TMDL's will be held on October 20, 2004, from 7 p.m. to 9 p.m. at the Cooks Corner Community Center, Route 33, Cooks Corner, Middlesex County, Virginia. Directions can be obtained by calling Chris French at (804) 521-5124. The public comment period will begin on October 21, 2004, and end at 5 p.m. on November 19, 2004. Questions or information requests should be addressed to Chester Bigelow and should include the name, address, and telephone number of the person submitting the comments. Requests should be sent to Chester Bigelow, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23240, telephone (804) 698-4554, FAX (804) 698-4116, or e-mail cbigelow@deq.state.va.us.

Total Maximum Daily Load (TMDL) for Mill Creek

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation seek written and oral comments from interested persons on the development of a Total Maximum Daily Load (TMDL) for Mill Creek in Page County. This stream was listed on the 1998 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standard for bacteria. The impairment extends from the headwaters to the confluence with the South Fork Shenandoah River for a total of 6.78 miles.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's 303(d) TMDL Priority List and Report.

The first public meeting on the development of this TMDL will be held on Wednesday, October 20, 2004, 7 p.m. at the Page County Circuit Court Room, 116 South Court Street, Luray, VA 22835.

The public comment period for this meeting will end on November 19, 2004. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Robert Brent, Department of Environmental Quality, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7848, FAX (540) 574-7878, or e-mail mbrent@deq.virginia.gov.

Total Maximum Daily Loads (TMDLs) for the North River

The Department of Environmental Quality (DEQ) is developing Total Maximum Daily Loads (TMDLs) for the North River. This stream was listed on the 1996 303(d) TMDL Priority List and Report as impaired due to violations of the state's General Standard (benthic) for aquatic life. North River was also listed on the 2002 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standard for bacteria. The general standard impairment includes a 16.32-mile segment from Cooks Creek to the confluence with the South River. The bacteria impairment includes a 24.96-mile segment from Beaver Creek to the confluence with the South River.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's 303(d) TMDL Priority List and Report.

A public meeting was held on September 23, 2004, to introduce the public to the impairments and solicit public comment on the TMDL development. Following this meeting, a Technical Advisory Committee of local stakeholders and officials was formed to provide direct input throughout the development of the TMDL. The first meeting of the Technical Advisory Committee will be held on Thursday, October 14, 2004, 1 p.m. at the DEQ Valley Regional Office, 4411 Early Road, Harrisonburg, VA 22801.

Total Maximum Daily Loads (TMDLs) for Nottoway River Basin and its Tributaries

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation seek written and oral comments from interested persons on the development of Total Maximum Daily Loads (TMDLs) to address multiple impairments in the Nottoway River Basin and its tributaries. The affected streams were identified in Virginia's 1998 303(d) TMDL Priority List and Report and Virginia's 2002 303(d) Report on Impaired Waters as impaired due to violations of Virginia's water quality standards for fecal coliform bacteria.

The streams are therefore not supporting the Primary Contact Recreation (swimmable) Designated Use. The impairments include 17.76 miles of the Nottoway River, 9.85 miles of the Little Nottoway River, 10.35 miles of Big Hounds Creek and 7.17 miles of Beaverpond Creek. These impairments are located in Prince Edward, Nottoway, Lunenburg, and Dinwiddie Counties.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's 303(d) TMDL Priority List and Report.

The first public meeting on the development of the Nottoway River Basin TMDL will be held on Thursday, October 28, 2004, 7 p.m. in the Blackstone Town Council Chambers located in the Town Office Building at 100 West Elm Street in Blackstone.

The public comment period for this phase of the TMDL development will end on November 29, 2004. A fact sheet on the development of the Nottoway River TMDL is available upon request or can be viewed on the DEQ website at <http://www.deq.virginia.gov/tmdl>. Questions or information requests should be addressed to Kelly Wills. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Kelly J. Wills, Department of Environmental Quality, 7705 Timberlake Road, Lynchburg, VA 24502, telephone (434) 582-5120 ext. 6042, FAX (434) 582-5125, or e-mail kjwills@deq.virginia.gov.

Total Maximum Daily Loads (TMDLs) for Nottoway River and its Tributaries

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation seek interested persons to participate in a water quality study that is beginning in the Nottoway River watershed. The purpose of the study will be to identify sources of bacteria in the watershed and to determine the reductions in bacteria loadings needed to allow various streams in the watershed to meet water quality goals. The study will result in Total Maximum Daily Loads (TMDLs) to address multiple bacteria impairments on the Nottoway River and its tributaries.

The affected streams were identified in Virginia's 1998 303(d) TMDL Priority List and Report and Virginia's 2002 303(d) Report on Impaired Waters as impaired due to violations of Virginia's water quality standards for fecal coliform bacteria. The streams are therefore not supporting the Primary Contact Recreation (swimmable) Designated Use. The impairments include 17.76 miles of the Nottoway River, 9.85 miles of the Little Nottoway River, 10.35 miles of Big Hounds Creek and 7.17 miles of Beaverpond Creek. These impairments are located in Prince Edward, Nottoway, Lunenburg, and Dinwiddie Counties.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for each pollutant causing a water quality problem, or impairment, in streams contained in Virginia's 303(d) Report on Impaired Waters.

General Notices/Errata

A second advisory committee meeting for the Nottoway River watershed TMDL has been scheduled for Thursday, October 14, 2004, at 1 p.m. in the Blackstone Town Council Chambers located in the Town Office Building at 100 West Elm Street in Blackstone. The purpose of the meeting is to discuss the results of the bacteria source assessment and water quality modeling results, in addition to the allocations based on the assessments. Anyone interested in attending this meeting should contact the regional TMDL coordinator, Kelly Wills (contact information provided below). Information from this meeting will be made available on the DEQ TMDL web site at <http://www.deq.virginia.gov/tmdl/>. A fact sheet on the water quality study and development of the Nottoway River watershed TMDLs is available upon request or can be viewed at the DEQ TMDL website at <http://www.deq.virginia.gov/tmdl/>. Questions or information requests should be addressed to Kelly Wills, Department of Environmental Quality, 7705 Timberlake Road, Lynchburg, VA 24502, telephone (434) 582-5120 ext. 6042, FAX (434) 582-5125, or e-mail kjwills@deq.virginia.gov.

Total Maximum Daily Loads (TMDLs) for Sappony Creek and Raccoon Creek

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation seek written and oral comments from interested persons on a water quality study that is beginning in the Sappony Creek and Raccoon Creek watersheds. The purpose of the study will be to identify sources of bacteria in the watersheds and to determine the reductions in bacteria loadings needed to allow various streams in the watershed to meet water quality goals. The study will result in Total Maximum Daily Loads (TMDLs) to address bacteria impairments on Sappony Creek and Raccoon Creek.

The affected streams were identified in Virginia's 1998 303(d) TMDL Priority List and Report, the Virginia 2002 303(d) Report on Impaired Waters, and the 2004 VA Water Quality Assessment 305(b)/303(d) Integrated Report as impaired due to violations of Virginia's water quality standards for fecal coliform bacteria. The streams are therefore not supporting the Primary Contact Recreation (Swimmable) Designated Use. The impairments include 20.19 miles of Sappony Creek in Dinwiddie and Sussex Counties and 19.3 miles of Raccoon Creek in Sussex and Southampton Counties.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for each pollutant causing a water quality problem, or impairment, in streams contained in Virginia's 303(d) Report on Impaired Waters.

The first public meeting for the Sappony Creek and Raccoon Creek TMDLs has been scheduled for Monday, October 18, 2004, at 7 p.m. at the Sussex Judicial Center, General District Courtroom, at 15098 Courthouse Road in Sussex. The purpose of the meeting is to discuss the TMDL development process on Sappony Creek and Raccoon Creek watersheds and to share information on bacteria sources. Anyone interested in attending this meeting should contact the regional TMDL coordinator, Chris French (contact information

provided below). Information from this meeting will be made available on the DEQ TMDL web site at <http://www.deq.virginia.gov/tmdl/>.

A fact sheet on the water quality study and development of the Sappony Creek and Raccoon Creek TMDLs is available upon request or can be viewed at the DEQ TMDL website at <http://www.deq.virginia.gov/tmdl/>. The public comment period will end on November 17, 2004. Written comments regarding the water quality study and TMDL development should include the name, address, and telephone number of the person submitting the comments and should be sent to Chris French, Department of Environmental Quality, 4949-A Cox Road, Glen Allen, Virginia, 23060, telephone (804) 527-5124, FAX (804) 527-5106, or e-mail rcfrench@deq.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Pharmacy Services Reimbursement for Generic Drug Products

Notice is hereby given that the Department of Medical Assistance Services (DMAS) intends to modify its reimbursement plan for pharmacy services 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 Chapter 4 of the 2004 Acts of the Assembly, Item 326 WW directing DMAS to modify the reimbursement methodology used for generic drug products.

This new methodology will reimburse for the product cost based on a Maximum Allowable Cost (MAC) for generic, multiple source drug products. The MAC program will replace the current maximum allowable cost as a payment methodology for multiple source drugs. The MAC will expand the variety of drugs priced through the current methodology. In addition, the MAC program will ensure that pricing is reflective of current market conditions and that these prices are made available to providers on a regular basis. This action sets the criteria for the department to develop MAC pricing methodology, publish prices, and maintain a pricing dispute resolution procedure. The methodology used to reimburse for generic drug products shall be the higher of either: (i) the lowest Wholesale Acquisition Cost (WAC) plus 10 percent, or (ii) the second lowest WAC plus six percent.

The remainder of the agency's pharmacy reimbursement, as set forth in 12 VAC 30-80-40, will not change. The MAC program is expected to offer savings of \$10 million in total funds in fiscal year 2004. Savings will be achieved by more accurately pricing generic, multiple source drugs based on market pricing and the availability of drugs.

A copy of this notice is available for public review from H. Bryan Tomlinson, Director, Health Care Services Division, DMAS, 600 Broad Street, Suite 1300, Richmond, VA 23219, and this notice is available for public review at www.townhall.state.va.us. Comments or inquiries may be submitted, in writing, within 30 days of this notice publication

to Mr. Tomlinson and such comments are available for review at the same address.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

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

Notice of Public Comment

The Department of Mental Health, Mental Retardation and Substance Abuse Services and the State Mental Health, Mental Retardation and Substance Abuse Services Board will review its regulation, 12 VAC 35-115, Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services to determine whether it should be terminated, amended, or retained in its current form. The review will be guided by the principles listed in Executive Order 21 (2002).

The department seeks public comment on any issue relating to the review of this regulation including whether (i) the regulation is effective in achieving its goals; (ii) the regulation is essential to protect the health, safety, or welfare of citizens; (iii) there are less burdensome and intrusive alternatives to the regulation; and (iv) the regulation is clearly written and easily understandable.

Written comments may be submitted until November 15, 2004, in care of Margaret Walsh, Director of the Office of Human Rights, 1220 Bank Street, P.O. Box 1797, Richmond, VA 23218-1797, by e-mail to cohrreg@co.dmhmrzas.virginia.gov or by facsimile to (804) 371-2308. Please include full name and mailing address in any correspondence.

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

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

October 8, 2004 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Room 395, Richmond, Virginia.♿
(Interpreter for the deaf provided upon request)

A full board meeting to discuss general business matters. A public comment period will be held at the beginning of the meeting. All meetings are subject to cancellation. The time of the meeting is subject to change. Any person desiring to attend the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so suitable arrangements can be made. The board fully complies with the Americans 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.

COMMONWEALTH COUNCIL ON AGING

† **October 13, 2004 - 10:30 a.m.** -- Open Meeting
Virginia Department for the Aging, 1610 Forest Avenue, Suite 100, Richmond, Virginia.♿ (Interpreter for the deaf provided upon request)

A business meeting of the Legislative Committee. Public comments are welcomed.

Contact: Bill Peterson, Deputy Commissioner for Programs, Virginia Department for the Aging, 1610 Forest Ave., Suite 100, Richmond, VA 23229, telephone (804) 662-9325, e-mail bill.peterson@vda.virginia.gov.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Virginia Horse Industry Board

† **October 19, 2004 - 11:30 a.m.** -- Open Meeting
Markel Insurance Company, Markel Plaza, 4600 Cox Road,
1st Floor Conference Room, Glen Allen, Virginia.♿

A meeting to focus on revising the grant guidelines for proposals to be submitted for FY 2004-2005. 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. 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 aheid@vdacs.state.va.us.

STATE AIR POLLUTION CONTROL BOARD

October 8, 2004 -- Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled **9 VAC 5-20, General Provisions, and 9 VAC 5-40, Existing Stationary Sources**. The purpose of the proposed action is to develop a regulation concerning consumer products that will contribute to the achievement of the necessary VOC emissions reductions to stay within the budget limit in order to safeguard federal approval of transportation projects in Northern Virginia.

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

Contact: Gary Graham, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone

(804) 698-4103, FAX (804) 698-4510 or e-mail gegraham@deq.virginia.gov.

October 8, 2004 -- Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled **9 VAC 5-91, Regulations for the Control of Motor Vehicle Emissions in the Northern Virginia Area**. The purpose of the proposed action is to develop regulation amendments that conform to state law concerning the on-road testing (remote sensing) of emissions from motor vehicles located or primarily operated in Northern Virginia and out of area commuters, the subsequent testing of those motor vehicles, and the operation of a program to subsidize repair costs of some vehicles identified by remote sensing.

Statutory Authority: §§ 46.2-1178.1, 46.2-1178.2 and 46.2-1180 of the Code of Virginia.

Contact: Mary L. Major, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4423, FAX (804) 698-4510 or e-mail mimajor@deq.virginia.gov.

† **October 15, 2004 - 7 p.m.** -- Public Hearing
Henry County Administration Building, 3300 Kings Mountain Road, Main Meeting Room, Martinsville, Virginia. 

A public hearing to receive comments on an air permit application from MasterBrand Cabinets to construct a cabinet manufacturing and coating facility in Martinsville. The public comment period closes on November 1, 2004.

Contact: Gary Bradley, Department of Environmental Quality, 3019 Peters Creek Rd., Roanoke, VA 24019, telephone (540) 562-6738, FAX (540) 562-6729, e-mail grbradley@deq.virginia.gov.

November 3, 2004 - 11 a.m. -- Open Meeting
Virginia Beach area; location to be announced.

The annual meeting of the State Air Pollution Control Board and State Advisory Board on Air Pollution.

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.

† **November 10, 2004 - 10 a.m.** -- Open Meeting
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. 

A meeting to receive public comment on the notice of intended regulatory action to amend the regulation for the control and abatement of air pollution concerning open burning. The notice of intended regulatory action appears in the Virginia Register of Regulations on October 4, 2004, and the comment period closes on November 10, 2004.

Contact: Mary E. Major, State Air Pollution Control Board, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4423, FAX (804) 698-4510, e-mail memajor@deq.virginia.gov.

November 17, 2004 - 1 p.m. -- Open Meeting

November 18, 2004 - 9 a.m. -- Open Meeting

Williamsburg, Virginia area; location to be determined. 

A meeting of representatives of the three regulatory citizen boards: State Air Pollution Control Board, Virginia Waste Management Board and the State Water Pollution Control Board.

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.

ALCOHOLIC BEVERAGE CONTROL BOARD

October 12, 2004 - 9 a.m. -- Open Meeting

October 25, 2004 - 9 a.m. -- Open Meeting

November 8, 2004 - 9 a.m. -- Open Meeting

November 22, 2004 - 9 a.m. -- Open Meeting

December 6, 2004 - 9 a.m. -- Open Meeting

December 20, 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.

October 23, 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 Alcoholic Beverage Control Board intends to amend regulations entitled **3 VAC 5-30, Tied-House**. The purpose of the proposed action is to lessen restrictions on promotional activities involving gifts of things of value from alcoholic beverage manufacturers or wholesalers to retailers.

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Contact: W. Curtis Coleburn, III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4409, FAX (804) 213-4411 or e-mail wccolen@abc.state.va.us.

Calendar of Events

October 23, 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 Alcoholic Beverage Control Board intends to amend regulations entitled **3 VAC 5-40, Requirements for Product Approval**; and **3 VAC 5-70, Other Provisions**. The purpose of the proposed action is to adopt regulations providing for the application process, recordkeeping and reporting process for wine or beer shippers' licensees and common carriers approved to deliver shipments from such licensees to consumers.

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Contact: W. Curtis Coleburn, III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4409, FAX (804) 213-4411 or e-mail wccolen@abc.state.va.us.

ALZHEIMER'S DISEASE AND RELATED DISORDERS COMMISSION

December 7, 2004 - 10 a.m. -- Open Meeting
Department for the Aging, 1610 Forest Avenue, Suite 100, Richmond, Virginia. 

A quarterly meeting.

Contact: Janet L. Honeycutt, Director of Grant Operations, Alzheimer's Disease and Related Disorders Commission, 1610 Forest Ave., Suite 100, Richmond, VA 23229, telephone (804) 662-9333, FAX (804) 662-9354, toll-free (800) 552-3402, (804) 662-9333/TTY , e-mail janet.honeycutt@vda.virginia.gov.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

NOTE: CHANGE IN MEETING TIME

October 13, 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: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail APELSCIDLA@dpor.virginia.gov.

† October 25, 2004 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A meeting of the Architects Section to conduct board business. The meeting is open to the public; however, a

portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail APELSCIDLA@dpor.virginia.gov.

† October 26, 2004 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A meeting of the Professional Engineers Section to conduct board business. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail APELSCIDLA@dpor.virginia.gov.

† November 4, 2004 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A meeting of the Certified Interior Designers Section to conduct board business. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail APELSCIDLA@dpor.virginia.gov.

† November 9, 2004 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A meeting of the Land Surveyors Section to conduct board business. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and

requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail APELSCIDLA@dpor.virginia.gov.

† **November 10, 2004 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ♿

A meeting of the Landscape Architects Section to conduct board business. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail APELSCIDLA@dpor.virginia.gov.

† **December 9, 2004 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ♿

A meeting of the board to conduct board business. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail APELSCIDLA@dpor.virginia.gov.

ART AND ARCHITECTURAL REVIEW BOARD

November 5, 2004 - 10 a.m. -- Open Meeting
December 3, 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

November 3, 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.

AUCTIONEERS BOARD

† **October 7, 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 meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Marian H. Brooks, Regulatory Board Administrator, Auctioneers Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail Auctioneers@dpor.virginia.gov.

October 14, 2004 - 10 a.m. -- Open Meeting
† **November 2, 2004 - 1 p.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: Marian H. Brooks, Regulatory Board Administrator, Auctioneers Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail Auctioneers@dpor.virginia.gov.

Calendar of Events

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

November 11, 2004 - 9:30 a.m. -- Canceled
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A quarterly business meeting has been canceled.

Contact: Elizabeth Young, Executive Director, Board of Audiology and Speech-Language Pathology, Alcoa Building, 6603 West 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.

VIRGINIA AVIATION BOARD

† **October 19, 2004 - 3 p.m.** -- Open Meeting

† **October 20, 2004 - 9 a.m.** -- Open Meeting

Holiday Inn Airport, 5203 Williamsburg Road, Sandston, Virginia.

A regular bimonthly meeting. Applications for state funding will be presented to the board; other matters of interest will be presented to the Virginia aviation community. Individuals with disabilities should contact Carolyn Toth at least 10 days prior to the meeting if assistance is needed.

Contact: Carolyn Toth, Administrative Assistant, Virginia Aviation Board, 5702 Gulfstream Rd., Richmond, VA 23250, telephone (804) 236-3637, FAX (804) 236-3635, e-mail carolyn.toth@doav.virginia.gov.

DEPARTMENT FOR THE BLIND AND VISION IMPAIRED

October 20, 2004 - 7 p.m. -- Open Meeting
Lions Sight Foundation, 501 Elm Avenue, S.W., Roanoke, Virginia. (Interpreter for the deaf provided upon request)

† **October 23, 2004 - 10 a.m.** -- Open Meeting
Old Country Buffet, Regency Hilltop Plaza, 1952 Laskin Road, Virginia Beach, Virginia. (Interpreter for the deaf provided upon request)

† **October 29, 2004 - 4 p.m.** -- Open Meeting
Holiday Inn-University Area, 1901 Emmett Street, Charlottesville, Virginia. (Interpreter for the deaf provided upon request)

A meeting to solicit comments from the public regarding the Department for the Blind and Vision Impaired's intent to amend its state plan for vocational rehabilitation (VR) to identify by category the order in which eligible VR clients will be served in the event resources are not available to serve all eligible VR clients.

Contact: Susan D. Payne, VR Director, Department for the Blind and Vision Impaired, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3184, FAX (804) 371-3390, toll-free (800) 622-2155, (804) 371-3140/TTY, e-mail sdpayne@dbvi.state.va.us.

BOARD FOR BRANCH PILOTS

October 22, 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 for Branch Pilots intends to amend regulations entitled **18 VAC 45-10, Board for Branch Pilots Regulations**. The purpose of the proposed action is to document and formalize the process through which the public has access to the regulatory review process. The amendments further increase the agency's efficiency in seeking public input into the regulatory process.

Statutory Authority: §§ 2.2-4007 and 54.1-902 of the Code of Virginia.

Contact: Karen W. O'Neal, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475 or e-mail karen.oneal@dpor.virginia.gov.

† **November 1, 2004 - 8:30 a.m.** -- Open Meeting
Radisson Hotel Hampton, 700 Settlers Landing Road, Hampton, Virginia.

A meeting to conduct examinations.

Contact: Mark N. Courtney, Executive Director, Board for Branch Pilots, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY, e-mail branchpilots@dpor.virginia.gov.

† **November 1, 2004 - 10 a.m.** -- Open Meeting
Radisson Hotel Hampton, 700 Settlers Landing Road, Hampton, Virginia.

A meeting to conduct board business. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Executive Director, Board for Branch Pilots, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY, e-mail branchpilots@dpor.virginia.gov.

DEPARTMENT OF BUSINESS ASSISTANCE

Small Business Advisory Board

October 18, 2004 - 10 a.m. -- Open Meeting
Department of Business Assistance, 707 East Main Street, 3rd Floor Board Room, Richmond, Virginia.

A general business meeting.

Contact: Barbara E. Anderson, Assistant to Director, EBS, Department of Business Assistance, 707 E. Main St., Suite 300, Richmond, VA 23219, telephone (804) 371-8230, FAX

(804) 371-2142, toll-free (866) 248-8814, e-mail barbara.anderson@dba.virginia.gov.

CEMETERY BOARD

October 12, 2004 - 1 p.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: 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.oneal@dpor.virginia.gov.

STATE BOARD FOR COMMUNITY COLLEGES

November 16, 2004 - 11:45 a.m. -- Open Meeting
Boar's Head Inn, 200 Ednam Drive, Charlottesville, Virginia. 
(Interpreter for the deaf provided upon request)

The 2004 annual meeting will be held on November 16 and
17. A registration fee is required. No official business of the
board will be conducted at this meeting.

Contact: D. Susan Hayden, Director of Public Affairs, Virginia
Community College System, 15th Floor, 101 N. 14th Street,
Richmond, VA 23219, telephone (804) 819-4961, FAX (804)
819-4768, (804) 371-8504/TTY 

November 17, 2004 - 1:30 p.m. -- Open Meeting
Boar's Head Inn, 200 Ednam Drive, Charlottesville, Virginia. 
(Interpreter for the deaf provided upon request)

Meetings of the Academic, Student Affairs and Workforce
Committee, the Audit Committee, and the Budget and
Finance Committee at 1:30 p.m. The Facilities Committee
and the Personnel Committee will meet at 3 p.m.

Contact: D. Susan Hayden, Director of Public Affairs, Virginia
Community College System, 101 N. 14th St., Richmond, VA
23219, telephone (804) 819-4961, FAX (804) 819-4768, (804)
371-8504/TTY 

November 18, 2004 - 9 a.m. -- Open Meeting
The Black Box Theatre, Piedmont Virginia Community
College, 501 College Drive, Charlottesville,
Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the full board. 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, Virginia
Community College System, 15th Floor, 101 N. 14th St.,
Richmond, VA 23219, telephone (804) 819-4961, FAX (804)
819-4768, (804) 371-8504/TTY 

COMPENSATION BOARD

October 20, 2004 - 11 a.m. -- Open Meeting
202 North 9th Street, 10th Floor, Richmond, Virginia. 

A monthly board meeting.

Contact: Cindy Waddell, 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

October 6, 2004 - 7 p.m. -- Open Meeting
Westmoreland State Park Conference Center, 1650 State
Park Road, Montross, Virginia.

A meeting to discuss input from the August 4, 2004, public
meeting and future park development as the committee
continues work on development of a new park master plan
for Westmoreland State Park.

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 william.conkle@dcr.virginia.gov.

BOARD FOR CONTRACTORS

October 5, 2004 - 9 a.m. -- Open Meeting
October 7, 2004 - 9 a.m. -- Open Meeting
October 13, 2004 - 9 a.m. -- Open Meeting
† October 21, 2004 - 9 a.m. -- Open Meeting
October 26, 2004 - 9 a.m. -- Open Meeting
November 2, 2004 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Richmond, Virginia. 

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.

October 8, 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 for Contractors intends to
amend regulations entitled **18 VAC 50-22, Board for
Contractors Rules and Regulations**, and **18 VAC 50-30,
Tradesman Rules and Regulations**. The purpose of the
proposed action is to adjust the licensing fees for
contractors and tradesmen regulated by the Board for
Contractors.

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of
Virginia.

Contact: Eric Olson, Executive Director, Board for
Contractors, 3600 W. Broad St., Richmond, VA 23230,

Calendar of Events

telephone (804) 367-2785, FAX (804) 367-2474 or e-mail contractor@dpor.virginia.gov.

October 19, 2004 - 9 a.m. -- Open Meeting

December 14, 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 COUNSELING

November 4, 2004 - 10 a.m. -- Open Meeting

Department of Health Professions, 6603 West Broad Street, Board Room 3, 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.

November 5, 2004 - 9:30 a.m. -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 3, Richmond, Virginia. ♿

A quarterly 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

December 9, 2004 - 9 a.m. -- Public Hearing

General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia.

November 5, 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 Criminal Justice Services Board intends to adopt regulations entitled **6 VAC 20-230, Regulations Relating to Special Conservators of the Peace**. The purpose of the proposed action is to establish a registration process to include a fingerprint-based background check, registration fees, entry-level training

standards, and administration of the regulatory system. The regulation will authorize the department to receive complaints concerning the conduct of any person whose activities are monitored by the board; conduct investigations; issue disciplinary action; and revoke, suspend, and refuse to renew a registration.

Statutory Authority: § 9.1-150.2 of the Code of Virginia.

Contact: Ellen B. Spain, Regulatory Programs Coordinator, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-1018, FAX (804) 692-6344 or e-mail ellen.spain@dcjs.virginia.gov.

December 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, Criminal Justice Services Board, 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.virginia.gov.

BOARD OF DENTISTRY

October 15, 2004 - 9 a.m. -- Open Meeting

November 5, 2004 - 9 a.m. -- Open Meeting

November 12, 2004 - 9 a.m. -- Open Meeting

December 3, 2004 - 9 a.m. -- Open Meeting

December 10, 2004 - 9 a.m. -- Open Meeting

December 17, 2004 - 9 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. 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.

November 19, 2004 - 9 a.m. -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 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

October 21, 2004 - 11 a.m. -- Open Meeting
November 18, 2004 - 11 a.m. -- Open Meeting
December 16, 2004 - 11 a.m. -- Open Meeting
Department of General Services, Eighth Street Office Building,
805 East Broad Street, 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

† **October 7, 2004 - 8:45 a.m.** -- Open Meeting
† **October 8, 2004 - 8 a.m.** -- Open Meeting
Wyndham Airport Hotel, 2801 Hershberger Road Northwest, Roanoke, Virginia.

A meeting of the State Special Education Advisory Committee. Public comment will be received at the October 7 meeting.

Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Board of Education, P.O. Box 2120, 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail mroberts@mail.vak12ed.edu.

October 27, 2004 - 9 a.m. -- Open Meeting
November 17, 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.

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.

† **November 15, 2004 - 8:45 a.m.** -- Open Meeting
Location to be announced.

A meeting of the Advisory Board for Teacher Education and Licensure. 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, 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.

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† **November 17, 2004 - 11 a.m.** -- Public Hearing
James Monroe Building, 101 North 14th Street, Main Lobby, Conference Rooms C and D, Richmond, Virginia.

† **December 6, 2004** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Education intends to amend regulations entitled **8 VAC 20-30, Regulations Governing Adult High School Programs**. The purpose of the proposed action is twofold. First, adult high school programs, at which adults are able to earn a standard or advanced studies diploma, will be required to maintain the same high standards as regular day school programs. Second, the change provides a high-standard alternative diploma (the Adult Education Diploma) for adults who are unable to complete the requirements for a standard or advanced studies diploma.

Statutory Authority: § 22.1-224 of the Code of Virginia.

Contact: Robert MacGillivray, Adult Education Services, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 371-2333, FAX (804) 225-2524, email rmacgill@mail.vak12ed.edu.

STATE BOARD OF ELECTIONS

† **November 22, 2004 - 10:30 a.m.** -- Open Meeting
State Capitol, House Room 2, Richmond, Virginia. 

A meeting to approve old business and ascertain the results of the November 2, 2004, elections, pursuant to § 24.2-679 of the Code of Virginia.

Contact: Vanessa E. Archie, Administrative Assistant, State Board of Elections, 200 N. 9th St., Room 101, Richmond, VA 23219, telephone (804) 864-8901, FAX (804) 371-0194, toll-free (800) 552-9745, (800) 260-3466/TTY ☎, e-mail vanessa.archie@sbe.virginia.gov.

† **December 2, 2004 - 10:30 a.m.** -- Open Meeting
State Capitol, House Room 2, Richmond, Virginia. 

A meeting to approve old business and review administrative process voting equipment certification and other business.

Calendar of Events

Contact: Vanessa E. Archie, Administrative Assistant, State Board of Elections, 200 N. 9th St., Room 101, Richmond, VA 23219, telephone (804) 864-8901, FAX (804) 371-0194, toll-free (800) 552-9745, (800) 260-3466/TTY ☎, e-mail vanessa.archie@sbe.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

† **October 6, 2004 - 7 p.m.** -- Open Meeting
Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, Virginia. ♿

The Department of Environmental Quality will host open house community meetings in each region of Virginia. The meetings are to improve the agency's ability to collaborate with stakeholders on identifying and working to solve environmental issues. These meetings begin an ongoing program of direct local community involvement. An open house will begin at 1 p.m. The community meeting will begin at 7 p.m.

Contact: Jeffery A. Steers, Regional Director, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3810, e-mail jasteers@deq.virginia.gov.

October 7, 2004 - 1 p.m. -- Open Meeting
Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, Virginia. ♿

The first technical advisory committee meeting on the development of benthic, temperature and bacteria TMDLs for Beaver Creek located in Rockingham County. The public notice appears in the Virginia Register of Regulations on September 6, 2004.

Contact: Robert Brent, Department of Environmental Quality, P.O. Box 3000 Harrisonburg, VA 22801, telephone (540) 574-7848, FAX (540) 574-7878, e-mail rbrent@deq.virginia.gov.

October 7, 2004 - 3 p.m. -- Open Meeting
Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, Virginia. ♿

The first technical advisory committee meeting for the development of TMDLs to address multiple impairments in the Roanoke River Basin and its tributaries above Smith Mountain Lake located in Montgomery, Roanoke, Franklin and Bedford Counties and the Cities of Salem and Roanoke. The public notice appears in the September 6, 2004, issue of the Virginia Register of Regulations.

Contact: Jason Hill, Department of Environmental Quality, 3019 Peters Creek Rd., Roanoke, VA 24019, telephone (540) 562-6724, FAX (540) 562-6860, e-mail jrhill@deq.virginia.gov.

October 7, 2004 - 7 p.m. -- Open Meeting
Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, Virginia. ♿

The first public meeting for the development of TMDLs to address multiple impairments in the Roanoke River Basin and its tributaries above Smith Mountain Lake located in Montgomery, Roanoke, Franklin and Bedford Counties and the Cities of Salem and Roanoke. The public notice appears

in the September 6, 2004, issue of the Virginia Register of Regulations. The public comment period will begin on October 7 and close on November 7, 2004.

Contact: Jason Hill, Department of Environmental Quality, 3019 Peters Creek Rd., Roanoke, VA 24019, telephone (540) 562-6724, FAX (540) 562-6860, e-mail jrhill@deq.virginia.gov.

† **October 8, 2004 - 10 a.m.** -- Open Meeting
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia. ♿

A meeting of the Community Involvement Task Force.

Contact: Bill Hayden, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4447, FAX (804) 698-4453, e-mail wphayden@deq.virginia.gov.

† **October 13, 2004 - 6:30 p.m.** -- Open Meeting
Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, Virginia. ♿

The Department of Environmental Quality will host an open house community meeting in each region of Virginia. The meetings are to improve the agency's ability to collaborate with stakeholders on identifying and working to solve environmental issues. These meetings begin an ongoing program of direct local community involvement.

Contact: Frank L. Daniel, Regional Director, Department of Environmental Quality, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2000, e-mail fdaniel@deq.virginia.gov.

† **October 14, 2004 - 1 p.m.** -- Open Meeting
Blackstone Town Council Chambers, Town Office Building, 100 West Elm Street, Blackstone, Virginia. ♿

The second advisory committee meeting for the Nottoway River watershed TMDLs.

Contact: Kelly J. Wills, Department of Environmental Quality, 7705 Timberlake Rd., Lynchburg, VA 24502, telephone (434) 582-5120, FAX (434) 582-5125, e-mail kjwills@deq.virginia.gov.

† **October 14, 2004 - 1 p.m.** -- Open Meeting
Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, Virginia. ♿

The first meeting of the technical advisory committee formed to provide input throughout the development of the benthic TMDL for Cooks Creek and Beaver Creek.

Contact: Robert Brent, Department of Environmental Quality, 4411 Early Rd., Harrisonburg, VA 22801, telephone (540) 574-7848, FAX (540) 574-7878, e-mail rbrent@deq.virginia.gov.

† **October 18, 2004 - 7 p.m.** -- Open Meeting
Sussex Judicial Center, 15098 Courthouse Road, General District Courtroom, Sussex, Virginia. ♿

A meeting on the development of bacteria TMDLs to address impairments on Sappony Creek and Raccoon Creek in Dinwiddie, Sussex and Southampton Counties. The public comment period will begin with publication of the

notice in the Virginia Register of Regulations on October 4, 2004. The comment period closes on November 17, 2004.

Contact: Chris French, Department of Environmental Quality, 4949-A Cox Rd., Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804) 527-5106, e-mail rcfrench@deq.virginia.gov.

† **October 19, 2004 - 6:30 p.m.** -- Open Meeting
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia. 

The Department of Environmental Quality will host an open house community meeting in each region of Virginia. The meetings are to improve the agency's ability to collaborate with stakeholders on identifying and working to solve environmental issues. These meetings begin an ongoing program of direct local community involvement.

Contact: Gerry Seeley, Regional Director, Department of Environmental Quality, 4949-A Cox Rd., Richmond, VA 23060, telephone (804) 527-5020, e-mail gseeley@deq.virginia.gov.

† **October 20, 2004 - 6:30 p.m.** -- Open Meeting
Central Virginia Community College, Merritt Hall, 3506 Wards Road, Lynchburg, Virginia. 

The Department of Environmental Quality will host an open house community meeting in each region of Virginia. The meetings are to improve the agency's ability to collaborate with stakeholders on identifying and working to solve environmental issues. These meetings begin an ongoing program of direct local community involvement.

Contact: Thomas Henderson, Regional Director, Department of Environmental Quality, 7705 Timberlake Rd., Lynchburg, VA 24502, telephone (434) 582-5120, e-mail thenderso@deq.virginia.gov.

† **October 20, 2004 - 7 p.m.** -- Open Meeting
Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, Virginia.

The first public meeting on the development of TMDLs to address bacteria impairments on several waterways in the Back Bay and North Landing River watersheds located in Virginia Beach. The public notice will appear in the Virginia Register of Regulations and the public comment period begins on October 4, 2004. The comment period closes on November 20, 2004.

Contact: Jennifer Howell, Department of Environmental Quality, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2111, FAX (757) 518-2009, e-mail jshowell@deq.virginia.gov.

† **October 20, 2004 - 7 p.m.** -- Open Meeting
Page County Circuit Court Room, 116 South Court Street, Luray, Virginia. 

The first public meeting on the development of a bacteria TMDL for Mill Creek in Page County. The public notice will appear in the Virginia Register of Regulations and the comment period begins on October 4, 2004. The comment period closes on November 19, 2004.

Contact: Robert Brent, Department of Environmental Quality, 4411 Early Rd., Harrisonburg, VA 22801, telephone (540) 574-7848, FAX (540) 574-7878, e-mail rbrent@deq.virginia.gov.

† **October 20, 2004 - 7 p.m.** -- Open Meeting
Cooks Corner Community Center, Route 33, Cooks Corner, Middlesex County, Virginia. 

The first public meeting on the development of fecal coliform TMDL's for shellfish propagation waters in Middlesex County. The public notice and comment period will begin with publication of the notice in the Virginia Register of Regulations on October 4, 2004. The comment period closes on November 19, 2004.

Contact: Chester Bigelow, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4554, FAX (804) 698-4116, (804) 698-4021/TTY , e-mail ccbigeow@deq.virginia.gov.

† **October 25, 2004 - 7 p.m.** -- Open Meeting
Surry Community Center, 205 Enos Farm Drive, Surry, Virginia. 

A public meeting on the development of bacteria TMDLs on tributaries (Mill Swamp and Rattlesnake (Creek) Swamp) to the Blackwater River located in Isle of Wight and Surry Counties. The public comment period will begin with publication of the notice in the Virginia Register of Regulations on October 4, 2004. The comment period closes on November 24, 2004.

Contact: Chris French, Department of Environmental Quality, 4949-A Cox Rd., Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804) 527-5106, e-mail rcfrench@deq.virginia.gov.

† **October 27, 2004 - 6:30 p.m.** -- Open Meeting
Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, Virginia. 

The Department of Environmental Quality will host an open house community meeting in each region of Virginia. The meetings are to improve the agency's ability to collaborate with stakeholders on identifying and working to solve environmental issues. These meetings begin an ongoing program of direct local community involvement.

Contact: Bradley Chewing, Regional Director, Department of Environmental Quality, 4411 Early Rd., Harrisonburg, VA 22801, telephone (540) 574-7800, e-mail rbchewing@deq.virginia.gov.

† **October 28, 2004 - 7 p.m.** -- Open Meeting
Blackstone Town Council Chambers, Town Office Building, 100 West Elm Street, Blackstone, Virginia. 

The first public meeting on the development of TMDLs to address multiple impairments in the Nottoway River Basin and its tributaries in Prince Edward, Nottoway, Lunenburg and Dinwiddie counties. The public notice will appear in the Virginia Register of Regulations and the comment period begins with publication in the Virginia Register of Regulations on October 4, 2004. The comment period closes on November 29, 2004.

Calendar of Events

Contact: Kelly J. Wills, Department of Environmental Quality, 7705 Timberlake Rd., Lynchburg, VA 24502, telephone (434) 582-5120, FAX (434) 582-5125, e-mail kjwills@deq.virginia.gov.

† **November 4, 2004 - 6 p.m.** -- Open Meeting
Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, Virginia. 

The Department of Environmental Quality will host an open house community meeting in each region of Virginia. The meetings are to improve the agency's ability to collaborate with stakeholders on identifying and working to solve environmental issues. These meetings begin an ongoing program of direct local community involvement.

Contact: Steven Dietrich, Regional Director, Department of Environmental Quality, 3019 Peters Creek Rd., Roanoke, VA 24019, telephone (540) 562-6700, e-mail sadietrich@deq.virginia.gov.

† **November 9, 2004 - 6:30 p.m.** -- Open Meeting
Department of Environmental Quality, Southwest Regional Office, 355 Deadmore Street, Abingdon, Virginia. 

The Department of Environmental Quality will host an open house community meeting in each region of Virginia. The meetings are to improve the agency's ability to collaborate with stakeholders on identifying and working to solve environmental issues. These meetings begin an ongoing program of direct local community involvement.

Contact: Mike Overstreet, Regional Director, Department of Environmental Quality, 355 Deadmore St., Abingdon, VA 24210, telephone (276) 676-4800, e-mail moverstre@deq.virginia.gov.

FAIR HOUSING BOARD

October 6, 2004 - 9 a.m. -- Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

October 22, 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 Fair Housing Board intends to adopt regulations entitled **18 VAC 62-20, Fair Housing Board Certification Regulations**. The purpose of the proposed regulation is to establish the qualifications for obtaining and renewing fair housing certification as well as the qualifications for proprietary schools, instructors and courses that are required to obtain the certification.

Statutory Authority: § 54.1-2344 of the Code of Virginia.

Contact: Christine Martine, Executive Director, Fair Housing Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-6946 or e-mail fhcertification@dpor.virginia.gov.

VIRGINIA FIRE SERVICES BOARD

† **October 14, 2004 - 10 a.m.** -- Open Meeting
Augusta County Government Center, 18 Government Center Lane, Verona, Virginia. 

Meetings of the Fire Education and Training Committee at 10 a.m.; Fire Prevention and Control Committee at 1 p.m.; and Administration, Policy and Finance Committee at 2:30 p.m.

Contact: Michael Steele, VFSB Clerk, Virginia Fire Services Board, 101 N. 14th St., 18th Floor, Richmond, VA 23219, telephone (804) 371-0220, FAX (804) 371-0219, e-mail msteele@vdfp.state.va.us.

† **October 15, 2004 - 9 a.m.** -- Open Meeting
Augusta County Government Center, 18 Government Center Lane, Verona, Virginia. 

Please contact Michael Steele for details.

Contact: Michael Steele, VFSB Clerk, Virginia Fire Services Board, 101 N. 14th St., 18th Floor, Richmond, VA 23219, telephone (804) 371-0220, FAX (804) 371-0219, e-mail msteele@vdfp.state.va.us.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

October 5, 2004 - 9 a.m. -- Canceled
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 has been canceled.

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.

† **October 5, 2004 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A board retreat to examine issues within the practice of funeral service. No public comment will be received.

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 OF GAME AND INLAND FISHERIES

† **October 21, 2004 - 9 a.m.** -- Open Meeting
Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond Virginia.  (Interpreter for the deaf provided upon request)

A meeting to address general and administrative issues. The board may hold a closed session at some time during the meeting.

Contact: Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4000 W. Broad St., Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488, e-mail RegComments@dgif.state.va.us.

CHARITABLE GAMING BOARD

December 7, 2004 - 10 a.m. -- Open Meeting
Science Museum of Virginia, RFandP Forum Room, 2500 West Broad Street, Richmond, Virginia. 

A regular quarterly meeting.

Contact: Clyde Cristman, Director, Charitable Gaming Board, 101 N 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 786-1681, FAX (804) 786-1079, e-mail clyde.cristman@dgc.virginia.gov.

BOARD FOR GEOLOGY

October 8, 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 for Geology intends to amend regulations entitled **18 VAC 70-20, Rules and Regulations for the Virginia Board for Geology**. The purpose of the proposed action is to delete language redundant to the board's statutory authority; amend the language establishing the fee for the certification examination; amend the qualifications for certification to more clearly articulate the requirements that must be fulfilled prior to qualifying for certification; amend the certification by reciprocity standards; add a section requiring the board to be notified in the event of a change in name or address of a regulant; and amend the grounds for certification denial or disciplinary action as the result of a criminal conviction.

Statutory Authority: §§ 54.1-201 and 54.1-1402 of the Code of Virginia.

Contact: Tom Perry, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, FAX (804) 367-6128 or e-mail geology@dpor.virginia.gov.

October 13, 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 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.

GEORGE MASON UNIVERSITY

† **October 6, 2004 - 9:30 a.m.** -- Open Meeting
George Mason University, Mason Hall, Suite D103, Fairfax, Virginia. 

A meeting of the Executive Committee of the Board of Visitors. The topic of the meeting will be the 2010 Plan.

Contact: Mary Roper, Secretary Pro Tem, George Mason University, 4400 University Dr., Fairfax, VA 22030, telephone (703) 993-8703, FAX (703) 993-8707.

OFFICE OF THE GOVERNOR

October 12, 2004 - 10 a.m. -- Open Meeting
1604 Santa Rosa Road, Richmond, Virginia. 

A meeting of the Oversight Advisory Committee.

Contact: Kathie Shifflett, Administrative Assistant, The Olmstead Initiative, Office of the Governor, 8004 Franklin Farms Dr., Richmond, VA 23229, telephone (804) 660-7069, FAX (804) 662-7663, e-mail shiffk@drs.state.virginia.us.

STATE BOARD OF HEALTH

October 8, 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 Board of Health intends to **repeal** regulations entitled **12 VAC 5-390, Regulations for the Licensure of Hospices**, and **adopt** regulations entitled **12 VAC 5-391, Regulations for the Licensure of Hospices**. The purpose of the proposed action is to comprehensively amend the regulations governing hospice care.

Statutory Authority: §§ 32.1-12 and 32.1-162.5 of the Code of Virginia.

Contact: Carrie Eddy, Department of Health, Center for Quality Health Care, 3600 W. Broad St., Suite 216, Richmond, VA 23230, telephone (804) 367-2100, FAX (804) 367-2206 or e-mail carrie.eddy@vdh.virginia.gov.

NOTE: CHANGE IN MEETING TIME

October 21, 2004 - 10 a.m. -- Open Meeting
October 22, 2004 - 9 a.m. -- Open Meeting
Commonwealth Park Hotel, Bank and Ninth Streets, Richmond, Virginia. 

A two-day quarterly board meeting.

Contact: Margot Fritts, VDH/Office of Health Policy and Planning, 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.

Calendar of Events

† **December 3, 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 Board of Health intends to amend regulations entitled **12 VAC 5-230, State Medical Facilities Plan** and to repeal regulations entitled **12 VAC 5-240, General Acute Care Services; 12 VAC 5-250, Perinatal Services; 12 VAC 5-260, Cardiac Services; 12 VAC 5-270, General Surgical Services; 12 VAC 5-280, Organ Transplantation Services; 12 VAC 5-290, Psychiatric and Substance Abuse Treatment Services; 12 VAC 5-300, Mental Retardation Services; 12 VAC 5-310, Medical Rehabilitation Services; 12 VAC 5-320, Diagnostic Imaging Services; 12 VAC 5-330, Lithotripsy Services; 12 VAC 5-340, Radiation Therapy Services; 12 VAC 5-350, Miscellaneous Capital Expenditures; and 12 VAC 5-360, Nursing Home Services.** The purpose of the proposed action is to update the criteria and standards in the SMFP to reflect current national and health care industry standards, remove archaic language and ambiguities, and consolidate all portions of the SMFP into one comprehensive document.

Statutory Authority: §§ 32.1-11 and 32.1-12 of the Code of Virginia.

Contact: Carrie Eddy, Senior Policy Analyst, Department of Health, Center for Quality Health Care Services, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2157, FAX (804) 367-2149 or e-mail carrie.eddy@vdh.virginia.gov.

DEPARTMENT OF HEALTH

† **October 4, 2004 - 10 a.m.** -- Open Meeting
Office of EMS, 109 Governor Street, Suite UB-55, Richmond, Virginia. 

A meeting of the Regulation and Policy Committee to conduct ongoing review as required by code for implemented regulations regarding emergency medical services.

Contact: Michael D. Berg, Manager, Regulation and Compliance, Department of Health, 109 Governor St., Suite UB-55, Richmond, VA 23219, telephone (804) 864-7600, FAX (804) 864-7580, toll-free (800) 523-6019, e-mail michael.berg@vdh.virginia.gov.

DEPARTMENT OF HEALTH PROFESSIONS

October 8, 2004 - 9 a.m. -- Open Meeting
December 10, 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.

† **October 18, 2004 - 9 a.m.** -- Public Hearing
Department of Health Professions, Alcoa Building, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. 

† **December 3, 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 Health Professions intends to adopt regulations entitled **18 VAC 76-20, Regulations Governing the Prescription Monitoring Program.** The purpose of the proposed action is to eliminate the requirement for a prescriber to submit a copy of a patient's consent form in order to query the monitoring system.

Statutory Authority: §§ 54.1-2505 and 54.1-2520 of the Code of Virginia.

Public comments may be submitted until December 3, 2004, to Robert A. Nebiker, Director, Department of Health Professions, 6603 West Broad Street, Richmond, VA 23230-1712.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9114, (804) 662-7197/TTY , e-mail elaine.yeatts@dhp.virginia.gov.

† **December 15, 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. 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.

BOARD FOR HEARING AID SPECIALISTS

November 8, 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 interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: William H. Ferguson, II, Executive Director, Board for Hearing Aid Specialists, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY ☎, e-mail hearingaidspec@dpor.virginia.gov.

VIRGINIA HIGHER EDUCATION TUITION TRUST FUND

† **October 5, 2004 - 9 a.m.** -- Open Meeting
Virginia College Savings Plan Boardroom, James Monroe Building, 101 North 14th Street, 5th Floor, Richmond, Virginia. ♿

An Investment Advisory Committee meeting.

Contact: Robin Schultz, Virginia Higher Education Tuition Trust Fund, James Monroe Building, 101 N. 14th St., 5th Floor, Richmond, VA 23219, telephone (804) 786-0719, FAX (804) 786-2453, toll-free (888) 567-0540, (804) 786-2766/TTY ☎, e-mail vcspinfo@virginia529.com.

† **November 5, 2004 - 10 a.m.** -- Open Meeting
Virginia College Savings Plan Boardroom, James Monroe Building, 5th Floor, 101 North 14th Street, Richmond, Virginia. ♿

A Virginia College Savings Plan Board meeting.

Contact: Lee Hall, Special Projects Assistant, Virginia Higher Education Tuition Trust Fund, James Monroe Building, 101 N. 14th St., Richmond, VA 23219, telephone (804) 786-3605, FAX (804) 786-2453, toll-free (888) 567-0540, (804) 786-2766/TTY ☎, e-mail Vcspinfo@virginia529.com.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

October 23, 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 Housing and Community Development intends to amend regulations entitled **13 VAC 5-111, Enterprise Zone Program Regulation**. The purpose of the proposed action is to amend the regulation to comport with recent statutory changes in the Enterprise Zone Program and to update and clarify other provisions within the regulation.

Statutory Authority: § 59.1-278 of the Code of Virginia.

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) 371-7015, FAX (804) 371-7090, (804) 371-7089/TTY ☎, e-mail steve.calhoun@dhdcd.virginia.gov.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

State Building Code Technical Review Board

† **October 15, 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)

The board will hear appeals concerning the application of the Virginia Uniform Statewide Building Code and the Virginia Statewide Fire Prevention Code. The board will also consider interpretations of the code in making recommendations for future amendment or repeal of provisions.

Contact: Vernon W. Hodge, Secretary, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7150.

JAMESTOWN-YORKTOWN FOUNDATION

October 6, 2004 - Noon -- Open Meeting
The Library of Virginia, 800 East Broad Street, Conference Rooms A and B, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting 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.

November 15, 2004 - Noon -- Open Meeting
November 16, 2004 - 8 a.m. -- Open Meeting
Williamsburg Hospitality House, 415 Richmond Road, Williamsburg, Virginia. ♿ (Interpreter for the deaf provided upon request)

A semiannual two-day meeting of the Board of Trustees and the board's standing committees, detailed schedule to be determined. Opportunity for public comment will be included on the agenda for the November 16 business meeting.

Contact: Laura W. Bailey, Executive Assistant to the Boards, Jamestown-Yorktown Foundation, P.O. Box 1607, Williamsburg, VA 23187, telephone (757) 253-4840, FAX (757) 253-5299, toll-free (888) 593-4682, (757) 253-7236/TTY ☎, e-mail lwbailey@jyf.state.va.us.

December 1, 2004 - 2 p.m. -- Open Meeting
McGuireWoods, One James Center, 901 East Cary Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting of the Jamestown 2007 Executive Committee.

Contact: Stacy Ruckman, Administrative Office Manager, Jamestown-Yorktown Foundation, P.O. Box 1607, Williamsburg, VA 23187, telephone (757) 253-4253, FAX

Calendar of Events

(757) 253-5299, (757) 253-5110/TTY ☎, e-mail sruckman@jyf.state.va.us.

STATE BOARD OF JUVENILE JUSTICE

November 10, 2004 - 10 a.m. -- Public Hearing
Department of Juvenile Justice, 700 East Franklin Street, 4th Floor, Richmond, Virginia. ♿

The board will receive comments from the public on proposed changes to its Standards for Juvenile Residential Facilities (6 VAC 35-140). In addition, committees of the board will meet at 9 a.m. to receive certification audit reports on secure and nonsecure programs, and the full board will meet at 10 a.m. to act on the certification reports and take up other matters.

Contact: Donald Carignan, Regulatory Coordinator, State Board of Juvenile Justice, 700 Centre, 700 E. Franklin St., 4th Floor, Richmond, VA 23219, telephone (804) 371-0743, FAX (804) 371-0773, e-mail carigndr@djj.state.va.us.

NOTE: EXTENSION OF PUBLIC COMMENT DEADLINE

November 12, 2004 - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Juvenile Justice intends to amend regulations entitled **6 VAC 35-140, Standards for Juvenile Residential Facilities**. As a result of the mandated periodic review of this regulation, and through discussions with the Virginia Commission on Youth and the superintendents of juvenile detention facilities, the department recommends that the regulation be amended to include additional standards for post-dispositional programs as mandated by the General Assembly in the 2000 Appropriations Act and § 16.1-284.1 D of the Code of Virginia, which states: "Standards for these facilities shall require juveniles placed pursuant to this section for a period which exceeds 30 calendar days to be provided separate services for their rehabilitation, consistent with the intent of this section."

Statutory Authority: §§ 16.1-309.9, 66-10 and 66-25.1 of the Code of Virginia.

Contact: Donald R. Carignan, Regulatory Coordinator, Department of Juvenile Justice, P.O. Box 1110, Richmond, VA 23218-1110, telephone (804) 371-0743, FAX (804) 371-0773 or e-mail carigndr@djj.state.va.us.

STATE LIBRARY BOARD

November 15, 2004 - 8:15 a.m. -- Open Meeting
The Library of Virginia, 800 East Broad Street, Richmond, Virginia. ♿

Meetings of the board to discuss matters pertaining to the Library of Virginia and the board. Committees of the board will meet as follows:

8:15 a.m. - Public Library Development Committee, Orientation Room
Publications and Educational Services Committee, Conference Room B
Records Management Committee, Conference Room C

9:30 a.m. - Archival and Information Services Committee, Orientation Room
Collection Management Services Committee, Conference Room B
Legislative and Finance Committee, Conference Room C

10:30 a.m. - Library Board, Conference Room, 2M

Contact: Jean H. Taylor, Executive Secretary to the Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-2000, telephone (804) 692-3535, FAX (804) 692-3594, (804) 692-3976/TTY ☎, e-mail jtaylor@lva.lib.va.us.

MARINE RESOURCES COMMISSION

October 26, 2004 - 9:30 a.m. -- Open Meeting
Marine Resources Commission, 2600 Washington Avenue, 4th Floor, Newport News, Virginia. ♿ (Interpreter for the deaf provided upon request)

A monthly commission meeting.

Contact: Jean McCroskey, Commission Secretary, Marine Resources Commission, 2600 Washington Ave., 3rd Floor, Newport News, VA 23607, telephone (757) 247-2215, FAX (757) 247-8101, toll-free (800) 541-4646, (757) 247-2292/TTY ☎, e-mail jmccroskey@mrc.virginia.gov.

BOARD OF MEDICAL ASSISTANCE SERVICES

December 14, 2004 - 10 a.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor Conference Room, Richmond, Virginia. ♿

A routine quarterly meeting required in the BMAS by-laws.

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.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

† **October 6, 2004 - 1 p.m.** -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor, Board Room, Richmond, Virginia. ♿

A special session of the Pharmacy and Therapeutics Committee to review antidepressants and anti-anxiety medications, pursuant to the 2004 Appropriation Act (Item 326 BB 7).

Contact: Katina Goodwyn, Pharmacy Contract Manager, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-0428, FAX (804) 786-0973, (800) 343-0634/TTY ☎, e-mail katina.goodwyn@dmas.virginia.gov.

November 11, 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, FAX (804) 786-1680, (800) 343-0634/TTY , e-mail jmenendez@dmas.virginia.gov.

November 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 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.

Drug Utilization Review Board

November 4, 2004 - 2 p.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor, Board Room, Richmond, Virginia. 

A regular meeting.

Contact: Javier Menendez, Pharmacy Manager, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300 Richmond, VA 23219, telephone (804) 786-2196, FAX (804) 786-1680, (800) 343-0634/TTY , e-mail jmenende@dmas.virginia.gov.

BOARD OF MEDICINE

October 6, 2004 - 9 a.m. -- Open Meeting
Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, Virginia.

October 19, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.

An informal conference committee of the board will convene a special conference committee 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 may review cases with staff for case disposition including consideration of consent orders for settlement. The committee will meet in open and closed sessions pursuant to the Code of Virginia. Public comment will not be received.

Contact: Peggy Sadler/Renee Dixon, Staff, Department of Health Professions, 6603 W. Broad St., Richmond, VA, telephone (804) 662-7332, FAX (804) 662-9517, (804) 662-7197/TTY , e-mail peggy.sadler@dhp.virginia.gov.

October 14, 2004 - 8 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia.

A meeting to consider regulatory and disciplinary matters as may be presented on the agenda. Public comment on agenda items 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.

October 14, 2004 - 1 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 3, Richmond, Virginia.

The Credentials Committee will meet to consider applicants for licensure and other matters of the board. 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.

October 14, 2004 - 1 p.m. -- Open Meeting

October 15, 2004 - 8 a.m. -- Open Meeting

October 16, 2004 - 8 a.m. -- Open Meeting

Department of Health Professions, 6603 West Broad Street, Richmond, Virginia. 

Formal hearings and informal conferences 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 board may review cases with other staff members for case disposition including consideration of consent orders for settlement. The board will convene into open and closed sessions pursuant to the Code of Virginia. Public comment will not be received.

Contact: Peggy Sadler/Renee Dixon, Staff, Board of Medicine, Alcoa Bldg., 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.

October 29, 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.

November 19, 2004 - 8 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia.

Calendar of Events

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.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

October 26, 2004 - 1 p.m. -- Open Meeting

November 16, 2004 - 1 p.m. -- Open Meeting

† December 21, 2004 - 1 p.m. -- Open Meeting

Virginia Housing and Development Authority, 601 South 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

October 8, 2004 - 10 a.m. -- Open Meeting

Riverfront Plaza, 901 East Byrd Street, West Tower, 20th Floor, Presentation Center, Richmond, Virginia. ♿

A regular quarterly meeting.

Contact: Valerie Hubbard, Communications Manager, Virginia Commission on Military Bases, P.O. Box 798, Richmond, VA 23218, telephone (804) 225-3743, FAX (804) 786-1121.

STATE MILK COMMISSION

December 15, 2004 - 10:30 a.m. -- Open Meeting

Department of Forestry, 900 Natural Resource Drive, Room 2063, Charlottesville, Virginia.

A regular meeting to consider industry 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 Edward C. Wilson 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.

DEPARTMENT OF MOTOR VEHICLES

Medical Advisory Board

November 10, 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 23220, 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

October 5, 2004 - 8 a.m. -- Open Meeting

November 2, 2004 - 8 a.m. -- Open Meeting

December 7, 2004 - 8 a.m. -- Open Meeting

† January 4, 2005 - 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.

BOARD OF NURSING

October 4, 2004 - 9 a.m. -- Open Meeting

October 12, 2004 - 9 a.m. -- Open Meeting

October 13, 2004 - 9 a.m. -- Open Meeting

October 19, 2004 - 9 a.m. -- Open Meeting

October 26, 2004 - 9 a.m. -- Open Meeting

December 2, 2004 - 9 a.m. -- Open Meeting

December 7, 2004 - 9 a.m. -- Open Meeting

December 8, 2004 - 9 a.m. -- Open Meeting

December 9, 2004 - 9 a.m. -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. ♿

October 14, 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.

November 15, 2004 - 9 a.m. -- Open Meeting
November 17, 2004 - 9 a.m. -- Open Meeting
November 18, 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.

November 16, 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.

JOINT BOARDS OF NURSING AND MEDICINE

October 8, 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 Boards of Nursing and Medicine intend to amend regulations entitled **18 VAC 90-30, Regulations Governing the Licensure of Nurse Practitioners**. The purpose of the proposed action is to clarify that congruency in education, certification and licensure is required and that a graduate degree is necessary for initial licensure; to provide an avenue for licensure to those who may not meet current qualifications but who have been safely practicing in other states as advanced practice nurses; and to update categories of nurse practitioners and names of certifying bodies.

Statutory Authority: §§ 54.1-2400 and 54.1-2957 of the Code of Virginia.

Public comments may be submitted until October 8, 2004, to Jay P. Douglas, R.N., Executive Director, Board of Nursing, 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.

October 20, 2004 - 9 a.m. -- Open Meeting
December 15, 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

October 13, 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 comment period at the beginning of the meeting.

Contact: Sandra Reen, Executive Director, Board of Nursing Home Administrators, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-7457, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail sandra.reen@dhp.virginia.gov.

OLD DOMINION UNIVERSITY

October 18, 2004 - 3 p.m. -- Open Meeting
November 15, 2004 - 3 p.m. -- Open Meeting
Webb University Center, Old Dominion University, Norfolk,
Virginia. 

A regular meeting of the Board of Visitors' Executive Committee to discuss business of the board and the institution as determined by the Rector and the President.

Contact: Donna Meeks, Executive Secretary to the Board of Visitors, Old Dominion University, 204 Koch Hall, Old Dominion University, Norfolk, VA 23529, telephone (757) 683-3072, FAX (757) 683-5679, e-mail dmeeks@odu.edu.

December 10, 2004 - 1 p.m. -- Open Meeting
Webb University Center, Old Dominion University, Norfolk,
Virginia. 

A quarterly meeting of the governing board of the institution to discuss business of the board and the institution as determined by the Rector and the President.

Contact: Donna Meeks, Executive Secretary to the Board of Visitors, Old Dominion University, 204 Koch Hall, Norfolk, VA 23529, telephone (757) 683-3072, FAX (757) 683-5679, e-mail dmeeks@odu.edu.

BOARD FOR OPTICIANS

October 8, 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 for Opticians intends to amend regulations entitled **18 VAC 100-20, Board for Opticians Regulations**. The purpose of the proposed action is to amend regulations to adjust fees in accordance with the Callahan Act, § 54.1-113 of the Code of Virginia.

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

Calendar of Events

Contact: William H. Ferguson, II, Executive Director, Board for Opticians, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8310, FAX (804) 367-6295, (804) 367-9753/TTY ☎, or e-mail opticians@dpor.virginia.gov.

NOTE: CHANGE IN MEETING DATE

October 15, 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 ☎, or e-mail opticians@dpor.virginia.gov.

BOARD OF OPTOMETRY

October 6, 2004 - 9 a.m. -- Public Hearing
Department of Health Professions, 6603 West Broad Street,
5th Floor, Conference Room 3, Richmond, Virginia.

October 6, 2004 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 54.1-3223 of the Code of Virginia that the Board of Optometry intends to amend regulations entitled **18 VAC 105-20, Regulations Governing the Practice of Optometry**. The purpose of the proposed action is to amend the treatment guidelines and formulary of therapeutic pharmaceutical agents that can be prescribed or administered by a qualified optometrist.

Statutory Authority: § 54.1-3223 of the Code of Virginia.

Public comments may be submitted until October 6, 2004, to Elizabeth A. Carter, Ph.D., Executive Director, Board of Optometry, 6603 W. Broad St., Richmond, VA 23230.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.virginia.gov.

PESTICIDE CONTROL BOARD

October 14, 2004 - 9 a.m. -- Public Hearing
Department of Agriculture and Consumer Services,
Washington Building, 1100 Bank Street, Room 204,
Richmond, Virginia.

November 1, 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 Pesticide Control Board intends to amend regulations entitled **2 VAC 20-40, Rules and Regulations Governing Licensing of Pesticide Businesses by the Department of Agriculture and Consumer Services Operating Under Authority of the Virginia Pesticide Control Act**. The purpose of the proposed action is to review the regulations for effectiveness and continued need. The proposed regulations (i) establish standards for the licensure of pesticide businesses and for the denial, suspension, or revocation of the license; (ii) establish recordkeeping requirements for licensed pesticide businesses, as a means of ensuring that pesticides are stored and used safely; and (iii) protect the public's health, safety and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.

Statutory Authority: § 3.1-249.30 of the Code of Virginia.

Contact: W. Wayne Surles, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-6558, FAX (804) 371-8598, toll-free 1-800-552-9963, or e-mail wsurles@vdacs.state.va.us.

† October 14, 2004 - 9 a.m. -- Open Meeting
Department of Agriculture and Consumer Services,
Washington Building 1100 Bank Street, 2nd Floor Board
Room, Richmond, Virginia. ♿

A meeting to discuss general business matters requiring board action. Portions of the meeting may be held in closed session, pursuant to § 2.2-3711 of the Code of Virginia. The board will consider adoption of a Notice of Intended Regulatory Action (NOIRA) to promulgate regulations on pesticide registration requirements. The board will also hold a public hearing on proposed amendments to 2 VAC 20-40, Regulations Governing Licensing of Pesticide Businesses Operating Under the Authority of the Virginia Pesticide Control Act. The board will entertain public comment at the beginning of the meeting on all other business for a period not to exceed 30 minutes. Any person requiring special accommodations in order to participate in the meeting should contact Dr. W. Wayne Surles at least five days before the meeting date so that suitable arrangements can be made.

Contact: Dr. W. Wayne Surles, Program Manager, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., 4th Floor, Richmond, VA 23219, telephone (804) 371-6558, FAX (804) 371-8598, toll-free (800) 552-9963, e-mail wsurles@vdacs.state.va.us.

BOARD OF PHYSICAL THERAPY

October 15, 2004 - 9 a.m. -- Canceled
Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia. ♿

The quarterly business meeting has been canceled.

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.

POLYGRAPH EXAMINERS ADVISORY BOARD

December 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 meeting is open to the public; however, a portion of the board's business may be discussed in closed session. 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: Eric Olson, Executive Director, Polygraph Examiners Advisory Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY ☎, e-mail olson@dpor.virginia.gov.

BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION

November 15, 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.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

† **November 17, 2004 - 10 a.m.** -- Public Hearing
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ♿

A public hearing on proposed Professional Boxing and Wrestling Event Regulations.

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 oneal@dpor.virginia.gov.

BOARD OF PSYCHOLOGY

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 BROADCASTING BOARD

October 6, 2004 - 10:30 a.m. -- Open Meeting
WETA, 3620 South 27th Street, Arlington, Virginia.

A meeting of the Ed/Tech subcommittee.

Contact: Shannon Rainey, Virginia Public Broadcasting Board, 202 N. 9th Street, Suite 636, Richmond, VA 23219, telephone (804) 786-1201.

VIRGINIA PUBLIC GUARDIAN AND CONSERVATOR ADVISORY BOARD

December 9, 2004 - 10 a.m. -- Open Meeting
1610 Forest Avenue, Suite 100, Richmond, Virginia. ♿

A quarterly meeting.

Contact: Terry Raney, Guardianship Coordinator, Virginia Public Guardian and Conservator Advisory Board, 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.

REAL ESTATE APPRAISER BOARD

November 9, 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.

† **November 10, 2004 - 10 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Room 453, Richmond,
Virginia. ♿

Informal fact-finding conferences.

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 oneal@dpor.virginia.gov.

Calendar of Events

REAL ESTATE BOARD

† **October 5, 2004 - 10 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 5-West Conference Room,
Richmond, Virginia. 

A meeting to conduct board member training.

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 oneal@dpor.virginia.gov.

October 7, 2004 - 9 a.m. -- Open Meeting

October 14, 2004 - 9 a.m. -- Open Meeting

† **October 21, 2004 - 9 a.m.** -- Open Meeting

† **November 17, 2004 - 2 p.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: 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.

DEPARTMENT OF REHABILITATIVE SERVICES

Disability Services Council

† **November 16, 2004 - 1 p.m.** -- Open Meeting
Virginia Rehabilitation Center for the Blind and Vision
Impaired, 401 Azalea Avenue, Assembly Room, Richmond,
Virginia.  (Interpreter for the deaf provided upon request)

Agenda item is the FY05 RSIF grant awards.

Contact: Shirley S. Ferguson, Policy and Planning Director,
Department of Rehabilitative Services, 8004 Franklin Farms
Dr., P.O. Box K-300, Richmond, VA 23288-0300, telephone
(804) 662-7070, toll-free (800) 552-5019, e-mail
fergusss@drs.state.va.us.

VIRGINIA RESOURCES AUTHORITY

October 19, 2004 - 9 a.m. -- Open Meeting
Harrisonburg, 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
bmcrae@vra.state.va.us.

SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD

October 20, 2004 - 10 a.m. -- Canceled
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 is canceled.

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

† **October 20, 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, e-mail scott.parsons@dba.virginia.gov.

STATE BOARD OF SOCIAL SERVICES

October 8, 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 Board of Social Services
intends to **repeal** regulations entitled **22 VAC 40-120,
Minimum Standards for Licensed Family Day-Care
Systems** and **adopt** regulations entitled **22 VAC 40-121,
Standards for Licensed Family Day Systems**. The
purpose of the proposed action is to repeal the current
Minimum Standards for Licensed Family Day-Care Systems
(22 VAC 40-120) and replace it with a new regulation,
Standards for Licensed Family Day Systems (22 VAC 40-
121).

Statutory Authority: §§ 63.2-217, 63.2-1701 and 63.2-1734 of
the Code of Virginia.

Contact: Doris Sherrod, Program Development Consultant, Division of Licensing Programs, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7153, FAX (804) 726-7132 or e-mail doris.sherrod@dss.virginia.gov.

October 8, 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 Board of Social Services intends to adopt regulations entitled **22 VAC 40-170, Voluntary Registration of Family Day Homes-Requirements for Contracting Organizations**. The purpose of the proposed action is to update statutory references in Title 63.2; eliminate requirements that have been found to be inefficient or burdensome; clarify contracting organizations' responsibilities; add requirements that establish time frames for submission of reports and for notification of the department of certain events and changes; transfer responsibility for providing certain information to parents and for processing all aspects of adverse enforcement actions from contracting organizations to the department.

Statutory Authority: §§ 63.2-217, 63.2-1704 and 63.2-1734 of the Code of Virginia.

Contact: Doris Sherrod, Program Development Consultant, Department of Social Services, Division of Licensing Programs, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7153, FAX (804) 726-7132 or e-mail doris.sherrod@dss.virginia.gov.

October 8, 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 Board of Social Services intends to **repeal** regulations entitled **22 VAC 40-660, Child Day Care Services Policy**, and **adopt** regulations entitled **22 VAC 40-661, Child Care Program**. The purpose of the proposed action is to repeal the current regulation pertaining to the Child Care and Development Fund and replace it with a new regulation. New federal regulations and changes in policies in Virginia necessitate that new regulations be created.

Statutory Authority: §§ 63.2-217, 63.2-319, 63.2-510, 63.2-611, and 63.2-616 of the Code of Virginia; Child Care and Development Block Grant of 1990 as amended by the Personal Responsibility and Work Opportunity Act of 1996 (P.L. 104-193) and the Balanced Budget Act of 1997 (P.L. 105-33), as implemented in regulation 45 CFR Parts 98 and 99; the Food Stamp Act of 1977 as amended.

Contact: Mary Ward, Program Consultant, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7638, FAX (804) 726-7655 or e-mail mary.ward@dss.virginia.gov.

October 8, 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 Board of Social Services intends to **repeal** regulations entitled **22 VAC 40-770, Standards and Regulations for Agency Approved Providers**, and **adopt** regulations entitled **22 VAC 40-771, Local Department-Approved Provider Standards**. The purpose of the proposed action is to repeal the existing regulation and replace it with a new regulation. The current regulation addresses standards used by local departments of social services to approve and regulate service providers including adult service providers, child care providers, and adoptive and foster providers.

Statutory Authority: § 63.2-217 of the Code of Virginia.

Contact: Sue Murdock, Family Specialist, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7616, FAX (804) 726-7895 or e-mail susan.murdock@dss.virginia.gov.

October 20, 2004 - 9 a.m. -- Open Meeting
Law Enforcement and Judicial Complex, 245 South 4th Street, Wytheville, Virginia. 

December 15, 2004 - 9 a.m. -- Open Meeting
Department of Social Services, 608 Jackson Street, Fredericksburg, Virginia.

A work session from 9 a.m. until noon, followed by a full board meeting at 1:30 p.m. Public comment will be received at 1:30 p.m.

Contact: Pat Rengnerth, Board Liaison, Department of Social Services, Office of Legislative and Regulatory Affairs, 7 N. 8th St., Room 5214, Richmond, VA 23219, telephone (804) 726-7905, FAX (804) 726-7906, (800) 828-1120/TTY , e-mail patricia.rengnerth@dss.virginia.gov.

October 21, 2004 - 9 a.m. -- Open Meeting
Law Enforcement and Judicial Complex, 245 South 4th Street, Wytheville, Virginia. 

December 16, 2004 - 9 a.m. -- Open Meeting
Department of Social Services, 608 Jackson Street, Fredericksburg, Virginia.

A board meeting.

Contact: Pat Rengnerth, Board Liaison, Department of Social Services, Office of Legislative and Regulatory Affairs, 7 N. 8th St., Room 5214, Richmond, VA 23219, telephone (804) 726-7905, FAX (804) 726-7906, (800) 828-1120/TTY , e-mail patricia.rengnerth@dss.virginia.gov.

DEPARTMENT OF SOCIAL SERVICES

October 14, 2004 - 9:30 a.m. -- Open Meeting
Department of Social Services, 7 North 8th Street, Richmond, Virginia. 

Calendar of Events

The Family and Children's Trust Fund (FACT) Board of Trustees will hold its regular business meeting.

Contact: Nan McKenney, Executive Director, Department of Social Services, 7 North 8th St., Richmond, VA 23219, telephone (804) 726-7604, FAX (804) 726-7015.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS AND WETLAND PROFESSIONALS

October 14, 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 meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Executive Director, Board for Professional Soil Scientists and Wetland Professionals, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail soilscientist@dpor.virginia.gov.

VIRGINIA TOBACCO SETTLEMENT FOUNDATION

† **October 5, 2004 - 1 p.m.** -- Open Meeting
Sully Governmental Center, 4900 Stonecroft Blvd., Chantilly,
Virginia.

A meeting of the North Regional Advisory Board to review programs.

Contact: Lisa Brown, Grants Program Administrator, Virginia Tobacco Settlement Foundation, 620 Herndon Parkway, Suite 200, Herndon, VA 20170, telephone (703) 481-9823, FAX (703) 481-9857, e-mail lbrown@tsf.state.va.us.

TREASURY BOARD

October 20, 2004 - 9 a.m. -- Open Meeting
101 North 14th Street, 3rd Floor, Treasury Board Room,
Richmond, Virginia. 

A regular meeting.

Contact: Melissa Mayes, Secretary, Department of the Treasury, 101 N. 14th St., 3rd Floor, Richmond, VA 23219, telephone (804) 371-6011, FAX (804) 225-3187, e-mail melissa.mayes@trs.virginia.gov.

BOARD OF VETERINARY MEDICINE

NOTE: CHANGE IN MEETING DATE

October 7, 2004 - 8:30 a.m. -- Public Hearing
Department of Health Professions, 6603 West Broad Street,
5th Floor, Board Room 4, Richmond, Virginia.

October 8, 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 Veterinary Medicine intends to amend regulations entitled **18 VAC 150-20, Regulations Governing the Practice of Veterinary Medicine**. The purpose of the proposed action is to amend definitions of "immediate and direct supervision" and "surgery" for consistency with current board policies.

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

Public comments may be submitted until October 8, 2004, to Elizabeth A. Carter, Ph.D., Executive Director, Board of Veterinary Medicine, 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.

October 7, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Conference Room 4, Richmond, Virginia. 

Informal hearings (disciplinary proceedings). These are public meetings, but public comment will not be received.

Contact: Terri H. Behr, Administrative Assistant, Board of Veterinary Medicine, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9915, FAX (804) 662-7098, (804) 662-7197/TTY , e-mail terri.behr@dhp.virginia.gov.

VIRGINIA WASTE MANAGEMENT BOARD

† **November 4, 2004 - 1 p.m.** -- Open Meeting
Department of Environmental Quality, 629 East Main Street,
Richmond, Virginia. 

A public meeting to receive comments on the notice of intent to amend the coal combustion by-products regulation. The notice of intent will appear in the Virginia Register of Regulations on October 4, 2004. The public comment period closes on November 15, 2004.

Contact: Michael Dieter, Virginia Waste Management Board, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4146, FAX (804) 698-4032, e-mail mjdieter@deq.virginia.gov.

November 17, 2004 - 1 p.m. -- Open Meeting
November 18, 2004 - 9 a.m. -- Open Meeting
Williamsburg, Virginia area; location to be determined. 

A meeting of representatives of the three regulatory citizen boards: State Air Pollution Control Board, Virginia Waste Management Board and the State Water Pollution Control Board.

Contact: Cindy Berndt, Regulatory Coordinator, State Air Pollution Control Board, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4378, FAX (804) 698-4346, e-mail cberndt@deq.virginia.gov.

STATE WATER CONTROL BOARD

† **October 5, 2004 - 1 p.m.** -- Open Meeting
Department of Environmental Quality, 629 East Main Street,
Richmond, Virginia. ♿

A meeting of the advisory committee assisting in the development of proposed amendments to the Virginia Water Protection Permit Program general permit regulations (9 VAC 25-660, 9 VAC 25-670, 9 VAC 25-680 and 9 VAC 25-690).

Contact: Brenda K. Winn, State Water Control Board, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4516, FAX (804) 698-4347, e-mail bkwin@deq.virginia.gov.

† **November 10, 2004 - 7 p.m.** -- Open Meeting
Dabney S. Lancaster Community College, Moomaw Student Center, 1000 Dabney Drive, Clifton Forge, Virginia. ♿

A public meeting to receive comment on the notice of intent to consider amending the water quality standards regulation to designate a portion of the Cowpasture River as a Tier III exceptional state resource water. The notice of intent will be published in the Virginia Register on October 4, 2004, and the public comment period closes on November 15, 2004.

Contact: Jean W. Gregory, State Water Control Board, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4113, FAX (804) 698-4522, e-mail jwgregory@deq.virginia.gov.

November 17, 2004 - 1 p.m. -- Open Meeting

November 18, 2004 - 9 a.m. -- Open Meeting
Williamsburg, Virginia area; location to be determined. ♿

A meeting of representatives of the three regulatory citizen boards: State Air Pollution Control Board, Virginia Waste Management Board and the State Water Pollution Control Board.

Contact: Cindy Berndt, Regulatory Coordinator, State Air Pollution Control Board, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4378, FAX (804) 698-4346, e-mail cmberndt@deq.virginia.gov.

December 2, 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

November 10, 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 E. Dick, Assistant Director, Board for Waterworks and Wastewater Works Operators, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, FAX (804) 367-2475, (804) 367-9753/TTY ♿, e-mail waterwasteoper@dpor.state.va.us.

December 8, 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.state.va.us.

VIRGINIA WORKFORCE COUNCIL

October 18, 2004 - Noon -- Open Meeting
Richmond Marriott Hotel, 500 East Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A business meeting. Public comment will be scheduled and limited to five minutes per person and a written copy of comments is required. The agenda will be announced at a later date.

Contact: Gail Robinson, Workforce Council Liaison, Virginia Employment Commission, 703 E. Main St., Richmond, VA 23219, telephone (804) 225-3070, FAX (804) 225-2190, toll-free (800) 828-1120, e-mail grobinson@vec.state.va.us.

INDEPENDENT

VIRGINIA RETIREMENT SYSTEM

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.

NOTE: CHANGE IN MEETING DATE AND TIME

October 20, 2004 - 10:30 a.m. -- Open Meeting

November 24, 2004 - 9 a.m. -- Open Meeting

December 16, 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-

Calendar of Events

free (888) 827-3847, (804) 344-3190/TTY ☎, or e-mail lking@vrs.state.va.us.

November 16, 2004 - Noon -- Open Meeting
Virginia Retirement System Headquarters Building, 1200 East Main Street, Richmond, Virginia. ♿

A meeting of the Optional Retirement Plan Advisory Committee. No public comment will be received.

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.

November 17, 2004 - 11 a.m. -- Open Meeting
Virginia Retirement System Headquarters Building, 1200 East Main Street, Richmond, Virginia. ♿

Meetings of the following committees:

- 11 a.m. -- Investment Advisory Committee
- 2:30 p.m. - Benefits and Actuarial
- 4 p.m. - Administration and Personnel
- 4 p.m. - Audit and Compliance

No public comment will be received.

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 ☎, e-mail lking@vrs.state.va.us.

December 15, 2004 - 3 p.m. -- Open Meeting
Bank of America Building, 1111 East Main Street, Virginia Retirement System Investment Department, Pavilion, 4th Floor, Richmond, Virginia. ♿

A regular meeting of the Investment Advisory Committee. No public comment will be received at the meeting.

Contact: Phyllis Henderson, Executive 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 lking@vrs.state.va.us

LEGISLATIVE

VIRGINIA CODE COMMISSION

October 20, 2004 - 10 a.m. -- Open Meeting
November 17, 2004 - 10 a.m. -- Open Meeting
December 15, 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

December 2, 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 foiaocouncil@leg.state.va.us.

JOINT COMMISSION ON TECHNOLOGY AND SCIENCE

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: Lisa Wallmeyer, 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.

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.

October 19, 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) 371-0169, e-mail jcots@leg.state.va.us.

October 20, 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: Lisa Wallmeyer, 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.

December 1, 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 2005 legislative proposals.

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.

CHRONOLOGICAL LIST

OPEN MEETINGS

October 4

† Health, Department of
Nursing, Board of

October 5

Contractors, Board for
† Funeral Directors and Embalmers, Board of
† Higher Education Tuition Trust Fund, Virginia
Museum of Fine Arts, Virginia
† Real Estate Board
Technology and Science, Joint Commission on
† Tobacco Settlement Foundation, Virginia
† Water Control Board, State

October 6

Conservation and Recreation, Department of
† Environmental Quality, Department of
† George Mason University
Jamestown-Yorktown Foundation
† Medical Assistance Services, Department of
Medicine, Board of
Public Broadcasting Board, Virginia
Retirement System, Virginia
Technology and Science, Joint Commission on

October 7

† Auctioneers Board
Contractors, Board for
† Education, Board of
Environmental Quality, Department of
Real Estate Board
Veterinary Medicine, Board of

October 8

Accountancy, Board of
† Education, Board of
† Environmental Quality, Department of
Health Professions, Department of
Military Bases, Virginia Commission on

October 12

Alcoholic Beverage Control Board
Cemetery Board
† Governor, Office of the
Nursing, Board of
Psychology, Board of

October 13

† Aging, Commonwealth Council on
Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for
Contractors, Board for
† Environmental Quality, Department of
Geology, Board for
Nursing, Board of
Nursing Home Administrators, Board of

October 14

Auctioneers Board
† Environmental Quality, Department of
† Fire Services Board, Virginia
Medicine, Board of
Nursing, Board of
† Pesticide Control Board
Real Estate Board
Social Services, Department of
† Soil Scientists and Wetland Professionals, Board for
Professional

October 15

Dentistry, Board of
† Fire Services Board, Virginia
† Housing and Community Development, Department of
- State Building Code Technical Review Board
Medicine, Board of
Opticians, Board for

October 16

Medicine, Board of

October 18

Business Assistance, Department of
- Small Business Advisory Board
† Environmental Quality, Department of
Old Dominion University
Workforce Council, Virginia

October 19

† Agriculture and Consumer Services, Department of
- Virginia Horse Industry Board
† Aviation Board, Virginia
Contractors, Board for
† Environmental Quality, Department of
Medicine, Board of
Nursing, Board of
Resources Authority, Virginia
Technology and Science, Joint Commission on

October 20

† Aviation Board, Virginia
Blind and Vision Impaired, Department for the
Code Commission, Virginia
Compensation Board
† Environmental Quality, Department of
Nursing and Medicine, Joint Boards of
Retirement System, Virginia
† Small Business Financing Authority, Virginia
Social Services, State Board of
Technology and Science, Joint Commission on
Treasury Board

October 21

† Contractors, Board for
Design-Build/Construction Management Review Board
† Game and Inland Fisheries, Board of

Calendar of Events

Health, State Board of
† Real Estate Board
Social Services, State Board of

October 22

Health, State Board of

October 23

† Blind and Vision Impaired, Department for the

October 25

Alcoholic Beverage Control Board

† Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for

† Environmental Quality, Department of

October 26

† Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for

Contractors, Board for

Marine Resources Commission

Mental Health, Mental Retardation and Substance Abuse
Services, Department of

Nursing, Board of

October 27

Education, Board of

† Environmental Quality, Department of

October 28

† Environmental Quality, Department of

October 29

† Blind and Vision Impaired, Department for the
Medicine, Board of

November 1

† Branch Pilots, Board for

November 2

† Auctioneers Board

Contractors, Board for

Museum of Fine Arts, Virginia

November 3

Air Pollution Control Board, State

Asbestos, Lead, and Home Inspectors, Board for

November 4

† Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for

Counseling, Board of

† Environmental Quality, Department of

Medical Assistance Services, Department of
- Drug Utilization Review Board

† Waste Management Board, Virginia

November 5

Art and Architectural Review Board

Counseling, Board of

Dentistry, Board of

† Higher Education Tuition Trust Fund, Virginia

November 8

Alcoholic Beverage Control Board

Hearing Aid Specialists, Board for

November 9

† Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for

† Environmental Quality, Department of

Real Estate Appraiser Board

November 10

† Air Pollution Control Board

† Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for

Motor Vehicles, Department of

- Medical Advisory Board

† Real Estate Appraiser Board

† Water Control Board, State

Waterworks and Wastewater Works Operators, Board for

November 11

Medical Assistance Services, Department of

- Pharmacy Liaison Committee

November 12

Dentistry, Board of

November 15

† Education, Board of

Jamestown-Yorktown Foundation

Library Board, State

Nursing, Board of

Old Dominion University

Professional and Occupational Regulation, Board for

November 16

Community Colleges, State Board for

Jamestown-Yorktown Foundation

Mental Health, Mental Retardation and Substance Abuse
Services, Department of

Nursing, Board of

† Rehabilitative Services, Department of

Retirement System, Virginia

November 17

Air Pollution Control Board, State

Code Commission, Virginia

Community Colleges, State Board for

Education, Board of

Medical Assistance Services, Department of

- Medicaid Transportation Advisory Committee

Nursing, Board of

† Real Estate Board

Retirement System, Virginia

Waste Management Board, Virginia

Water Control Board, State

November 18

Air Pollution Control Board, State

Community Colleges, State Board for

Design-Build/Construction Management Review Board

Nursing, Board of

Waste Management Board, Virginia

Water Control Board, State

November 19

Dentistry, Board of

Medicine, Board of

November 22

Alcoholic Beverage Control Board

† Elections, State Board of

November 24

Retirement System, Virginia

December 1

Jamestown-Yorktown Foundation

Technology and Science, Joint Commission on

December 2

† Elections, State Board of

Freedom of Information Advisory Council, Virginia
Nursing, Board of
Polygraph Examiners Advisory Board
Water Control Board, State

December 3

Art and Architectural Review Board
Dentistry, Board of

December 6

Alcoholic Beverage Control Board

December 7

Alzheimer's Disease and Related Disorders Commission
Gaming Board, Charitable
Museum of Fine Arts, Virginia
Nursing, Board of

December 8

Nursing, Board of
Waterworks and Wastewater Works Operators, Board for

December 9

† Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for
Criminal Justice Services Board
Nursing, Board of
Public Guardian and Conservator Advisory Board

December 10

Dentistry, Board of
Health Professions, Department of
Old Dominion University

December 14

Contractors, Board for
Medical Assistance Services, Board of

December 15

Code Commission, Virginia
† Health Professions, Department of
Milk Commission, State
Nursing and Medicine, Committee of the Joint Boards of
Retirement System, Virginia
Social Services, State Board

December 16

Design-Build/Construction Management Review Board
Retirement System, Virginia
Social Services, State Board of

December 17

Dentistry, Board of

December 20

Alcoholic Beverage Control Board

December 21

† Mental Health, Mental Retardation and Substance Abuse
Services, Department of

January 4

† Museum of Fine Arts, Virginia

October 15

† Air Pollution Control Board, State

October 18

† Health Professions, Department of

November 10

Juvenile Justice, State Board of

November 17

† Education, Board of
† Professional and Occupational Regulation, Department of

December 9

Criminal Justice Services Board

PUBLIC HEARINGS

October 6

Fair Housing Board
Optometry, Board of

October 7

Veterinary Medicine, Board of

October 14

Pesticide Control Board

Calendar of Events
