



Virginia Register of Regulations

VOL. 25 ISS. 2

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

SEPTEMBER 29, 2008

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THE VIRGINIA REGISTER OF REGULATIONS (USPS-001831) is published biweekly, with quarterly cumulative indices published in January, April, July and October, for \$168.00 per year by LexisNexis Matthew Bender, 1275 Broadway, Albany, NY 12204. Periodical postage is paid at Albany, NY and at additional mailing offices. POSTMASTER: Send address changes to LexisNexis Matthew Bender, 1275 Broadway, Albany, NY 12204.

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THE VIRGINIA REGISTER INFORMATION PAGE

THE VIRGINIA REGISTER OF REGULATIONS is an official state publication issued every other week throughout the year. Indexes are published quarterly, and are cumulative for the year. The *Virginia Register* has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in the *Virginia Register*. In addition, the *Virginia Register* is a source of other information about state government, including petitions for rulemaking, emergency regulations, executive orders issued by the Governor, the Virginia Tax Bulletin issued periodically by the Department of Taxation, and notices of public hearings and open meetings of state agencies.

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

An agency wishing to adopt, amend, or repeal regulations must first publish in the *Virginia Register* a notice of intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

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

The Joint Commission on Administrative Rules (JCAR) or the appropriate standing committee of each house of the General Assembly may meet during the promulgation or final adoption process and file an objection with the Registrar and the promulgating agency. The objection will be published in the *Virginia Register*. Within 21 days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative body, and the Governor.

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

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

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

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

provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

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

FAST-TRACK RULEMAKING PROCESS

Section 2.2-4012.1 of the Code of Virginia provides an exemption from certain provisions of the Administrative Process Act for agency regulations deemed by the Governor to be noncontroversial. To use this process, Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations will become effective on the date noted in the regulatory action if no objections to using the process are filed in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 12 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the Register.

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

STATEMENT

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia be examined carefully.

CITATION TO THE VIRGINIA REGISTER

The *Virginia Register* is cited by volume, issue, page number, and date. **23:7 VA.R. 1023-1140 December 11, 2006**, refers to Volume 23, Issue 7, pages 1023 through 1140 of the *Virginia Register* issued on December 11, 2006.

The Virginia Register of Regulations is published pursuant to Article 6 (§ 2.2-4031 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia.

Members of the Virginia Code Commission: **R. Steven Landes**, Chairman; **John S. Edwards**, Vice Chairman; **Ryan T. McDougle**; **Robert Hurt**; **Robert L. Calhoun**; **Frank S. Ferguson**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **James F. Almand**; **Jane M. Roush**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **June T. Chandler**, Assistant Registrar.

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the *Register's* Internet home page (<http://register.state.va.us>).

September 2008 through June 2009

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
FINAL INDEX Volume 24		
		October 2008
25:2	September 10, 2008	September 29, 2008
25:3	September 24, 2008	October 13, 2008
25:4	October 8, 2008	October 27, 2008
25:5	October 22, 2008	November 10, 2008
25:6	November 5, 2008	November 24, 2008
25:7	November 18, 2008 (Tuesday)	December 8, 2008
INDEX 1 Volume 25		
		January 2009
25:8	December 3, 2008	December 22, 2008
25:9	December 16, 2008 (Tuesday)	January 5, 2009
25:10	December 30, 2008 (Tuesday)	January 19, 2009
25:11	January 14, 2009	February 2, 2009
25:12	January 28, 2009	February 16, 2009
25:13	February 11, 2009	March 2, 2009
25:14	February 25, 2009	March 16, 2009
INDEX 2 Volume 25		
		April 2009
25:15	March 11, 2009	March 30, 2009
25:16	March 25, 2009	April 13, 2009
25:17	April 8, 2009	April 27, 2009
25:18	April 22, 2009	May 11, 2009
25:19	May 6, 2009	May 25, 2009
25:20	May 20, 2009	June 8, 2009
INDEX 3 Volume 25		
		July 2009
25:21	June 3, 2009	June 22, 2009

*Filing deadlines are Wednesdays unless otherwise specified.

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 2008 VAC Supplement includes final regulations published through *Virginia Register* Volume 24, Issue 7, dated December 10, 2007, and fast-track regulations published through *Virginia Register* Volume 24 Issue 10, dated January 21, 2008). 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 30-45-10 through 1 VAC 30-45-860	Added	24:25 VA.R. 3449-3506	10/1/08
1 VAC 30-46-10 through 1 VAC 30-46-210	Added	24:25 VA.R. 3506-3523	10/1/08
1 VAC 75-10-10 through 1 VAC 75-10-40	Repealed	24:25 VA.R. 3523	9/17/08
1 VAC 75-11-10 through 1 VAC 75-11-110	Added	24:25 VA.R. 3523-3526	9/17/08
Title 2. Agriculture			
2 VAC 5-30-10	Amended	24:17 VA.R. 2318	6/12/08
2 VAC 5-30-20	Amended	24:17 VA.R. 2318	6/12/08
2 VAC 5-50-20	Amended	24:17 VA.R. 2320	6/12/08
2 VAC 5-50-70	Amended	24:17 VA.R. 2320	6/12/08
2 VAC 5-50-100	Amended	24:17 VA.R. 2320	6/12/08
2 VAC 5-50-110	Amended	24:17 VA.R. 2321	6/12/08
2 VAC 5-90-30	Amended	24:17 VA.R. 2322	6/12/08
2 VAC 5-100-10 through 2 VAC 5-100-40	Repealed	24:26 VA.R. 3707	10/18/08
2 VAC 5-150-10	Amended	24:17 VA.R. 2323	6/12/08
2 VAC 5-180-20	Amended	24:17 VA.R. 2326	6/12/08
2 VAC 5-180-30	Amended	24:17 VA.R. 2327	6/12/08
2 VAC 5-180-50	Amended	24:17 VA.R. 2327	6/12/08
2 VAC 5-180-60	Amended	24:17 VA.R. 2327	6/12/08
2 VAC 5-180-80	Amended	24:17 VA.R. 2327	6/12/08
2 VAC 5-180-120	Amended	24:17 VA.R. 2328	6/12/08
2 VAC 5-206-10 through 2 VAC 5-206-50	Added	24:25 VA.R. 3527-3531	10/3/08
2 VAC 5-210-30	Amended	24:9 VA.R. 1096	12/11/07
2 VAC 5-210-41	Amended	24:9 VA.R. 1097	12/11/07
2 VAC 5-390-180	Amended	24:15 VA.R. 2023	3/11/08
2 VAC 5-400-5	Added	24:17 VA.R. 2330	6/12/08
2 VAC 5-420-30	Amended	24:20 VA.R. 2838	5/21/08
2 VAC 5-420-80	Amended	24:20 VA.R. 2840	5/21/08
2 VAC 5-501-80	Amended	24:17 VA.R. 2332	6/12/08
2 VAC 5-501-100	Amended	24:17 VA.R. 2336	6/12/08
2 VAC 5-510-10	Amended	24:17 VA.R. 2340	6/12/08
2 VAC 5-510-50	Amended	24:17 VA.R. 2341	6/12/08
2 VAC 5-510-60	Repealed	24:17 VA.R. 2341	6/12/08
2 VAC 5-510-70	Repealed	24:17 VA.R. 2341	6/12/08
2 VAC 5-510-80	Repealed	24:17 VA.R. 2342	6/12/08
2 VAC 5-510-90	Amended	24:17 VA.R. 2342	6/12/08
2 VAC 5-510-100	Repealed	24:17 VA.R. 2344	6/12/08
2 VAC 5-510-110	Amended	24:17 VA.R. 2344	6/12/08
2 VAC 5-510-120	Repealed	24:17 VA.R. 2345	6/12/08

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
2 VAC 5-510-130	Amended	24:17 VA.R. 2345	6/12/08
2 VAC 5-510-140	Repealed	24:17 VA.R. 2347	6/12/08
2 VAC 5-510-150	Amended	24:17 VA.R. 2347	6/12/08
2 VAC 5-510-160	Repealed	24:17 VA.R. 2348	6/12/08
2 VAC 5-510-170	Amended	24:17 VA.R. 2348	6/12/08
2 VAC 5-510-180	Repealed	24:17 VA.R. 2348	6/12/08
2 VAC 5-510-190	Amended	24:17 VA.R. 2348	6/12/08
2 VAC 5-510-200	Repealed	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-210	Amended	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-220	Repealed	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-230	Repealed	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-240	Amended	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-250	Repealed	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-260	Amended	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-270	Repealed	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-290	Amended	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-300	Repealed	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-310	Amended	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-320	Repealed	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-330	Amended	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-340	Repealed	24:17 VA.R. 2351	6/12/08
2 VAC 5-510-350	Amended	24:17 VA.R. 2351	6/12/08
2 VAC 5-510-360	Repealed	24:17 VA.R. 2351	6/12/08
2 VAC 5-510-390	Amended	24:17 VA.R. 2351	6/12/08
2 VAC 5-510-400	Repealed	24:17 VA.R. 2352	6/12/08
2 VAC 5-510-410	Amended	24:17 VA.R. 2352	6/12/08
2 VAC 5-510-420	Amended	24:17 VA.R. 2352	6/12/08
2 VAC 5-510-500	Amended	24:17 VA.R. 2352	6/12/08
2 VAC 5-510-510	Amended	24:17 VA.R. 2353	6/12/08
2 VAC 5-531-50	Amended	24:16 VA.R. 2235	5/29/08
2 VAC 5-531-140	Amended	24:16 VA.R. 2241	5/29/08
2 VAC 15-20-81	Amended	24:16 VA.R. 2242	4/14/08
2 VAC 20-10-80	Amended	24:24 VA.R. 3331	9/18/08
2 VAC 20-10-100	Amended	24:24 VA.R. 3331	9/18/08
2 VAC 20-10-110	Amended	24:24 VA.R. 3331	9/18/08
2 VAC 20-20-70	Amended	24:17 VA.R. 2355	6/12/08
2 VAC 20-20-130	Amended	24:17 VA.R. 2355	6/12/08
2 VAC 20-20-210	Amended	24:17 VA.R. 2355	6/12/08
2 VAC 20-40-50	Amended	24:17 VA.R. 2357	6/12/08
Title 3. Alcoholic Beverages			
3 VAC 5-50-140 emer	Amended	24:11 VA.R. 1344	1/9/08-1/8/09
3 VAC 5-50-145 emer	Added	24:11 VA.R. 1345	1/9/08-1/8/09
3 VAC 5-70-220	Amended	24:14 VA.R. 1891	5/1/08
3 VAC 5-70-225 emer	Added	24:10 VA.R. 1257	1/2/08-1/1/09
Title 4. Conservation and Natural Resources			
4 VAC 5-50-10 through 4VAC5-50-170	Repealed	24:17 VA.R. 2357	5/28/08
4 VAC 15-20-50	Amended	24:10 VA.R. 1258	1/1/08
4 VAC 15-20-130	Amended	24:10 VA.R. 1259	1/1/08
4 VAC 15-20-200	Amended	24:10 VA.R. 1261	1/1/08
4 VAC 15-20-210	Amended	24:10 VA.R. 1261	1/1/08
4 VAC 15-30-5	Amended	24:10 VA.R. 1262	1/1/08

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

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4 VAC 15-30-40	Amended	24:10 VA.R. 1262	1/1/08
4 VAC 15-40-30	Amended	24:23 VA.R. 3108	7/1/08
4 VAC 15-40-70	Amended	24:23 VA.R. 3108	7/1/08
4 VAC 15-40-190	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-40-210	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-40-220	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-50-20	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-50-25	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-50-71	Amended	24:24 VA.R. 3332	7/8/08
4 VAC 15-50-81	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-50-91	Amended	24:23 VA.R. 3110	7/1/08
4 VAC 15-70-50	Amended	24:23 VA.R. 3111	7/1/08
4 VAC 15-70-70	Added	24:23 VA.R. 3111	7/1/08
4 VAC 15-90-22	Amended	24:23 VA.R. 3111	7/1/08
4 VAC 15-90-70	Amended	24:23 VA.R. 3112	7/1/08
4 VAC 15-90-80	Amended	24:23 VA.R. 3112	7/1/08
4 VAC 15-90-80	Amended	24:24 VA.R. 3332	7/8/08
4 VAC 15-90-90	Amended	24:23 VA.R. 3113	7/1/08
4 VAC 15-90-91	Amended	24:23 VA.R. 3114	7/1/08
4 VAC 15-110-10	Amended	24:23 VA.R. 3117	7/1/08
4 VAC 15-110-75	Amended	24:23 VA.R. 3118	7/1/08
4 VAC 15-240-11	Added	24:23 VA.R. 3118	7/1/08
4 VAC 15-240-20	Amended	24:23 VA.R. 3118	7/1/08
4 VAC 15-240-31	Amended	24:23 VA.R. 3118	7/1/08
4 VAC 15-240-40	Amended	24:23 VA.R. 3118	7/1/08
4 VAC 15-240-50	Amended	24:23 VA.R. 3119	7/1/08
4 VAC 15-240-51	Added	24:23 VA.R. 3119	7/1/08
4 VAC 15-260-140	Amended	24:24 VA.R. 3333	7/8/08
4 VAC 15-270-50	Repealed	24:24 VA.R. 3334	7/8/08
4 VAC 15-320-25	Amended	24:10 VA.R. 1265	1/1/08
4 VAC 15-330-30	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-100	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-120	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-160	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-171	Amended	24:10 VA.R. 1273	1/1/08
4 VAC 15-330-200	Amended	24:10 VA.R. 1273	1/1/08
4 VAC 15-340-10	Amended	24:10 VA.R. 1273	1/1/08
4 VAC 15-340-30	Amended	24:10 VA.R. 1274	1/1/08
4 VAC 15-350-20	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-350-30	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-350-60	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-350-70	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-360-10	Amended	24:10 VA.R. 1276	1/1/08
4 VAC 15-410-10 through 4 VAC 15-410-160	Added	24:23 VA.R. 3119-3125	7/1/08
4 VAC 20-40-10 through 4 VAC 20-40-40	Repealed	24:19 VA.R. 2749	4/30/08
4 VAC 20-90-10	Repealed	24:19 VA.R. 2749	4/30/08
4 VAC 20-90-20	Repealed	24:19 VA.R. 2749	4/30/08
4 VAC 20-90-30	Repealed	24:19 VA.R. 2749	4/30/08
4 VAC 20-140-10	Amended	24:21 VA.R. 2917	3/17/09
4 VAC 20-140-20	Amended	24:21 VA.R. 2917	3/17/09

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-140-25	Added	24:21 VA.R. 2917	3/17/09
4 VAC 20-150-30	Amended	24:10 VA.R. 1277	1/1/08
4 VAC 20-252-55	Amended	24:10 VA.R. 1278	1/1/08
4 VAC 20-252-120	Amended	24:10 VA.R. 1278	1/1/08
4 VAC 20-252-150	Amended	24:10 VA.R. 1279	1/1/08
4 VAC 20-252-160	Amended	24:10 VA.R. 1279	1/1/08
4 VAC 20-252-230	Amended	24:10 VA.R. 1281	1/1/08
4 VAC 20-270-10 emer	Amended	24:19 VA.R. 2751	5/1/08-5/31/08
4 VAC 20-270-10	Amended	24:21 VA.R. 2918	6/1/08
4 VAC 20-270-30	Amended	24:19 VA.R. 2750	4/30/08
4 VAC 20-270-40	Amended	24:19 VA.R. 2750	4/30/08
4 VAC 20-270-50	Amended	24:19 VA.R. 2750	4/30/08
4 VAC 20-270-50 emer	Amended	24:19 VA.R. 2751	5/1/08-5/31/08
4 VAC 20-270-50	Amended	24:21 VA.R. 2918	6/1/08
4 VAC 20-270-55	Amended	24:15 VA.R. 2023	3/1/08
4 VAC 20-270-55	Amended	24:19 VA.R. 2751	4/30/08
4 VAC 20-270-56	Amended	24:19 VA.R. 2751	4/30/08
4 VAC 20-270-58	Added	24:19 VA.R. 2751	4/30/08
4 VAC 20-320-50	Amended	24:12 VA.R. 1456	2/1/08
4 VAC 20-450-30	Amended	24:21 VA.R. 2918	6/1/08
4 VAC 20-530-20	Amended	24:12 VA.R. 1456	2/1/08
4 VAC 20-530-31	Amended	24:13 VA.R. 1735	2/5/08
4 VAC 20-530-32	Repealed	24:12 VA.R. 1457	2/1/08
4 VAC 20-610-20	Amended	24:8 VA.R. 959	12/1/07
4 VAC 20-610-25	Added	24:8 VA.R. 959	12/1/07
4 VAC 20-610-30	Amended	24:8 VA.R. 960	12/1/07
4 VAC 20-610-30	Amended	24:15 VA.R. 2024	3/1/08
4 VAC 20-610-50	Amended	24:8 VA.R. 961	12/1/07
4 VAC 20-610-60	Amended	24:8 VA.R. 961	12/1/07
4 VAC 20-620-30	Amended	24:10 VA.R. 1281	12/27/07
4 VAC 20-620-40 emer	Amended	24:8 VA.R. 962	11/28/07-12/27/07
4 VAC 20-620-40	Amended	24:10 VA.R. 1282	12/27/07
4 VAC 20-620-50	Amended	24:15 VA.R. 2025	3/1/08
4 VAC 20-620-70	Amended	24:15 VA.R. 2026	3/1/08
4 VAC 20-670-20	Amended	24:19 VA.R. 2752	4/30/08
4 VAC 20-670-25	Amended	24:19 VA.R. 2752	4/30/08
4 VAC 20-670-30	Amended	24:19 VA.R. 2752	4/30/08
4 VAC 20-670-40	Amended	24:19 VA.R. 2753	4/30/08
4 VAC 20-700-10 emer	Amended	24:19 VA.R. 2753	5/1/08-5/31/08
4 VAC 20-700-15 emer	Added	24:19 VA.R. 2753	5/1/08-5/31/08
4 VAC 20-700-15	Added	24:21 VA.R. 2918	6/1/08
4 VAC 20-700-20	Amended	24:15 VA.R. 2026	3/1/08
4 VAC 20-700-20 emer	Amended	24:19 VA.R. 2754	5/1/08-5/31/08
4 VAC 20-700-20	Amended	24:21 VA.R. 2919	6/1/08
4 VAC 20-720-40	Amended	24:12 VA.R. 1457	2/1/08
4 VAC 20-720-50	Amended	24:12 VA.R. 1458	2/1/08
4 VAC 20-720-60	Amended	24:12 VA.R. 1458	2/1/08
4 VAC 20-720-80	Amended	24:12 VA.R. 1458	2/1/08
4 VAC 20-720-106 emer	Amended	25:1 VA.R. 24	9/1/08-9/30/08
4 VAC 20-750-10	Amended	24:15 VA.R. 2026	3/1/08
4 VAC 20-750-10	Repealed	24:19 VA.R. 2754	4/30/08

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-750-30	Amended	24:15 VA.R. 2026	3/1/08
4 VAC 20-750-30	Repealed	24:19 VA.R. 2754	4/30/08
4 VAC 20-750-40	Repealed	24:19 VA.R. 2754	4/30/08
4 VAC 20-750-50	Repealed	24:19 VA.R. 2754	4/30/08
4 VAC 20-751-15	Added	24:15 VA.R. 2027	3/1/08
4 VAC 20-751-20	Amended	24:15 VA.R. 2027	3/1/08
4 VAC 20-752-20	Amended	24:19 VA.R. 2754	4/30/08
4 VAC 20-752-30	Amended	24:16 VA.R. 2246	4/1/08
4 VAC 20-752-30	Amended	24:19 VA.R. 2755	4/30/08
4 VAC 20-880-10 emer	Amended	24:19 VA.R. 2755	5/1/08-5/31/08
4 VAC 20-880-10	Amended	24:21 VA.R. 2919	6/1/08
4 VAC 20-880-20 emer	Amended	24:19 VA.R. 2755	5/1/08-5/31/08
4 VAC 20-880-20	Amended	24:19 VA.R. 2756	4/30/08
4 VAC 20-880-30 emer	Amended	24:19 VA.R. 2757	5/1/08-5/31/08
4 VAC 20-880-30	Amended	24:19 VA.R. 2757	4/30/08
4 VAC 20-880-30	Amended	24:21 VA.R. 2919	6/1/08
4 VAC 20-910-45	Amended	24:25 VA.R. 3537	8/1/08
4 VAC 20-950-47	Amended	24:15 VA.R. 2028	3/1/08
4 VAC 20-950-48	Amended	24:15 VA.R. 2028	3/1/08
4 VAC 20-950-48.1	Amended	24:15 VA.R. 2029	3/1/08
4 VAC 20-960-45	Amended	24:8 VA.R. 964	1/1/08
4 VAC 20-960-47	Amended	24:8 VA.R. 964	1/1/08
4 VAC 20-1040-20	Amended	24:8 VA.R. 964	1/1/08
4 VAC 20-1040-35	Added	24:12 VA.R. 1459	2/1/08
4 VAC 20-1090-10 emer	Amended	24:19 VA.R. 2757	5/1/08-5/31/08
4 VAC 20-1090-30	Amended	24:8 VA.R. 965	12/1/07
4 VAC 20-1090-30 emer	Amended	24:19 VA.R. 2757	5/1/08-5/31/08
4 VAC 20-1090-30	Amended	24:19 VA.R. 2760	4/30/08
4 VAC 20-1090-30	Amended	24:21 VA.R. 2920	6/1/08
4 VAC 20-1130-10 through 4 VAC 20-1130-70	Added	24:8 VA.R. 968-970	12/1/07
4 VAC 20-1140-10	Added	24:19 VA.R. 2763	4/30/08
4 VAC 20-1140-20	Added	24:19 VA.R. 2763	4/30/08
4 VAC 20-1140-30	Added	24:19 VA.R. 2763	4/30/08
4 VAC 20-1150-10	Added	24:25 VA.R. 3538	8/1/08
4 VAC 20-1150-20	Added	24:25 VA.R. 3538	8/1/08
4 VAC 25-130 (Forms)	Amended	24:11 VA.R. 1424	--
4 VAC 25-150-90	Amended	24:17 VA.R. 2359	6/12/08
4 VAC 50-20-20 through 4 VAC 50-20-90	Amended	24:25 VA.R. 3539-3554	9/26/08
4 VAC 50-20-51	Added	24:25 VA.R. 3544	9/26/08
4 VAC 50-20-52	Added	24:25 VA.R. 3545	9/26/08
4 VAC 50-20-54	Added	24:25 VA.R. 3545	9/26/08
4 VAC 50-20-58	Added	24:25 VA.R. 3546	9/26/08
4 VAC 50-20-59	Added	24:25 VA.R. 3546	9/26/08
4 VAC 50-20-100 through 4 VAC 50-20-140	Repealed	24:25 VA.R. 3554-3558	9/26/08
4 VAC 50-20-105	Added	24:25 VA.R. 3554	9/26/08
4 VAC 50-20-125	Added	24:25 VA.R. 3557	9/26/08
4 VAC 50-20-150 through 4 VAC 50-20-240	Amended	24:25 VA.R. 3558-3563	9/26/08
4 VAC 50-20-155	Added	24:25 VA.R. 3558	9/26/08
4 VAC 50-20-165	Added	24:25 VA.R. 3559	9/26/08
4 VAC 50-20-175	Added	24:25 VA.R. 3560	9/26/08

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4 VAC 50-20-177	Added	24:25 VA.R. 3561	9/26/08
4 VAC 50-20-250	Repealed	24:25 VA.R. 3564	9/26/08
4 VAC 50-20-260 through 4 VAC 50-20-320	Amended	24:25 VA.R. 3564-3565	9/26/08
4 VAC 50-20-330 through 4 VAC 50-20-400	Added	24:25 VA.R. 3565-3567	9/26/08
4 VAC 50-60-10	Amended	24:20 VA.R. 2842	7/9/08
4 VAC 50-60-1200	Amended	24:20 VA.R. 2852	7/9/08
4 VAC 50-60-1210	Amended	24:20 VA.R. 2853	7/9/08
4 VAC 50-60-1220	Amended	24:20 VA.R. 2854	7/9/08
4 VAC 50-60-1230	Amended	24:20 VA.R. 2854	7/9/08
4 VAC 50-60-1240	Amended	24:20 VA.R. 2856	7/9/08
Title 5. Corporations			
5 VAC 5-20-20	Amended	24:11 VA.R. 1347	2/15/08
5 VAC 5-20-140	Amended	24:11 VA.R. 1347	2/15/08
5 VAC 5-20-150	Amended	24:11 VA.R. 1348	2/15/08
5 VAC 5-20-170	Amended	24:11 VA.R. 1348	2/15/08
5 VAC 5-20-240	Amended	24:11 VA.R. 1349	2/15/08
Title 6. Criminal Justice and Corrections			
6 VAC 15-31-320	Amended	24:25 VA.R. 3568	9/18/08
6 VAC 15-61-10 through 6 VAC 15-61-300	Repealed	24:8 VA.R. 970	1/24/08
6 VAC 15-62-10 through 6 VAC 15-62-120	Added	24:8 VA.R. 970-979	1/24/08
6 VAC 15-62-110	Amended	24:13 VA.R. 1736	3/3/08
6 VAC 15-62 (Forms)	Amended	24:12 VA.R. 1523	--
6 VAC 20-80-10 through 6 VAC 20-80-90	Amended	24:23 VA.R. 3127-3132	9/1/08
6 VAC 20-80-100	Repealed	24:23 VA.R. 3132	9/1/08
6 VAC 20-80-110	Repealed	24:23 VA.R. 3132	9/1/08
6 VAC 20-171-10 emer	Amended	24:23 VA.R. 3134	7/1/08 - 6/30/09
6 VAC 20-171-50 emer	Amended	24:23 VA.R. 3137	7/1/08 - 6/30/09
6 VAC 20-171-120 emer	Amended	24:23 VA.R. 3138	7/1/08 - 6/30/09
6 VAC 20-171-230 emer	Amended	24:23 VA.R. 3139	7/1/08 - 6/30/09
6 VAC 20-171-320 emer	Amended	24:23 VA.R. 3141	7/1/08 - 6/30/09
6 VAC 20-171-350 emer	Amended	24:23 VA.R. 3142	7/1/08 - 6/30/09
6 VAC 20-171-360 emer	Amended	24:23 VA.R. 3145	7/1/08 - 6/30/09
6 VAC 20-250-10 through 6 VAC 20-250-380	Added	24:23 VA.R. 3146-3161	8/20/08
6 VAC 35-10-10 through 6 VAC 35-10-150	Repealed	24:25 VA.R. 3573	9/17/08
6 VAC 35-11-10 through 6 VAC 35-11-110	Added	24:25 VA.R. 3574-3576	9/17/08
6 VAC 35-51-10 through 6 VAC 35-51-1100	Added	24:25 VA.R. 3577-3610	9/17/08
6 VAC 40-20-30	Amended	24:26 VA.R. 3718	10/16/08
6 VAC 40-20-120	Amended	24:26 VA.R. 3718	10/16/08
6 VAC 40-20-130	Amended	24:26 VA.R. 3718	10/16/08
6 VAC 40-20-160	Amended	24:26 VA.R. 3718	10/16/08
6 VAC 40-50-10 through 6 VAC 40-50-80	Added	24:9 VA.R. 1103-1104	2/6/08
Title 7. Economic Development			
7 VAC 10-20-10 through 7 VAC 10-20-350	Repealed	24:26 VA.R. 3719	9/1/08
7 VAC 10-21-10 through 7 VAC 10-21-610	Added	24:26 VA.R. 3719-3729	9/1/08
Title 8. Education			
8 VAC 20-650-30	Amended	24:21 VA.R. 2936	9/15/08
Title 9. Environment			
9 VAC 10-20-120	Amended	24:22 VA.R. 3040	8/6/08
9 VAC 20-60-18	Amended	24:9 VA.R. 1106	2/6/08
9 VAC 25-32 (Forms)	Amended	24:13 VA.R. 1738	--
9 VAC 25-120-10	Amended	24:9 VA.R. 1107	2/6/08

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9 VAC 25-120-20	Amended	24:9 VA.R. 1107	2/6/08
9 VAC 25-120-50	Amended	24:9 VA.R. 1108	2/6/08
9 VAC 25-120-60	Amended	24:9 VA.R. 1108	2/6/08
9 VAC 25-120-70	Amended	24:9 VA.R. 1108	2/6/08
9 VAC 25-120-80	Amended	24:9 VA.R. 1109	2/6/08
9 VAC 25-120-80	Amended	24:18 VA.R. 2502	6/11/08
9 VAC 25-193-40	Amended	24:18 VA.R. 2517	6/11/08
9 VAC 25-193-70	Amended	24:18 VA.R. 2517	6/11/08
9 VAC 25-196-20	Amended	24:9 VA.R. 1124	2/6/08
9 VAC 25-196-40	Amended	24:9 VA.R. 1124	2/6/08
9 VAC 25-196-60	Amended	24:9 VA.R. 1124	2/6/08
9 VAC 25-196-70	Amended	24:9 VA.R. 1125	2/6/08
9 VAC 25-196-70	Amended	24:18 VA.R. 2532	6/11/08
9 VAC 25-210-10	Amended	24:9 VA.R. 1132	2/6/08
9 VAC 25-210-60	Amended	24:9 VA.R. 1136	2/6/08
9 VAC 25-210-116	Amended	24:9 VA.R. 1140	2/6/08
9 VAC 25-210-130	Amended	24:9 VA.R. 1142	2/6/08
9 VAC 25-260-30	Amended	24:13 VA.R. 1741	*
9 VAC 25-260-30	Amending	24:26 VA.R. 3747	8/12/08
9 VAC 25-660-10	Amended	24:9 VA.R. 1144	2/6/08
9 VAC 25-660-60	Amended	24:9 VA.R. 1145	2/6/08
9 VAC 25-660-70	Amended	24:9 VA.R. 1147	2/6/08
9 VAC 25-660-80	Amended	24:9 VA.R. 1148	2/6/08
9 VAC 25-660-100	Amended	24:9 VA.R. 1148	2/6/08
9 VAC 25-670-10	Amended	24:9 VA.R. 1156	2/6/08
9 VAC 25-670-70	Amended	24:9 VA.R. 1157	2/6/08
9 VAC 25-670-80	Amended	24:9 VA.R. 1158	2/6/08
9 VAC 25-670-100	Amended	24:9 VA.R. 1159	2/6/08
9 VAC 25-680-10	Amended	24:9 VA.R. 1170	2/6/08
9 VAC 25-680-60	Amended	24:9 VA.R. 1172	2/6/08
9 VAC 25-680-70	Amended	24:9 VA.R. 1174	2/6/08
9 VAC 25-680-80	Amended	24:9 VA.R. 1175	2/6/08
9 VAC 25-680-100	Amended	24:9 VA.R. 1176	2/6/08
9 VAC 25-690-10	Amended	24:9 VA.R. 1188	2/6/08
9 VAC 25-690-70	Amended	24:9 VA.R. 1190	2/6/08
9 VAC 25-690-80	Amended	24:9 VA.R. 1191	2/6/08
9 VAC 25-690-100	Amended	24:9 VA.R. 1191	2/6/08
9 VAC 25-720-50	Amended	24:18 VA.R. 2540	6/11/08
9 VAC 25-720-120	Amended	24:21 VA.R. 2940	8/7/08
9 VAC 25-720-130	Amended	24:18 VA.R. 2548	6/11/08
9 VAC 25-740-10 through 9 VAC 25-740-210	Added	24:26 VA.R. 3748-3773	10/1/08
9 VAC 25-820-10	Amended	24:21 VA.R. 2942	8/7/08
9 VAC 25-820-20	Amended	24:21 VA.R. 2944	8/7/08
9 VAC 25-820-70	Amended	24:21 VA.R. 2944	8/7/08
Title 10. Finance and Financial Institutions			
10 VAC 5-20-30	Amended	24:22 VA.R. 3043	6/23/08
10 VAC 5-40-5	Added	24:22 VA.R. 3045	7/1/08
10 VAC 5-40-60	Added	24:22 VA.R. 3045	7/1/08

* Effective upon filing notice of U.S. EPA approval with Registrar of Regulations

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10 VAC 5-160-10	Amended	24:26 VA.R. 3775	8/10/08
10 VAC 5-160-70	Added	24:26 VA.R. 3776	8/10/08
10 VAC 5-160-80	Added	24:26 VA.R. 3776	8/10/08
Title 11. Gaming			
11 VAC 10-130-60	Amended	24:16 VA.R. 2247	4/14/08
11 VAC 10-180-10	Amended	24:16 VA.R. 2247	4/14/08
11 VAC 10-180-20	Repealed	24:16 VA.R. 2248	4/14/08
11 VAC 10-180-25	Added	24:16 VA.R. 2250	4/14/08
11 VAC 10-180-35	Added	24:16 VA.R. 2250	4/14/08
11 VAC 10-180-60	Amended	24:16 VA.R. 2251	4/14/08
11 VAC 10-180-70	Amended	24:16 VA.R. 2256	4/14/08
11 VAC 10-180-75	Added	24:16 VA.R. 2256	4/14/08
11 VAC 10-180-80	Amended	24:16 VA.R. 2257	4/14/08
11 VAC 10-180-85	Amended	24:16 VA.R. 2258	4/14/08
11 VAC 10-180-110	Amended	24:16 VA.R. 2259	4/14/08
Title 12. Health			
12 VAC 5-90-370	Added	24:19 VA.R. 2777	7/1/08
12 VAC 5-195-10 through 12 VAC 5-195-670	Added	24:19 VA.R. 2778-2802	5/26/08
12 VAC 5-220-10	Amended	24:11 VA.R. 1350	3/5/08
12 VAC 5-220-110	Amended	24:11 VA.R. 1353	3/5/08
12 VAC 5-220-110	Amended	25:1 VA.R. 26	10/15/08
12 VAC 5-220-130	Amended	24:11 VA.R. 1354	3/5/08
12 VAC 5-220-160	Amended	25:1 VA.R. 25	10/15/08
12 VAC 5-220-200	Amended	24:11 VA.R. 1354	3/5/08
12 VAC 5-220-200	Amended	25:1 VA.R. 26	10/15/08
12 VAC 5-371-150	Amended	24:11 VA.R. 1357	3/5/08
12 VAC 5-381-10 through 12VAC5-381-40	Amended	24:11 VA.R. 1358-1361	3/5/08
12 VAC 5-381-60 through 12VAC5-381-100	Amended	24:11 VA.R. 1361-1362	3/5/08
12 VAC 5-381-120	Amended	24:11 VA.R. 1362	3/5/08
12 VAC 5-381-140	Amended	24:11 VA.R. 1362	3/5/08
12 VAC 5-381-150	Amended	24:11 VA.R. 1362	3/5/08
12 VAC 5-381-240	Amended	24:11 VA.R. 1363	3/5/08
12 VAC 5-381-280	Amended	24:11 VA.R. 1363	3/5/08
12 VAC 5-391-10	Amended	24:11 VA.R. 1364	3/5/08
12 VAC 5-391-30 through 12 VAC 5-391-100	Amended	24:11 VA.R. 1366-1368	3/5/08
12 VAC 5-391-120	Amended	24:11 VA.R. 1368	3/5/08
12 VAC 5-391-130	Amended	24:11 VA.R. 1368	3/5/08
12 VAC 5-391-150	Amended	24:11 VA.R. 1369	3/5/08
12 VAC 5-391-160	Amended	24:11 VA.R. 1369	3/5/08
12 VAC 5-391-250	Amended	24:11 VA.R. 1370	3/5/08
12 VAC 5-391-280	Amended	24:11 VA.R. 1370	3/5/08
12 VAC 5-410-230	Amended	24:11 VA.R. 1371	3/5/08
12 VAC 5-481-10	Amended	24:18 VA.R. 2566	6/12/08
12 VAC 5-481-20	Amended	24:18 VA.R. 2592	6/12/08
12 VAC 5-481-30	Amended	24:18 VA.R. 2592	6/12/08
12 VAC 5-481-90	Amended	24:18 VA.R. 2592	6/12/08
12 VAC 5-481-100	Amended	24:18 VA.R. 2593	6/12/08
12 VAC 5-481-110	Amended	24:18 VA.R. 2593	6/12/08
12 VAC 5-481-130	Amended	24:18 VA.R. 2594	6/12/08
12 VAC 5-481-150	Amended	24:18 VA.R. 2594	6/12/08
12 VAC 5-481-200	Repealed	24:18 VA.R. 2594	6/12/08

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12 VAC 5-481-230 through 12 VAC 5-481-270	Amended	24:18 VA.R. 2594-2595	6/12/08
12 VAC 5-481-340	Amended	24:18 VA.R. 2595	6/12/08
12 VAC 5-481-370 through 12 VAC 5-481-450	Amended	24:18 VA.R. 2597-2607	6/12/08
12 VAC 5-481-451	Added	24:25 VA.R. 3612	10/3/08
12 VAC 5-481-460	Repealed	24:18 VA.R. 2607	6/12/08
12 VAC 5-481-470	Amended	24:18 VA.R. 2608	6/12/08
12 VAC 5-481-480	Amended	24:18 VA.R. 2610	6/12/08
12 VAC 5-481-500	Amended	24:18 VA.R. 2619	6/12/08
12 VAC 5-481-510	Amended	24:18 VA.R. 2620	6/12/08
12 VAC 5-481-530 through 12 VAC 5-481-590	Amended	24:18 VA.R. 2622-2626	6/12/08
12 VAC 5-481-571	Added	24:18 VA.R. 2624	6/12/08
12 VAC 5-481-630 through 12 VAC 5-481-760	Amended	24:18 VA.R. 2626-2629	6/12/08
12 VAC 5-481-780	Amended	24:18 VA.R. 2629	6/12/08
12 VAC 5-481-790	Amended	24:18 VA.R. 2629	6/12/08
12 VAC 5-481-800	Repealed	24:18 VA.R. 2629	6/12/08
12 VAC 5-481-810 through 12 VAC 5-481-910	Amended	24:18 VA.R. 2630-2631	6/12/08
12 VAC 5-481-930 through 12 VAC 5-481-1050	Amended	24:18 VA.R. 2632-2633	6/12/08
12 VAC 5-481-971	Added	24:18 VA.R. 2632	6/12/08
12 VAC 5-481-1070	Amended	24:18 VA.R. 2633	6/12/08
12 VAC 5-481-1090	Amended	24:18 VA.R. 2633	6/12/08
12 VAC 5-481-1100	Amended	24:18 VA.R. 2633	6/12/08
12 VAC 5-481-1110	Amended	24:18 VA.R. 2633	6/12/08
12 VAC 5-481-1130	Amended	24:18 VA.R. 2634	6/12/08
12 VAC 5-481-1151	Added	24:18 VA.R. 2634	6/12/08
12 VAC 5-481-1160	Repealed	24:18 VA.R. 2635	6/12/08
12 VAC 5-481-1161	Added	24:18 VA.R. 2635	6/12/08
12 VAC 5-481-1190	Amended	24:18 VA.R. 2637	6/12/08
12 VAC 5-481-1200	Amended	24:18 VA.R. 2638	6/12/08
12 VAC 5-481-1220 through 12 VAC 5-481-1250	Amended	24:18 VA.R. 2639-2640	6/12/08
12 VAC 5-481-1270	Amended	24:18 VA.R. 2640	6/12/08
12 VAC 5-481-1300	Amended	24:18 VA.R. 2640	6/12/08
12 VAC 5-481-1310	Amended	24:18 VA.R. 2641	6/12/08
12 VAC 5-481-1320	Amended	24:18 VA.R. 2641	6/12/08
12 VAC 5-481-1350	Amended	24:18 VA.R. 2644	6/12/08
12 VAC 5-481-1380	Amended	24:18 VA.R. 2644	6/12/08
12 VAC 5-481-1420	Amended	24:18 VA.R. 2644	6/12/08
12 VAC 5-481-1440	Amended	24:18 VA.R. 2644	6/12/08
12 VAC 5-481-1490	Amended	24:18 VA.R. 2645	6/12/08
12 VAC 5-481-1520	Amended	24:18 VA.R. 2645	6/12/08
12 VAC 5-481-1540	Repealed	24:18 VA.R. 2645	6/12/08
12 VAC 5-481-1550	Repealed	24:18 VA.R. 2646	6/12/08
12 VAC 5-481-1560	Amended	24:18 VA.R. 2646	6/12/08
12 VAC 5-481-1570	Amended	24:18 VA.R. 2647	6/12/08
12 VAC 5-481-1670 through 12 VAC 5-481-2040	Amended	24:18 VA.R. 2647-2650	6/12/08
12 VAC 5-481-2001	Added	24:18 VA.R. 2649	6/12/08
12 VAC 5-481-2050	Repealed	24:18 VA.R. 2650	6/12/08
12 VAC 5-481-2060	Amended	24:18 VA.R. 2651	6/12/08
12 VAC 5-481-2070	Amended	24:18 VA.R. 2651	6/12/08
12 VAC 5-481-2080	Amended	24:18 VA.R. 2651	6/12/08
12 VAC 5-481-2100	Amended	24:18 VA.R. 2651	6/12/08

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-481-2230	Amended	24:18 VA.R. 2652	6/12/08
12 VAC 5-481-2240	Amended	24:18 VA.R. 2653	6/12/08
12 VAC 5-481-2260	Amended	24:18 VA.R. 2653	6/12/08
12 VAC 5-481-2270	Amended	24:18 VA.R. 2653	6/12/08
12 VAC 5-481-2280	Amended	24:18 VA.R. 2654	6/12/08
12 VAC 5-481-2330	Amended	24:18 VA.R. 2654	6/12/08
12 VAC 5-481-2420	Amended	24:18 VA.R. 2654	6/12/08
12 VAC 5-481-2430	Amended	24:18 VA.R. 2655	6/12/08
12 VAC 5-481-2470	Amended	24:18 VA.R. 2655	6/12/08
12 VAC 5-481-2490	Amended	24:18 VA.R. 2655	6/12/08
12 VAC 5-481-2510	Amended	24:18 VA.R. 2656	6/12/08
12 VAC 5-481-2530	Amended	24:18 VA.R. 2656	6/12/08
12 VAC 5-481-2540	Amended	24:18 VA.R. 2656	6/12/08
12 VAC 5-481-2550	Amended	24:18 VA.R. 2657	6/12/08
12 VAC 5-481-2571	Added	24:18 VA.R. 2657	6/12/08
12 VAC 5-481-2572	Added	24:18 VA.R. 2659	6/12/08
12 VAC 5-481-2573	Added	24:18 VA.R. 2660	6/12/08
12 VAC 5-481-2660 through 12 VAC 5-481-2950	Amended	24:18 VA.R. 2660-2661	6/12/08
12 VAC 5-481-2970	Amended	24:18 VA.R. 2661	6/12/08
12 VAC 5-481-2980	Amended	24:18 VA.R. 2662	6/12/08
12 VAC 5-481-3000 through 12 VAC 5-481-3040	Amended	24:18 VA.R. 2663-2665	6/12/08
12 VAC 5-481-3070 through 12 VAC 5-481-3140	Amended	24:18 VA.R. 2667-2670	6/12/08
12 VAC 5-481-3050	Repealed	24:18 VA.R. 2665	6/12/08
12 VAC 5-481-3051	Added	24:18 VA.R. 2666	6/12/08
12 VAC 5-481-3091	Added	24:18 VA.R. 2668	6/12/08
12 VAC 5-481-3151	Added	24:18 VA.R. 2670	6/12/08
12 VAC 5-481-3160	Amended	24:18 VA.R. 2671	6/12/08
12 VAC 5-481-3200 through 12 VAC 5-481-3270	Amended	24:18 VA.R. 2671-2675	6/12/08
12 VAC 5-481-3241	Added	24:18 VA.R. 2673	6/12/08
12 VAC 5-481-3261	Added	24:18 VA.R. 2674	6/12/08
12 VAC 5-481-3290	Amended	24:18 VA.R. 2675	6/12/08
12 VAC 5-481-3300	Amended	24:18 VA.R. 2675	6/12/08
12 VAC 5-481-3340	Amended	24:18 VA.R. 2675	6/12/08
12 VAC 5-481-3350	Amended	24:18 VA.R. 2675	6/12/08
12 VAC 5-481-3400	Amended	24:18 VA.R. 2676	6/12/08
12 VAC 5-481-3430	Amended	24:18 VA.R. 2677	6/12/08
12 VAC 5-481-3440	Amended	24:18 VA.R. 2683	6/12/08
12 VAC 5-481-3480	Amended	24:18 VA.R. 2684	6/12/08
12 VAC 5-481-3490	Amended	24:18 VA.R. 2684	6/12/08
12 VAC 5-481-3510	Amended	24:18 VA.R. 2684	6/12/08
12 VAC 5-481-3520	Amended	24:18 VA.R. 2685	6/12/08
12 VAC 5-481-3530	Amended	24:18 VA.R. 2685	6/12/08
12 VAC 5-481-3560	Amended	24:18 VA.R. 2686	6/12/08
12 VAC 5-481-3580	Amended	24:18 VA.R. 2687	6/12/08
12 VAC 5-481-3600	Amended	24:18 VA.R. 2687	6/12/08
12 VAC 5-481-3610	Amended	24:18 VA.R. 2688	6/12/08
12 VAC 5-481-3650	Amended	24:18 VA.R. 2688	6/12/08
12 VAC 5-481-3670	Repealed	24:18 VA.R. 2689	6/12/08
12 VAC 5-481-3680 through 12 VAC 5-481-3780	Added	24:18 VA.R. 2689-2715	6/12/08
12 VAC 30-40-290 emer	Amended	25:1 VA.R. 35	8/27/08-8/26/09
12 VAC 30-50-130 emer	Amended	24:23 VA.R. 3165	7/2/08 - 7/1/09

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12 VAC 30-70-221	Amended	24:21 VA.R. 2959	7/23/08
12 VAC 30-70-311	Amended	24:26 VA.R. 3778	10/15/08
12 VAC 30-70-321	Amended	24:26 VA.R. 3778	10/15/08
12 VAC 30-80-30	Erratum	24:17 VA.R. 2473	--
12 VAC 30-80-30	Amended	24:21 VA.R. 2962	7/23/08
12 VAC 30-80-40 emer	Amended	24:25 VA.R. 3617	8/4/08-8/3/09
12 VAC 30-80-75	Added	24:21 VA.R. 2965	7/23/08
12 VAC 30-80-190 emer	Amended	25:1 VA.R. 41	8/27/08-8/26/09
12 VAC 30-90-41	Amended	24:26 VA.R. 3778	10/15/08
12 VAC 30-100-170	Amended	24:25 VA.R. 3622	10/2/08
12 VAC 30-120-70 emer	Amended	24:23 VA.R. 3168	7/1/08 - 6/30/09
12 VAC 30-120-90 emer	Amended	24:23 VA.R. 3169	7/1/08 - 6/30/09
12 VAC 30-120-100	Amended	24:26 VA.R. 3781	10/15/08
12 VAC 30-120-140 emer	Amended	24:23 VA.R. 3171	7/1/08 - 6/30/09
12 VAC 30-120-211 emer	Amended	24:23 VA.R. 3174	7/1/08 - 6/30/09
12 VAC 30-120-213 emer	Amended	24:23 VA.R. 3177	7/1/08 - 6/30/09
12 VAC 30-120-225 emer	Amended	24:23 VA.R. 3178	7/1/08 - 6/30/09
12 VAC 30-120-229 emer	Amended	24:23 VA.R. 3181	7/1/08 - 6/30/09
12 VAC 30-120-237 emer	Amended	24:23 VA.R. 3182	7/1/08 - 6/30/09
12 VAC 30-120-247 emer	Amended	24:23 VA.R. 3184	7/1/08 - 6/30/09
12 VAC 30-120-700 emer	Amended	24:23 VA.R. 3185	7/1/08 - 6/30/09
12 VAC 30-120-710 emer	Amended	24:23 VA.R. 3189	7/1/08 - 6/30/09
12 VAC 30-120-754 emer	Amended	24:23 VA.R. 3190	7/1/08 - 6/30/09
12 VAC 30-120-758 emer	Amended	24:23 VA.R. 3191	7/1/08 - 6/30/09
12 VAC 30-120-762 emer	Amended	24:23 VA.R. 3192	7/1/08 - 6/30/09
12 VAC 30-120-770 emer	Amended	24:23 VA.R. 3193	7/1/08 - 6/30/09
12 VAC 30-120-900 emer	Amended	24:23 VA.R. 3195	7/1/08 - 6/30/09
12 VAC 30-120-910 emer	Amended	24:23 VA.R. 3197	7/1/08 - 6/30/09
12 VAC 30-120-920 emer	Amended	24:23 VA.R. 3198	7/1/08 - 6/30/09
12 VAC 30-120-970 emer	Amended	24:23 VA.R. 3200	7/1/08 - 6/30/09
12 VAC 30-120-1500 emer	Amended	24:23 VA.R. 3202	7/1/08 - 6/30/09
12 VAC 30-120-1550 emer	Amended	24:23 VA.R. 3204	7/1/08 - 6/30/09
12 VAC 30-120-2000 emer	Added	24:23 VA.R. 3206	7/1/08 - 6/30/09
12 VAC 30-120-2010 emer	Added	24:23 VA.R. 3207	7/1/08 - 6/30/09
12 VAC 30-135-10	Amended	24:26 VA.R. 3783	10/16/08
12 VAC 30-135-20	Amended	24:26 VA.R. 3783	10/16/08
12 VAC 30-135-30	Amended	24:26 VA.R. 3783	10/16/08
12 VAC 30-135-40	Amended	24:26 VA.R. 3783	10/16/08
12 VAC 30-135-70	Amended	24:26 VA.R. 3784	10/16/08
12 VAC 35-105-115	Added	24:11 VA.R. 1372	3/5/08
Title 13. Housing			
13 VAC 5-21-10	Amended	24:14 VA.R. 1894	5/1/08
13 VAC 5-21-20	Amended	24:14 VA.R. 1894	5/1/08
13 VAC 5-21-31	Amended	24:14 VA.R. 1895	5/1/08
13 VAC 5-21-41	Amended	24:14 VA.R. 1895	5/1/08
13 VAC 5-21-45	Amended	24:14 VA.R. 1895	5/1/08
13 VAC 5-21-51	Amended	24:14 VA.R. 1895	5/1/08
13 VAC 5-21-61	Amended	24:14 VA.R. 1896	5/1/08
13 VAC 5-31-20 through 13 VAC 5-31-50	Amended	24:14 VA.R. 1897-1898	5/1/08
13 VAC 5-31-70 through 13 VAC 5-31-170	Repealed	24:14 VA.R. 1898-1903	5/1/08

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
13 VAC 5-31-75	Added	24:14 VA.R. 1898	5/1/08
13 VAC 5-31-85	Added	24:14 VA.R. 1900	5/1/08
13 VAC 5-31-200	Amended	24:14 VA.R. 1904	5/1/08
13 VAC 5-31-210	Amended	24:14 VA.R. 1904	5/1/08
13 VAC 5-31-215 through 13 VAC 5-31-270	Added	24:14 VA.R. 1904-1905	5/1/08
13 VAC 5-51-21 through 13 VAC 5-51-51	Amended	24:14 VA.R. 1907-1910	5/1/08
13 VAC 5-51-81	Amended	24:14 VA.R. 1910	5/1/08
13 VAC 5-51-81	Amended	24:25 VA.R. 3622	10/1/08
13 VAC 5-51-85	Amended	24:14 VA.R. 1921	5/1/08
13 VAC 5-51-91	Amended	24:14 VA.R. 1924	5/1/08
13 VAC 5-51-130 through 13 VAC 5-51-135	Amended	24:14 VA.R. 1925-1928	5/1/08
13 VAC 5-51-143	Added	24:14 VA.R. 1928	5/1/08
13 VAC 5-51-145	Amended	24:14 VA.R. 1932	5/1/08
13 VAC 5-51-150	Amended	24:14 VA.R. 1932	5/1/08
13 VAC 5-51-152	Repealed	24:14 VA.R. 1937	5/1/08
13 VAC 5-51-154	Amended	24:14 VA.R. 1937	5/1/08
13 VAC 5-51-155	Amended	24:14 VA.R. 1939	5/1/08
13 VAC 5-63-10 through 13 VAC 5-63-50	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-70	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-80	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-100 through 13 VAC 5-63-130	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-150	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-160	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-190 through 13 VAC 5-63-260	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-225	Repealed	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-265	Repealed	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-267	Added	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-270	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-280	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-300 through 13 VAC 5-63-360	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-335	Added	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-400	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-430	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-432	Repealed	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-434 through 13 VAC 5-63-450	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-470 through 13 VAC 5-63-500	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-520	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-525	Added	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-550	Repealed	24:14 VA.R. 1941	5/1/08
13 VAC 5-91-20	Amended	24:14 VA.R. 1943	5/1/08
13 VAC 5-91-100	Amended	24:14 VA.R. 1943	5/1/08
13 VAC 5-91-110	Repealed	24:14 VA.R. 1944	5/1/08
13 VAC 5-91-115	Added	24:14 VA.R. 1944	5/1/08
13 VAC 5-91-120	Amended	24:14 VA.R. 1944	5/1/08
13 VAC 5-91-160	Amended	24:14 VA.R. 1945	5/1/08
13 VAC 5-91-270	Amended	24:14 VA.R. 1945	5/1/08
13 VAC 5-95-10	Amended	24:14 VA.R. 1947	5/1/08
13 VAC 5-95-30	Amended	24:14 VA.R. 1948	5/1/08
13 VAC 5-112-340	Amended	24:8 VA.R. 979	1/23/08
13 VAC 5-200-10	Amended	24:26 VA.R. 3784	10/1/08
13 VAC 5-200-40 through 13 VAC 5-200-80	Amended	24:26 VA.R. 3784-3785	10/1/08

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13 VAC 5-200-100	Amended	24:26 VA.R. 3785	10/1/08
13 VAC 10-180-10	Amended	24:11 VA.R. 1373	2/4/08
13 VAC 10-180-50	Amended	24:11 VA.R. 1374	2/4/08
13 VAC 10-180-60	Amended	24:11 VA.R. 1376	2/4/08
13 VAC 10-180-60	Amended	24:11 VA.R. 1387	2/4/08
13 VAC 10-180-100	Amended	24:11 VA.R. 1397	2/4/08
Title 14. Insurance			
14 VAC 5-30-30	Amended	24:15 VA.R. 2153	4/1/08
14 VAC 5-200-185	Amended	24:15 VA.R. 2155	4/1/08
14 VAC 5-211-50	Amended	24:22 VA.R. 3063	7/1/08
14 VAC 5-211-90	Amended	24:22 VA.R. 3063	7/1/08
14 VAC 5-211-100	Amended	24:22 VA.R. 3063	7/1/08
14 VAC 5-215 (Forms)	Amended	24:17 VA.R. 2452	--
14 VAC 5-270-10 through 14 VAC 5-270-150	Amended	24:12 VA.R. 1460-1470	1/1/10
14 VAC 5-270-144	Added	24:12 VA.R. 1467	1/1/10
14 VAC 5-270-146	Added	24:12 VA.R. 1468	1/1/10
14 VAC 5-270-148	Added	24:12 VA.R. 1469	1/1/10
14 VAC 5-270-170	Amended	24:12 VA.R. 1470	1/1/10
14 VAC 5-270-174	Added	24:12 VA.R. 1470	1/1/10
14 VAC 5-270-180	Amended	24:12 VA.R. 1470	1/1/10
14 VAC 5-395-40	Amended	24:26 VA.R. 3811	8/29/08
Title 15. Judicial			
15 VAC 5-80-50	Amended	24:23 VA.R. 3211	7/1/08
Title 16. Labor and Employment			
16 VAC 15-21-30	Amended	24:23 VA.R. 3213	8/21/08
16 VAC 15-30-40	Amended	24:25 VA.R. 3632	9/18/08
16 VAC 15-30-190	Amended	24:23 VA.R. 3214	8/21/08
16 VAC 20-20-20	Amended	24:22 VA.R. 3065	8/7/08
16 VAC 20-20-40	Amended	24:22 VA.R. 3066	8/7/08
16 VAC 20-20-50	Amended	24:22 VA.R. 3068	8/7/08
16 VAC 20-20-60	Amended	24:22 VA.R. 3069	8/7/08
16 VAC 20-20-80	Amended	24:22 VA.R. 3070	8/7/08
16 VAC 20-20-110	Amended	24:22 VA.R. 3070	8/7/08
16 VAC 25-10-10 through 16 VAC 25-10-120	Repealed	24:26 VA.R. 3811	10/1/08
16 VAC 25-11-10 through 16 VAC 25-11-110	Added	24:26 VA.R. 3811-3814	10/1/08
16 VAC 25-90-1910.6	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.68	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.94	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.103	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.107	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.110	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.111	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.132	Added	24:16 VA.R. 2263	6/1/08
16 VAC 25-90-1910.144	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.243	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.251	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.253	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.261	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-100-1915.152	Added	24:16 VA.R. 2263	6/1/08
16 VAC 25-120-1917.96	Added	24:16 VA.R. 2263	6/1/08

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16 VAC 25-130-1918.106	Added	24:16 VA.R. 2263	6/1/08
16 VAC 25-175-1926.95	Added	24:16 VA.R. 2263	6/1/08
Title 18. Professional and Occupational Licensing			
18 VAC 15-10-10 through 18 VAC 15-10-90	Repealed	25:1 VA.R. 55	10/15/08
18 VAC 15-11-10 through 18 VAC 15-11-110	Added	25:1 VA.R. 55-58	10/15/08
18 VAC 15-20-451	Amended	24:17 VA.R. 2455	8/1/08
18 VAC 30-20 (Forms)	Amended	24:26 VA.R. 3814	--
18 VAC 30-20-80	Amended	24:10 VA.R. 1284	2/20/08
18 VAC 30-20-170	Amended	24:10 VA.R. 1284	2/20/08
18 VAC 30-20-171	Amended	24:10 VA.R. 1285	2/20/08
18 VAC 45-10-10 through 18 VAC 45- 10-90	Repealed	24:26 VA.R. 3815	10/2/08
18 VAC 45-11-10 through 18 VAC 45-11-110	Added	24:26 VA.R. 3815-3818	10/2/08
18 VAC 60-20 (Forms)	Amended	25:1 VA.R. 58	--
18 VAC 60-20-30	Amended	24:20 VA.R. 2874	7/24/08
18 VAC 60-20-81	Added	24:14 VA.R. 1949	4/16/08
18 VAC 60-20-108	Amended	24:14 VA.R. 1950	4/16/08
18 VAC 60-20-190	Amended	24:14 VA.R. 1951	4/16/08
18 VAC 60-20-220	Amended	24:10 VA.R. 1287	3/10/08
18 VAC 60-20-220	Amended	24:14 VA.R. 1951	4/16/08
18 VAC 65-20 (Forms)	Amended	24:26 VA.R. 3818	--
18 VAC 65-20-10	Amended	24:24 VA.R. 3358	9/3/08
18 VAC 65-20-15	Amended	24:24 VA.R. 3358	9/3/08
18 VAC 65-20-60	Amended	24:24 VA.R. 3358	9/3/08
18 VAC 65-20-120	Amended	24:24 VA.R. 3358	9/3/08
18 VAC 65-20-130	Amended	24:24 VA.R. 3359	9/3/08
18 VAC 65-20-151	Amended	24:22 VA.R. 3070	8/6/08
18 VAC 65-20-153	Amended	24:24 VA.R. 3359	9/3/08
18 VAC 65-20-170	Amended	24:24 VA.R. 3359	9/3/08
18 VAC 65-20-171	Added	24:24 VA.R. 3359	9/3/08
18 VAC 65-20-240	Amended	24:24 VA.R. 3360	9/3/08
18 VAC 65-20-350	Amended	24:24 VA.R. 3360	9/3/08
18 VAC 65-20-420	Amended	24:24 VA.R. 3360	9/3/08
18 VAC 65-20-440	Amended	24:24 VA.R. 3360	9/3/08
18 VAC 65-20-500	Amended	24:24 VA.R. 3360	9/3/08
18 VAC 65-20-510	Amended	24:24 VA.R. 3361	9/3/08
18 VAC 65-20-590	Amended	24:24 VA.R. 3361	9/3/08
18 VAC 65-20-700	Amended	24:24 VA.R. 3361	9/3/08
18 VAC 65-40 (Forms)	Amended	24:26 VA.R. 3818	--
18 VAC 75-20 (Forms)	Amended	24:25 VA.R. 3632	--
18 VAC 76-20 (Forms)	Amended	24:26 VA.R. 3819	--
18 VAC 76-30-10 through 18 VAC 76-30-120	Repealed	24:25 VA.R. 3632	9/17/08
18 VAC 76-31-10 through 18 VAC 76-31-110	Added	24:25 VA.R. 3633-3635	9/17/08
18 VAC 76-40 (Forms)	Amended	24:26 VA.R. 3820	--
18 VAC 85-10-10 through 18 VAC 85-10-110	Repealed	24:26 VA.R. 3820	10/1/08
18 VAC 85-11-10 through 18 VAC 85-11-110	Added	24:26 VA.R. 3820	10/1/08
18 VAC 85-20 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-20-22	Amended	24:11 VA.R. 1404	3/5/08
18 VAC 85-20-22	Amended	24:14 VA.R. 1952	4/16/08
18 VAC 85-20-225	Amended	24:24 VA.R. 3367	9/3/08
18 VAC 85-20-226	Added	24:11 VA.R. 1404	3/5/08
18 VAC 85-20-400	Amended	24:20 VA.R. 2876	7/24/08

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 85-40 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-40-35	Amended	24:11 VA.R. 1404	3/5/08
18 VAC 85-40-55	Amended	24:24 VA.R. 3368	9/3/08
18 VAC 85-40-67	Added	24:11 VA.R. 1405	3/5/08
18 VAC 85-50 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-50-35	Amended	24:11 VA.R. 1405	3/5/08
18 VAC 85-50-59	Amended	24:24 VA.R. 3368	9/3/08
18 VAC 85-50-61	Added	24:11 VA.R. 1405	3/5/08
18 VAC 85-80 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-80-26	Amended	24:11 VA.R. 1406	3/5/08
18 VAC 85-80-65	Amended	24:24 VA.R. 3368	9/3/08
18 VAC 85-80-73	Added	24:11 VA.R. 1406	3/5/08
18 VAC 85-101 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-101-25	Amended	24:11 VA.R. 1406	3/5/08
18 VAC 85-101-25	Amended	24:20 VA.R. 2879	7/24/08
18 VAC 85-101-40	Amended	24:20 VA.R. 2879	7/24/08
18 VAC 85-101-50	Amended	24:20 VA.R. 2879	7/24/08
18 VAC 85-101-55	Added	24:20 VA.R. 2880	7/24/08
18 VAC 85-101-60	Amended	24:20 VA.R. 2880	7/24/08
18 VAC 85-101-70	Repealed	24:20 VA.R. 2881	7/24/08
18 VAC 85-101-145	Amended	24:24 VA.R. 3368	9/3/08
18 VAC 85-101-150	Amended	24:20 VA.R. 2881	7/24/08
18 VAC 85-101-153	Added	24:11 VA.R. 1407	3/5/08
18 VAC 85-110 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-110-35	Amended	24:11 VA.R. 1407	3/5/08
18 VAC 85-110-145	Amended	24:24 VA.R. 3369	9/3/08
18 VAC 85-110-161	Added	24:11 VA.R. 1407	3/5/08
18 VAC 85-120 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-120-10	Amended	24:20 VA.R. 2884	7/24/08
18 VAC 85-120-50	Amended	24:20 VA.R. 2884	7/24/08
18 VAC 85-120-70	Amended	24:20 VA.R. 2885	7/24/08
18 VAC 85-120-85	Amended	24:24 VA.R. 3369	9/3/08
18 VAC 85-120-90	Amended	24:20 VA.R. 2885	7/24/08
18 VAC 85-120-95	Added	24:20 VA.R. 2885	7/24/08
18 VAC 85-120-150	Amended	24:20 VA.R. 2885	7/24/08
18 VAC 85-130 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-130-30	Amended	24:14 VA.R. 1952	4/16/08
18 VAC 90-10-10 through 18 VAC 90-10-120	Repealed	24:25 VA.R. 3635	9/17/08
18 VAC 90-11-10 through 18 VAC 90-11-110	Added	24:25 VA.R. 3636-3639	9/17/08
18 VAC 90-20 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-20-10	Amended	24:13 VA.R. 1842	4/2/08
18 VAC 90-20-35	Amended	24:13 VA.R. 1843	4/2/08
18 VAC 90-20-40 through 18 VAC 90-20-60	Amended	24:13 VA.R. 1843-1845	4/2/08
18 VAC 90-20-65	Repealed	24:13 VA.R. 1844	4/2/08
18 VAC 90-20-70	Amended	24:13 VA.R. 1844	4/2/08
18 VAC 90-20-90	Amended	24:13 VA.R. 1845	4/2/08
18 VAC 90-20-95	Amended	24:13 VA.R. 1846	4/2/08
18 VAC 90-20-96	Added	24:13 VA.R. 1846	4/2/08
18 VAC 90-20-110 through 18 VAC 90-20-140	Amended	24:13 VA.R. 1846-1848	4/2/08
18 VAC 90-20-151	Added	24:13 VA.R. 1848	4/2/08

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 90-20-160	Amended	24:13 VA.R. 1849	4/2/08
18 VAC 90-20-190	Amended	24:13 VA.R. 1849	4/2/08
18 VAC 90-20-200	Amended	24:13 VA.R. 1850	4/2/08
18 VAC 90-20-220	Amended	24:13 VA.R. 1850	4/2/08
18 VAC 90-20-230	Amended	24:13 VA.R. 1851	4/2/08
18 VAC 90-20-271	Amended	24:21 VA.R. 2969	7/23/08
18 VAC 90-20-275	Amended	24:13 VA.R. 1851	4/2/08
18 VAC 90-20-280	Amended	24:13 VA.R. 1851	4/2/08
18 VAC 90-20-300	Amended	24:13 VA.R. 1851	4/2/08
18 VAC 90-20-370	Amended	24:13 VA.R. 1852	4/2/08
18 VAC 90-20-390	Amended	24:13 VA.R. 1852	4/2/08
18 VAC 90-20-410	Amended	24:13 VA.R. 1853	4/2/08
18 VAC 90-25 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-30 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-30-10	Amended	24:10 VA.R. 1288	2/20/08
18 VAC 90-30-80	Erratum	24:18 VA.R. 2731-2732	--
18 VAC 90-30-80	Amended	24:24 VA.R. 3369	9/3/08
18 VAC 90-30-120	Amended	24:10 VA.R. 1288	2/20/08
18 VAC 90-30-121	Added	24:10 VA.R. 1289	2/20/08
18 VAC 90-30-160	Amended	24:24 VA.R. 3370	9/3/08
18 VAC 90-40 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-50 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-60 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-60-110	Amended	24:23 VA.R. 3216	9/4/08
18 VAC 95-20 (Forms)	Amended	24:26 VA.R. 3827	--
18 VAC 95-20-80	Amended	24:16 VA.R. 2264	5/14/08
18 VAC 95-20-175	Amended	24:20 VA.R. 2887	7/24/08
18 VAC 95-20-220	Amended	24:20 VA.R. 2888	7/24/08
18 VAC 95-20-230	Amended	24:20 VA.R. 2888	7/24/08
18 VAC 95-30 (Forms)	Amended	24:26 VA.R. 3827	--
18 VAC 95-30-40	Amended	24:16 VA.R. 2264	5/14/08
18 VAC 95-30-95	Amended	24:23 VA.R. 3219	9/4/08
18 VAC 95-30-150	Amended	24:23 VA.R. 3220	9/4/08
18 VAC 95-30-180	Amended	24:23 VA.R. 3220	9/4/08
18 VAC 105-10-10 through 18 VAC 105-10-120	Repealed	24:26 VA.R. 3828	10/1/08
18 VAC 105-11-10 through 18 VAC 105-11-110	Added	24:26 VA.R. 3828-3831	10/1/08
18 VAC 105-20 (Forms)	Amended	24:25 VA.R. 3639	--
18 VAC 105-20-75	Amended	24:22 VA.R. 3071	8/6/08
18 VAC 110-20 (Forms)	Amended	24:25 VA.R. 3640	--
18 VAC 110-20-10	Amended	24:8 VA.R. 983	1/23/08
18 VAC 110-20-75	Amended	24:22 VA.R. 3071	8/6/08
18 VAC 110-20-321	Added	24:8 VA.R. 986	1/23/08
18 VAC 110-20-411 through 18 VAC 110-20-416	Repealed	24:8 VA.R. 986-987	1/23/08
18 VAC 110-20-530	Amended	24:16 VA.R. 2265	5/14/08
18 VAC 110-30 (Forms)	Amended	24:25 VA.R. 3640	--
18 VAC 110-30-15	Amended	24:10 VA.R. 1290	2/20/08
18 VAC 110-50 (Forms)	Amended	24:25 VA.R. 3640	--
18 VAC 110-50-10	Amended	24:10 VA.R. 1290	2/20/08
18 VAC 110-50-160	Added	24:10 VA.R. 1291	2/20/08
18 VAC 110-50-170	Added	24:10 VA.R. 1291	2/20/08
18 VAC 110-50-180	Added	24:10 VA.R. 1292	2/20/08

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 110-50-190	Added	24:10 VA.R. 1292	2/20/08
18 VAC 112-10-10 through 18 VAC 112-10-120	Repealed	25:1 VA.R. 61	10/15/08
18 VAC 112-11-10 through 18 VAC 112-11-110	Added	25:1 VA.R. 62-64	10/15/08
18 VAC 112-20 (Forms)	Amended	24:26 VA.R. 3831	--
18 VAC 115-10-10 through 18 VAC 115-10-120	Repealed	24:26 VA.R. 3832	10/1/08
18 VAC 115-11-10 through 18 VAC 115-11-110	Added	24:26 VA.R. 3832-3835	10/1/08
18 VAC 115-20 (Forms)	Amended	25:1 VA.R. 65	--
18 VAC 115-20-10	Amended	24:24 VA.R. 3387	9/3/08
18 VAC 115-20-45	Amended	24:24 VA.R. 3387	9/3/08
18 VAC 115-20-49	Amended	24:24 VA.R. 3388	9/3/08
18 VAC 115-20-51	Amended	24:24 VA.R. 3388	9/3/08
18 VAC 115-20-52	Amended	24:24 VA.R. 3388	9/3/08
18 VAC 115-20-120	Repealed	24:24 VA.R. 3390	9/3/08
18 VAC 115-30 (Forms)	Amended	25:1 VA.R. 65	--
18 VAC 115-30-150	Amended	24:14 VA.R. 1953	4/16/08
18 VAC 115-30-160	Amended	24:14 VA.R. 1953	4/16/08
18 VAC 115-40 (Forms)	Amended	25:1 VA.R. 65	--
18 VAC 115-50 (Forms)	Amended	25:1 VA.R. 65	--
18 VAC 115-50-10	Amended	24:24 VA.R. 3390	9/3/08
18 VAC 115-50-40	Amended	24:24 VA.R. 3390	9/3/08
18 VAC 115-50-55	Amended	24:24 VA.R. 3391	9/3/08
18 VAC 115-50-60	Amended	24:24 VA.R. 3391	9/3/08
18 VAC 115-60 (Forms)	Amended	25:1 VA.R. 65	--
18 VAC 115-60-10	Amended	24:24 VA.R. 3392	9/3/08
18 VAC 115-60-50	Amended	24:24 VA.R. 3393	9/3/08
18 VAC 115-60-70	Amended	24:24 VA.R. 3393	9/3/08
18 VAC 115-60-80	Amended	24:24 VA.R. 3394	9/3/08
18 VAC 120-10-100 through 18 VAC 120-10-180	Repealed	24:26 VA.R. 3835	10/2/08
18 VAC 120-11-10 through 18 VAC 120-11-110	Added	24:26 VA.R. 3836-3838	10/2/08
18 VAC 125-20 (Forms)	Amended	25:1 VA.R. 66	--
18 VAC 125-20-170	Amended	24:12 VA.R. 1471	3/19/08
18 VAC 125-30 (Forms)	Amended	25:1 VA.R. 66	--
18 VAC 125-30-120	Amended	24:12 VA.R. 1471	3/19/08
18 VAC 130-20-10	Amended	24:23 VA.R. 3225	9/1/08
18 VAC 130-20-70	Amended	24:23 VA.R. 3229	9/1/08
18 VAC 130-20-180	Amended	24:23 VA.R. 3229	9/1/08
18 VAC 130-20-200	Amended	24:23 VA.R. 3231	9/1/08
18 VAC 130-20-230	Amended	24:23 VA.R. 3231	9/1/08
18 VAC 135-20-10	Amended	24:11 VA.R. 1408	4/1/08
18 VAC 135-20-30	Amended	24:11 VA.R. 1409	4/1/08
18 VAC 135-20-60	Amended	24:11 VA.R. 1410	4/1/08
18 VAC 135-20-100	Amended	24:11 VA.R. 1410	4/1/08
18 VAC 135-20-101	Added	24:11 VA.R. 1412	4/1/08
18 VAC 135-20-105	Amended	24:11 VA.R. 1413	4/1/08
18 VAC 135-20-160	Amended	24:11 VA.R. 1413	4/1/08
18 VAC 135-20-170	Amended	24:11 VA.R. 1414	4/1/08
18 VAC 135-20-180	Amended	24:11 VA.R. 1414	4/1/08
18 VAC 135-20-190	Amended	24:11 VA.R. 1416	4/1/08
18 VAC 135-20-210	Amended	24:11 VA.R. 1417	4/1/08
18 VAC 135-20-220	Amended	24:11 VA.R. 1417	4/1/08

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 135-20-280	Amended	24:11 VA.R. 1417	4/1/08
18 VAC 135-20-300	Amended	24:11 VA.R. 1418	4/1/08
18 VAC 135-20-345	Added	24:11 VA.R. 1418	4/1/08
18 VAC 135-20-360	Amended	24:11 VA.R. 1419	4/1/08
18 VAC 135-20-370	Amended	24:11 VA.R. 1419	4/1/08
18 VAC 135-20-390	Amended	24:11 VA.R. 1420	4/1/08
18 VAC 135-60-60	Amended	24:9 VA.R. 1230	3/1/08
18 VAC 140-10-10 through 18 VAC 140-10-120	Repealed	24:25 VA.R. 3641	9/17/08
18 VAC 140-11-10 through 18 VAC 140-11-110	Added	24:25 VA.R. 3641-3644	9/17/08
18 VAC 140-20 (Forms)	Amended	25:1 VA.R. 67	--
18 VAC 140-20-50	Amended	24:23 VA.R. 3234	9/4/08
18 VAC 140-20-70	Amended	24:23 VA.R. 3235	9/4/08
18 VAC 140-20-105	Amended	24:20 VA.R. 2890	7/24/08
18 VAC 150-10-10 through 18 VAC 150-10-120	Repealed	25:1 VA.R. 68	10/15/08
18 VAC 150-11-10 through 18 VAC 150-11-110	Added	25:1 VA.R. 68-71	10/15/08
18 VAC 150-20 (Forms)	Amended	24:26 VA.R. 3838	--
18 VAC 150-20-135	Amended	24:21 VA.R. 2969	7/23/08
Title 19. Public Safety			
19 VAC 30-10-10 through 19 VAC 30-10-40	Repealed	24:26 VA.R. 3839	10/1/08
19 VAC 30-11-10 through 19 VAC 30-11-110	Added	24:26 VA.R. 3839-3842	10/1/08
19 VAC 30-20-115	Added	24:11 VA.R. 1421	3/6/08
19 VAC 30-70-6	Amended	24:8 VA.R. 988	3/1/08
19 VAC 30-70-7	Amended	24:8 VA.R. 988	3/1/08
19 VAC 30-70-9	Amended	24:8 VA.R. 989	3/1/08
19 VAC 30-70-10	Amended	24:8 VA.R. 991	3/1/08
19 VAC 30-70-40	Amended	24:8 VA.R. 994	3/1/08
19 VAC 30-70-50	Amended	24:8 VA.R. 995	3/1/08
19 VAC 30-70-60	Amended	24:8 VA.R. 997	3/1/08
19 VAC 30-70-80	Amended	24:8 VA.R. 998	3/1/08
19 VAC 30-70-90	Amended	24:8 VA.R. 1001	3/1/08
19 VAC 30-70-110 through 19 VAC 30-70-660	Amended	24:8 VA.R. 1001-1070	3/1/08
19 VAC 30-190-10 through 19 VAC 30-190-140	Added	24:11 VA.R. 1421-1423	3/6/08
Title 20. Public Utilities and Telecommunications			
20 VAC 5-315-10	Amended	24:26 VA.R. 3845	8/25/08
20 VAC 5-315-20	Amended	24:26 VA.R. 3845	8/25/08
20 VAC 5-315-40	Amended	24:26 VA.R. 3846	8/25/08
20 VAC 5-315-50	Amended	24:26 VA.R. 3847	8/25/08
Title 21. Securities and Retail Franchising			
21 VAC 5-20-280	Amended	24:21 VA.R. 2971	7/1/08
21 VAC 5-80-10	Amended	24:21 VA.R. 2976	7/1/08
21 VAC 5-80-200	Amended	24:21 VA.R. 2977	7/1/08
21 VAC 5-110-10	Amended	24:21 VA.R. 2983	7/1/08
21 VAC 5-110-20	Amended	24:21 VA.R. 2984	7/1/08
21 VAC 5-110-30	Amended	24:21 VA.R. 2984	7/1/08
21 VAC 5-110-40	Amended	24:21 VA.R. 2984	7/1/08
21 VAC 5-110-50	Amended	24:21 VA.R. 2985	7/1/08
21 VAC 5-110-55	Added	24:21 VA.R. 2985	7/1/08
21 VAC 5-110-60	Amended	24:21 VA.R. 2986	7/1/08
21 VAC 5-110-65	Amended	24:21 VA.R. 2987	7/1/08
21 VAC 5-110-70	Amended	24:21 VA.R. 2988	7/1/08
21 VAC 5-110-75	Amended	24:21 VA.R. 2988	7/1/08

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
21 VAC 5-110-80	Amended	24:21 VA.R. 2989	7/1/08
21 VAC 5-110-90	Repealed	24:21 VA.R. 2992	7/1/08
21 VAC 5-110-95	Added	24:21 VA.R. 2992	7/1/08
Title 22. Social Services			
22 VAC 5-30-10 through 22 VAC 5-30-60	Added	24:25 VA.R. 3665-3669	1/1/09
22 VAC 15-30-310	Amended	24:10 VA.R. 1295	3/6/08
22 VAC 30-10-10	Amended	24:22 VA.R. 3076	8/8/08
22 VAC 30-10-10	Repealed	25:1 VA.R. 71	10/15/08
22 VAC 30-10-20	Amended	24:22 VA.R. 3077	8/8/08
22 VAC 30-10-20	Repealed	25:1 VA.R. 71	10/15/08
22 VAC 30-10-40	Amended	24:22 VA.R. 3077	8/8/08
22 VAC 30-10-40	Repealed	25:1 VA.R. 71	10/15/08
22 VAC 30-10-50	Amended	24:22 VA.R. 3077	8/8/08
22 VAC 30-10-50	Repealed	25:1 VA.R. 71	10/15/08
22 VAC 30-10-60	Repealed	25:1 VA.R. 71	10/15/08
22 VAC 30-11-10 through 22 VAC 30-11-110	Added	25:1 VA.R. 72-74	10/15/08
22 VAC 40-11-10 through 22 VAC 40-11-70	Repealed	25:1 VA.R. 74	1/1/09
22 VAC 40-12-10 through 22 VAC 40-12-110	Added	25:1 VA.R. 74-78	1/1/09
22 VAC 40-470-10	Amended	24:9 VA.R. 1231	2/6/08
22 VAC 40-685-30	Amended	24:9 VA.R. 1231	2/6/08
22 VAC 40-690-20	Amended	24:24 VA.R. 3420	10/1/08
22 VAC 40-690-30	Amended	24:24 VA.R. 3420	10/1/08
22 VAC 40-690-40	Amended	24:24 VA.R. 3421	10/1/08
22 VAC 40-690-55	Amended	24:24 VA.R. 3421	10/1/08
22 VAC 40-690-65	Amended	24:24 VA.R. 3421	10/1/08
22 VAC 40-705-10 emer	Amended	24:14 VA.R. 1987	3/1/08-2/28/09
22 VAC 40-705-30 emer	Amended	24:14 VA.R. 1990	3/1/08-2/28/09
Title 23. Taxation			
23 VAC 10-10-10 through 23 VAC 10-10-80	Amended	24:12 VA.R. 1520-1521	4/19/08
23 VAC 10-10-80	Amended	24:12 VA.R. 1521	4/19/08
23 VAC 10-10-90	Repealed	24:12 VA.R. 1522	4/19/08
23 VAC 10-20-155	Added	24:26 VA.R. 3848	10/1/08
23 VAC 10-210-20	Repealed	24:26 VA.R. 3849	10/1/08
23 VAC 10-210-693	Amended	24:23 VA.R. 3240	10/6/08
23 VAC 10-500-10 through 23 VAC 10-500-820	Added	24:23 VA.R. 3253-3289	10/6/08
Title 24. Transportation and Motor Vehicles			
24 VAC 27-30-10 through 24 VAC 27-30-190	Added	25:1 VA.R. 78-89	10/15/08
24 VAC 30-72-10 through 24 VAC 30-72-170	Added	24:17 VA.R. 2458-2466	7/1/08
24 VAC 30-72-30	Erratum	24:18 VA.R. 2732	--
24 VAC 30-155-10	Amended	24:23 VA.R. 3290	7/1/08
24 VAC 30-155-40	Amended	24:23 VA.R. 3291	7/1/08
24 VAC 30-155-50	Amended	24:23 VA.R. 3292	7/1/08
24 VAC 30-155-60	Amended	24:23 VA.R. 3294	7/1/08
24 VAC 30-155-70	Amended	24:23 VA.R. 3303	7/1/08
24 VAC 30-155-80	Amended	24:23 VA.R. 3303	7/1/08

PETITIONS FOR RULEMAKING

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Initial Agency Notice

Titles of Regulations: **9VAC5-40. Existing Stationary Sources.**

9VAC5-50. New and Modified Stationary Sources.

Statutory Authority: §§10.1-1307 and 10.1-1308 of the Code of Virginia.

Name of Petitioner: Metropolitan Washington Air Quality Committee (MWAQC).

Nature of Petitioner's Request: MWAQC is concerned that the opacity standards for new and existing facilities in Virginia are set at a level that is too high to be sufficiently protective of human health. On March 7, 2008, MWAQC adopted a resolution to petition the State Air Pollution Control Board to revise the opacity standard. The District of Columbia and Maryland have much stricter opacity standards (0-10%) for emissions from point sources in the metropolitan Washington, D.C. nonattainment area. In contrast, Virginia's opacity standard at 20% is the least stringent of the three jurisdictions. MWAQC requests that the State Air Pollution Control Board lower the Virginia opacity standard from 20% to 10%, at least in the Northern Virginia region, to be more consistent with those of the District of Columbia and Maryland. MWAQC believes that such action could help to improve air quality in the metropolitan Washington, D.C. area.

Agency's Plan for Disposition of Request: Receive comments on the petition for 21 days and present petition and comments to State Air Pollution Control Board for a decision on whether or not to initiate a rulemaking.

Comments may be submitted until October 20, 2008.

Agency Contact: Doris A. McLeod, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4197, or email damcleod@deq.virginia.gov.

VA.R. Doc. No. R09-03; Filed September 10, 2008, 11:46 a.m.

REGULATIONS

For information concerning the different types of regulations, see the Information Page.

Symbol Key

Roman type indicates existing text of regulations. Underscored language indicates proposed new text. Language that has been stricken indicates proposed text for deletion. Brackets are used in final regulations to indicate changes from the proposed regulation.

TITLE 1. ADMINISTRATION

COMMISSION ON LOCAL GOVERNMENT

Final Regulation

REGISTRAR'S NOTICE: The following model public participation guidelines are exempt from Article 2 (§2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia pursuant to Chapter 321 of the 2008 Acts of Assembly.

Titles of Regulations: **1VAC50-10. Public Participation Guidelines (repealing 1VAC50-10-60 through 1VAC50-10-150).**

1VAC50-11. Public Participation Guidelines (adding 1VAC50-11-10 through 1VAC50-11-110).

Statutory Authority: §§2.2-4007.02 and 15.2-2903 of the Code of Virginia.

Effective Date: October 29, 2008.

Agency Contact: Susan Williams, Department of Housing and Community Development, 501 North Second Street, Richmond, VA 23219, telephone (804) 786-6508, FAX (804) 371-7090, or email susan.williams@dhcd.virginia.gov.

Summary:

The regulations comply with the legislative mandate (Chapter 321, 2008 Acts of Assembly) that agencies adopt model public participation guidelines issued by the Department of Planning and Budget by December 1, 2008. Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations.

This regulatory action repeals the current public participation guidelines and promulgates new public participation guidelines as required by Chapter 321 of the 2008 Acts of Assembly. Highlights of the public participation guidelines include (i) providing for the establishment and maintenance of notification lists of interested persons and specifying the information to be sent to such persons; (ii) providing for public comments on regulatory action; (iii) establishing the time period during which public comments shall be accepted; (iv) providing that the plan to hold a public meeting shall be indicated in any notice of intended regulatory action; (v) providing for the appointment, when necessary, of regulatory advisory panels to provide professional specialization or technical assistance and negotiated rulemaking panels if a regulatory action is expected to be

controversial; and (vi) providing for the periodic review of regulations.

CHAPTER 11

PUBLIC PARTICIPATION GUIDELINES

Part I

Purpose and Definitions

1VAC50-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Commission on Local Government. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

1VAC50-11-20. Definitions.

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

"Administrative Process Act" means Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the Commission on Local Government, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by §2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to

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make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at www.townhall.virginia.gov, which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§2.2-4031 et seq.) of the Administrative Process Act.

Part II

Notification of Interested Persons

1VAC50-11-30. Notification list.

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

1VAC50-11-40. Information to be sent to persons on the notification list.

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 1VAC50-11-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).

2. A notice of the comment period on a proposed, a repropoed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.

3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to §2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

Part III

Public Participation Procedures

1VAC50-11-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).

2. For a minimum of 60 calendar days following the publication of a proposed regulation.

3. For a minimum of 30 calendar days following the publication of a repropoed regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with §2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to §2.2-4012 E of the Code of Virginia.

1VAC50-11-60. Petition for rulemaking.

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;

2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and

3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to §2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

1VAC50-11-70. Appointment of regulatory advisory panel.

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

1VAC50-11-80. Appointment of negotiated rulemaking panel.

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. An NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or

3. The agency determines that resolution of a controversy is unlikely.

1VAC50-11-90. Meetings.

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with §2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

1VAC50-11-100. Public hearings on regulations.

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

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B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;

2. The Governor directs the agency to hold a public hearing; or

3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

1VAC50-11-110. Periodic review of regulations.

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to §2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and

2. The requirements in §2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

VA.R. Doc. No. R09-1418; Filed September 9, 2008, 3:17 p.m.

DEPARTMENT OF HUMAN RESOURCE MANAGEMENT

Final Regulation

REGISTRAR'S NOTICE: The following model public participation guidelines are exempt from Article 2 (§2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia pursuant to Chapter 321 of the 2008 Acts of Assembly.

Titles of Regulations: 1VAC55-10. Public Participation Guidelines (repealing 1VAC55-10-10 through 1VAC55-10-50).

1VAC55-11. Public Participation Guidelines (adding 1VAC55-11-10 through 1VAC55-11-110).

Statutory Authority: §§2.2-1201 and 2.2-4007.02 of the Code of Virginia.

Effective Date: October 29, 2008.

Agency Contact: Charles Reed, Associate Director, Department of Human Resource Management, James Monroe Bldg., 13th Floor, 101 N. 14th St., Richmond, VA 23219, telephone (804) 786-3124, FAX (804) 371-2505, or email charles.reed@dhrm.virginia.gov.

Summary:

The regulations comply with the legislative mandate (Chapter 321, 2008 Acts of Assembly) that agencies adopt model public participation guidelines issued by the Department of Planning and Budget by December 1, 2008. Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations.

This regulatory action repeals the current public participation guidelines and promulgates new public participation guidelines as required by Chapter 321 of the 2008 Acts of Assembly. Highlights of the public participation guidelines include (i) providing for the establishment and maintenance of notification lists of interested persons and specifying the information to be sent to such persons; (ii) providing for public comments on regulatory action; (iii) establishing the time period during which public comments shall be accepted; (iv) providing that the plan to hold a public meeting shall be indicated in any notice of intended regulatory action; (v) providing for the appointment, when necessary, of regulatory advisory panels to provide professional specialization or technical assistance and negotiated rulemaking panels if a regulatory action is expected to be controversial; and (vi) providing for the periodic review of regulations.

CHAPTER 11

PUBLIC PARTICIPATION GUIDELINES

Part I

Purpose and Definitions

1VAC55-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Department of Human Resource Management. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

1VAC55-11-20. Definitions.

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

"Administrative Process Act" means Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the Department of Human Resource Management, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by §2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at www.townhall.virginia.gov, which has online public comment forums and displays information about regulatory meetings and regulatory actions under

consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§2.2-4031 et seq.) of the Administrative Process Act.

Part II

Notification of Interested Persons

1VAC55-11-30. Notification list.

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

1VAC55-11-40. Information to be sent to persons on the notification list.

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 1VAC55-11-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).

2. A notice of the comment period on a proposed, a repropoed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.

3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to §2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

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B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

Part III
Public Participation Procedures

1VAC55-11-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).

2. For a minimum of 60 calendar days following the publication of a proposed regulation.

3. For a minimum of 30 calendar days following the publication of a repropoed regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with §2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to §2.2-4012 E of the Code of Virginia.

1VAC55-11-60. Petition for rulemaking.

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;

2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and

3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to §2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

1VAC55-11-70. Appointment of regulatory advisory panel.

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

1VAC55-11-80. Appointment of negotiated rulemaking panel.

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. An NRP that has been appointed by the agency may be dissolved by the agency when:

- 1. There is no longer controversy associated with the development of the regulation;
- 2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or
- 3. The agency determines that resolution of a controversy is unlikely.

1VAC55-11-90. Meetings.

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with §2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

1VAC55-11-100. Public hearings on regulations.

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

- 1. The agency's basic law requires the agency to hold a public hearing;
- 2. The Governor directs the agency to hold a public hearing; or
- 3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

1VAC55-11-110. Periodic review of regulations.

A. The agency shall conduct a periodic review of its regulations consistent with:

- 1. An executive order issued by the Governor pursuant to §2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and
- 2. The requirements in §2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

VA.R. Doc. No. R09-1419; Filed August 28, 2008, 9:59 a.m.



TITLE 2. AGRICULTURE

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Final Regulation

REGISTRAR'S NOTICE: The Department of Agriculture and Consumer Services is exempt from the Administrative Process Act in accordance with § 3.2-703, which exempts quarantine to prevent or retard the spread of a pest into, within, or from the Commonwealth.

Title of Regulation: **2VAC5-330. Rules and Regulations for Enforcement of the Virginia Pest Law-Virginia Gypsy Moth Quarantine (amending 2VAC5-330-30).**

Statutory Authority: §§3.2-701 and 3.2-704 of the Code of Virginia.

Effective Date: October 15, 2008.

Agency Contact: Larry M. Nichols, Program Manager, Department of Agriculture and Consumer Services, P. O. Box 1163, Richmond, VA 23218, telephone (804) 786-3515, FAX (804) 371-7793, TTY (800) 828-1120, or email larry.nichols@vdacs.virginia.gov.

Summary:

The amendment extends the regulated areas under the Virginia Gypsy Moth Quarantine due to the detection of larvae or other life stages of the gypsy moth in areas not currently under regulation. The current regulated area is changed by the addition of the counties of Floyd and

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Franklin. All other parts of the Virginia Gypsy Moth Quarantine will remain unchanged.

2VAC5-330-30. Regulated areas.

A. Any area of another state or the District of Columbia, whether designated high risk or low risk, in which gypsy moth is known to occur and is so geographically described and regulated by the United States Department of Agriculture under the Gypsy Moth and Browntail Moth Quarantine No. 45, (7 USC §§1520dd, 150ee, 162) or under a state gypsy moth quarantine or other state legislation.

B. The following areas in Virginia:

1. The entire counties of: Accomack, Albemarle, Alleghany, Amelia, Amherst, Appomattox, Arlington, Augusta, Bath, Bedford, Botetourt, Brunswick, Buckingham, Campbell, Caroline, Charles City, Charlotte, Chesterfield, Clarke, Craig, Culpeper, Cumberland, Dinwiddie, Essex, Fairfax, Fauquier, Floyd, Fluvanna, Franklin, Frederick, Giles, Gloucester, Goochland, Greene, Greensville, Halifax, Hanover, Henrico, Highland, Isle of Wight, James City, King George, King and Queen, King William, Lancaster, Loudoun, Louisa, Lunenburg, Madison, Mathews, Mecklenburg, Middlesex, Montgomery, Nelson, New Kent, Northampton, Northumberland, Nottoway, Orange, Page, Pittsylvania, Powhatan, Prince Edward, Prince George, Prince William, Rappahannock, Richmond, Roanoke, Rockbridge, Rockingham, Shenandoah, Southampton, Spotsylvania, Stafford, Surry, Sussex, Warren, Westmoreland, and York.

2. The entire independent cities of: Alexandria, Bedford, Buena Vista, Charlottesville, Chesapeake, Clifton Forge, Colonial Heights, Covington, Danville, Emporia, Fairfax City, Falls Church, Franklin, Fredericksburg, Hampton, Harrisonburg, Hopewell, Lexington, Lynchburg, Manassas, Manassas Park, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Roanoke, Salem, Staunton, Suffolk, Virginia Beach, Waynesboro, Williamsburg, and Winchester.

VA.R. Doc. No. R09-1267; Filed September 9, 2008, 3:31 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Department of Agriculture and Consumer Services is exempt from the Administrative Process Act in accordance with § 3.2-703 of the Code of Virginia, which exempts quarantine to prevent or retard the spread of a pest into, within, or from the Commonwealth.

Title of Regulation: 2VAC5-335. Virginia Emerald Ash Borer Quarantine for Enforcement of the Virginia Pest Law (adding 2VAC5-335-10, 2VAC5-335-20, 2VAC5-335-30, 2VAC5-335-40, 2VAC5-335-50, 2VAC5-335-60, 2VAC5-335-70, 2VAC5-335-80, 2VAC5-335-90, 2VAC5-335-100, 2VAC5-335-110, 2VAC5-335-120, 2VAC5-335-130).

Statutory Authority: §3.2-703 of the Code of Virginia.

Effective Date: October 15, 2008.

Agency Contact: Larry M. Nichols, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-3515, FAX (804) 371-7793, or email larry.nichols@vdacs.virginia.gov.

Summary:

This regulation will restrict the intrastate movement of ash products and hardwood firewood from regulated to nonregulated areas of Virginia. This quarantine will include the counties of Arlington, Fairfax, Fauquier, Loudoun and Prince William and the cities of Alexandria, Fairfax City, Falls Church, Manassas and Manassas Park as regulated areas in Virginia. Tree removal services, landscape nurseries, and shippers of ash logs or mulch in regulated areas of Virginia, as in other quarantined states, must obtain special inspections and certifications prior to selling their ash trees, green (nonheat treated) ash lumber and ash wood products, as well as hardwood firewood, into any nonregulated counties. This state quarantine parallels a federal quarantine issued by USDA/APHIS/Plant Protection and Quarantine governing the interstate movement of ash products and hardwood firewood from regulated areas of Virginia.

CHAPTER 335

VIRGINIA EMERALD ASH BORER QUARANTINE FOR ENFORCEMENT OF THE VIRGINIA PEST LAW

2VAC5-335-10. Declaration of quarantine.

A quarantine is hereby established to regulate the movement of certain articles capable of transporting the highly destructive pest of ash (*Fraxinus* spp.) known as the emerald ash borer, *Agrilus planipennis* (Fairemaire) into uninfested or unregulated areas of the state unless such articles comply with the conditions specified herein.

2VAC5-335-20. Purpose of quarantine.

The emerald ash borer is an introduced beetle that specifically attacks and kills ash trees. It has become established in Fairfax County, Virginia, and has the potential to spread to uninfested counties by both natural means and humans moving infested articles. The purpose of this quarantine is to prevent the artificial spread of the emerald ash borer to uninfested areas of the state by regulating the movement of those articles that pose a significant threat of transporting the emerald ash borer.

2VAC5-335-30. Definitions.

The following words and terms shall have the following meaning unless the context clearly indicates otherwise:

"Certificate" means a document issued by an inspector or any other person operating in accordance with a compliance

agreement to allow the movement of regulated articles to any destination.

"Compliance agreement" means a written agreement between a person engaged in growing, handling, receiving or moving regulated articles and the Virginia Department of Agriculture and Consumer Services, the United States Department of Agriculture, or both, wherein the former agrees to comply with the requirements of the compliance agreement.

"Emerald ash borer" means the live insect known as the emerald ash borer, *Agrilus planipennis* (Fairemaire), in any life stage (egg, larva, pupa, adult).

"Infestation" means the presence of the emerald ash borer or the existence of circumstances that make it reasonable to believe that the emerald ash borer is present.

"Inspector" means any employee of the Virginia Department of Agriculture and Consumer Services, or other person authorized by the commissioner to enforce the provisions of the quarantine or regulation.

"Limited permit (permit)" means a document issued by an inspector or other person operating in accordance with a compliance agreement to allow the movement of regulated articles to a specific destination.

"Moved (move, movement)" means shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

"Person" means any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

"Virginia Pest Law" means the statute set forth in Chapter 7 (§3.2-700 et seq. of Title 3.2 of the Code of Virginia).

2VAC5-335-40. Regulated articles.

The following articles are regulated under the provisions of this quarantine, and shall not be moved out of any regulated area within Virginia, except in compliance with the conditions prescribed in this quarantine:

1. The emerald ash borer in any life stage.
2. Firewood of all hardwood (nonconiferous) species.
3. Ash (*Fraxinus* spp.) nursery stock.
4. Green (nonheat treated) ash lumber.
5. Other living, dead, cut, or fallen material of the genus *Fraxinus*, including logs, stumps, roots, branches, and composted and uncomposted wood chips.

2VAC5-335-50. Regulated areas.

The following areas in Virginia:

The entire counties of:

- Arlington
- Fairfax
- Fauquier
- Loudoun
- Prince William

The entire independent cities of:

- Alexandria
- Fairfax City
- Falls Church
- Manassas
- Manassas Park

2VAC5-335-60. Conditions governing the intrastate movement of regulated articles.

A. Movement of a regulated article solely within the regulated area is allowed without restriction.

B. Any regulated article may be moved intrastate from a regulated area only if moved under the following conditions:

1. With a certificate or limited permit issued and attached in accordance with 2VAC5-335-70 and 2VAC5-335-100 of this quarantine.

2. Without a certificate or limited permit, if:

a. The points of origin and destination are indicated on a waybill accompanying the regulated article;

b. The regulated article, if moved through the regulated area during the period of April 1 through September 30, is moved in an enclosed vehicle or is completely covered to prevent access by the emerald ash borer;

c. The regulated article is moved directly through the regulated area without stopping (except for refueling or for traffic conditions, such as traffic lights or stop signs), or has been stored, packed, or handled at locations approved by an inspector as not posing a risk of infestation by the emerald ash borer; and

d. The regulated article has not been combined or commingled with other articles so as to lose its individual identity.

3. With a limited permit issued by the Commonwealth if the regulated article is moved:

a. By a state or federal agency for experimental or scientific purposes;

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b. Under conditions, specified on the permit, which the commissioner has found to be adequate to prevent the spread of the emerald ash borer; and

c. With a tag or label bearing the number of the permit issued for the regulated article attached to the outside of the container of the regulated article or attached to the regulated article itself if the regulated article is not in a container.

2VAC5-335-70. Issuance and cancellation of certificates and limited permits.

A. Certificates may be issued by an inspector or any person operating under a compliance agreement for the movement of regulated articles to any destination within Virginia when:

1. The articles have been examined by the inspector and found to be apparently free of the emerald ash borer;

2. The articles have been grown, produced, manufactured, stored or handled in such a manner that, in the judgment of the inspector, their movement does not present a risk of spreading the emerald ash borer;

3. The regulated article is to be moved in compliance with any additional conditions deemed necessary under the Virginia Pest Law to prevent the spread of the emerald ash borer; and

4. The regulated article is eligible for unrestricted movement under all other state or federal domestic plant quarantines and regulations applicable to the regulated articles.

B. Limited permits may be issued by an inspector for the movement of regulated articles to specific destinations within Virginia if:

1. The regulated article is apparently free of emerald ash borer, based on inspection; or the article has been grown, produced, manufactured, stored, or handled in a manner that, in the judgment of the Virginia Department of Agriculture and Consumer Services, prevents the article from presenting a risk of spreading the emerald ash borer; or

2. The regulated article is to be moved intrastate to a specified destination under conditions that specify the limited handling, utilization, processing or treatment of the articles, when the inspector determines that such movement will not result in the spread of the emerald ash borer because the life stage(s) of the insect will be destroyed by such specified handling, utilization, processing or treatment; and

3. The regulated article is to be moved in compliance with any additional conditions deemed necessary under the Virginia Pest Law to prevent the spread of the emerald ash borer; and

4. The regulated article is eligible for interstate movement under all other state or federal domestic plant quarantines and regulations applicable to the regulated article.

C. Certificates and limited permits for use for intrastate movement of regulated articles may be issued by an inspector or person operating under a compliance agreement. A person operating under a compliance agreement may issue a certificate for the intrastate movement of a regulated article if an inspector has determined that the regulated article is otherwise eligible for a certificate in accordance with subsection A of this section. A person operating under a compliance agreement may issue a limited permit for intrastate movement of a regulated article when an inspector has determined that the regulated article is eligible for a limited permit in accordance with subsection B of this section.

D. Any certificate or limited permit that has been issued or authorized may be withdrawn by the inspector orally, or in writing, if he determines that the holder of the certificate or limited permit has not complied with all conditions for the use of the certificate or limited permit or with any applicable compliance agreement. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal shall be confirmed in writing as promptly as circumstances allow.

2VAC5-335-80. Compliance agreements and cancellation.

A. Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when an inspector determines that the person understands this quarantine. The agreement shall stipulate that safeguards will be maintained against the establishment and spread of infestation, and will comply with the conditions governing the maintenance of identity, handling, and subsequent movement of such articles, and the cleaning and treatment of means of conveyance and containers.

B. Any compliance agreement may be canceled orally or in writing by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this quarantine. If the cancellation is oral, the cancellation and the reasons for the cancellation shall be confirmed in writing as promptly as circumstances allow.

2VAC5-335-90. Assembly and inspection of regulated articles.

A. Any person (other than a person authorized to issue certificates or limited permits under 2VAC5-335-70) who desires to move a regulated article intrastate accompanied by a certificate or limited permit shall apply for inspection as far in advance as possible, but at least five business days before the services are needed.

B. The regulated article must be assembled at the place and in the manner the inspector designates as necessary to

facilitate inspection and comply with this quarantine. The regulated article shall be safeguarded from infestation.

2VAC5-335-100. Attachment and disposition of certificates and limited permits.

A. A certificate or limited permit required for the intrastate movement of a regulated article must be attached at all times during the intrastate movement to the outside of the container containing the regulated article or to the regulated article itself if not in a container. The requirements of this section may also be met by attaching the certificate or limited permit to the consignee's copy of the waybill, provided the regulated article is sufficiently described on the certificate or limited permit and on the waybill to identify the regulated article.

B. The certificate or limited permit for the intrastate movement of a regulated article must be furnished by the carrier to the consignee at the destination of the regulated article. A copy of the certificate and/or limited permit must be retained by the sender of the article(s) at the place of origin.

2VAC5-335-110. Inspection and disposal of regulated articles and pests.

Any properly identified inspector is authorized to stop and inspect, and to seize, destroy, or otherwise dispose of, or require disposal of regulated articles and emerald ash borers as provided in the Virginia Pest Law under which this quarantine is issued.

2VAC5-335-120. Nonliability of the department.

The Virginia Department of Agriculture and Consumer Services shall not be liable for any costs incident to inspections required under the provisions of the quarantine and regulations other than for the services of the inspector.

2VAC5-335-130. Revocation of this regulation.

This regulation may be revoked by the board when such party is satisfied that the need for this quarantine no longer exists. Such revocation shall take place upon the date specified by the board in the order that revokes this regulation.

VA.R. Doc. No. R09-1555; Filed September 9, 2008, 3:32 p.m.



TITLE 4. CONSERVATION AND NATURAL RESOURCES

BOARD OF CONSERVATION AND RECREATION

Final Regulation

REGISTRAR'S NOTICE: The following model public participation guidelines are exempt from Article 2 (§2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia pursuant to Chapter 321 of the 2008 Acts of Assembly.

Titles of Regulations: **4VAC3-10. Regulatory Public Participation Procedures (repealing 4VAC3-10-10, 4VAC3-10-20, 4VAC3-10-30).**

4VAC3-11. Public Participation Guidelines (adding 4VAC3-11-10 through 4VAC3-11-110).

Statutory Authority: §§2.2-4007.02 and 10.1-107 of the Code of Virginia.

Effective Date: October 29, 2008.

Agency Contact: David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, or email david.dowling@dcr.virginia.gov.

Summary:

The regulations comply with the legislative mandate (Chapter 321, 2008 Acts of Assembly) that agencies adopt model public participation guidelines issued by the Department of Planning and Budget by December 1, 2008. Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations.

This regulatory action repeals the current public participation guidelines and promulgates new public participation guidelines as required by Chapter 321 of the 2008 Acts of Assembly. Highlights of the public participation guidelines include (i) providing for the establishment and maintenance of notification lists of interested persons and specifying the information to be sent to such persons; (ii) providing for public comments on regulatory action; (iii) establishing the time period during which public comments shall be accepted; (iv) providing that the plan to hold a public meeting shall be indicated in any notice of intended regulatory action; (v) providing for the appointment, when necessary, of regulatory advisory panels to provide professional specialization or technical assistance and negotiated rulemaking panels if a regulatory action is expected to be controversial; and (vi) providing for the periodic review of regulations.

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CHAPTER 11 PUBLIC PARTICIPATION GUIDELINES

Part I Purpose and Definitions

4VAC3-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Board of Conservation and Recreation. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

4VAC3-11-20. Definitions.

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

"Administrative Process Act" means Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the Board of Conservation and Recreation, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by §2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at www.townhall.virginia.gov, which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§2.2-4031 et seq.) of the Administrative Process Act.

Part II Notification of Interested Persons

4VAC3-11-30. Notification list.

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

4VAC3-11-40. Information to be sent to persons on the notification list.

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 4VAC3-11-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).
2. A notice of the comment period on a proposed, a repropoed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.
3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to §2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

Part III
Public Participation Procedures

4VAC3-11-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.
2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).
2. For a minimum of 60 calendar days following the publication of a proposed regulation.
3. For a minimum of 30 calendar days following the publication of a repropoed regulation.
4. For a minimum of 30 calendar days following the publication of a final adopted regulation.
5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with §2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to §2.2-4012 E of the Code of Virginia.

4VAC3-11-60. Petition for rulemaking.

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;
2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and
3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to §2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

4VAC3-11-70. Appointment of regulatory advisory panel.

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall

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determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

4VAC3-11-80. Appointment of negotiated rulemaking panel.

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. An NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or
3. The agency determines that resolution of a controversy is unlikely.

4VAC3-11-90. Meetings.

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with §2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

4VAC3-11-100. Public hearings on regulations.

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;
2. The Governor directs the agency to hold a public hearing; or

3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

4VAC3-11-110. Periodic review of regulations.

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to §2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and
2. The requirements in §2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

VA.R. Doc. No. R09-1426; Filed September 3, 2008, 1:30 p.m.

DEPARTMENT OF CONSERVATION AND RECREATION

Final Regulation

REGISTRAR'S NOTICE: The following model public participation guidelines are exempt from Article 2 (§2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia pursuant to Chapter 321 of the 2008 Acts of Assembly.

Titles of Regulations: **4VAC5-10. Regulatory Public Participation Procedures (repealing 4VAC5-10-10, 4VAC5-10-20, 4VAC5-10-30).**

4VAC5-11. Public Participation Guidelines (adding 4VAC5-11-10 through 4VAC5-11-110).

Statutory Authority: §§2.2-4007.02 and 10.1-104 of the Code of Virginia.

Effective Date: October 29, 2008.

Agency Contact: David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, or email david.dowling@dcr.virginia.gov.

Summary:

The regulations comply with the legislative mandate (Chapter 321, 2008 Acts of Assembly) that agencies adopt model public participation guidelines issued by the Department of Planning and Budget by December 1, 2008. Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations.

This regulatory action repeals the current public participation guidelines and promulgates new public participation guidelines as required by Chapter 321 of the 2008 Acts of Assembly. Highlights of the public participation guidelines include (i) providing for the establishment and maintenance of notification lists of interested persons and specifying the information to be sent to such persons; (ii) providing for public comments on regulatory action; (iii) establishing the time period during which public comments shall be accepted; (iv) providing that the plan to hold a public meeting shall be indicated in any notice of intended regulatory action; (v) providing for the appointment, when necessary, of regulatory advisory panels to provide professional specialization or technical assistance and negotiated rulemaking panels if a regulatory action is expected to be controversial; and (vi) providing for the periodic review of regulations.

CHAPTER 11 PUBLIC PARTICIPATION GUIDELINES

Part I Purpose and Definitions

4VAC5-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Department of Conservation and Recreation. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

4VAC5-11-20. Definitions.

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

"Administrative Process Act" means Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the Department of Conservation and Recreation, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by §2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at www.townhall.virginia.gov, which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§2.2-4031 et seq.) of the Administrative Process Act.

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Part II

Notification of Interested Persons

4VAC5-11-30. Notification list.

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

4VAC5-11-40. Information to be sent to persons on the notification list.

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 4VAC5-11-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).
2. A notice of the comment period on a proposed, a repropoed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.
3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to §2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

Part III

Public Participation Procedures

4VAC5-11-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either

orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).

2. For a minimum of 60 calendar days following the publication of a proposed regulation.

3. For a minimum of 30 calendar days following the publication of a repropoed regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with §2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to §2.2-4012 E of the Code of Virginia.

4VAC5-11-60. Petition for rulemaking.

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;
2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and
3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to §2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

4VAC5-11-70. Appointment of regulatory advisory panel.

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

4VAC5-11-80. Appointment of negotiated rulemaking panel.

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. An NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or

3. The agency determines that resolution of a controversy is unlikely.

4VAC5-11-90. Meetings.

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with §2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

4VAC5-11-100. Public hearings on regulations.

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;
2. The Governor directs the agency to hold a public hearing; or
3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

4VAC5-11-110. Periodic review of regulations.

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to §2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and
2. The requirements in §2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

Regulations

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

VA.R. Doc. No. R09-1427; Filed September 3, 2008, 1:32 p.m.

BOARD OF GAME AND INLAND FISHERIES

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is exempt from the Administrative Process Act pursuant to §29.1-701 E of the Code of Virginia, which provides that proposal and adoption of regulations implementing Chapter 7 (§29.1-700 et seq.) of Title 29.1 shall take place as described in Article 1 (§29.1-500 et seq.) of Chapter 5 of Title 29.1 of the Code of Virginia. The department is required by §2.2-4031 of the Code of Virginia to publish all proposed and final regulations.

Title of Regulation: **4VAC15-450. Watercraft: Commercial Parasail Operations (adding 4VAC15-450-10 through 4VAC15-450-40).**

Statutory Authority: §§29.1-501, 29.1-502, 29.1-701, and 29.1-735.3 of the Code of Virginia.

Public Hearing Information:

October 23, 2008 - 9 a.m. - Department of Game and Inland Fisheries, 4000 W. Broad Street, Richmond, VA

Public Comments: Public comments may be submitted until 5 p.m. on October 6, 2008.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

Summary:

The board has proposed a new boating regulation regarding commercial parasail operations. The proposed regulation will not have any effect on general boating activities by the recreational boating public, but will apply only to the commercial operations of parasail operators on the waters of the Commonwealth. The proposal defines "commercial parasail operation" and "parasailing;" and establishes provisions to which commercial parasailing operators must comply for lawful operation, including a requirement that all commercial parasail operators shall have a valid Coast Guard license for carrying passengers for hire, and other provisions addressing the safety of persons taking part in the parasailing activity.

CHAPTER 450 WATERCRAFT: COMMERCIAL PARASAIL OPERATIONS

4VAC15-450-10. Application.

This chapter applies to all commercial parasail operations on waters of the Commonwealth.

4VAC15-450-20. Definitions.

As used in this chapter unless the context clearly requires a different meaning the following words and terms shall have the following meanings:

"Commercial parasail operation" means all parasail activities engaged in or caused to be engaged in by any person or legal entity with the object of making a profit or obtaining an economic benefit either directly or indirectly.

"Operate" means to navigate or otherwise control the movement of a vessel.

"Parasailing" means the activity in which an individual is transported or carried aloft by a parachute, sail, or other material attached to a towline that is towed by a vessel where the rider ascends into the air by the towline being extended from the vessel and remains suspended in the air as the vessel runs its course.

"Vessel" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

"Waters of the Commonwealth" means any public waters within the territorial limits of the Commonwealth, the adjacent marginal sea and the high seas when navigated as a part of a journey or ride to or from the Virginia shore.

4VAC15-450-30. Commercial parasailing activities.

Commercial parasailing operators shall comply with the following provisions:

1. All commercial parasail operators shall have a valid Coast Guard License for carrying passengers for hire.
2. Vessels engaged in parasailing operations must be equipped with a rear launchplatform and direct launch and recovery hydraulic winch system used to pay out and reel in the towline.
3. Prior to leaving the dock, all passengers and parasail participants shall be required to view a parasail safety briefing video and/or be given a written parasail safety briefing handout. Briefing materials shall be consistent with information approved or provided by the Professional Association of Parasail Operators (PAPO).
4. Parasailing shall only be conducted from one-half hour before sunrise to one-half hour after sunset.

5. All parasail riders, when attached to the harness of a parasail canopy, shall wear a United States Coast Guard approved Type I, II, or III inherently buoyant noninflatable personal flotation device that is in serviceable condition and of the proper size. The rider must be secured in a seat harness attached to an ascending type of parachute that is connected to the towline.

6. All parasailing operations shall include, in addition to the operator of the vessel, an observer 18 years or older at all times to monitor the progress of an airborne parasail rider and parachute.

7. All parasailing towing vessels when operating more than 1,000 feet from shore shall be equipped with a VHF radio that is in working order and tuned to Channel 16.

8. Parasailing shall be prohibited when there are sustained winds in excess of 20 mph/17.5 knots and/or seas in excess of six feet in the area of operation.

9. Parasail operation towlines shall not exceed 1,200 feet in total length on the vessel's winch drum or exceed 1,000 feet of towline from boat to canopy yoke while conducting parasail flight operations. All commercial towlines must have a minimum diameter of 3/8 inches, be a maximum length of 1,200 feet, and have a minimum tensile strength of 4,800 lbs. An in-service date shall be logged whenever new line is installed.

10. Parasail operators shall inspect the towline in its entirety daily for damage and/or wear and, if necessary, shall immediately replace the line. A minimum of two feet shall be trimmed from the towline bitter end within a maximum period of seven days or every 400 flights or as may become necessary. The towline shall be kept clean and well maintained in accordance with manufacturers' specifications, requirements, and/or recommendations. A written log of such inspections and maintenance shall be kept at all times.

11. Parasail vessel operators shall at all times maintain a safe parasail chute distance from any surf-zone, shoreline, or fixed object when engaged in actual parasail operations. This includes all of the following: (i) the canopy shall not be allowed to pass within three times the length of the towline from shore or any structure, (ii) when the wind has an onshore component, the canopy's minimum distance from shore is a function of wind speed as follows: either 1,000 feet or a sliding distance based on wind speed (0-5 mph – 600 feet, 6-10 mph – 1,000 feet, 11-15 mph – 1,800 feet, 16-20 mph – 2,400 feet).

12. Parasail operators shall only launch and land riders from the flight deck of the vessel. Spectators shall not be permitted on the launch/landing deck area while the vessel is engaged in actual parasail operations. At no time shall there be more than three passengers in any canopy.

Multipassenger flights shall only be conducted after the vessel operator has made reasonable judgment regarding the flight safety prior to each flight and then only under the following conditions: (i) wind conditions must be adequate, stable and persistent, (ii) sea conditions must be conducive to such activities, (iii) commercial equipment specifically designed and professionally manufactured for multipassenger flight operations must be utilized, (iv) all equipment manufacturers' specifications, requirements and/or recommendations must be adhered to, and (v) the vessel's winch system must be equipped with a functional level-winder during all multipassenger flights.

13. A person may not operate or manipulate any vessel by which the direction or location of a parasail may be affected or controlled in such a way as to cause the parasail or any person thereon to collide or strike against or be likely to collide or strike against any vessel, bridge, wharf, pier, dock, buoy, platform, piling, channel marker, or other object.

14. The deliberate lowering of any person attached to the parasail to be in contact with the water's surface (toe dipping) shall only be conducted after the vessel operator has made reasonable judgment regarding the safety of the activity and his ability to control such an activity and then only when wind and sea conditions are conducive to such activity. Deliberate dipping above the ankles or allowing a participant to touch the water during his flight within 200 feet of another vessel or object or within 50 feet of the stern of the tow vessel is prohibited.

15. Commercial parasail operators shall notify the department's law-enforcement division dispatch office at least 14 days in advance of the commencement of annual operations.

4VAC15-450-40. Penalties.

Except as otherwise provided by statute, any person who violates any provision of this chapter shall be guilty of a Class 4 misdemeanor for each such violation as provided by §29.1-746 of the Code of Virginia.

V.A.R. Doc. No. R09-1618; Filed September 10, 2008, 10:42 a.m.

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Final Regulation

REGISTRAR'S NOTICE: The following model public participation guidelines are exempt from Article 2 (§2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia pursuant to Chapter 321 of the 2008 Acts of Assembly.

Titles of Regulations: **4VAC50-10. Regulatory Public Participation Procedures (repealing 4VAC50-10-10, 4VAC50-10-20, 4VAC50-10-30).**

Regulations

4VAC50-11. Public Participation Guidelines (adding 4VAC50-11-10 through 4VAC50-11-110).

Statutory Authority: §§2.2-4007.02 and 10.1-502 of the Code of Virginia.

Effective Date: October 29, 2008.

Agency Contact: David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, or email david.dowling@dcr.virginia.gov.

Summary:

The regulations comply with the legislative mandate (Chapter 321, 2008 Acts of Assembly) that agencies adopt model public participation guidelines issued by the Department of Planning and Budget by December 1, 2008. Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations.

This regulatory action repeals the current public participation guidelines and promulgates new public participation guidelines as required by Chapter 321 of the 2008 Acts of Assembly. Highlights of the public participation guidelines include (i) providing for the establishment and maintenance of notification lists of interested persons and specifying the information to be sent to such persons; (ii) providing for public comments on regulatory action; (iii) establishing the time period during which public comments shall be accepted; (iv) providing that the plan to hold a public meeting shall be indicated in any notice of intended regulatory action; (v) providing for the appointment, when necessary, of regulatory advisory panels to provide professional specialization or technical assistance and negotiated rulemaking panels if a regulatory action is expected to be controversial; and (vi) providing for the periodic review of regulations.

CHAPTER 11 PUBLIC PARTICIPATION GUIDELINES

Part I Purpose and Definitions

4VAC50-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Virginia Soil and Water Conservation Board. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

4VAC50-11-20. Definitions.

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

"Administrative Process Act" means Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the Virginia Soil and Water Conservation Board, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by §2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at www.townhall.virginia.gov, which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§2.2-4031 et seq.) of the Administrative Process Act.

Part II Notification of Interested Persons

4VAC50-11-30. Notification list.

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

4VAC50-11-40. Information to be sent to persons on the notification list.

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 4VAC50-11-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).
2. A notice of the comment period on a proposed, a repropoed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.

3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to §2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

Part III Public Participation Procedures

4VAC50-11-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).

2. For a minimum of 60 calendar days following the publication of a proposed regulation.

3. For a minimum of 30 calendar days following the publication of a repropoed regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the

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changes in accordance with §2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to §2.2-4012 E of the Code of Virginia.

4VAC50-11-60. Petition for rulemaking.

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;
2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and
3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to §2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

4VAC50-11-70. Appointment of regulatory advisory panel.

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

4VAC50-11-80. Appointment of negotiated rulemaking panel.

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. An NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or
3. The agency determines that resolution of a controversy is unlikely.

4VAC50-11-90. Meetings.

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with §2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

4VAC50-11-100. Public hearings on regulations.

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;
2. The Governor directs the agency to hold a public hearing; or
3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

4VAC50-11-110. Periodic review of regulations.

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to §2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and

2. The requirements in §2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

VA.R. Doc. No. R09-1432; Filed September 3, 2008, 1:29 p.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Final Regulation

Title of Regulation: **6VAC20-160. Rules Relating to the Court-Appointed Special Advocate Program (CASA) (amending 6VAC20-160-10, 6VAC20-160-20, 6VAC20-160-30, 6VAC20-160-40, 6VAC20-160-60, 6VAC20-160-70, 6VAC20-160-80, 6VAC20-160-100, 6VAC20-160-120).**

Statutory Authority: §9.1-151 of the Code of Virginia.

Effective Date: October 29, 2008.

Agency Contact: Judith Kirkendall, Regulatory Coordinator, Department of Criminal Justice Services, 202 North 9th Street, 10th Floor, Richmond, VA 23219, telephone (804) 225-4086, FAX (804) 786-0588, or email leon.baker@dcjs.virginia.gov, judith.kirkendall@dcjs.virginia.gov, or lisa.mcgee@dcjs.virginia.gov.

Summary:

The amendments (i) change the staff-to-volunteer ratio that the court-appointed special advocate (CASA) programs must maintain, (ii) reduce from three to two the number of children/sibling groups for whom a CASA volunteer may advocate at any one time, (iii) allow volunteer training obtained before application to a local CASA program to count toward required training hours so long as that training meets National Court Appointed Special Advocate Association (NCASAA) standards, (iv) specify the topics

that must be covered in training for new CASA governing board members, and (v) require a central registry background check for all volunteer applicants who have lived outside of Virginia any time in the last five years.

Changes to the regulations since publication of the proposed (i) require advisory councils to have defined roles and guidelines that do not conflict with their governing organization, (ii) clarify the composition of CASA governing boards and specify the content of training required for CASA board and advisory council members, (iii) require CASA programs to maintain records using an automated data system prescribed by the Department of Criminal Justice Services that allows for flexibility in reporting, and (iv) add clarifying language to provide guidance on CASA report dissemination.

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

[CHAPTER 160

~~RULES~~ REGULATIONS RELATING TO THE COURT-APPOINTED SPECIAL ADVOCATE PROGRAM (CASA)]

Part I

General Definitions

6VAC20-160-10. Definitions.

The following words and terms [;] when used in this chapter [;] shall apply unless the context clearly indicates otherwise:

~~"Active case" means a case that is assigned by the director to a CASA volunteer.~~

"Advisory [Council council] means a locally appointed body with a specific purpose to advise the governing [body board] of a local CASA program.

~~"Board" means the Criminal Justice Services Board.~~

"CASA" means court-appointed special advocate.

"CASA program" means any locally operated court-appointed special advocate program which utilizes court-appointed volunteers to assist in judicial proceedings involving allegations that a child is abused, neglected, in need of services, or in need of supervision and for whom [~~the a~~] Juvenile and Domestic Relations District Court judge determines such services are appropriate.

"Case" means a child ~~referred to the CASA program [on for]~~ whom a Juvenile and Domestic Relations District Court [Judge judge] has entered an order of appointment for a CASA [Volunteer volunteer].

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"Closed case" means a case in which the court has released the CASA volunteer or the director has notified the court of their intent to release the case or there has been no volunteer activity for more than 90 days.

"DCJS" means the Department of Criminal Justice Services.

"Director" means the director or coordinator of a local CASA program responsible for the day-to-day operations of the local CASA program.

"Governing board" means the oversight body responsible for the local CASA program. [This may be a city council, county board of supervisors or the board of directors of a nonprofit organization.]

"Referred case" means a case that is referred by the court but is not assigned by the director to a CASA volunteer.

"Staff advocate" means an employee of the CASA program who serves, [in lieu of a CASA volunteer,] as the assigned advocate for a case.

"Volunteer" means [~~the~~ a] court-appointed special advocate.

Part II Program Administration

6VAC20-160-20. Boards CASA program governance.

A. ~~If a local CASA program does not have a board of directors, it shall have an advisory board. A CASA program shall have a governing board responsible for overseeing the program's operations.~~

B. [A governing board may choose to establish an advisory council to support the CASA program operations. The governing board shall articulate in writing a clearly defined purpose for the advisory council, criteria for selection of members, a defined relationship between the council and the CASA program staff and a clear process for reporting to the governing board.]

[~~The~~ C. If the governing board is not a city council or county board of supervisors, the] composition of [a] local CASA [~~boards~~ governing board and any established advisory council] should include representatives of each geographic area served by the program [having . Members should represent diverse cultures, professional disciplines, public and private sectors, and have] knowledge of or an interest in court matters, child welfare and juvenile justice issues [the CASA program from both public and private sectors matters including, but not limited to, the courts, child welfare and juvenile justice].

[~~C.~~ D.] All new [governing] board members [and advisory council members] shall receive [board training an orientation] within six months of their [appointment selection]. [Training for new board members The orientation] shall include education about Virginia's CASA

[~~programs~~ programs'] mission, goals and objectives with emphasis on [governing] board member [and advisory council] roles, fiduciary responsibilities and fundraising.

[~~D. A governing board may choose to establish an advisory council to support the CASA program operations. The governing board shall articulate in writing a clearly defined purpose for the advisory council, criteria for selection of members, a defined relationship between the council and the CASA program staff and a clear process for reporting to the governing board.~~]

6VAC20-160-30. Recordkeeping and monitoring.

A. CASA programs [~~are required to~~ shall] maintain records of the activities of the CASA program by using [~~CASA Outcomes Management and Evaluation Tool (COMET)~~ an automated data system prescribed by DCJS].

B. CASA programs shall provide quarterly [~~annual and other~~] reports on the operation of the CASA program to ~~the Department of Criminal Justice Services DCJS~~ in a format provided prescribed by [~~the department.~~ DCJS]. ~~The CASA quarterly reports shall cover the following periods: July-September; October-December; January-March; April-June. These reports are due on according to a timeline [as] established by DCJS.~~

C. The quarterly reports shall include the following:

- ~~1. The number of volunteers who completed training during the quarter, the number currently assigned to cases, the number currently inactive, and the number currently unassigned;~~
- ~~2. The number of volunteer hours and a dollar equivalency for volunteer services for the quarter as prescribed by DCJS;~~
- ~~3. The number of cases served during the quarter including cases opened, closed and continued from previous quarters to ensure unduplicated numbers;~~
- ~~4. Average number of cases per volunteer; if this number exceeds three cases a rationale must be submitted to and approved by DCJS;~~
- ~~5. Breakdown of the types of cases handled during the quarter;~~
- ~~6. Breakdown of the age, sex and race of children served at the time of case assignment;~~
- ~~7. For cases closed during the quarter, the average length of time each case was assigned to the program;~~
- ~~8. For cases closed during the quarter, the average length of time each child was in out-of-home placement while assigned to the program; and~~

~~9. The number of new cases referred during the quarter awaiting assignment of a CASA volunteer or denied service due to lack of a CASA volunteer.~~

~~D. An annual report (Forms B, C, D and E) shall be due on [C. CASA programs shall provide an annual report on the operation of the program in a format prescribed by the department according to a timeline as established by DCJS.] The annual report shall include, but not be limited to, the following:~~

- ~~1. An annual statistical summary;~~
- ~~2. A program budget which contains expenditure and income projections and the sources and amounts of income from each source;~~
- ~~3. A narrative detailing the program's accomplishments, major changes in program policy or operation during the past year;~~
- ~~4. A letter from the CASA program's fiscal agent or accountant identifying who is responsible for maintaining the fiscal records, and stating where the fiscal records are routinely kept; and~~
- ~~5. A year end fiscal statement prepared in accordance with generally accepted accounting practices showing the total cash receipts and disbursements for the CASA program from the past year.~~

6VAC20-160-40. Program and personnel policies.

A. CASA [Programs programs] shall be in compliance with Standards for National CASA Association (NCASAA) Member Programs.

~~A. Programs~~ B. CASA programs shall ensure that an attorney is available for CASA directors and [governing] boards to provide legal consultation in matters pertaining to administration of the programs.

~~B. Programs~~ C. CASA [programs shall not employ as paid staff any individual who program employees shall not] concurrently [supervises supervise] children in need of services, children in need of supervision, or juvenile offender cases, either for the courts or any child serving agencies.

~~C. Programs~~ D. CASA programs shall write policies on the following and make those written policies available to the respective [court courts]:

1. The maximum [number of cases caseload] to which a volunteer may be assigned at any one time. If that number is larger than ~~three~~ two children or two sibling groups, a rationale must be submitted to and approved by DCJS.
2. Assignment of CASA staff as an advocate. In the event a CASA supervisor or staff member is required to serve as an advocate, that staff member will serve no more than two

children or two sibling groups. If that number is larger than two children or two sibling groups, a rationale must be submitted to and approved by DCJS.

~~2. 3.~~ The maximum number of volunteers to be supervised by each staff person. The staff-to-volunteer ratio calculated and reported each quarter shall not exceed [~~1~~ one] full-time equivalent staff to ~~25~~ 30 volunteers who are assigned to active cases. This ratio is reduced according to the number of hours the volunteer supervisor may be assigned to administrative or other responsibilities. A request shall be submitted to ~~and approved by DCJS for approval~~ should that ratio exceed ~~1:25~~ 1:30.

~~3. 4.~~ The review, investigation and handling of any complaints that may be received concerning CASA volunteers, including procedures for the removal of CASA volunteers should dismissal become necessary.

~~4. 5.~~ The specific factors to be used by the CASA program to accept and prioritize cases for assignment to CASA volunteers.

~~5. 6.~~ The confidentiality of the records and information to which CASA volunteers will have access, and training volunteers on the importance of confidentiality.

~~6. 7.~~ The objectives, standards, and conduct for CASA volunteers and the procedures that the CASA program [~~has implemented~~ will use] to evaluate the performance of its volunteers in order to ensure that volunteers are meeting CASA's objectives and standards of conduct.

~~7. 8.~~ The CASA volunteers' responsibility to report incidents of suspected child abuse and neglect.

~~8. 9.~~ Concerning CASA investigations, CASA's role and responsibility in assisting the guardian ad litem, and monitoring court order compliance.

~~9. 10.~~ Compliance with federal laws, including Equal Opportunity Employment, Drug-Free [~~workplae Workplace~~], Smoke-Free [~~workplae Workplace~~], and political activity statements.

~~D. E.~~ CASA programs shall [~~provide employ~~] staff capable of managing effective and efficient program operations. The following job descriptions provide for essential CASA program management:

1. [Director.] The director is responsible for accomplishing organizational goals and all managerial functions. This staff position requires a degree or equivalent experience in child welfare, public administration, counseling, human services, juvenile justice or law. [~~It is also important that this~~ The] person [should] have an understanding of and experience with community organization and volunteer program management. Generally the duties and responsibilities of the director [~~include~~ are as follows]:

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a. [~~Conducting~~ Conduct] or [~~overseeing~~ oversee] the recruitment, screening, training, supervision and evaluation of the program volunteers and staff;

b. [~~Developing~~ Develop] and [~~maintaining~~ maintain] procedures for case recordkeeping; [~~supervising~~ supervise] staff and volunteers in completing recordkeeping tasks;

c. [~~Serving~~ Serve] as a liaison to the court, [~~to their the~~] local [governing] board, [and if applicable, advisory council,] to local agencies serving children, to DCJS [~~personnel~~], [and] to the Virginia CASA Network, ~~to the Virginia CASA Association,~~ and to the National CASA Association;

d. [~~Planning~~ Plan] for and [~~managing~~ manage] program growth, development and evaluation, including special projects, budgets, annual workplans, and analysis of trends in program services;

e. [~~Representing~~ Represent] the program to networks of service providers [;] and community coalitions dealing with child welfare issues; and

f. [~~Supervising~~ Supervise] program operations including financial management, risk management, and resource development.

2. [Program/volunteer coordinator Program/Volunteer Coordinator]. Depending on program size, it may be necessary to designate a staff person having knowledge of [;] or [~~interest in~~ willingness to learn about,] court matters, child welfare and juvenile justice issues who will focus on volunteer recruitment, screening, training, case assignment, and supervision. Generally, the duties and responsibilities of the program/volunteer coordinator [~~include are as follows~~]:

a. [~~Developing~~ Develop] and [~~distributing~~ distribute] volunteer recruitment materials, and [~~conducting~~ conduct] presentations on the CASA program for the purpose of recruiting volunteers and increasing community awareness;

b. [~~Screening~~ Screen] volunteer applications and [~~conducting~~ conduct] interviews to determine [the] suitability of the applicant for the CASA program;

c. [~~Arranging~~ Arrange] training for CASA volunteers;

d. [~~Recommending~~ Recommend] trained volunteers for acceptance into the CASA program;

e. [~~Assigning~~ Assign] cases and [~~supervising~~ supervise] volunteers;

f. [~~Planning~~ Plan] and [~~implementing~~ implement] volunteer recognition events;

g. [~~Evaluating~~ Evaluate] effectiveness of volunteer recruitment, training, and case assignment; and

h. [~~Conducting~~ Conduct] annual written evaluations of each CASA volunteer.

[F. CASA programs are responsible for disseminating CASA reports according to §16.1-274 of the Code of Virginia.]

6VAC20-160-60. CASA volunteer duties and responsibilities.

A. Volunteers shall follow specific policies regarding the nature of assistance:

1. Provided to the guardian ad litem;
2. Relating to their investigative role;
3. Relating to monitoring compliance with court orders; and
4. Relating to the submission to the court of written reports.

B. The ~~CASA's~~ CASA volunteer's investigation involves fact-finding via interviews, professional reports, observation of family and social interactions, and observation of the child's environment.

C. The ~~CASA's~~ CASA volunteer's investigation involves the observation of the child's circumstances. ~~CASAs~~ CASA volunteers may conduct interviews of children; however, ~~CASAs~~ CASA volunteers are specifically prohibited from questioning or inquiring of the child information regarding a precipitating incident or allegation involving child abuse and neglect.

D. The CASA volunteer should encourage interdisciplinary coordination and cooperation, whenever possible, in an effort to develop a plan of action in conjunction with other local agencies and professionals.

6VAC20-160-70. Confidentiality.

A. All CASA volunteers shall follow specific policies regarding the following:

1. Reporting suspected child abuse and neglect, and the procedure for making such reports;;
2. Confidentiality of records and information; and
3. Contacting, interviewing and responding to persons involved in the case.

B. To the extent permitted by state and federal confidentiality ~~regulations~~ laws, CASA volunteers should share information gathered with other involved professionals whenever possible and practicable.]

6VAC20-160-80. Code of ethics.

A. CASA volunteers should conduct themselves in a professional manner, adhering to a code of ethics ~~which~~ that

is consistent with ethical principles established by local, state or national guidelines.

B. ~~[A]~~ CASA ~~[volunteer volunteers]~~ should not become inappropriately involved in the case by providing direct service delivery to any parties that could (i) lead to conflict of interest or liability or (ii) cause a child or family to become dependent on the CASA volunteer for services ~~which that~~ should be provided by other agencies or organizations.

~~[C. CASA volunteers should develop a general understanding of the code of ethics of other professionals with whom the CASA volunteer will be working.]~~

6VAC20-160-100. Screening.

A. Prior to being sworn in, CASA volunteers shall successfully complete screening procedures, which, at a minimum, shall include a written application and personal interview.

B. Pursuant to ~~§9-173.8~~ §9.1-153 of the Code of Virginia, the director shall obtain, with the approval of the court, a copy of each applicant's criminal history record or certification that no conviction data is maintained on him, in accordance with §19.2-389 of the Code of Virginia; ~~and~~ a copy of information from the central registry, maintained pursuant to ~~§63.1-248.8~~ §63.2-1515 of the Code of Virginia, on any investigation of child abuse or neglect undertaken on him or certification that no such record is maintained on him. If the volunteer applicant has lived in another state within the past ~~three~~ five years, the ~~CASA volunteer program director~~ shall also ~~provide a copy~~ obtain [copies a copy] of his criminal history record and a copy of information from the central registry from that area. An applicant ~~should~~ shall be rejected if he refuses to sign a release of information for appropriate law-enforcement checks.

C. ~~[CASA volunteers shall provide]~~ The CASA program shall contact and obtain a response from ~~]~~ three references ~~[who provided by the CASA volunteer. References]~~ will speak to ~~[their the]~~ character, judgment and suitability for the position of CASA volunteer.

D. Before the volunteer is sworn in, the director shall determine that the CASA volunteer is qualified under 6VAC20-160-90 and 6VAC20-160-120.

E. CASA volunteers shall successfully complete required training as set forth in 6VAC20-160-120.

Part V

Training Guidelines for Volunteers

6VAC20-160-120. Training.

A. To ensure that volunteers are fully prepared to perform their role as a CASA ~~[volunteer]~~ and to assume the accompanying responsibilities, each volunteer shall participate in a minimum of 30 hours of training prior to

being accepted as a CASA volunteer and assigned cases. Credit may ~~[not]~~ be given towards ~~[this the]~~ 30 hours of training for any previous training obtained by a volunteer prior to application to a local CASA program if that program uses the NCASAA Training Curriculum and documentation of completion of the training is provided.

B. The initial training curriculum for a CASA ~~[volunteer]~~ should, at a minimum, include ~~[instructions on]~~:

1. The delineation of the roles and responsibilities of a CASA ~~[volunteer]~~ focusing on the rationale for family preservation/permanency planning, discussion of the basic principles of advocacy, distinction between the appropriate and inappropriate activities for a CASA ~~[volunteer]~~, level of commitment required of a CASA ~~[volunteer]~~ involved in a case and the performance expectations, review of the case assignment process and procedures, differentiation between the role of the CASA ~~[volunteer]~~ and other ~~[child welfare]~~ system personnel, and a comprehensive list of resources available and when and how to utilize these resources;
2. The obligation of confidentiality in CASA-related matters, proper recordkeeping techniques, and the scope of state and federal statutes on the confidentiality of records;
3. The dynamics of cultural diversity and the development of cultural sensitivity by the CASA ~~[volunteer]~~;
4. The nature of child abuse and neglect, the impact of drugs and alcohol on the incidence of abuse, identification of the family conditions and patterns which lead to and perpetuate abuse and neglect, and instruction on how local departments of social services respond to and assess reports of abuse and neglect;
5. The general principles and concepts of child and family development;
6. Concepts of separation and loss, the role of foster care and permanency planning in the context of state law with consideration of the state's position on family preservation, family reunification and alternative permanent plans for a child who cannot be returned to the home;
7. Basic communication and interview skills, with guidelines for dealing with sensitive issues and the interaction between the CASA ~~[volunteer]~~ and parties to a case, and practice in conducting interviews and writing reports;
8. The juvenile court process which should include an outline of the various types of court proceedings, what transpires at each proceeding, the ~~[CASA's]~~ CASA volunteer's role, who to contact when there is a question about the court process, a glossary of legal terminology, how to prepare for a hearing, and how to prepare a report for the court; ~~[and]~~

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9. The development of advocacy skills, such as negotiation and conflict management, and how they may be used by the CASA [volunteer] to improve the conditions for a child [; and]

10. The development of a general understanding of the [code codes] of ethics of other professionals with whom the CASA volunteer will be working.

C. The initial training program shall provide an opportunity for the volunteer to observe actual court proceedings similar to those in which he would be involved as a CASA volunteer. This observation is above and beyond the hours included in the initial training.

D. CASA volunteers in training [should shall] be provided an opportunity to visit community agencies and institutions relevant to their work as a volunteer.

E. The CASA program ~~should~~ shall provide volunteers in training with the following written materials:

1. Copies of pertinent laws, regulations, and policies;
2. A statement of commitment form clearly stating the minimum expectations of the volunteer once trained; and
3. A training manual which is easy to update and revise.

F. Trainers and faculty for the initial training program and any ongoing training or continuing education ~~should~~ shall be persons with substantial knowledge, training and experience in the subject matter which they present and should also be competent in the provision of technical training to lay persons.

G. CASA program staff and others responsible for the initial training program should be attentive to the participation and progress of each trainee and be able to objectively evaluate his abilities according to criteria developed by the CASA program for that purpose. CASA directors should use the Comprehensive Training Curriculum for CASA from the ~~National CASA Association~~ NCASAA and training curricula developed within the state as a reference in designing and developing their training program.

H. The CASA program shall make available a minimum of 12 hours of in-service training annually for volunteers who are accepted into the program. These in-service programs should be designed and presented to maintain and improve the volunteer's level of knowledge and skill. Special attention shall be given to informing volunteers of changes in the law, local court procedures, the practices of other agencies involved, CASA program policies and developments in the fields of child development, child abuse and child advocacy.

I. CASA volunteers shall ~~participate in~~ complete 12 hours of continuing education annually as approved by the director. This continuing education may be in-service programs provided directly by the CASA program, or in conjunction with another agency or agencies, or may be through an

outside agency, through print or electronic media, or from other sources. All training not conducted or sponsored by the CASA program must [~~have been be~~] reviewed and approved by the CASA director for its suitability for the continuing education of CASA volunteers, and the amount of continuing education credit that is appropriate.

FORMS (Repealed.)

~~CASA Quarterly Case Summary, Form A, rev. 8/1/97.~~

~~CASA Annual Case Summary, Form B, rev. 5/97.~~

~~CASA Annual Case Summary Narrative, Form C, rev. 5/97.~~

~~CASA Annual Financial Status, Form D, rev. 5/97.~~

~~CASA Annual Projected Program Budget, Form E, rev. 5/97.~~

VA.R. Doc. No. R07-02; Filed September 4, 2008, 2:35 p.m.

FORENSIC SCIENCE BOARD

Final Regulation

<p><u>REGISTRAR'S NOTICE:</u> The following model public participation guidelines are exempt from Article 2 (§2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia pursuant to Chapter 321 of the 2008 Acts of Assembly.</p>
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Titles of Regulations: **6VAC40-10. Public Participation Guidelines (repealing 6VAC40-10-10 through 6VAC40-10-90).**

6VAC40-11. Public Participation Guidelines (adding 6VAC40-11-10 through 6VAC40-11-110).

Statutory Authority: §§2.2-4007.02 and 9.1-1110 of the Code of Virginia.

Effective Date: October 30, 2008.

Agency Contact: Michele M. Gowdy, Department Counsel, Department of Forensic Science, 700 North Fifth Street, Richmond, VA 23219, telephone (804) 786-6848, or email michele.gowdy@dfs.virginia.gov.

Summary:

The regulations comply with the legislative mandate (Chapter 321, 2008 Acts of Assembly) that agencies adopt model public participation guidelines issued by the Department of Planning and Budget by December 1, 2008. Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations.

This regulatory action repeals the current public participation guidelines and promulgates new public participation guidelines as required by Chapter 321 of the 2008 Acts of Assembly. Highlights of the public participation guidelines include (i) providing for the establishment and maintenance of notification lists of interested persons and specifying the information to be

sent to such persons; (ii) providing for public comments on regulatory action; (iii) establishing the time period during which public comments shall be accepted; (iv) providing that the plan to hold a public meeting shall be indicated in any notice of intended regulatory action; (v) providing for the appointment, when necessary, of regulatory advisory panels to provide professional specialization or technical assistance and negotiated rulemaking panels if a regulatory action is expected to be controversial; and (vi) providing for the periodic review of regulations.

CHAPTER 11 PUBLIC PARTICIPATION GUIDELINES

Part I Purpose and Definitions

6VAC40-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Forensic Science Board or the Department of Forensic Science. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

6VAC40-11-20. Definitions.

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

"Administrative Process Act" means Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the Forensic Science Board or the Department of Forensic Science, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by §2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic

list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at www.townhall.virginia.gov, which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§2.2-4031 et seq.) of the Administrative Process Act.

Part II Notification of Interested Persons

6VAC40-11-30. Notification list.

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

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C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

6VAC40-11-40. Information to be sent to persons on the notification list.

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 6VAC40-11-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).
2. A notice of the comment period on a proposed, a repropoed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.
3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to §2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

Part III Public Participation Procedures

6VAC40-11-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.
2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).
2. For a minimum of 60 calendar days following the publication of a proposed regulation.
3. For a minimum of 30 calendar days following the publication of a repropoed regulation.
4. For a minimum of 30 calendar days following the publication of a final adopted regulation.
5. For a minimum of 30 calendar days following the publication of a fast-track regulation.
6. For a minimum of 21 calendar days following the publication of a notice of periodic review.
7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with §2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to §2.2-4012 E of the Code of Virginia.

6VAC40-11-60. Petition for rulemaking.

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;
2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and
3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to §2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

6VAC40-11-70. Appointment of regulatory advisory panel.

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

6VAC40-11-80. Appointment of negotiated rulemaking panel.

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. An NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or
3. The agency determines that resolution of a controversy is unlikely.

6VAC40-11-90. Meetings.

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with §2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

6VAC40-11-100. Public hearings on regulations.

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;
2. The Governor directs the agency to hold a public hearing; or
3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

6VAC40-11-110. Periodic review of regulations.

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to §2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and
2. The requirements in §2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

VA.R. Doc. No. R09-1437; Filed September 3, 2008, 12:03 p.m.



Regulations

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Final Regulation

Title of Regulation: **9VAC20-80. Solid Waste Management Regulations (amending 9VAC20-80-10, 9VAC20-80-60, 9VAC20-80-250, 9VAC20-80-260, 9VAC20-80-270, 9VAC20-80-280, 9VAC20-80-485, 9VAC20-80-500, 9VAC20-80-510).**

Statutory Authority: §10.1-1402 of the Code of Virginia; 42 USC §6941 et seq.; 40 CFR Part 258.

Effective Date: November 1, 2008.

Agency Contact: Leslie D. Beckwith, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4123, FAX (804) 698-4327, or email ldbeckwith@deq.virginia.gov.

Summary:

The amendments (i) clarify the closure definition and procedure with particular reference to §10.1-1413.2 of the Code of Virginia landfills; (ii) address plans and actions related to the management of landfill gas and odors; (iii) provide an option for facilities to apply for research, design, and development; and (iv) streamline public participation requirements by deleting automatic public hearings for certain permit or amendment issuance process. Secondly, the proposed amendments broaden the definition of airport to include military airfields and are intended to ensure consistent wording in sections concerning safety plans and permitting timeframes. Finally, the amendments incorporate citations referencing two new statutory provisions for a landfill location that is protective with respect to water supplies and wetlands and certification of permit application consistency with local government waste management plans.

Minor changes have been made since the publication of the proposed regulation. The amendments include changes in wording identified by commenters and other minor text changes.

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

Part I Definitions

9VAC20-80-10. Definitions.

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

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

"Active life" means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities required by this chapter.

"Active portion" means that part of a facility or unit that has received or is receiving wastes and that has not been closed in accordance with this chapter.

"Agricultural waste" means all solid waste produced from farming operations.

"Airport" means, for the purpose of this chapter, a military airfield or a public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

"Anaerobic digestion" means the decomposition of organic materials in the absence of oxygen or under low oxygen concentration. Anaerobic conditions occur when gaseous oxygen is depleted during respiration. Anaerobic decomposition is not considered composting.

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

"Aquifer" means a geologic formation, group of formations, or a portion of a formation capable of yielding significant quantities of ground water to wells or springs.

"Areas susceptible to mass movement" means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the solid waste management unit, because of natural or man-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluctuation, block sliding, and rock fall.

"Ash" means the fly ash or bottom ash residual waste material produced from incineration or burning of solid waste or from any fuel combustion.

"Base flood" see "Hundred-year flood."

"Bedrock" means the rock that underlies soil or other unconsolidated, superficial material at a site.

"Benchmark" means a permanent monument constructed of concrete and set in the ground surface below the frostline with identifying information clearly affixed to it. Identifying information will include the designation of the benchmark as well as the elevation and coordinates on the local or Virginia state grid system.

"Beneficial use" means a use which is of benefit as a substitute for natural or commercial products and does not contribute to adverse effects on health or environment.

"Bioremediation" means remediation of contaminated media by the manipulation of biological organisms to enhance the degradation of contaminants.

"Bird hazard" means an increase in the likelihood of bird/aircraft collisions that may cause damage to the aircraft or injury to its occupants.

"Board" means the Virginia Waste Management Board.

"Bottom ash" means ash or slag that has been discharged from the bottom of the combustion unit after combustion.

"By-product material" means a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. By-product does not include a co-product that is produced for the general public's use and is ordinarily used in the form that is produced by the process.

"Captive industrial landfill" means an industrial landfill that is located on property owned or controlled by the generator of the waste disposed of in that landfill.

"Clean wood" means uncontaminated natural or untreated wood. Clean wood includes but is not limited to by-products of harvesting activities conducted for forest management or commercial logging, or mill residues consisting of bark, chips, edgings, sawdust, shavings or slabs. It does not include wood that has been treated, adulterated, or chemically changed in some way; treated with glues, binders, or resins; or painted, stained or coated.

"Closed facility" means a solid waste management facility which has been properly secured in accordance with the requirements of this chapter.

"Closure" means ~~the act of securing a solid waste management facility pursuant to the requirements of this chapter that point in time when a [waste] unit of a permitted landfill is filled, capped, certified as final covered by a professional engineer, inspected, and [the closure activities are accepted~~ closure notification is performed] by the [Department of Environmental Quality (DEQ) department in accordance with 9VAC20-80-250 E 6, 9VAC20-80-260 E 5, or 9VAC20-80-270 E 5].

"Coal combustion by-products" means residuals, including fly ash, bottom ash, boiler slag, and flue gas emission control waste produced by coal-fired electrical or steam generating units.

"Combustion unit" means an incinerator, waste heat recovery unit or boiler.

"Commercial chemical product" means a chemical substance which is manufactured or formulated for

commercial, agricultural or manufacturing use. This term includes a manufacturing chemical intermediate, off-specification chemical product, which, if it met specification, would have been a chemical product or intermediate. It includes any residues remaining in the container or the inner liner removed from the container that has been used to hold any of the above which have not been removed using the practices commonly employed to remove materials from that type of container and has more than one inch of residue remaining.

"Commercial waste" means all solid waste generated by establishments engaged in business operations other than manufacturing or construction. This category includes, but is not limited to, solid waste resulting from the operation of stores, markets, office buildings, restaurants and shopping centers.

"Community activity" means the normal activities taking place within a local community to include residential, site preparation and construction, government, commercial, institutional, and industrial activities.

"Compliance schedule" means a time schedule for measures to be employed on a solid waste management facility which will ultimately upgrade it to conform to this chapter.

"Composite liner system" means a system designed and constructed to meet the requirements of 9VAC20-80-250 B 9.

"Compost" means a stabilized organic product produced by a controlled aerobic decomposition process in such a manner that the product can be handled, stored, and/or applied to the land without adversely affecting public health or the environment. Composted sludge shall be as specified in 12VAC5-581-630.

"Composting" means the manipulation of the natural aerobic process of decomposition of organic materials to increase the rate of decomposition.

"Conditionally exempt small quantity generator" means a generator of hazardous waste who has been so defined in 40 CFR 261.5. That section applies to the persons who generate in that calendar month no more than 100 kilograms of hazardous waste or 1 kilogram of acutely hazardous waste.

"Confined composting system" means a composting process that takes place inside an enclosed container.

"Construction/Demolition/Debris landfill" or "CDD landfill" means a land burial facility engineered, constructed and operated to contain and isolate construction waste, demolition waste, debris waste, or combinations of the above solid wastes.

"Construction waste" means solid waste which is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings, and other structures. Construction wastes include, but are not limited to

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lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, paving materials, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids and garbage are not construction wastes.

"Contaminated soil" means, for the purposes of this chapter, a soil that, as a result of a release or human usage, has absorbed or adsorbed physical, chemical, or radiological substances at concentrations above those consistent with nearby undisturbed soil or natural earth materials.

"Container" means any portable device in which a material is stored, transported, treated, or otherwise handled and includes transport vehicles that are containers themselves (e.g., tank trucks) and containers placed on or in a transport vehicle.

"Containment structure" means a closed vessel such as a tank or cylinder.

"Convenience center" means a collection point for the temporary storage of solid waste provided for individual solid waste generators who choose to transport solid waste generated on their own premises to an established centralized point, rather than directly to a disposal facility. To be classified as a convenience center, the collection point may not receive waste from collection vehicles that have collected waste from more than one real property owner. A convenience center shall be on a system of regularly scheduled collections.

"Cover material" means compactable soil or other approved material which is used to blanket solid waste in a landfill.

"Debris waste" means wastes resulting from land clearing operations. Debris wastes include, but are not limited to stumps, wood, brush, leaves, soil, and road spoils.

"Demolition waste" means that solid waste which is produced by the destruction of structures and their foundations and includes the same materials as construction wastes.

"Department" means the Virginia Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality. For purposes of submissions to the director as specified in the Waste Management Act, submissions may be made to the department.

"Discard" means to abandon, dispose of, burn, incinerate, accumulate, store or treat before or instead of being abandoned, disposed of, burned or incinerated.

"Discarded material" means a material which is:

A. Abandoned by being:

1. Disposed of;

2. Burned or incinerated; or

3. Accumulated, stored or treated (but not used, reused, or reclaimed) before or in lieu of being abandoned by being disposed of, burned or incinerated;

B. Recycled used, reused, or reclaimed material as defined in this part; or

C. Considered inherently waste-like as described in 9VAC20-80-140 C.

"Discharge of dredged material" means any release of material that is excavated or dredged from the waters of the U.S. or state waters and returned to the waters of the U.S. or state waters.

"Disclosure statement" means a sworn statement or affirmation, in such form as may be required by the director (see DEQ Form DISC-01 and 02 (Disclosure Statement), which includes:

1. The full name, business address, and social security number of all key personnel;

2. The full name and business address of any entity, other than natural person, that collects, transports, treats, stores, or disposes of solid waste or hazardous waste in which any key personnel holds an equity interest of five percent or more;

3. A description of the business experience of all key personnel listed in the disclosure statement;

4. A listing of all permits or licenses required for the collection, transportation, treatment, storage, or disposal of solid waste or hazardous waste issued to or held by any key personnel within the past 10 years;

5. A listing and explanation of any notices of violation, prosecution, administrative orders (whether by consent or otherwise), license or permit suspensions or revocations, or enforcement actions of any sort by any state, federal or local authority, within the past ten years, which are pending or have concluded with a finding of violation or entry of a consent agreement, regarding an allegation of civil or criminal violation of any law, regulation or requirement relating to the collection, transportation, treatment, storage or disposal of solid waste or hazardous waste by any key personnel, and an itemized list of all convictions within ten years of key personnel of any of the following crimes punishable as felonies under the laws of the Commonwealth or the equivalent thereof under the laws of any other jurisdiction: murder; kidnapping; gambling; robbery; bribery; extortion; criminal usury; arson; burglary; theft and related crimes; forgery and fraudulent practices; fraud in the offering, sale, or purchase of securities; alteration of motor vehicle identification numbers; unlawful manufacture, purchase, use or transfer of firearms; unlawful possession or use of destructive

devices or explosives; violation of the Drug Control Act, Chapter 34 (§54.1-3400 et seq.) of Title 54.1 of the Code of Virginia; racketeering; or violation of antitrust laws;

6. A listing of all agencies outside the Commonwealth which have regulatory responsibility over the applicant or have issued any environmental permit or license to the applicant within the past ten years, in connection with the applicant's collection, transportation, treatment, storage or disposal of solid waste or hazardous waste;

7. Any other information about the applicant and the key personnel that the director may require that reasonably relates to the qualifications and ability of the key personnel or the applicant to lawfully and competently operate a solid waste management facility in Virginia; and

8. The full name and business address of any member of the local governing body or planning commission in which the solid waste management facility is located or proposed to be located, who holds an equity interest in the facility.

"Displacement" means the relative movement of any two sides of a fault measured in any direction.

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

"EPA" means the United States Environmental Protection Agency.

"Existing unit" means any permitted solid waste management unit that is receiving or has received solid waste and has not been closed in accordance with the regulations in effect at the time of closure. Waste placement in existing units shall be consistent with past operating practices, the permit, or modified practices to ensure good management.

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

"Facility boundary" means the boundary of the solid waste management facility approved to manage solid waste as defined in Part A of the permit application. For unpermitted solid waste management facilities as defined in 9VAC20-80-200, the facility boundary is the boundary of the property where the solid waste is located. For facilities with a permit-by-rule (PBR) the facility boundary is the boundary of the property where the permit-by-rule activity occurs.

"Facility structure" means any building, shed, or utility or drainage line on the facility.

"Fault" means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

"Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters, including lowlying areas of offshore islands where flooding occurs.

"Fly ash" means ash particulate collected from air pollution attenuation devices on combustion units.

"Food chain crops" means crops grown for human consumption, tobacco, and crops grown for pasture and forage or feed for animals whose products are consumed by humans.

"Fossil fuel combustion products" means coal combustion byproducts as defined in this regulation, coal combustion byproducts generated at facilities with fluidized bed combustion technology, petroleum coke combustion byproducts, byproducts from the combustion of oil, byproducts from the combustion of natural gas, and byproducts from the combustion of mixtures of coal and "other fuels" (i.e., co-burning of coal with "other fuels" where coal is at least 50% of the total fuel). For purposes of this definition, "other fuels" means waste-derived fuel product, auto shredder fluff, wood wastes, coal mill rejects, peat, tall oil, tire-derived fuel, deionizer resins, and used oil.

"Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure as determined by the Paint Filter Liquids Test, Method 9095, U.S. Environmental Protection Agency, Publication SW-846.

"Garbage" means readily putrescible discarded materials composed of animal, vegetable or other organic matter.

"Gas condensate" means the liquid generated as a result of gas control or recovery processes at the solid waste management unit.

"Ground water" means water below the land surface in a zone of saturation.

"Hazardous constituent" means a constituent of solid waste listed in Part V, Table 5.1.

"Hazardous waste" means a "hazardous waste" as described by the Virginia Hazardous Waste Management Regulations (9VAC20-60).

"Holocene" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present.

"Home use" means the use of compost for growing plants which is produced and used on a privately owned residential site.

"Host agreement" means any lease, contract, agreement or land use permit entered into or issued by the locality in which the landfill is situated that includes terms or conditions governing the operation of the landfill.

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"Household hazardous waste" means any waste material derived from households (including single and multiple residences, hotels, motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas) which, except for the fact that it is derived from a household, would otherwise be classified as a hazardous waste in accordance with 9VAC20-60.

"Household waste" means any waste material, including garbage, trash and refuse, derived from households. Households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. Household wastes do not include sanitary waste in septic tanks (septage) which is regulated by other state agencies.

"Hundred-year flood" means a flood that has a 1.0% or greater chance of recurring in any given year or a flood of magnitude equaled or exceeded on the average only once in a hundred years on the average over a significantly long period.

"Ignitable waste" means: (i) Liquids having a flash point of less than 140°F (60°C) as determined by the methods specified in the Virginia Hazardous Waste Management Regulations (9VAC20-60); (ii) nonliquids liable to cause fires through friction, absorption of moisture, spontaneous chemical change or retained heat from manufacturing or liable, when ignited, to burn so vigorously and persistently as to create a hazard; (iii) ignitable compressed gases, oxidizers, or both.

"Incineration" means the controlled combustion of solid waste for disposal.

"Incinerator" means a facility or device designed for the treatment of solid waste by combustion.

"Industrial waste" means any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: Electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

"Industrial waste landfill" means a solid waste landfill used primarily for the disposal of a specific industrial waste or a waste which is a by-product of a production process.

"Inert waste" means solid waste which is physically, chemically and biologically stable from further degradation and considered to be nonreactive. Inert wastes include rubble, concrete, broken bricks, bricks, and blocks.

"Injection well" means, for the purposes of this chapter, a well or bore hole into which fluids are injected into selected geological horizons.

"Institutional waste" means all solid waste emanating from institutions such as, but not limited to, hospitals, nursing homes, orphanages, and public or private schools. It can include regulated medical waste from health care facilities and research facilities that must be managed as a regulated medical waste.

"Karst terranes" means areas where karst topography, with its characteristic surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terranes include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

"Key personnel" means the applicant itself and any person employed by the applicant in a managerial capacity, or empowered to make discretionary decisions, with respect to the solid waste or hazardous waste operations of the applicant in Virginia, but shall not include employees exclusively engaged in the physical or mechanical collection, transportation, treatment, storage, or disposal of solid or hazardous waste and such other employees as the director may designate by regulation. If the applicant has not previously conducted solid waste or hazardous waste operations in Virginia, the term also includes any officer, director, partner of the applicant, or any holder of five percent or more of the equity or debt of the applicant. If any holder of five percent or more of the equity or debt of the applicant or of any key personnel is not a natural person, the term includes all key personnel of that entity, provided that where such entity is a chartered lending institution or a reporting company under the Federal Security and Exchange Act of 1934, the term does not include key personnel of such entity. Provided further that the term means the chief executive officer of any agency of the United States or of any agency or political subdivision of the Commonwealth, and all key personnel of any person, other than a natural person, that operates a landfill or other facility for the disposal, treatment, or storage of nonhazardous solid waste under contract with or for one of those governmental entities.

"Lagoon" means a body of water or surface impoundment designed to manage or treat waste water.

"Land application unit" means an area where solid or liquid wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for agricultural purposes or for treatment or disposal.

"Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill.

"Landfill disposal area" means the area within the facility boundary of a landfill in which solid waste is buried or permitted for actual burial.

"Landfill gas" means gas generated as a byproduct of the decomposition of organic materials in a landfill. Landfill gas consists primarily of methane and carbon dioxide.

"Lateral expansion" means a horizontal expansion of the waste management unit boundary.

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

"Lead acid battery" means, for the purposes of this chapter, any wet cell battery.

"Lift" means the daily landfill layer of compacted solid waste plus the cover material.

"Liquid waste" means any waste material that is determined to contain "free liquids" as defined by this chapter.

"Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth's surface.

"Litter" means, for purposes of this chapter, any solid waste that is discarded or scattered about a solid waste management facility outside the immediate working area.

"Lower explosive limit" means the lowest concentration by volume of a mixture of explosive gases in air that will propagate a flame at 25°C and at atmospheric pressure.

"Manufacturing or mining by-product" means a material that is not one of the primary products of a particular manufacturing or mining operation, but is a secondary and incidental product of the particular operation and would not be solely and separately manufactured or mined by the particular manufacturing or mining operation. The term does not include an intermediate manufacturing or mining product which results from one of the steps in a manufacturing or mining process and is typically processed through the next process step within a short time.

"Materials recovery facility" means a solid waste management facility for the collection, processing and

recovery of material such as metals from solid waste or for the production of a fuel from solid waste. This does not include the production of a waste-derived fuel product.

"Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90% or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

"Monitoring" means all methods, procedures and techniques used to systematically analyze, inspect and collect data on operational parameters of the facility or on the quality of air, ground water, surface water, and soils.

"Monitoring wells" means a well point below the ground surface for the purpose of obtaining periodic water samples from ground water for quantitative and qualitative analysis.

"Mulch" means woody waste consisting of stumps, trees, limbs, branches, bark, leaves and other clean wood waste which has undergone size reduction by grinding, shredding, or chipping, and is distributed to the general public for landscaping purposes or other horticultural uses except composting as defined and regulated under this chapter or the Vegetative Waste Management and Yard Waste Composting Regulations (9VAC20-101).

"Municipal solid waste" means that waste which is normally composed of residential, commercial, and institutional solid waste and residues derived from combustion of these wastes.

"New solid waste management facility" means a facility or a portion of a facility that was not included in a previous determination of site suitability (Part A approval).

"Nonsudden events" mean those events continuing for an extended time period or for long term releases of contaminants into the environment which take place over time such as leachate contamination of ground water.

"Nuisance" means an activity which unreasonably interferes with an individual's or the public's comfort, convenience or enjoyment such that it interferes with the rights of others by causing damage, annoyance, or inconvenience.

"Off-site" means any site that does not meet the definition of on-site as defined in this part.

"On-site" means the same or geographically contiguous property, which may be divided by public or private right-of-way, provided the entrance and exit to the facility are controlled by the owner or the operator of the facility. Noncontiguous properties owned by the same person, but connected by a right-of-way which he controls and to which the public does not have access, are also considered on-site property.

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"Open burning" means the combustion of solid waste without:

- ~~A.~~ 1. Control of combustion air to maintain adequate temperature for efficient combustion;
- ~~B.~~ 2. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and
- ~~C.~~ 3. Control of the combustion products' emission.

"Open dump" means a site on which any solid waste is placed, discharged, deposited, injected, dumped or spilled so as to present a threat of a release of harmful substances into the environment or present a hazard to human health. Such a site is subject to the Open Dump Criteria in 9VAC20-80-180.

"Operating Record" means records required to be maintained in accordance with the facility permit or this part (see 9VAC20-80-570).

"Operator" means the person responsible for the overall operation and site management of a solid waste management facility.

"Owner" means the person who owns a solid waste management facility or part of a solid waste management facility.

"Permit" means the written permission of the director to own, operate or construct a solid waste management facility.

"PCB" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contain such substance (see 40 CFR 761.3).

"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, vessel or other floating craft, from which pollutants are or may be discharged. Return flows from irrigated agriculture are not included.

"Pollutant" means any substance which causes or contributes to, or may cause or contribute to, environmental degradation when discharged into the environment.

"Poor foundation conditions" means those areas where features exist which indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of a solid waste management unit.

"Post-closure" means the requirements placed upon solid waste disposal facilities after closure to ensure environmental and public health safety for a specified number of years after closure.

"Private solid waste disposal facility" means any solid waste disposal facility including, without limitations, all solid waste disposal facilities other than facilities owned or operated by a local government, combination of local governments or public service authority.

"Processing" means preparation, treatment, or conversion of waste by a series of actions, changes, or functions that bring about a desired end result.

"Progressive cover" means cover material placed over the working face of a solid waste disposal facility advancing over the deposited waste as new wastes are added keeping the exposed area to a minimum.

"Public land" means any land, used for any purpose, that is leased or owned by a governmental entity.

"Putrescible waste" means solid waste which contains organic material capable of being decomposed by microorganisms and cause odors.

"Qualified ground water scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training and experience in ground water hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university programs that enable that individual to make sound professional judgements regarding ground water monitoring, contaminant fate and transport, and corrective action.

"RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 USC §6901 et seq.), the Hazardous and Solid Waste Amendments of 1984, and any other applicable amendments to these laws.

"RDF (Refuse Derived Fuel)" means solid waste that is processed to be used as fuel to produce energy.

"Reclaimed material" means a material that is processed or reprocessed to recover a usable product or is regenerated to a usable form.

"Refuse" means all solid waste products having the character of solids rather than liquids and which are composed wholly or partially of materials such as garbage, trash, rubbish, litter, residues from clean up of spills or contamination, or other discarded materials.

"Registered professional engineer" means an engineer licensed to practice engineering in the Commonwealth as defined by the rules and regulations set forth by the Board of Architects, Professional Engineers, Land Surveyors, and Landscape Architects (18VAC10-20).

"Regulated hazardous waste" means a solid waste that is a hazardous waste, as defined in the Virginia Hazardous Waste

Management Regulations (9VAC20-60), that is not excluded from those regulations as a hazardous waste.

"Regulated medical waste" means solid wastes so defined by the Regulated Medical Waste Management Regulations (9VAC20-120) as promulgated by the Virginia Waste Management Board.

"Release" means, for the purpose of this chapter, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, dumping, or disposing into the environment solid wastes or hazardous constituents of solid wastes (including the abandonment or discarding of barrels, containers, and other closed receptacles containing solid waste). This definition does not include: any release which results in exposure to persons solely within a workplace; release of source, by-product or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954 (68 Stat. 923); and the normal application of fertilizer. For the purpose of this chapter, release also means substantial threat of release.

"Remediation waste" means all solid waste, including all media (ground water, surface water, soils and sediments) and debris, that are managed for the purpose of remediating a site under Part IV (9VAC20-80-170 et seq.) or Part V (9VAC20-80-240 et seq.) of this chapter or under the Voluntary Remediation Regulations (9VAC20-160). For a given facility, remediation wastes may originate only from within the boundary of that facility, and may include wastes managed as a result of remediation beyond the boundary of the facility. Hazardous wastes as defined in 9VAC20-60, as well as "new" or "as generated" wastes, are excluded from this definition.

"Remediation waste management unit" or "RWMU" means an area within a facility that is designated by the director for the purpose of implementing remedial activities required under Part IV or V of this chapter or under the Voluntary Remediation Regulations (9VAC20-160). An RWMU shall only be used for the management of remediation wastes pursuant to implementing such remedial activities at the facility.

"Residential waste" means household waste.

"Resource recovery system" means a solid waste management system which provides for collection, separation, use, reuse, or reclamation of solid wastes, recovery of energy and disposal of non-recoverable waste residues.

"Rubbish" means combustible or slowly putrescible discarded materials which include but are not limited to trees, wood, leaves, trimmings from shrubs or trees, printed matter, plastic and paper products, grass, rags and other combustible or slowly putrescible materials not included under the term "garbage."

"Runoff" means any rainwater, leachate, or other liquid that drains over land from any part of a solid waste management facility.

"Runon" means any rainwater, wastewater, leachate, or other liquid that drains over land onto any part of the solid waste management facility.

"Salvage" means the authorized, controlled removal of waste materials from a solid waste management facility.

"Sanitary landfill" means an engineered land burial facility for the disposal of household waste which is so located, designed, constructed and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, hazardous waste from conditionally exempt small quantity generators, construction demolition debris, and nonhazardous industrial solid waste.

"Saturated zone" means that part of the earth's crust in which all voids are filled with water.

"Scavenging" means the unauthorized or uncontrolled removal of waste materials from a solid waste management facility.

"Scrap metal" means bits and pieces of metal parts such as bars, rods, wire, empty containers, or metal pieces that may be combined together with bolts or soldering which are discarded material and can be used, reused, or reclaimed.

"Secondary containment" means an enclosure into which a container or tank is placed for the purpose of preventing discharge of wastes to the environment.

"Seismic impact zone" means an area with a 10% or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in 250 years.

"Semiannual" means an interval corresponding to approximately 180 days. For the purposes of scheduling monitoring activities, sampling within 30 days of the 180-day interval will be considered semiannual.

"Site" means all land and structures, other appurtenances, and improvements on them used for treating, storing, and disposing of solid waste. This term includes adjacent land within the facility boundary used for the utility systems such as repair, storage, shipping or processing areas, or other areas incident to the management of solid waste.

(Note: This term includes all sites whether they are planned and managed facilities or are open dumps.)

"Sludge" means any solid, semi-solid or liquid waste generated from a municipal, commercial or industrial wastewater treatment plant, water supply treatment plant, or

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air pollution control facility exclusive of treated effluent from a wastewater treatment plant.

"Small landfill" means a landfill that disposed of 100 tons/day or less of solid waste during a representative period prior to October 9, 1993, and did not dispose of more than an average of 100 tons/day of solid waste each month between October 9, 1993, and April 9, 1994.

"Solid waste" means any of those materials defined as 'solid waste' in Part III (9VAC20-80-140 et seq.) of this chapter.

"Solid waste boundary" means the outermost perimeter of the solid waste (vertical projection on a horizontal plane) as it would exist at completion of the disposal activity within the facility boundary.

"Solid waste disposal area" means the area within the facility boundary of a landfill facility in which solid waste is buried.

"Solid waste disposal facility" means a solid waste management facility at which solid waste will remain after closure.

"Solid waste management facility ("SWMF")" means a site used for planned treating, storing, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal units.

"Source separation" means separation of recyclable materials by the waste generator of materials that are collected for use, reuse or reclamation.

"Special wastes" mean solid wastes that are difficult to handle, require special precautions because of hazardous properties or the nature of the waste creates waste management problems in normal operations. (See Part VIII (9VAC20-80-630 et seq.) of this chapter.)

"Speculatively accumulated material" means any material that is accumulated before being used, reused, or reclaimed or in anticipation of potential use, reuse, or reclamation. Materials are not being accumulated speculatively when they can be used, reused or reclaimed, have a feasible means of use, reuse, or reclamation available and 75% of the materials accumulated are being removed from the facility annually.

"Stabilized compost" means a compost that has passed the stability criteria outlined in 9VAC20-80-330 D 2 a.

"State solid waste management plan ("State Plan" or "Plan")" means the plan of the Virginia Waste Management Board that sets forth solid waste management goals and objectives and describes planning and regulatory concepts to be employed by the Commonwealth.

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

"Storage" means the holding of waste, at the end of which the waste is treated, disposed, or stored elsewhere.

"Structural components of a solid waste disposal unit" means liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of the solid waste disposal facility that is necessary for protection of human health and the environment.

"Structural fill" means an engineered fill with a projected beneficial end use, constructed using soil or coal combustion by-products spread and compacted with proper equipment and covered with a vegetated soil cap.

"Sudden event" means a one time, single event such as a sudden collapse or a sudden, quick release of contaminants to the environment. An example would be the sudden loss of leachate from an impoundment into a surface stream caused by failure of a containment structure.

"Surface impoundment or 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), that is designed to hold an accumulation of liquid wastes or wastes containing free liquids and that is not an injection well.

"SW-846" means Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, EPA Publication SW-846, Second Edition, 1982 as amended by Update I (April, 1984), and Update II (April, 1985) and the third edition, November, 1986, as amended.

"Tank" means a stationary device, designed to contain an accumulation of liquid or semi-liquid components of solid waste that is constructed primarily of non-earthen materials that provide structural support.

"TEF" or "Toxicity Equivalency Factor" means a factor developed to account for different toxicities of structural isomers of polychlorinated dibenzodioxins and dibenzofurans and to relate them to the toxicity of 2,3,7,8-tetrachloro dibenzo-p-dioxin.

"Terminal" means the location of transportation facilities such as classification yards, docks, airports, management offices, storage sheds, and freight or passenger stations, where solid waste that is being transported may be loaded, unloaded, transferred, or temporarily stored.

"Thermal treatment" means the treatment of solid waste in a device which uses elevated temperature as the primary means to change the chemical, physical, or biological character, or composition of the solid waste.

"Tire chip" means a material processed from waste tires that is a nominal two square inches in size, and ranges from 1/4

inches to 4 inches in any dimension. Tire chips contain no wire protruding more than 1/4 inch.

"Tire shred" means a material processed from waste tires that is a nominal 40 square inches in size, and ranges from 4 inches to 10 inches in any dimension.

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

"Trash" means combustible and noncombustible discarded materials and is used interchangeably with the term rubbish.

"Treatment" means, for the purpose of this chapter, any method, technique or process, including but not limited to incineration, designed to change the physical, chemical or biological character or composition of any waste to render it more stable, safer for transport, or more amenable to use, reuse, reclamation or recovery.

"Unadulterated wood" means wood that is not painted, nor treated with chemicals such as preservatives nor mixed with other wastes.

"Underground source of drinking water" means an aquifer or its portion:

- A. Which contains water suitable for human consumption; or
- B. In which the ground water contains less than 10,000 mg/liter total dissolved solids.

"Unit" means a discrete area of land used for the management of solid waste.

"Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and Karst terranes.

"Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as, lower aquifers that are hydraulically interconnected with this aquifer within the facility boundary.

"Used or reused material" means a material which is either:

- A. Employed as an ingredient (including use as an intermediate) in a process to make a product, excepting those materials possessing distinct components that are recovered as separate end products; or
- B. Employed in a particular function or application as an effective substitute for a commercial product or natural resources.

"Vector" means a living animal, insect or other arthropod which transmits an infectious disease from one organism to another.

"Vegetative waste" means decomposable materials generated by yard and lawn care or land clearing activities and includes, but is not limited to, leaves, grass trimmings, woody wastes such as shrub and tree prunings, bark, limbs, roots, and stumps. For more detail see 9VAC20-101.

"Vertical design capacity" means the maximum design elevation specified in the facility's permit or if none is specified in the permit, the maximum elevation based on a 3:1 slope from the waste management unit boundary.

"VPDES ("Virginia Pollutant Discharge Elimination System")" means the Virginia system for the issuance of permits pursuant to the Permit Regulation (9VAC25-31), the State Water Control Law, and §402 of the Clean Water Act (33 U.S.C. USC §1251 et seq.).

"Washout" means carrying away of solid waste by waters of the base flood.

"Waste derived fuel product" means a solid waste or combination of solid wastes that have been treated (altered physically, chemically, or biologically) to produce a fuel product with a minimum heating value of 5,000 BTU/lb. Solid wastes used to produce a waste derived fuel product must have a heating value, or act as binders, and may not be added to the fuel for the purpose of disposal. Waste ingredients may not be listed or characteristic hazardous wastes. The fuel product must be stable at ambient temperature, and not degraded by exposure to the elements. This material may not be "Refuse Derived Fuel (RDF)" as defined in 9VAC5-40-890.

"Waste management unit boundary" means the vertical surface located at the boundary line of the unit. This vertical surface extends down into the uppermost aquifer.

"Waste needing special handling (special waste)" means any solid waste which requires extra or unusual management when introduced into a solid waste management facility to insure protection of human health or the environment.

"Waste pile" means any non-containerized accumulation of nonflowing, solid waste that is used for treatment or storage.

"Waste tire" means a tire that has been discarded because it is no longer suitable for its original intended purpose because of wear, damage or defect. (See 9VAC20-150 for other definitions dealing with the waste tire program.)

"Wastewaters" are, for the purpose of this chapter, wastes that contain less than 1.0% by weight total organic carbon (TOC) and less than 1.0% by weight total suspended solids (TSS).

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"Water pollution" means such alteration of the physical, chemical, or biological properties of any state water as will or is likely to create a nuisance or render such waters:

- A. Harmful or detrimental or injurious to the public health, safety, or welfare, or to the health of animals, fish, or aquatic life or plants;
- B. Unsuitable, with reasonable treatment, for use as present or possible future sources of public water supply; or
- C. Unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that:
 - 1. An alteration of the physical, chemical, or biological properties 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 or discharge or deposit to state waters by other persons is sufficient to cause pollution;
 - 2. The discharge of untreated sewage by any person into state waters; and
 - 3. The contribution to the degradation of water quality standards duly established by the State Water Control Board;

are "pollution" for the terms and purposes of this chapter.

"Water table" means the upper surface of the zone of saturation in ground waters in which the hydrostatic pressure is equal to the atmospheric pressure.

"Waters of the United States or waters of the U.S." means:

- A. 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;
- B. All interstate waters, including interstate "wetlands";
- C. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mud flats, sand flats, "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:
 - 1. Any such waters which are or could be used by interstate or foreign travelers for recreational or other purposes;
 - 2. Any such waters from which fish or shellfish are or could be taken and sold in interstate or foreign commerce;
 - 3. Any such waters which are used or could be used for industrial purposes by industries in interstate commerce;

- 4. All impoundments of waters otherwise defined as waters of the United States 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.

"Wetlands" mean those areas that are defined by the federal regulations under 33 CFR Part 328.

"White goods" means any stoves, washers, hot water heaters, and other large appliances.

"Working face" means that area within a landfill which is actively receiving solid waste for compaction and cover.

"Yard waste" means decomposable waste materials generated by yard and lawn care and includes leaves, grass trimmings, brush, wood chips, and shrub and tree trimmings. Yard waste shall not include roots or stumps that exceed six inches in diameter.

9VAC20-80-60. Applicability of chapter.

A. This chapter applies to all persons who manage or dispose of solid wastes as defined in Part III (9VAC20-80-140 et seq.) of this chapter.

B. All facilities that were permitted prior to March 15, 1993, and upon which solid waste has been disposed of prior to October 9, 1993, may continue to receive solid waste until they have reached their vertical design capacity or until the closure date established pursuant to §10.1-1413.2 of the Code of Virginia, in [~~Tables Table~~] 2.1 [~~and 2.2~~], provided:

~~Note: Municipal solid waste landfills (sanitary landfills) are subject to prioritization and a schedule for closure pursuant to §10.1-1413.2 of the Code of Virginia.~~

- 1. The facility is in compliance with the requirements for liners and leachate control in effect at the time of permit issuance.
- 2. On or before October 9, 1993, the owner or operator of the solid waste management facility has submitted to the director:
 - a. An acknowledgment that the owner or operator is familiar with state and federal law and regulations pertaining to solid waste management facilities operating after October 9, 1993, including post-closure care, corrective action and financial responsibility requirements;
 - b. A statement signed by a registered professional engineer that he has reviewed the regulations established by the department for solid waste management facilities, including the open dump criteria contained therein, that

he has inspected the facility and examined the monitoring data compiled for the facility in accordance with applicable regulations and that, on the basis of his inspection and review, he has concluded:

- (1) That the facility is not an open dump;
 - (2) That the facility does not pose a substantial present or potential hazard to human health and the environment; and
 - (3) That the leachate or residues from the facility do not pose a threat of contamination or pollution of the air, surface water or ground water in a manner constituting an open dump or resulting in a substantial present or potential hazard to human health or the environment; and
- c. A statement signed by the owner or operator:

- (1) That the facility complies with applicable financial assurance regulations; and
- (2) Estimating when the facility will reach its vertical design capacity.

3. Enlargement or closure of [these] facilities [: shall conform with the following subconditions:]

- a. The facility may not be enlarged prematurely to avoid compliance with this chapter when such enlargement is not consistent with past operating practices, the permit or modified operating practices to ensure good management.
- b. The facility shall not dispose of solid waste in any portion of a disposal area that has received final cover or has not received waste for a period of one year, in accordance with 9VAC20-80-250 E. The facility shall

notify the department in writing within 30 days when an area has received final cover or has not received waste for a one-year period, in accordance with 9VAC20-80-250 E. [~~e. A~~ However, a] facility may apply for a permit, and if approved, can construct and operate a new cell that overlays ("piggybacks") over a closed area in accordance with the permit requirements of 9VAC20-80-250.

[~~d. c.~~] The facilities subject to the restrictions in 9VAC20-80-60 B are listed in [~~Tables Table~~] 2.1 [~~and 2.2~~]. The closure dates have already been established in: Final Prioritization and Closure Schedule for HB 1205 Disposal Areas (DEQ, September 2001). The publication of these tables is for the convenience of the regulated community and does not change established dates. Any facility including, but not limited to, those listed in Table [~~2.2 2.1~~], must cease operation if that facility meets any of the open dump criteria listed in 9VAC20-80-180.

[~~e. d.~~] Those facilities assigned a closure date in accordance with §10.1-1413.2 of the Code of Virginia shall designate on a map, plat, diagram or other engineered drawing, areas in which waste will be disposed [until the latest cessation of waste acceptance date as listed in Table 2.2 is achieved in accordance with Table 2.1]. This map or plat shall be placed in the operating record and a copy shall be submitted [upon request] to the department [~~for its records~~ in order to track the progress of closure of these facilities. If the facility already has provided this information under 9VAC20-80-250, then the facility may refer to that information].

[~~TABLE 2.1~~
House Bill (HB) 1205 Landfills in Postclosure Care

<u>Solid Waste Permit Number</u>	<u>Site Name</u>	<u>Location</u>	<u>Department Regional Office[†]</u>	<u>Date Postclosure Care Commenced</u>
<u>21</u>	<u>Jolivue Landfill</u>	<u>Augusta County</u>	<u>VRO</u>	<u>12/16/05</u>
<u>62</u>	<u>Rockingham County Sanitary Landfill</u>	<u>Rockingham County</u>	<u>VRO</u>	<u>06/24/05</u>
<u>125</u>	<u>Ivy Sanitary Landfill</u>	<u>Albemarle County</u>	<u>VRO</u>	<u>08/06/04</u>
<u>314</u>	<u>Hanover County 301 Solid Waste Facility</u>	<u>Hanover County</u>	<u>PRO</u>	<u>01/12/04</u>
<u>397</u>	<u>Montgomery Regional Solid Waste Authority Sanitary Landfill</u>	<u>Montgomery County</u>	<u>WCRO</u>	<u>04/22/02</u>
<u>469</u>	<u>Shenandoah County Sanitary Landfill</u>	<u>Shenandoah County</u>	<u>VRO</u>	<u>01/07/05</u>

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<u>589³</u> (formerly #74)	<u>R-Board Sanitary Landfill</u>	<u>Stafford County</u>	<u>NVRO</u>	<u>08/29/02]</u>
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TABLE [2-2.2.1]
Final Prioritization and Closure Schedule for House Bill (HB) 1205
Disposal Areas

<u>Solid Waste Permit Number and Site Name</u>	<u>Location</u>	<u>Department Regional Office¹</u>	<u>Latest Cessation of Waste Acceptance Date²</u>
<u>429 - Fluvanna County Sanitary Landfill</u>	<u>Fluvanna County</u>	<u>VRO</u>	<u>12/31/07</u>
<u>92 - Halifax County Sanitary Landfill³</u>	<u>Halifax County</u>	<u>SCRO</u>	<u>12/31/2007</u>
<u>49 - Martinsville Landfill</u>	<u>City of Martinsville</u>	<u>WCRO</u>	<u>12/31/2007</u>
<u>14 - Mecklenburg County Landfill</u>	<u>Mecklenburg County</u>	<u>SCRO</u>	<u>12/31/2007</u>
<u>228 - Petersburg City Landfill³</u>	<u>City of Petersburg</u>	<u>PRO</u>	<u>12/31/2007</u>
<u>31 - South Boston Sanitary Landfill</u>	<u>Town of South Boston</u>	<u>SCRO</u>	<u>12/31/2007</u>
<u>204 - Waynesboro City Landfill</u>	<u>City of Waynesboro</u>	<u>VRO</u>	<u>12/31/2007</u>
<u>91 - Accomack County Landfill - Bobtown South</u>	<u>Accomack County</u>	<u>TRO</u>	<u>12/31/2012</u>
<u>580 - Big Bethel Landfill</u>	<u>City of Hampton</u>	<u>TRO</u>	<u>12/31/2012</u>
<u>182 - Caroline County Landfill</u>	<u>Caroline County</u>	<u>NVRO</u>	<u>12/31/2012</u>
<u>149 - Fauquier County Landfill</u>	<u>Fauquier County</u>	<u>NVRO</u>	<u>12/31/2012</u>

<u>405 - Greenville County Landfill</u>	<u>Greenville County</u>	<u>PRO</u>	<u>12/31/2012</u>
<u>29 - Independent Hill Landfill³</u>	<u>Prince William County</u>	<u>NVRO</u>	<u>12/31/2012</u>
<u>1 - Loudoun County Sanitary Landfill</u>	<u>Loudoun County</u>	<u>NVRO</u>	<u>12/31/2012</u>
<u>194 - Louisa County Sanitary Landfill</u>	<u>Louisa County</u>	<u>NVRO</u>	<u>12/31/2012</u>
<u>227 - Lunenburg County Sanitary Landfill</u>	<u>Lunenburg County</u>	<u>SCRO</u>	<u>12/31/2012</u>
<u>507 - Northampton County Landfill</u>	<u>Northampton County</u>	<u>TRO</u>	<u>12/31/2012</u>
<u>90 - Orange County Landfill</u>	<u>Orange County</u>	<u>NVRO</u>	<u>12/31/2012</u>
<u>75 - Rockbridge County Sanitary Landfill</u>	<u>Rockbridge County</u>	<u>VRO</u>	<u>12/31/2012</u>
<u>23 - Scott County Landfill</u>	<u>Scott County</u>	<u>SWRO</u>	<u>12/31/2012</u>
<u>587 - Shoosmith Sanitary Landfill³</u>	<u>Chesterfield County</u>	<u>PRO</u>	<u>12/31/2012</u>
<u>417 - Southeastern Public Service Authority [Landfill Landfill³]</u>	<u>City of Suffolk</u>	<u>TRO</u>	<u>12/31/2012</u>
<u>461 - Accomack County Landfill #2</u>	<u>Accomack County</u>	<u>TRO</u>	<u>12/31/2020</u>

<u>86 - Appomattox County Sanitary Landfill</u>	<u>Appomattox County</u>	<u>SCRO</u>	<u>12/31/2020</u>
<u>582 - Botetourt County Landfill³</u>	<u>Botetourt County</u>	<u>WCRO</u>	<u>12/31/2020</u>
<u>498 - Bristol City Landfill</u>	<u>City of Bristol</u>	<u>SWRO</u>	<u>12/31/2020</u>
<u>72 - Franklin County Landfill</u>	<u>Franklin County</u>	<u>WCRO</u>	<u>12/31/2020</u>
<u>398 - Virginia Beach Landfill #2 - Mount Trashmore II³</u>	<u>City of Virginia Beach</u>	<u>TRO</u>	<u>12/31/2020</u>

¹Department of Environmental Quality Regional Offices:

- NVRO Northern Virginia Regional Office
- PRO Piedmont Regional Office
- SCRO South Central Regional Office
- SWRO Southwest Regional Office
- TRO Tidewater Regional Office
- VRO Valley Regional Office
- WCRO West Central Regional Office

²This date means the latest date that the disposal area must cease accepting waste.

³A portion of these facilities operated under HB 1205 and another portion currently is compliant with Subtitle D requirements.

C. Facilities are authorized to expand laterally beyond the waste boundaries existing on October 9, 1993, as follows:

1. Existing captive industrial landfills.

- a. Existing nonhazardous industrial waste facilities that are located on property owned or controlled by the generator of the waste disposed of in the facility shall comply with all the provisions of this chapter except as shown in subdivision 1 of this subsection.
- b. Facility owners or operators shall not be required to amend their facility permit in order to expand a captive industrial landfill beyond the waste boundaries existing on October 9, 1993. Liners and leachate collection systems constructed beyond the waste boundaries existing on October 9, 1993 shall be constructed in accordance with the requirements in effect at the time of permit issuance.

c. Owners or operators of facilities which are authorized under subdivision 1 of this subsection to accept waste for disposal beyond the waste boundaries existing on October 9, 1993, shall ensure that such expanded disposal areas maintain setback distances applicable to such facilities in 9VAC20-80-270 A.

d. Facilities authorized for expansion in accordance with subdivision 1 of this subsection are limited to expansion to the limits of the permitted disposal area existing on October 9, 1993, or the facility boundary existing on October 9, 1993, if no discrete disposal area is defined in the facility permit.

2. Other existing industrial waste landfills.

a. Existing nonhazardous industrial waste facilities that are not located on property owned or controlled by the generator of the waste disposed of in the facility shall comply with all the provisions of this chapter except as shown in subdivision 2 of this subsection.

b. Facility owners or operators shall not be required to amend their facility permit in order to expand an industrial landfill beyond the waste boundaries existing on October 9, 1993. Liners and leachate collection systems constructed beyond the waste boundaries existing on October 9, 1993, shall be constructed in accordance with the requirements of 9VAC20-80-270 B.

c. Prior to the expansion of any such facility, the owner or operator submits to the department a written notice of the proposed expansion at least 60 days prior to commencement of construction. The notice shall include recent ground water monitoring data sufficient to determine that the facility does not pose a threat of contamination of ground water in a manner constituting an open dump or creating a substantial present or potential hazard to human health or the environment (see 9VAC20-80-180 B 4). The director shall evaluate the data included with the notification and may advise the owner or operator of any additional requirements that may be necessary to ensure compliance with applicable laws and prevent a substantial present or potential hazard to health or the environment.

d. Owners or operators of facilities which are authorized under subdivision 2 of this subsection to accept waste for disposal beyond the waste boundaries existing on October 9, 1993, shall ensure that such expanded disposal areas maintain setback distances applicable to such facilities in 9VAC20-80-270 A.

e. Facilities authorized for expansion in accordance with this subsection are limited to expansion to the limits of the permitted disposal area existing on October 9, 1993, or the facility boundary existing on October 9, 1993, if no discrete disposal area is defined in the facility permit.

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3. Existing construction/demolition/debris landfills.

a. Existing facilities that accept only construction/demolition/debris waste shall comply with all the provisions of this chapter except as shown in subdivision 3 of this subsection.

b. Facility owners or operators shall not be required to amend their facility permit in order to expand a construction/demolition/debris landfill beyond the waste boundaries existing on October 9, 1993. Liners and leachate collection systems constructed beyond the waste boundaries existing on October 9, 1993, shall be constructed in accordance with the requirements of 9VAC20-80-260 B.

c. Prior to the expansion of any such facility, the owner or operator submits to the department a written notice of the proposed expansion at least sixty days prior to commencement of construction. The notice shall include recent ground water monitoring data sufficient to determine that the facility does not pose a threat of contamination of ground water in a manner constituting an open dump or creating a substantial present or potential hazard to human health or the environment (see 9VAC20-80-180 B 4). The director shall evaluate the data included with the notification and may advise the owner or operator of any additional requirements that may be necessary to ensure compliance with applicable laws and prevent a substantial present or potential hazard to health or the environment.

d. Owners or operators of facilities which are authorized under this subdivision 3 to accept waste for disposal beyond the active portion of the landfill existing on October 9, 1993, shall ensure that such expanded disposal areas maintain setback distances applicable to such facilities in 9VAC20-80-260 A and B.

e. Facilities, or portions thereof, which have reached their vertical design capacity shall be closed in compliance with 9VAC20-80-260 E.

f. Facilities authorized for expansion in accordance with subdivision 2 c of this subsection are limited to expansion to the permitted disposal area existing on October 9, 1993, or the facility boundary existing on October 9, 1993, if no discrete disposal area is defined in the facility permit.

4. Facilities or units undergoing expansion in accordance with the partial exemptions created by subdivision 1 b, 2 b, or 3 b of this subsection may not receive hazardous wastes generated by the exempt small quantity generators as defined by the Virginia Hazardous Waste Management Regulations (9VAC20-60), wastes containing free liquids for disposal on the expanded portions of the facility. Other wastes that require special handling in accordance with the requirements of Part VIII (9VAC20-80-630 et seq.) of this

chapter or which contain hazardous constituents which would pose a risk to health or environment, may only be accepted with specific approval by the director.

5. Nothing in subdivisions 1 b, 2 b, and 3 b of this subsection shall alter any requirement for ground water monitoring, financial responsibility, operator certification, closure, post-closure care, operation, maintenance or corrective action imposed under this chapter, or impair the powers of the director to revoke or amend a permit pursuant to §10.1-1409 of the Virginia Waste Management Act or Part VII (9VAC20-80-480 et seq.) of this chapter.

D. An owner or operator of a previously unpermitted facility that managed materials previously exempt from this chapter shall submit a complete application for a solid waste management facility permit or a permit amendment in accordance with Part VII of this chapter within six months after these materials have been defined or identified as solid wastes. If the director finds that the application is complete, the owner or operator may continue to manage the newly defined or identified waste until a permit or permit amendment decision has been rendered or until a date two years after the change in definition whichever occurs sooner, provided however, that in so doing he shall not operate or maintain an open dump, a hazard, or a nuisance.

The owner or operator of an existing solid waste management facility shall comply with this regulation beginning September 24, 2003. Where necessary conflicts exist between the existing facility permit and the new requirements of the regulations, the regulations shall supersede the permit except where the standards in the permit are more stringent than the regulation. Language in an existing permit shall not act as a shield to compliance with the regulation, unless a variance to the regulations has been approved by the director in accordance with the provisions of Part IX (9VAC20-80-730 et seq.) of this chapter. Existing facility permits will not be required to be updated to eliminate requirements conflicting with the regulation, except at the request of the director or if a permit is amended for another reason. However, all sanitary landfills and incinerators that accept waste from jurisdictions outside of Virginia must submit the materials required under 9VAC20-80-113 D by March 22, 2004.

E. Conditional exemptions. The following solid waste management practices are exempt from this chapter provided no open dump, hazard, or public nuisance is created:

1. Composting of sewage sludge at the sewage treatment plant of generation without addition of other types of solid wastes.

2. Composting of household waste generated at a single-family residence at the site of generation.

3. Composting activities performed for educational purposes as long as no more than five tons of materials are

on site at any time. Greater quantities will be allowed with suitable justification presented to the department. For quantities greater than five tons approval from the director will be required prior to composting.

4. Management of wastes regulated by the State Board of Health, the State Water Control Board, or any other state agency with such authority.

5. On-site management of soil contaminated with petroleum products required as part of an ongoing corrective action by the department under Article 9 (§62.1-44.34:8 et seq.) or Article 11 (§62.1-44.34:14 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia. Management of the contaminated soils away from the site of generation is subject to this chapter unless specifically provided for in the approved corrective action plan.

6. Management of solid waste in appropriate containers at the site of its generation, provided that:

a. Putrescible waste is not stored more than seven days between time of collection and time of removal for disposal; and

b. All nonputrescible wastes that are on a system of regularly scheduled collection for disposal with collections occurring at intervals of less than 90 days.

7. Landfilling of solid waste which includes only rocks, brick, block, dirt, broken concrete and road pavement and which contains no paper, yard, or wood wastes.

8. On-site management of solid wastes generated by the wastewater treatment facilities provided such management is subject to a regulation promulgated by the State Water Control Board.

9. Placing of stumps and other land clearing debris from agricultural or forestal activities on site of the clearing where no debris is accepted from off-site. This does not include the burial of these materials.

10. Placing of solid wastes including large tires from mining equipment from mineral mining activities on a mineral mining site in compliance with a permit issued by the Department of Mines, Minerals and Energy where no such waste is accepted from off-site and does not contain any municipal solid wastes or other special wastes. Placement of such solid wastes shall be accomplished in an environmentally sound manner.

11. Storage of less than 100 waste tires at the site of generation provided that no waste tires are accepted from off-site and that the storage will not present a hazard or a nuisance.

12. The storage of land clearing debris including stumps and brush, clean wood wastes, log yard scrapings consisting of a mixture of soil and wood, cotton gin trash,

peanut hulls and similar organic wastes that do not readily decompose, in piles are exempt from this chapter if they meet the following conditions at a minimum:

a. The wastes are managed in the following manner:

(1) They do not cause discharges of leachate, or attract vectors.

(2) They cannot be dispersed by wind and rain.

(3) Combustion and fire are prevented.

(4) They do not become putrescent.

b. Any facility storing waste materials under the provisions of this section obtains a storm water discharge permit if they are considered a significant source under the provisions of 9VAC25-31-120 A 1 e.

c. No more than an total of 1/3 acre of waste material is stored on-site and the waste pile does not exceed 15 feet in height above base grade.

d. Siting provisions.

(1) All waste materials are stored at the site of the industrial activity that produces them.

(2) A 50-foot fire break is maintained between the wastepile and any structure or treeline.

(3) The slope of the ground within the area of the pile and within 50 feet of the pile does not exceed 4:1.

(4) No waste material may be stored closer than 50 feet to any regularly flowing surface water body or river, floodplain, or wetland.

(5) No stored waste materials shall extend closer than 50 feet to any property line.

e. If the industrial activities at the site cease, any waste stored at the site must be properly disposed in a permitted solid waste management facility within 90 days. The director can approve longer time frames with appropriate justification. Justification must be provided in writing no more than 30 days after ceasing industrial activity at the site.

f. Waste piles that do not meet these provisions are required to obtain a permit in accordance with the provisions in 9VAC20-80-480 and meet all of the requirements in 9VAC20-80-400. Facilities that do not comply with the provisions of this subdivision and fail to obtain a permit are subject to the provisions of 9VAC20-80-90 for unpermitted facilities.

F. This chapter is not applicable to units or facilities closed in accordance with regulations or permits in effect prior to December 21, 1988, unless releases, as defined in Part I (9VAC20-80-10 et seq.) of this chapter, from such closed facilities cause the site to be classified as an open dump, a

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hazard or a nuisance under §10.1-1402(21) of the Code of Virginia, or a site where improper waste management has occurred under §10.1-1402(19) of the Code of Virginia.

9VAC20-80-250. Sanitary landfill.

The provisions of this section shall apply to the siting, design, construction, operation, monitoring, and closure of a sanitary landfill.

A. Siting.

1. Airport safety.

a. Owners or operators of all sanitary landfills that are located within 10,000 feet of any airport runway end used by turbojet aircraft or within 5,000 feet of any airport runway end used by only piston-type aircraft shall demonstrate that the units are designed and operated so that the facility does not pose a bird hazard to aircraft.

b. Owners or operators proposing to site new sanitary landfill and lateral expansions of an existing facility within a five mile radius of any airport runway end used by turbojet or piston-type aircraft shall notify the affected airport and the Federal Aviation Administration (FAA). Owners and operators should also be aware that effective April 5, 2000, 49 USC §44718 (d), restricts the establishment of landfills within six miles of public airports under certain conditions. Provisions for exemptions from this law also exist.

c. The owner or operator of an existing facility shall submit the demonstration in subdivision 1 a of this subsection to the director by October 9, 1993.

2. Floodplains. Owners or operators of all sanitary landfills located in 100-year floodplains shall demonstrate that the facility will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human health and the environment. The owner or operator of an existing facility shall submit the demonstration to the director by October 9, 1993. No new sanitary landfill after July 1, 1999 shall be constructed in a 100-year flood plain.

3. Unstable areas.

a. Owners or operators of all sanitary landfills located in an unstable area shall demonstrate that engineering measures have been incorporated into the facility's design to ensure that the integrity of the structural components of the facility will not be disrupted. He shall consider the following factors, at a minimum, when determining whether an area is unstable:

(1) On-site or local soil conditions that may result in differential settling and subsequent failure of structural components;

(2) On-site or local geologic or geomorphologic features that may result in sudden or non-sudden events and subsequent failure of structural components; and

(3) On-site or local man-made features or events (both surface and subsurface) that may result in sudden or non-sudden events and subsequent failure of structural components.

b. The owner or operator of an existing facility shall submit the demonstration to the director by October 9, 1993.

4. Wetlands.

a. After July 1, 1999, new sanitary landfills and lateral expansions of existing facilities, except those impacting less than 1.25 acres of nontidal wetlands, shall not be constructed in any tidal wetland or nontidal wetland contiguous to any surface water body.

b. Construction allowed under the provisions of §10.1-1408.5 will be allowed only with appropriate approvals under the provisions of 9VAC25-210. In addition, the following additional demonstrations must be made to the director:

(1) Where applicable under §404 of the Clean Water Act or §62.1-44.15:5 of the Virginia wetlands laws, the presumption that a practicable alternative to the proposed landfill is available that does not involve wetlands is clearly rebutted;

(2) The construction and operation of the facility will not:

(a) Cause or contribute to violations of any applicable water quality standard;

(b) Violate any applicable toxic effluent standard or prohibition under §307 of the Clean Water Act;

(c) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Endangered Species Act of 1973; and

(d) Violate any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972 for the protection of a marine sanctuary;

(3) The facility will not cause or contribute to significant degradation of wetlands. The owner or operator shall demonstrate the integrity of the facility and its ability to protect ecological resources by addressing the following factors:

(a) Erosion, stability, and migration potential of native wetland soils, muds and deposits used to support the facility;

(b) Erosion, stability, and migration potential of dredged and fill materials used to support the facility;

(c) The volume and chemical nature of the waste managed in the facility;

(d) Impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste;

(e) The potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and

(f) Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected.

(4) To the extent required under §404 of the Clean Water Act or applicable Virginia wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands (as defined by acreage and function) by first avoiding impacts to wetlands to the maximum extent practicable as required by subdivision 4 b (1) of this subsection, then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands); and

(5) Sufficient other information is available to enable the department to make a reasonable determination with respect to these demonstrations.

5. Fault areas. New sanitary landfills and lateral expansions of existing facilities shall not be located within 200 feet of a fault that has had displacement in Holocene time unless the owner or operator demonstrates to the director that an alternative setback distance of less than 200 feet will prevent damage to the structural integrity of the facility and will be protective of human health and the environment.

6. Seismic impact zones. New sanitary landfills and lateral expansions of existing facilities shall not be located in seismic impact zones, unless the owner or operator demonstrates to the director that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

7. No sanitary landfill disposal unit or leachate storage unit shall extend closer than:

a. 100 feet of any regularly flowing surface water body or river;

b. 50 feet from the facility boundary;

c. 500 feet of any well, spring or other ground water source of drinking water in existence at the time of application;

d. One thousand feet from the nearest edge of the right-of-way of any interstate or primary highway or 500 feet from the nearest edge of the right-of-way of any other highway or city street except the following:

(1) Units which are screened by natural objects, plantings, fences, or other appropriate means so as to minimize the visibility from the main-traveled way of the highway or city street, or otherwise removed from sight;

(2) Units which are located in areas which are zoned for industrial use under authority of state law or in unzoned industrial areas as determined by the Commonwealth Transportation Board;

(3) Units which are not visible from the main-traveled way of the highway or city street.

NOTE: This requirement is based on §33.1-348 of the Code of Virginia. The regulatory responsibility for this standard rests with the Virginia Department of Transportation.

e. 200 feet from the active filling areas to any residence, school, hospital, nursing home or recreational park area in existence at the time of application.

NOTE: All distances are to be measured in the horizontal plane.

8. No new facility shall be located in areas where ground water monitoring cannot be conducted in accordance with subsection D of this section unless this requirement is suspended by the director pursuant to subdivision 1 c of this subsection.

9. No new sanitary landfill shall be constructed:

a. Within five miles upgradient of any existing surface or ground water public water supply intake or reservoir except as allowed under the provisions of §10.1-1408.4 B 3 of the Code of Virginia;

b. In any area vulnerable to flooding resulting from dam failures;

c. Over a sinkhole or less than 100 feet over a solution cavern associated with karst topography;

d. In any park or recreational area, wildlife management area or area designated by the federal or state agency as the critical habitat of any endangered species; or

e. Over an active fault.

10. Certain site characteristics may also prevent approval or require substantial limitations on the site use or require

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incorporation of sound engineering controls. Examples include but are not limited to:

- a. Excessive slopes (greater than 33%);
- b. Lack of daily cover materials;
- c. Springs, seeps, or other ground water intrusion into the site;
- d. The presence of gas, water, sewage, or electrical or other transmission lines under the site; or
- e. The prior existence on the site of an open dump, unpermitted landfill, lagoon, or similar unit, even if such a unit is closed, will be considered a defect in the site unless the proposed unit can be isolated from the defect by the nature of the unit design and the ground water for the proposed unit can be effectively monitored.

11. Specific site conditions may be considered in approving an exemption of a site from the siting restrictions of subdivision 10 of this subsection.

12. Facilities unable to furnish the demonstration required under subdivision 1 c, 2, or 3 b of this subsection shall close in accordance with the requirements of subsection E of this section and initiate post-closure care as required by subsection F of this section by October 9, 1996.

13. The deadline for closure required by subdivision 12 of this subsection may be extended by the director up to two years if the owner or operator demonstrates that:

- a. There is no alternate disposal capacity; and
- b. There is no immediate threat to human health and the environment.

B. Design/construction. The following design and construction requirements apply to all sanitary landfills:

1. All facilities shall be surrounded by a means of controlling vehicular access and preventing illegal disposal. All access will be limited by gates, and such gates shall be securable and equipped with locks.

2. Access roads extending from the public road to the entrance of a facility or site and any public access area shall be all-weather, and shall be provided with a base capable of withstanding anticipated heavy vehicle loads.

3. Each solid waste disposal facility should be provided with an adequately lighted and heated shelter where operating personnel can exercise site control and have access to essential sanitation facilities. Lighting, heat and sanitation facilities may be provided by portable equipment as necessary.

4. Aesthetics shall be considered in the design of a facility or site. Use of artificial or natural screens shall be incorporated into the design for site screening and noise attenuation to less than 80 dBA at the facility boundary.

The design should reflect those requirements, if any, that are determined from the long-range plan for the future use of the site.

5. All sanitary landfills shall be equipped with permanent or mobile telephone or radio communications.

6. All facilities shall be designed to provide and maintain:

a. A run-on control system to prevent flow onto the active portion of the landfill during the peak discharge from a 25-year storm;

b. A run-off control system from the active portion of the landfill to collect and control at least the water volume resulting from a 24-hour, 25-year storm. Run-off from the active portion of the landfill unit shall be handled in a manner that will not cause the discharge of:

(1) Pollutants into waters of the United States, including wetlands, that violates any requirements of the Clean Water Act, including, but-not limited to, the Virginia Pollutant Discharge Elimination system (VPDES) requirements; and

(2) Cause the discharge of a nonpoint source of pollution to waters of the United States, including wetlands, that violates any requirement of an area-wide or state-wide water quality management plan that has been approved under ~~section~~ §208 or 319 of the Clean Water Act, as amended.

c. Drainage structures to prevent ponding and erosion, and to minimize infiltration of water into solid waste cells.

7. A ground water monitoring system shall be installed at all sanitary landfills in accordance with 9VAC20-80-300.

8. Each site design shall include a gas management system to control decomposition gases generated within a sanitary landfill in accordance with 9VAC20-80-280.

9. All sanitary landfills shall be underlain by a composite liner system as follows:

a. Base preparation to protect the liner by preventing liner failure through subsidence or structural failure of the liner system.

b. A lower liner consisting of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec.

c. An upper component consisting of a minimum 30-mil flexible membrane liner (FML). If high density polyethylene (HDPE) is used as an FML, it shall be at least 60-mil thick. The FML component shall be:

(1) Installed in direct and uniform contact with the compacted soil liner;

(2) Placed in accordance with an approved construction quality control/quality assurance program submitted with the design plans; and

(3) Placed with a minimum of two percent slope for leachate drainage.

10. The applicant may submit a petition in accordance with 9VAC20-80-780 to allow for an alternate design of the liner system.

11. The design shall provide for leachate management which shall include its collection, treatment, storage, and disposal. Leachate control and monitoring systems are subject to the requirements in 9VAC20-80-290.

12. Landfill site designs shall provide sufficient area to allow for management of leachate. Leachate from a solid waste disposal facility shall not be permitted to drain or discharge into surface waters except when authorized under a VPDES permit issued by the State Water Control Board or otherwise approved by that agency.

13. Compacted lifts of deposited waste shall be designed for a height compatible with daily waste volumes keeping work face areas to a minimum and allowing for a daily compacted cover. Lift height is not recommended to exceed 10 feet for maximum compaction.

14. Final contours of the finished landfill shall be specified. Design of final contours shall consider subsequent site uses, existing natural contours, surface water management requirements, and the nature of the surrounding area. The final elevation of the landfill shall be limited by the structural capacity of the liner and leachate collection and removal system and by stability of foundation and slopes. The final contour shall not cause structural damage or collapse of the leachate collection system.

15. Finished side slopes shall be stable and be configured to adequately control erosion and runoff. Slopes of 33% will be allowed provided that adequate runoff controls are established. Steeper slopes may be considered if supported by necessary stability calculations and appropriate erosion and runoff control features. All finished slopes and runoff management facilities shall be supported by necessary calculations and included in the design manual. The top slope shall be at least two percent after allowance for settlement to prevent ponding of water.

16. Two survey bench marks shall be established and maintained on the landfill site, and their location identified or recorded on drawings and maps of the facility.

17. Each sanitary landfill shall be constructed in accordance with approved plans, which shall not be subsequently modified without approval by the department.

18. Construction quality assurance program.

a. General.

(1) A construction quality assurance (CQA) program is required for all landfill units. The program shall ensure that the constructed unit meets or exceeds all design criteria and specifications in the permit. The program shall be developed and implemented under the direction of a CQA officer who is a registered professional engineer.

(2) The CQA program shall address the following physical components, where applicable:

(a) Foundations;

(b) Low-hydraulic conductivity soil liners;

(c) Synthetic membrane liners;

(d) Leachate collection and removal systems;

(e) Gas management components; and

(f) Final cover systems.

b. Written CQA plan. The owner or operator shall develop and implement a written CQA plan. The plan shall identify steps that will be used to monitor and document the quality of materials and the condition and manner of their installation. The CQA plan shall include:

(1) Identification of applicable units, and a description of how they will be constructed.

(2) Identification of key personnel in the development and implementation of the CQA plan, and CQA officer qualifications.

(3) A description of inspection and sampling activities for all unit components identified in subdivision 18 a (2) of this subsection including observations and tests that will be used before, during, and after construction to ensure that the construction materials and the installed unit components meet the design specifications. The description shall cover: sampling size and locations; frequency of testing; data evaluation procedures; acceptance and rejection criteria for construction materials; plans for implementing corrective measures; and data or other information to be recorded.

c. Contents of program. The CQA program shall include observations, inspections, tests, and measurements sufficient to ensure:

(1) Structural stability and integrity of all components of the unit identified in subdivision 18 a (2) of this subsection;

(2) Proper construction of all components of the liners, leachate collection and removal system, gas management system, and final cover system, according to permit

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specifications and good engineering practices, and proper installation of all components (e.g., pipes) according to design specifications;

(3) Conformity of all materials used with design and other material specifications.

(4) The permeability of the liner soil. Soil liner construction will be demonstrated on a test pad where permeability will be confirmed using an in situ testing method.

d. Certification. Waste shall not be received in a landfill unit until the owner or operator has submitted to the department by certified mail or hand delivery a certification signed by the CQA officer that the approved CQA plan has been successfully carried out and that the unit meets the requirements of this section. Documentation supporting the CQA officer's certification shall be submitted to the department upon request. An additional engineer's certification is required under the provisions of 9VAC20-80-550 A 1.

C. Operation.

1. No hazardous wastes as defined by the Virginia Hazardous Waste Management Regulations (9VAC20-60) other wastes listed in 9VAC20-80-250 C 17, PCB waste or regulated medical waste shall be accepted at the landfill except as specifically authorized by the facility permit or by the director. The owner or operator shall implement an inspection program to be conducted by landfill personnel to detect and prevent disposal of such wastes. In addition to implementing the requirements of the control program for unauthorized waste in 9VAC20-80-113, the program shall include, at a minimum:

a. The procedures for the routine monitoring and observation of incoming waste at the working face of the landfill;

b. The procedures for random inspections of incoming loads to detect whether incoming loads contain regulated hazardous wastes, PCB wastes, regulated medical waste, or other unauthorized solid waste and ensure that such wastes are not accepted at the facility. The owner or operator shall inspect a minimum of 1.0% of the incoming loads of waste. In addition, if the facility receives waste generated outside of Virginia and the regulatory structure in that jurisdiction allows for the disposal or incineration of wastes as municipal solid waste that Virginia's laws and regulations prohibit or restrict, the facility shall inspect a minimum of 10% of the incoming loads of waste from that jurisdiction. All facilities receiving waste generated outside of Virginia shall submit an evaluation consistent with 9VAC20-80-113 D;

c. Records of all inspections, to include at a minimum time and date of the inspection, the personnel involved, the hauler, the type of waste observed, the identity of the generator of the waste if it can be determined, the location of the facility where the waste was handled prior to being sent to the landfill and the results of the inspection. All records associated with unauthorized waste monitoring and incidents shall be retained on-site for a minimum of three years and shall be available for inspection by the department;

d. Training of facility personnel to recognize and manage regulated hazardous waste, PCB wastes, regulated medical waste, and other unauthorized solid wastes;

e. Notification of the department if a regulated hazardous waste, PCB waste, regulated medical waste or other unauthorized waste is discovered at the facility. This notification will be made orally as soon as possible, but no later than 24 hours after the occurrence and shall be followed within 10 days by a written report that includes a description of the event, the cause of the event, the time and date of the event and the actions taken to respond to the event; and

f. All regulated medical waste, PCB waste or other unauthorized solid waste that are detected at a facility shall be isolated from the incoming waste and properly contained until arrangements can be made for proper transportation for treatment or disposal at an approved facility.

2. Compaction and cover requirements.

a. Unless provided otherwise in the permit, solid waste shall be spread into two-foot layers or less and compacted at the working face, which shall be confined to the smallest area practicable.

b. Lift heights shall be sized in accordance with daily waste volumes. Lift height is not recommended to exceed 10 feet.

c. Daily cover consisting of six inches of compacted soil or other approved material shall be placed upon and maintained on all exposed solid waste prior to the end of each operating day, or at more frequent intervals if necessary, to control disease vectors, fires, odors, blowing litter, and scavenging. Alternate materials of an alternate thickness may be approved by the director if the owner or operator demonstrates that the alternate material and thickness control disease vectors, fires, odors, blowing litter, and scavenging without presenting a threat to human health and the environment. At least three days of acceptable cover soil or approved material at the average usage rate should be maintained at the landfill or readily available at all times.

d. Intermediate cover of at least six inches of additional compacted soil shall be applied and maintained whenever an additional lift of refuse is not to be applied within 30 days. Further, all areas with intermediate cover exposed shall be inspected as needed, but not less than weekly. Additional cover material shall be placed on all cracked, eroded, and uneven areas as required to maintain the integrity of the intermediate cover system.

e. Final cover construction will be initiated and maintained in accordance with the requirements of subdivision E 1 b of this section when the following pertain:

(1) An additional lift of solid waste is not to be applied within one year.

(2) Any area of a landfill attains final elevation and within 90 days after such elevation is reached. The director may approve alternate timeframes if they are specified in the facility's closure plan.

(3) An entire landfill's permit is terminated for any reason, and within 90 days of such denial or termination.

f. Vegetative cover with proper support layers shall be established and maintained on all exposed final cover material within four months after placement, or as specified by the department when seasonal conditions do not permit. Mowing will be conducted a minimum of twice a year or at a frequency suitable for the species of vegetative cover as specified in the facility permit.

g. Areas where waste has been disposed that have not received waste within 30 days will not have slopes exceeding the final cover slopes specified in the permit or 33%, whichever is least.

3. Access to a solid waste disposal facility shall be permitted only when an attendant is on duty and only during daylight hours, unless otherwise specified in the facility permit.

4. Disease vectors shall be controlled using techniques appropriate for the protection of human health and the environment.

5. Safety hazards to operating personnel shall be controlled through an active safety program consistent with the requirements of 29 CFR Part 1910.

6. Adequate numbers and types of properly maintained equipment shall be available to a facility for operation. Provision shall be made for substitute equipment to be available within 24 hours should the former become inoperable or unavailable. Operators with training appropriate to the tasks they are expected to perform and in sufficient numbers for the complexity of the site shall be on the site whenever it is in operation. Equipment and operators provided will not be satisfactory unless they

ensure that the site is managed with a high degree of safety and effectiveness.

7. Owners or operators shall implement a gas management plan in accordance with 9VAC20-80-280 that will ensure that:

a. The concentration of methane gas generated by the facility does not exceed 25 percent of the lower explosive limit for methane in facility structures (excluding gas control or recovery system components); and

b. The concentration of methane gas does not exceed the lower explosive limit for methane at the facility boundary.

8. Burning waste.

a. Owners or operators shall ensure that the units do not violate any applicable requirements developed by the State Air Pollution Control Board or promulgated by the EPA administrator pursuant to §110 of the Clean Air Act, as amended (42 USC §§7401 to 7671q).

b. Open burning of solid waste, except for infrequent burning of agricultural wastes, silvicultural wastes, landclearing debris, diseased trees, or debris from emergency cleanup operations is prohibited. There shall be no open burning permitted on areas where solid waste has been disposed or is being used for active disposal.

9. The owner or operator shall be responsible for extinguishing any fires that may occur at the facility. A fire control plan will be developed which outlines the response of facility personnel to fires. The fire control plan will be provided as an attachment to the emergency contingency plan required under the provisions of 9VAC20-80-520 C 2 k. The fire control plan will be available for review upon request by the public.

10. Solid waste shall not be deposited in, nor shall it be permitted to enter any surface waters or ground waters.

11. Owners or operators shall maintain the run-on/runoff control systems designed and constructed in accordance with subdivision B 6 of this section.

12. Sanitary landfills shall not:

a. Cause a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the Clean Water Act (33 USC §1251 et seq.), including, but not limited to, the Virginia Pollutant Discharge Elimination System (VPDES) requirements and Virginia Water Quality Standards (9VAC25-260).

b. Cause the discharge of a nonpoint source of pollution to waters of the United States, including wetlands, that violates any requirement of an area-wide or state-wide water quality management plan that has been approved under §208 or 319 of the Clean Water Act (33 USC

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§1251 et seq.), as amended or violates any requirement of the Virginia Water Quality Standards (9VAC25-260).

13. Housekeeping.

a. Litter and blowing paper shall be confined to refuse holding and operating areas by fencing or other suitable control means.

b. Dust and odors shall be controlled so they do not constitute nuisances or hazards.

c. Salvaging may be permitted by a solid waste disposal facility operator, but shall be controlled within a designated salvage area to preclude interference with operation of the facility and to avoid the creation of hazards or nuisances.

d. Fugitive dust and mud deposits on main off-site roads and access roads shall be minimized at all times to limit nuisances.

e. Internal roads in the landfill shall be maintained to be passable in all weather by ordinary vehicles. All operation areas and units shall be accessible; gravel or other finish materials are usually required to accomplish this. Provisions shall be made to prevent tracking of mud onto public roads by vehicles leaving the site.

f. The open working face of a landfill shall be kept as small as practicable, determined by the tipping demand for unloading.

g. A sanitary landfill which is located within 10,000 feet of any airport runway used for turbojet aircraft or 5,000 feet of any airport runway used by only piston type aircraft, shall operate in such a manner that the facility does not increase or pose additional bird hazards to aircraft.

h. All facility appurtenances listed in subsection B of this section shall be properly maintained. These appurtenances include, but are not limited to, access controls, shelters, communications equipment, run-on and run-off controls, gas and ground water systems, liner systems, leachate collection control systems and the landfill cap.

14. Ground water monitoring program meeting the requirements of subsection D of this section shall be implemented.

15. A corrective action program meeting the requirements of 9VAC20-80-310 is required whenever the ground water protection standard is exceeded.

16. Sanitary landfills may receive the following types of solid wastes subject to specific limitations in the permit:

a. Agricultural waste.

b. Ashes and air pollution control residues that are not classified as hazardous waste. Incinerator and air pollution control residues should be incorporated into the working face and covered at such intervals as necessary to prevent them from becoming airborne.

c. Commercial waste.

d. Compost.

e. Construction waste.

f. Debris waste.

g. Demolition waste.

h. Discarded material.

i. Garbage.

j. Household waste.

k. Industrial waste meeting all criteria contained herein.

l. Inert waste.

m. Institutional waste except regulated medical waste as specified in the Regulated Medical Waste Management Regulations (9VAC20-120).

n. Municipal solid waste.

o. Putrescible waste. Occasional animal carcasses may be disposed of within a sanitary landfill. Large numbers (over 20 cy) of animal carcasses may be received with prior notification of the department. When large numbers of carcasses are received, they shall be placed in a separate area within the disposal unit and provided with a cover of compacted soil or other suitable material.

p. Refuse.

q. Residential waste.

r. Rubbish.

s. Scrap metal.

t. Sludges. Water treatment plant sludges containing no free liquid and stabilized, digested or heat treated wastewater treatment plant sludges containing no free liquid may be placed on the working face along with municipal solid wastes and covered with soil or municipal solid wastes. The quantities accepted should be determined by operational conditions encountered at the working face. For existing facilities without an adequate leachate collection system, only a limited quantity of sludge may be accepted. A maximum ratio of one ton of sludge per five tons of solid waste per day will be considered. Generation of leachate will be a basis for restriction of sludge disposal at such existing facilities.

u. Trash.

- v. White goods. Provided that all white goods are free of chlorofluorocarbons and PCBs prior to placement on the working face.
 - w. Nonregulated hazardous wastes and treated wastes rendered nonhazardous by specific approval only.
 - x. Special wastes as approved by the director.
 - y. Waste oil that has been adequately adsorbed in the course of a site cleanup.
 - z. Vegetative waste.
 - aa. Yard waste.
17. Sanitary landfills may not receive the following wastes:
- a. Free liquids.
 - (1) Bulk or noncontainerized liquid waste, unless:
 - (a) The waste is household waste; or
 - (b) The waste is leachate or gas condensate derived from that landfill and the facility is designed with a composite liner and leachate collection system as described in subdivision B 9 of this section and 9VAC20-80-290 B; or
 - (2) Containers holding liquid waste, unless:
 - (a) The container is a small container similar in size to that normally found in household waste;
 - (b) The container is designed to hold liquids for use other than storage; or
 - (c) The waste is household waste.
 - b. Regulated hazardous wastes.
 - c. Solid wastes, residues, or soils containing more than 1.0 ppb (parts per billion) TEF (dioxins).
 - d. Solid wastes, residues, or soils containing 50.0 ppm (parts per million) or more of PCB's except as allowed under the provisions of 9VAC20-80-650.
 - e. Unstabilized sewage sludge as defined by the Department of Health or sludges that have not been dewatered.
 - f. Pesticide containers that have not been triple rinsed and crushed.
 - g. Drums that are not empty, properly cleaned and opened.
 - h. Contaminated soil unless approved by the director in accordance with the requirements of 9VAC20-80-630 or 9VAC20-80-700.
18. Reasonable records to include date, quantity by weight or volume, and origin shall be maintained on solid waste received and processed to fulfill the requirements of the Solid Waste Information and Assessment Program, the Control Program for Unauthorized Waste. Such information shall be made available to the department for examination or use when requested.
- D. Ground water monitoring. Ground water monitoring program shall be instituted at all sanitary landfills in accordance with the requirements contained in 9VAC20-80-300.
- E. Closure.
- 1. Closure criteria. All sanitary landfills shall be closed in accordance with the procedures set forth as follows:
 - a. The owner or operator shall close his facility in a manner that minimizes the need for further maintenance, and controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, the post-closure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the ground water, surface water, decomposition gas migration, or to the atmosphere.
 - b. Final cover system. Owner or operator of all sanitary landfills shall install a final cover system that is designed to achieve the performance requirements of subdivision 1 a of this subsection.
 - (1) The final cover system shall be designed and constructed to:
 - (a) Have an 18-inch infiltration layer with a hydraulic conductivity less than or equal to the hydraulic conductivity of any bottom liner system or natural subsoils present, or a hydraulic conductivity no greater than 1×10^{-5} cm/sec, whichever is less; and
 - (b) Minimize infiltration through the closed disposal unit by the use of an infiltration layer that is constructed of earthen material; and
 - (c) Minimize erosion of the final cover by the use of an erosion layer that contains a minimum of 6 inches of earthen material that is capable of sustaining native plant growth, and provide for protection of the infiltration layer from the effects of erosion, frost, and wind.
 - (2) Finished side slopes shall be stable and be configured to adequately control erosion and runoff. Slopes of 33% will be allowed provided that adequate runoff controls are established. Steeper slopes may be considered if supported by necessary stability calculations and appropriate erosion and runoff control features. All finished slopes and runoff management facilities shall be supported by necessary calculations and included in the design manual. To prevent ponding of water, the top slope shall be at least two percent after allowance for settlement.

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2. The director may approve an alternate final cover design that includes:

- a. An infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in subdivision 1 b (1) (a) of this subsection; and
- b. An erosion layer that provides equivalent protection from wind and water erosion as the erosion layer specified in subdivision 1 b (1) (c) of this subsection.

3. Closure plan and amendment of plan.

a. The owner or operator of a solid waste disposal facility shall have a written closure plan. This plan shall identify the steps necessary to completely close the facility at the point of the permit period when the operation will be the most extensive and at the end of its intended life. The closure plan shall include, at least:

(1) A description of those measures to be taken and procedures to be employed to comply with this subsection.

(2) An estimate of the largest area ever requiring a final cover as required at any time during the active life;

(3) An estimate of the maximum inventory of wastes ever on-site over the active life of the landfill facility; and

(4) A schedule for final closure which shall include, at a minimum, the anticipated date when wastes will no longer be received, the date when completion of final closure is anticipated, and intervening milestone dates which will allow tracking of the progress of closure.

b. The owner or operator may amend his closure plan at any time during the active life of the facility. The owner or operator shall so amend his plan any time changes in operating plans or facility design affects the closure plan. The amended closure plan shall be placed in the operating record.

c. The owner or operator shall notify the department whenever an amended closure plan has been prepared and placed in the operating record.

d. At least 180 days prior to beginning closure of each solid waste disposal unit, the owner or operator shall notify the department of the intent to close.

e. If the owner or operator intends to use an alternate final cover design, he shall submit a proposed design meeting the requirements of subdivision 2 of this subsection to the department at least 180 days before the date he expects to begin closure. The director will approve or disapprove the plan within 90 days of receipt.

f. Closure plans, and amended closure plans not previously approved by the director shall be submitted to the department at least 180 days before the date the

owner or operator expects to begin construction activities related to closure. The director will approve or disapprove the plan within 90 days of receipt.

4. Time allowed for closure.

a. The owner or operator shall begin closure activities of each unit no later than 30 days after the date on which the unit receives the known final receipt of wastes or, if the unit has remaining capacity and there is a reasonable likelihood that the unit will receive additional wastes, no later than one year after the most recent receipt of wastes. Extensions beyond the one-year deadline for beginning closure may be granted by the director if the owner or operator demonstrates that the unit has the capacity to receive additional wastes and the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the unclosed unit.

b. The owner or operator shall complete closure activities of each unit within six months following the beginning of closure. The director may approve a longer closure period if the owner or operator can demonstrate that the required or planned closure activities will, of necessity, take longer than six months to complete; and that the owner or operator has taken all steps to eliminate any significant threat to human health and the environment from the unclosed but inactive unit.

5. Closure implementation.

a. The owner or operator shall close each unit with a final cover as specified in subdivision 1 b of this subsection, grade the fill area to prevent ponding, and provide a suitable vegetative cover. Vegetation shall be deemed properly established when there are no large areas void of vegetation and it is sufficient to control erosion.

b. Following construction of the final cover system for each unit, the owner or operator shall submit to the department a certification, signed by a registered professional engineer verifying that closure has been completed in accordance with the requirements of this part. This certification shall include the results of the CQA/QC requirements under subdivision B 18 a (2) (e) of this section.

c. The owner or operator shall properly bait the site for rodent and vector control before final closure is initiated.

d. Following the closure of all units the owner or operator shall:

(1) Post one sign at the entrance of the facility notifying all persons of the closing, and providing a notice prohibiting further receipt of waste materials. Further, suitable barriers shall be installed at former accesses to prevent new waste from being deposited.

(2) Within 90 days, submit to the local land recording authority a survey plat prepared by a professional land surveyor registered by the Commonwealth or a person qualified in accordance with Title 54.1 of the Code of Virginia indicating the location and dimensions of landfill disposal areas. Monitoring well locations should be included and identified by the number on the survey plat. The plat filed with the local land recording authority shall contain a note, prominently displayed, which states the owner's or operator's future obligation to restrict disturbance of the site as specified.

(3) Record a notation on the deed to the facility property, or on some other instrument which is normally examined during title searches, notifying any potential purchaser of the property that the land has been used to manage solid waste and its use is restricted under subdivision F 4 c of this section. A copy of the deed notation as recorded shall be filed with the department.

(4) Submit to the department a certification, signed by a registered professional engineer, verifying that closure has been completed in accordance with the requirements of subdivision 5 d (1) through 5 d (3) of this section and the facility closure plan.

6. Inspection. The department shall inspect all solid waste management units at the time of closure to confirm that the closing is complete and adequate. It shall notify the owner of a closed facility, in writing, if the closure is satisfactory, and shall require any construction or such other steps necessary to bring unsatisfactory sites into compliance with these regulations. Notification by the department that the closure is satisfactory does not relieve the operator of responsibility for corrective action to prevent or abate problems caused by the facility.

7. Post-closure period. The post-closure care period begins on the date of the certification signed by a registered professional engineer as required in subdivision 5 d (4) of this subsection. Unless a facility completes all provisions of subdivision 5 of this subsection, the department will not consider the facility closed, and the beginning of the post-closure care period will be postponed until all provisions have been completed. If the department's inspection required by subdivision 6 of this subsection reveals that the facility has not been properly closed in accordance with this part, post closure will begin on the date that the department acknowledges proper closure has been completed.

F. Post-closure care requirements.

1. Following closure of all disposal units, the owner or operator shall conduct post-closure care of the facility. Post-closure care shall consist of at least the following:

- a. Maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover;
- b. Maintaining and operating the leachate collection system in accordance with the requirements in 9VAC20-80-290 and 9VAC20-80-300. The director may allow the owner or operator to stop managing leachate if the owner or operator demonstrates that leachate no longer poses a threat to human health and the environment;
- c. Monitoring the ground water in accordance with the requirements of subsection D of this section and maintaining the ground water monitoring system, if applicable; and
- d. Maintaining and operating the gas monitoring system in accordance with the requirements of 9VAC20-80-280.

2. The post-closure care shall be conducted:

- a. For 10 years in case of facilities that ceased to accept wastes before October 9, 1993; or
- b. For 30 years in case of facilities that received wastes on or after October 9, 1993; or
- c. As provided in subdivision 3 of this subsection.

3. The length of the post-closure care period may be:

- a. Decreased by the director if the owner or operator demonstrates that the reduced period is sufficient to protect human health and the environment and this demonstration is approved by the director; or
- b. Increased by the director if the director determines that the lengthened period is necessary to complete the corrective measures or to protect human health and the environment. If the post-closure period is increased, the owner or operator shall submit a revised post-closure plan for review and approval, and continue post-closure monitoring and maintenance in accordance with the approved plan.

4. The owner or operator shall prepare a written post-closure plan that includes, at a minimum, the following information:

- a. A description of the monitoring and maintenance activities required in subdivision 1 of this subsection for each disposal unit, and the frequency at which these activities will be performed;
- b. Name, address, and telephone number of the person or office to contact about the facility during the post-closure period; and
- c. A description of the planned uses of the property during the post-closure period. Post-closure use of the

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property shall not disturb the integrity of the final cover, liners, or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements of this chapter. The director may approve any other disturbance if the owner or operator demonstrates that disturbance of the final cover, liner or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment.

5. The owner or operator shall submit a post-closure care plan for review and approval by the director whenever a post-closure care plan has been prepared or amended. Those post-closure care plans that have been placed in a facility's operating record must be reviewed and approved by the director prior to implementation.

6. Following completion of the post-closure care period for each disposal unit, the owner or operator shall submit to the department a certificate, signed by a registered professional engineer, verifying that post-closure care has been completed in accordance with the post-closure plan. The certificate shall be accompanied by an evaluation, prepared by a professional engineer licensed in the Commonwealth and signed by the owner or operator, assessing and evaluating the landfill's potential for harm to human health and the environment in the event that post-closure monitoring and maintenance are discontinued.

9VAC20-80-260. Construction/demolition/debris (CDD) landfills.

Construction/demolition/debris landfills may only receive demolition waste, construction waste, debris waste, land clearing debris, split tires, and white goods. No other wastes are authorized for the CDD landfill. Chloroflourocarbons and PCBs must be removed from white goods prior to placement on the working face.

A. Siting. The following criteria apply to all CDD landfills:

1. CDD landfills shall not be sited or constructed in areas subject to base floods unless it can be shown that the facility can be protected from inundation or washout and that the flow of water is not restricted.

2. CDD landfills shall not be sited in geologically unstable areas where inadequate foundation support for the structural components of the landfill exists. Factors to be considered when determining unstable areas shall include:

- a. Soil conditions that may result in differential settling and subsequent failure of containment structures;
- b. Geologic or geomorphologic features that may result in sudden or non-sudden events and subsequent failure of containment structures;

- c. Man-made features or events (both surface and subsurface) that may result in sudden or non-sudden events and subsequent failure of containment structures;
- d. Presence of sink holes within the disposal area.

3. Acceptable CDD landfill sites shall allow for adequate area and terrain for management of leachate if generated.

4. CDD landfill disposal area shall not be closer than 200 feet to any residence, school, hospital, nursing home or recreational park area.

5. CDD disposal or leachate storage unit may not be located closer than:

- a. 100 feet of any regularly flowing surface water body or river;
- b. 200 feet of any well, spring or other ground water source of drinking water; or
- c. One thousand feet from the nearest edge of the right-of-way of any interstate or primary highway or 500 feet from the nearest edge of the right-of-way of any other highway or city street, except the following:

(1) Units which are screened by natural objects, plantings, fences, or other appropriate means so as to minimize the visibility from the main-traveled way of the highway or city street, or otherwise removed from sight;

(2) Units which are located in areas which are zoned for industrial use under authority of state law or in unzoned industrial areas as determined by the Commonwealth Transportation Board; or

(3) Units which are not visible from the main-traveled way of the highway or city street.

NOTE: This requirement is based on §33.1-348 of the Code of Virginia, which should be consulted for detail. The regulatory responsibility for this standard rests with the Virginia Department of Transportation.

6. Wetlands. New CDD landfills and lateral expansions of existing facilities shall not be located in wetlands, unless the owner or operator can make the following demonstrations to the director:

- a. Where applicable under §404 of the Clean Water Act or applicable Virginia wetlands laws, the presumption is clearly rebutted that a practicable alternative to the proposed landfill exists that does not involve wetlands;
- b. The construction and operation of the facility will not:
 - (1) Cause or contribute to violations of any applicable water quality standard;
 - (2) Violate any applicable toxic effluent standard or prohibition under §307 of the Clean Water Act;

(3) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Endangered Species Act of 1973 (87 Stat. 884); and

(4) Violate any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972 (86 Stat. 1052) for the protection of a marine sanctuary;

c. The facility will not cause or contribute to significant degradation of wetlands. The owner or operator shall demonstrate the integrity of the facility and its ability to protect ecological resources by addressing the following factors:

(1) Erosion, stability, and migration potential of native wetland soils, muds and deposits used to support the facility;

(2) Erosion, stability, and migration potential of dredged and fill materials used to support the facility;

(3) The volume and chemical nature of the waste managed in the facility;

(4) Impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste;

(5) The potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and

(6) Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected;

d. To the extent required under §404 of the Clean Water Act or applicable Virginia wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands (as defined by acreage and function) by first avoiding impacts to wetlands to the maximum extent practicable as required by subdivision 6 a of this subsection, then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands);

e. Furnish a copy of final determinations on subdivision 6 a through d of this subsection, obtained from the U.S. Army Corps of Engineers pertaining to federal jurisdictional wetlands; and

f. Sufficient other information to enable the department to make a reasonable determination with respect to these demonstrations.

7. No new facility shall be located in areas where ground water monitoring cannot be conducted in accordance with subsection D of this section. Factors to be considered in

determining whether or not a site can be monitored shall include:

a. Ability to characterize the direction of ground water flow within the uppermost aquifer;

b. Ability to characterize and define any releases from the landfill so as to determine what corrective actions are necessary;

c. Ability to perform corrective action as necessary; and

d. Ability to install a double liner system with a leachate collection system above the top liner and a monitoring collection system between the two liners.

8. The following site characteristics may also prevent approval or require substantial limitations on the site use or require incorporation of sound engineering controls:

a. Excessive slopes (greater than 33%);

b. Lack of readily available cover materials on site, or lack of a firm commitment for adequate cover material from a borrow site;

c. Springs, seeps, or other ground water intrusion into the site;

d. The presence of gas, water, sewage, or electrical or other transmission lines under the site; or

e. The prior existence on the site of an open dump, unpermitted landfill, lagoon, or similar unit, even if such a unit is closed, will be considered a defect in the site unless the proposed unit can be isolated from the defect by the nature of the unit design and the ground water for the proposed unit can be effectively monitored.

9. In strip mine pits, all coal seams and coal outcrops shall be isolated from solid waste materials by a minimum of five feet of natural or compacted soils with a hydraulic conductivity equal to or less than 1×10^{-7} cm/sec.

10. Specific site conditions may be considered in approving an exemption of a site from the siting restrictions of subdivisions 7 and 8 of this subsection.

B. Design/construction.

1. All CDD landfill facilities shall be surrounded on all sides by natural barriers, fencing, or an equivalent means of controlling vehicular access. All access will be limited to gates, and such gates shall be securable and equipped with locks.

2. Access roads extending from the public road to the entrance of a facility or site shall be all weather, and shall be provided with a base capable of withstanding anticipated heavy vehicle loads.

3. CDD landfill facilities should be provided with an adequately lighted and heated shelter where operating

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personnel have access to essential sanitation facilities. Lighting, sanitation facilities and heat may be provided by portable equipment as necessary.

4. Aesthetics shall be considered in the design of a facility or site. Use of artificial or natural screens shall be incorporated into the design for site screening and noise attenuation. The design should reflect those requirements, if any, that are determined from the long-range plan for the future use of the site.

5. All CDD landfill facilities shall be equipped with permanent or mobile telephone or radio communications.

6. All CDD landfills shall be designed to divert surface water runoff from a 25-year, 24-hour storm away from disposal areas. The design shall provide that any surface water runoff is managed so that erosion is well controlled and environmental damage is prevented.

7. Each CDD landfill facility shall be constructed in accordance with approved plans, which shall not be subsequently modified without approval by the department.

8. A leachate collection system and removal system and leachate monitoring program shall be required as detailed in 9VAC20-80-290. Surface impoundments or other leachate storage structures shall be so constructed that discharge to ground water will not occur. Leachate derived from the CDD landfill may be recirculated provided the CDD disposal unit is designed with a composite liner as required by 9VAC20-80-250 B 9 and a leachate collection system as required by 9VAC20-80-290.

9. A decomposition gas venting system or gas monitoring program is required unless the owner or operator can demonstrate to the department that gas formation is not a problem at the permitted landfill. A venting system will be essential at any time the concentration of methane generated exceeds 25% of the lower explosive limit within any structure or at the facility boundary. When required, the control of the decomposition gases shall be carried out in accordance with 9VAC20-80-280.

10. Final contours of the finished landfill shall be specified. Design of final contours shall consider subsequent site uses, existing natural contours, surface water management requirements, and the nature of the surrounding area. The final elevation of the landfill shall be limited by the structural capacity of the liner and leachate collection and removal system. The final contour shall not cause structural damage or collapse of the leachate collection system. Two survey bench marks shall be established and maintained on the landfill site, and their locations identified or recorded on drawings and maps of the facility.

11. A ground water monitoring system shall be installed at all new and existing CDD landfills in accordance with the requirements of 9VAC20-80-300.

12. Finished side slopes shall be stable and be configured to adequately control erosion and runoff. Slopes of 33% will be allowed provided that adequate runoff controls are established. Steeper slopes may be considered if supported by necessary stability calculations and appropriate erosion and runoff control features. All finished slopes and runoff management facilities shall be supported by necessary calculations and included in the design manual.

13. Solid waste disposal shall be at least 50 feet from the facility boundary.

14. All CDD landfills shall be underlain by a liner system as follows:

a. Compacted clay:

(1) A liner consisting of at least one-foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec.

(2) The liner shall be placed with a minimum of 2.0% slope for leachate drainage.

(3) The liner shall be covered with a minimum one-foot thick drainage layer composed of material having a hydraulic conductivity of 1×10^{-3} cm/sec or greater (lab tested).

b. Synthetic liners:

(1) Synthetic liner consisting of a minimum 30-mil thick flexible membrane. If high density polyethylene is used, it shall be at least 60-mil thick. Synthetic liners shall be proven to be compatible with the solid waste and its leachate.

(2) The liner shall be placed in accordance with an approved construction quality control/quality assurance program submitted with the design plans.

(3) The base under the liner shall be a smooth rock-free base or otherwise prepared to prevent causing liner failure.

(4) The liner shall be placed with a minimum of 2.0% slope for leachate drainage.

(5) The liner shall be covered with a 12-inch thick drainage layer and a 6-inch thick protective layer, placed above the drainage layer, both materials having a hydraulic conductivity of 1×10^{-3} cm/sec or greater (lab tested).

c. Other liners:

(1) Other augmented compacted clays or soils may be used as a liner provided the thickness is equivalent and

the hydraulic conductivity will be equal to or less than that for compacted clay alone.

(2) The effectiveness of the proposed augmented soil liner shall be documented by using appropriate laboratory tests.

(3) Shall be placed with a minimum of 2.0% slope for leachate drainage.

d. In-place soil:

(1) Where the landfill will be separated from the ground water by low hydraulic conductivity soil as indicated by appropriate laboratory tests, which is natural and undisturbed, and provides equal or better performance in protecting ground water from leachate contamination, a liner can be developed by manipulation of the soil to form a liner with equivalent thickness and hydraulic conductivity equal to or less than that of the clay liner.

(2) Shall be prepared with a minimum of 2.0% slope for leachate drainage.

e. Double liners required or used in lieu of ground water monitoring shall include:

(1) Base preparation to protect the liner.

(2) A bottom or secondary liner which is soil, synthetic or augmented soil as indicated in subdivisions 14 a, b, and c of this subsection.

(3) A witness or monitoring zone placed above the bottom or secondary liner consisting of a minimum of 12-inch thick drainage layer composed of material with a hydraulic conductivity of 1×10^{-3} cm/sec or greater with a network or perforated pipe, or an equivalent design.

(4) The primary liner as indicated in subdivision 14 a, b, and c of this subsection.

(5) The primary liner shall be covered with a minimum 12-inch thick drainage layer for leachate removal and a 6-inch thick protective layer placed above the drainage layer both materials having a hydraulic conductivity of 1×10^{-3} cm/sec or greater (lab tested).

15. If five-foot separation from seasonal high ground water can be demonstrated, a separate area may be established to receive only stumps, brush, leaves and land clearing debris. Such an area may be constructed without a liner or a leachate collection system, but may not receive any other solid waste.

16. A fire break of 50 feet shall be designed around the disposal area and all tree lines.

17. Construction quality assurance program.

a. General.

(1) A construction quality assurance (CQA) program is required for all landfill units. The program shall ensure that the constructed unit meets or exceeds all design criteria and specifications in the permit. The program shall be developed and implemented under the direction of a CQA officer who is a registered professional engineer.

(2) The CQA program shall address the following physical components, where applicable:

(a) Foundations;

(b) Low-hydraulic conductivity soil liners;

(c) Synthetic membrane liners;

(d) Leachate collection and removal systems; and

(e) Final cover systems.

b. Written CQA plan. The owner or operator shall develop and implement a written CQA plan. The plan shall identify steps that will be used to monitor and document the quality of materials and the condition and manner of their installation. The CQA plan shall include:

(1) Identification of applicable units, and a description of how they will be constructed.

(2) Identification of key personnel in the development and implementation of the CQA plan, and CQA officer qualifications.

(3) A description of inspection and sampling activities for all unit components identified in subdivision 17 a (2) of this subsection including observations and tests that will be used before, during, and after construction to ensure that the construction materials and the installed unit components meet the design specifications. The description shall cover: sampling size and locations; frequency of testing; data evaluation procedures; acceptance and rejection criteria for construction materials; plans for implementing corrective measures; and data or other information to be recorded.

c. Contents of program. The CQA program shall include observations, inspections, tests, and measurements sufficient to ensure:

(1) Structural stability and integrity of all components of the unit identified in subdivision 17 a (2) of this subsection;

(2) Proper construction of all components of the liners, leachate collection and removal system, gas management system if required under subdivision 9 of this subsection and final cover system, according to permit specifications and good engineering practices, and proper installation of all components (e.g. pipes) according to design specifications;

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(3) Conformity of all materials used with design and other material specifications; and

(4) The permeability of the liner soil. Soil liner construction will be demonstrated on a test pad where permeability will be confirmed using an in situ testing method.

d. Certification. Waste shall not be received in a landfill unit until the owner or operator has submitted to the department by certified mail or hand delivery a certification signed by the CQA officer that the approved CQA plan has been successfully carried out and that the unit meets the requirements of this section. Documentation supporting the CQA officer's certification shall be submitted to the department upon request. An additional certification is required under the provisions of 9VAC20-80-550 A 1.

C. Operation.

1. Access to a facility shall be permitted only when an attendant is on duty and only during daylight hours, unless otherwise specified in the permit for the facility.

2. Litter shall be confined to refuse holding and operating areas by fencing or other suitable means.

3. Dust, odors, and vectors shall be effectively controlled so they do not constitute nuisances or hazards.

4. Safety hazards to operating personnel shall be ~~prevented~~ controlled through an active safety program consistent with the requirements of 29 CFR Part 1910.

5. Adequate numbers and types of properly maintained equipment shall be available to a facility for the performance of operation. Provision shall be made for substitute equipment to be available within 24 hours should the former become inoperable or unavailable.

6. Open burning shall be prohibited.

7. Solid waste shall not be deposited in, nor shall it be permitted to enter any surface waters or ground waters.

8. Salvaging may be permitted by a solid waste disposal facility operator, but shall be controlled within a designated salvage area to preclude interference with operation of the facility and to avoid the creation of hazards or nuisances.

9. Reasonable records shall be maintained on the amount of solid waste received and processed to include date, quantity by weight or volume, and origin. Such information shall be made available to the department for examination or use when requested.

10. Fire breaks shall be installed in layers periodically as established in the facility permit. Such fire breaks shall consist of borrow materials deemed suitable as intermediate cover, and shall be placed on the top, side

slopes, and working faces of the fill to a depth of at least one foot. The requirements for fire breaks may be waived, however, if the waste materials are non-combustible. The owner or operator shall be responsible for extinguishing any fires that may occur at the facility. A fire control plan will be developed that outlines the response of facility personnel to fires. The fire control plan will be provided as an attachment to the emergency contingency plan required under the provisions of 9VAC20-80-520 C 2 k. The fire control plan will be available for review upon request by the public.

11. Compaction and cover requirements.

a. Waste materials shall be compacted in shallow layers during the placement of disposal lifts to minimize differential settlement.

b. Compacted soil cover shall be applied as needed for safety and aesthetic purposes. A minimum one-foot thick progressive cover shall be maintained weekly such that the top of the lift is fully covered at the end of the work week. A fire break as specified in subdivision 10 of this subsection will be installed on the top, side slopes, and on the work face as weekly progressive cover or as required in the facility permit. The open working face of a landfill shall be kept as small as practicable, determined by the tipping demand for unloading.

c. When waste deposits have reached final elevations, or disposal activities are interrupted for 15 days or more, waste deposits shall receive a one-foot thick intermediate cover unless soil has already been applied in accordance with subdivision 11 b of this subsection and be graded to prevent ponding and to accelerate surface run-off.

d. Final cover construction will be initiated in accordance with the requirements of subdivision E 1 b of this section upon the completion of disposal operations or when the following pertain:

(1) When operations are suspended for six months or more.

(2) Within 90 days of any area of the landfill reaching final elevation final cover construction will be initiated in that area. The director may approve alternate timeframes if they are specified in the facility's closure plan.

(3) If, for any reason, the permit is terminated, cover construction will be initiated within 90 days of termination.

e. Vegetative cover with proper support layers shall be established and maintained on all exposed final cover material within four months after placement, or as otherwise specified by the department when seasonal conditions do not otherwise permit.

12. A ground water monitoring program meeting the requirements of subsection D of this section shall be implemented.

13. Corrective Action Program. A corrective action program meeting the requirements of 9VAC20-80-310 is required whenever the ground water protection standard is exceeded.

14. Leachate from a solid waste disposal facility shall not be permitted to drain or discharge into surface waters except when authorized under a VPDES permit issued pursuant to the State Water Control Board Regulation (9VAC25-31).

15. All items designed in accordance with the requirements of subsection B of this section shall be properly maintained.

D. Ground water monitoring program. A ground water monitoring program shall be instituted at all CDD landfills in accordance with the requirements contained in 9VAC20-80-300.

E. Closure.

1. Closure criteria. All CDD landfills shall be closed in accordance with the procedures set forth in this subdivision.

a. The owner or operator shall close his facility in a manner that minimizes the need for further maintenance, and controls, minimizes or eliminates the post-closure escape of uncontrolled leachate, surface runoff, decomposition gas migration, or waste decomposition products to the ground water, surface water, or to the atmosphere.

b. Final cover system. Except as specified in subdivision 1 c of this subsection, owner or operator of CDD landfills shall install a final cover system that is designed to achieve the performance requirements of subdivision 1 a of this subsection.

(1) The final cover system shall be designed and constructed to:

(a) Have a hydraulic conductivity less than or equal to the hydraulic conductivity of any bottom liner system or natural subsoils present, or a hydraulic conductivity no greater than 1×10^{-5} cm/sec, whichever is less; and

(b) Minimize infiltration through the closed disposal unit by the use of an infiltration layer that contains a minimum 18 inches of earthen material; and

(c) Minimize erosion of the final cover by the use of an erosion layer that contains a minimum of six inches of earthen material that is capable of sustaining native plant growth, and provide for protection of the infiltration layer from the effects of erosion, frost, and wind.

(2) Finished side slopes shall be stable and be configured to adequately control erosion and runoff. Slopes of 33% will be allowed provided that adequate runoff controls are established. Steeper slopes may be considered if supported by necessary stability calculations and appropriate erosion and runoff control features. All finished slopes and runoff management facilities shall be supported by necessary calculations and included in the design manual. To prevent ponding of water, the top slope shall be at least two percent after allowance for settlement.

(3) The director may approve an alternate final cover design that includes:

(a) An infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in subdivisions b (1) (a) and b (1) (b) of this subsection; and

(b) An erosion layer that provides equivalent protection from wind and water erosion as the erosion layer specified in subdivision 1 b (1) (c) of this subsection.

c. Owners or operators of units used for the disposal of wastes consisting only of stumps, wood, brush, and leaves from landclearing operations may apply two feet of compacted soil as final cover material in lieu of the final cover system specified in subdivision 1 (b) (1) of this subsection. The provisions of this section shall not be applicable to any facility with respect to which the director has made a finding that continued operation of the facility constitutes a threat to the public health or the environment.

2. Closure plan and amendment of plan.

a. The owner or operator of a solid waste disposal facility shall have a written closure plan. This plan shall identify the steps necessary to completely close the facility at the time when the operation will be the most extensive and at the end of its intended life. The closure plan shall include, at least:

(1) A description of those measures to be taken and procedures to be employed to comply with this subsection;

(2) An estimate of the largest area ever requiring a final cover as required at any time during the active life;

(3) An estimate of the maximum inventory of wastes ever on-site over the active life of the landfill facility; and

(4) A schedule for final closure shall also be provided which shall include, as a minimum, the anticipated date when wastes will no longer be received, the date when completion of final closure is anticipated, and intervening

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milestone dates which will allow tracking of the progress of closure.

b. The owner or operator may amend his closure plan at any time during the active life of the facility. The owner or operator shall so amend his plan any time changes in operating plans or facility design affects the closure plan.

c. The owner or operator shall notify the department whenever an amended closure plan has been prepared and placed in the operating record.

d. Prior to beginning closure of each solid waste disposal unit, the owner or operator shall notify the department of the intent to close.

e. If the owner or operator intends to use an alternate final cover design, he shall submit a proposed design meeting the requirements of subdivision 1 b (3) of this subsection to the department at least 180 days before the date he expects to begin closure. The director will approve or disapprove the plan within 90 days of receipt.

f. Closure plans, and amended closure plans not previously approved by the director shall be submitted to the department at least 180 days before the date the owner or operator expects to begin closure. The director will approve or disapprove the plan within 90 days of receipt.

3. Time allowed for closure.

a. The owner or operator shall begin closure activities of each unit no later than 30 days after the date on which the unit receives the known final receipt of wastes or, if the unit has remaining capacity and there is a reasonable likelihood that the unit will receive additional wastes, no later than one year after the most recent receipt of wastes. Extensions beyond the one-year deadline for beginning closure may be granted by the director if the owner or operator demonstrates that the unit has the capacity to receive additional wastes and the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the unclosed unit.

b. The owner or operator shall complete closure activities in accordance with the closure plan within six months after receiving the final volume of wastes. The director may approve a longer closure period if the owner or operator can demonstrate that the required or planned closure activities will, of necessity, take longer than six months to complete; and that the owner or operator has taken all steps to eliminate any significant threat to human health and the environment from the unclosed but inactive facility.

4. Closure implementation.

a. The owner or operator shall close each unit with a final cover as specified in subdivision 1 b of this subsection, grade the fill area to prevent ponding, and provide a suitable vegetative cover. Vegetation shall be deemed properly established when there are no large areas void of vegetation and it is sufficient to control erosion.

b. Following construction of the final cover system for each unit, the owner or operator shall submit to the department a certification, signed by a registered professional engineer verifying that closure has been completed in accordance with the closure plan requirements of this part. This certification shall include the results of the CQA/QC requirements under subdivision B 17 a (2) (e) of this section.

c. Following the closure of all units the owner or operator shall:

(1) Post one sign at the entrance of the facility notifying all persons of the closing, and the prohibition against further receipt of waste materials. Further, suitable barriers shall be installed at former accesses to prevent new waste from being deposited.

(2) Within 90 days after closure is completed, the owner or operator of a landfill shall submit to the local land recording authority a survey plat prepared by a professional land surveyor registered by the Commonwealth indicating the location and dimensions of landfill disposal areas. Monitoring well locations should be included and identified by the number on the survey plat. The plat filed with the local land recording authority shall contain a note which states the owner's or operator's future obligation to restrict disturbance of the site as specified.

(3) The owner of the property on which a disposal facility is located shall record a notation on the deed to the facility property, or on some other instrument which is normally examined during title search, notifying any potential purchaser of the property that the land has been used to manage solid waste. A copy of the deed notation as recorded shall be filed with the department.

(4) Submit to the department a certification, signed by a registered professional engineer, verifying that closure has been completed in accordance with the requirements of subdivision 4 d (1) through 4 d (3) of this subsection and the facility closure plan.

5. Inspection. The department shall inspect all solid waste management units at the time of closure to confirm that the closing is complete and adequate. It shall notify the owner of a closed facility, in writing, if the closure is satisfactory, and shall require any construction or such other steps necessary to bring unsatisfactory sites into compliance with this chapter. Notification by the department that the closure is satisfactory does not relieve the operator of

responsibility for corrective action to prevent or abate problems caused by the facility.

6. Post-closure period. The post-closure care period begins on the date of the certification signed by a registered professional engineer as required in subdivision 4 c (4) of this subsection. Unless a facility completes all provisions of subdivision 4 of this subsection the department will not consider the facility closed, and the beginning of the post-closure care period will be postponed until all provisions have been completed. If the department's inspection required by subdivision 5 of this subsection reveals that the facility has not been properly closed in accordance with this part, post closure will begin on the date that the department acknowledges proper closure has been completed.

F. Post-closure care requirements

1. Following closure of all disposal units, the owner or operator shall conduct post-closure care of the facility. Except as provided under subdivision 2 of this subsection, post-closure care shall be conducted for 10 years after the date of completing closure or for as long as leachate is generated, whichever is later, and shall consist of at least the following:

- a. Maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover;
- b. Maintaining and operating the leachate collection system in accordance with the requirements in 9VAC20-80-290 and 9VAC20-80-300, if applicable. The director may allow the owner or operator to stop managing leachate if the owner or operator demonstrates that leachate no longer poses a threat to human health and the environment;
- c. Monitoring the ground water in accordance with the requirements of subsection D of this section and maintaining the ground water monitoring system, if applicable; and
- d. If applicable, maintaining and operating the gas monitoring system in accordance with the requirements of 9VAC20-80-280.

2. The length of the post-closure care period may be:

- a. Decreased by the director if the owner or operator demonstrates that the reduced period is sufficient to protect human health and the environment and this demonstration is approved by the director; or
- b. Increased by the director if the director determines that the lengthened period is necessary to complete the corrective measures or to protect human health and the

environment. If the post-closure period is increased, the owner or operator shall submit a revised post-closure plan for review and approval, and continue post-closure monitoring and maintenance in accordance with the approved plan.

3. The owner or operator shall prepare a written post-closure plan that includes, at a minimum, the following information:

- a. A description of the monitoring and maintenance activities required in subdivision 1 of this subsection for each disposal unit, and the frequency at which these activities will be performed;
- b. Name, address, and telephone number of the person or office to contact about the facility during the post-closure period; and
- c. A description of the planned uses of the property during the post-closure period. Post-closure use of the property shall not disturb the integrity of the final cover, liners, or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements of this chapter. The director may approve any other disturbance if the owner or operator demonstrates that disturbance of the final cover, liner or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment.

4. The owner or operator shall submit a post-closure care plan for review and approval by the director whenever a post-closure care plan has been prepared or amended. Those post-closure care plans that have been placed in a facility's operating record must be reviewed and approved by the director prior to implementation.

5. Following completion of the post-closure care period for each disposal unit, the owner or operator shall submit to the department a certificate, signed by a registered professional engineer, verifying that post-closure care has been completed in accordance with the post-closure plan. The certificate shall be accompanied by an evaluation, prepared by a professional engineer licensed in the Commonwealth and signed by the owner or operator, assessing and evaluating the landfill's potential for harm to human health and the environment in the event that post-closure monitoring and maintenance are discontinued.

9VAC20-80-270. Industrial waste disposal facilities.

Facilities intended primarily for the disposal of nonhazardous industrial waste shall be subject to design and operational requirements dependent on the volume and the physical, chemical, and biological nature of the waste. Household wastes may not be disposed of in industrial waste disposal facilities. Additional requirements, to include added

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ground water and decomposition gas monitoring, may be imposed by the director depending on the volume and the nature of the waste involved as necessary to protect health or the environment.

A. Siting.

1. Landfills shall not be sited or constructed in areas subject to base floods unless it can be shown that the facility can be protected from inundation or washout and that flow of water is not restricted.

2. Landfills shall not be sited in geologically unstable areas where inadequate foundation support for the structural components of the landfill exists. Factors to be considered when determining unstable areas shall include:

- a. Soil conditions that may result in differential settling and subsequent failure of containment structures;
- b. Geologic or geomorphologic features that may result in sudden or nonsudden events and subsequent failure of containment structures;
- c. Man-made features or events (both surface and subsurface) that may result in sudden or nonsudden events and subsequent failure of containment structures;

3. Acceptable landfill sites shall have sufficient area and terrain to allow for management of leachate.

4. No new industrial waste landfill disposal or leachate storage unit or expansion of existing units shall extend closer than:

- a. 100 feet of any regularly flowing surface water body or river;
- b. 500 feet of any well, spring or other ground water source of drinking water;
- c. One thousand feet from the nearest edge of the right-of-way of any interstate or primary highway or 500 feet from the nearest edge of the right-of-way of any other highway or city street, except the following:
 - (1) Units which are screened by natural objects, plantings, fences, or other appropriate means so as to minimize the visibility from the main-traveled way of the highway or city street, or otherwise removed from sight;
 - (2) Units which are located in areas which are zoned for industrial use under authority of state law or in unzoned industrial areas as determined by the Commonwealth Transportation Board;
 - (3) Units which are not visible from the main-traveled way of the highway or city street;

NOTE: This requirement is based on §33.1-348 of the Code of Virginia, which should be consulted for detail. The regulatory responsibility for this standard rests with the Virginia Department of Transportation.

d. 200 feet from the active filling areas to any residence, school or recreational park area; or

e. 50 feet from the active filling areas to the facility boundary.

5. Wetlands. New industrial landfills and lateral expansions of existing facilities shall not be located in wetlands, unless the owner or operator can make the following demonstrations:

a. Where applicable under §404 of the Clean Water Act or applicable Virginia wetlands laws, the presumption is clearly rebutted that a practicable alternative to the proposed landfill exists that does not involve wetlands;

b. The construction and operation of the facility will not:

(1) Cause or contribute to violations of any applicable water quality standard;

(2) Violate any applicable toxic effluent standard or prohibition under §307 of the Clean Water Act;

(3) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Endangered Species Act of 1973; and

(4) Violate any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972 for the protection of a marine sanctuary;

c. The facility will not cause or contribute to significant degradation of wetlands. The owner or operator shall demonstrate the integrity of the facility and its ability to protect ecological resources by addressing the following factors:

(1) Erosion, stability, and migration potential of native wetland soils, muds and deposits used to support the facility;

(2) Erosion, stability, and migration potential of dredged and fill materials used to support the facility;

(3) The volume and chemical nature of the waste managed in the facility;

(4) Impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste;

(5) The potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and

(6) Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected;

d. To the extent required under §404 of the Clean Water Act or applicable Virginia wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands

(as defined by acreage and function) by first avoiding impacts to wetlands to the maximum extent practicable as required by 9VAC20-80-250 A 4, then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands); and

e. Sufficient information is available to make a reasonable determination with respect to these demonstrations.

6. No new facility shall be located in areas where ground water monitoring cannot be conducted in accordance with subsection D of this section. Factors to be considered in determining whether or not a site can be monitored shall include:

a. Ability to characterize the direction of ground water flow within the uppermost aquifer;

b. Ability to characterize and define any releases from the landfill so as to determine what corrective actions are necessary;

c. Ability to perform corrective action as necessary; and

d. Ability to install a double liner system with a leachate collection system above the top liner and a monitoring collection system between the two liners.

7. The following site characteristics may also prevent approval or require substantial limitations on the site use or require incorporation of sound engineering controls:

a. Excessive slopes (greater than 33%) over more than half the site area;

b. Lack of readily available cover materials or lack of a firm commitment for adequate cover material from a borrow site;

c. Springs, seeps, or other ground water intrusion into the site;

d. The presence of gas, water, sewage, or electrical or other transmission lines under the site; or

e. The prior existence on the site of a dump, unpermitted landfill, lagoon, or similar unit, even if such unit is closed, will be considered a defect in the site unless the proposed unit can be isolated from the defect by the nature of the unit design and the ground water under the proposed unit can be effectively monitored.

8. Specific site conditions may be considered in approving an exemption of a site from the siting restrictions of subdivision 5 and 6 of this subsection.

B. Design/construction. The following design and construction requirements apply to all industrial waste landfills:

1. All facilities shall be surrounded on all sides by natural barriers, fencing, or an equivalent means of controlling public access and preventing illegal disposal. Except where the solid waste disposal facility is on site of the industrial facility where access is limited, all access will be limited to gates, and such gates shall be securable and equipped with locks.

2. Access roads to the entrance of a solid waste disposal facility or site and to the disposal area shall be passable in all weather conditions, and shall be provided with a base capable of withstanding anticipated heavy vehicle loads.

3. Each off-site solid waste disposal facility should be provided with an adequately lighted and heated shelter where operating personnel can exercise site control and have access to essential sanitation facilities. Lighting, heat and sanitation facilities may be provided by portable equipment as necessary.

4. Aesthetics shall be considered in the design of a solid waste disposal facility. Use of artificial or natural screens shall be incorporated into the design for site screening and noise attenuation. The design should reflect those requirements, if any, that are determined from the long-range plan for the future use of the site.

5. All landfills should be equipped with permanent or mobile telephone or radio communications except where other on-site resources are available.

6. All facilities shall be designed to divert surface water runoff from a 25-year, 24-hour storm away from disposal areas. The design shall provide that any surface water runoff is managed so that erosion is well controlled and environmental damage is prevented.

7. The design shall provide for leachate management which shall include its collection, treatment, storage, and disposal and a leachate monitoring program in accordance with 9VAC20-80-290.

8. Each landfill shall be constructed in accordance with approved plans, which shall not be subsequently modified without approval by the department.

9. Two survey bench marks shall be established and maintained on the landfill site, and its location identified or recorded on drawings and maps of the facility.

10. Compacted lifts of deposited waste shall be of a height that is compatible with the amount received daily and the specific industrial waste being managed keeping work face to a minimum.

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11. Acceptable landfill sites shall have sufficient area and terrain to allow for management of leachate.

12. A ground water monitoring system shall be installed at all new and existing industrial landfills in accordance with the requirements of 9VAC20-80-300.

13. Drainage structures shall be installed and continuously maintained to prevent ponding and erosion, and to minimize infiltration of water into solid waste cells.

14. All landfills shall be underlain by a liner system as follows:

a. Compacted soil:

(1) A liner consisting of at least one-foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec.

(2) The liner shall be placed with a minimum of 2.0% slope for leachate drainage.

(3) The liner shall be covered with a minimum one-foot thick drainage layer composed of material having a hydraulic conductivity of 1×10^{-3} cm/sec or greater (lab tested).

b. Synthetic liners:

(1) Synthetic liner consisting of a minimum 30-mil thick flexible membrane. If high density polyethylene is used, it shall be at least 60-mil thick. Synthetic liners shall be proven to be compatible with the solid waste and its leachate.

(2) The liner shall be placed in accordance with an approved construction quality control/quality assurance program submitted with the design plans.

(3) The base under the liner shall be a smooth rock-free base or otherwise prepared to prevent causing liner failure.

(4) The liner shall be placed with a minimum of 2.0% slope for leachate drainage.

(5) The liner shall be covered with a 12-inch thick drainage layer for leachate removal and a six -inch thick protective layer placed above the drainage layer, both composed of materials with a hydraulic conductivity of 1×10^{-3} cm/sec or greater (lab tested).

c. Other liners:

(1) Other augmented compacted clays or soils may be used as a liner provided the thickness is equivalent and the hydraulic conductivity will be equal to or less than that for compacted clay alone.

(2) The effectiveness of the proposed augmented soil liner shall be documented by using appropriate laboratory tests.

(3) The liner shall be placed with a minimum of 2.0% slope for leachate drainage.

d. In-place soil:

(1) Where the landfill will be separated from the ground water by low hydraulic conductivity soil as indicated by appropriate laboratory tests, which is natural and undisturbed, and provides equal or better performance in protecting ground water from leachate contamination, a liner can be developed by manipulation of the soil to form a liner with equivalent thickness and hydraulic conductivity equal to or less than that of the clay liner.

(2) The liner shall be prepared with a minimum of 2.0% slope for leachate drainage.

e. Double liners required or used in lieu of ground water monitoring shall include:

(1) Base preparation to protect the liner.

(2) A bottom or secondary liner which is soil, synthetic or augmented soil as indicated in subdivision 14 a, b, c, or d of this subsection.

(3) A witness or monitoring zone placed above the bottom or secondary liner consisting of a 12 -inch thick drainage layer composed of material with a hydraulic conductivity of 1×10^{-3} cm/sec or greater (lab tested) with a network of perforated pipe, or an equivalent design.

(4) The primary liner as indicated in subdivision 14 a, b, or c of this subsection.

(5) The primary liner will be covered with a minimum 12-inch thick drainage layer and a six-inch thick protective layer, placed above the drainage layer, both composed of materials having a hydraulic conductivity of 1×10^{-3} cm/sec or greater (lab tested).

15. The leachate collection system shall be placed above the top liner in accordance with the requirements of 9VAC20-80-290. Surface impoundments or other leachate storage structures shall be so constructed that discharge to ground water will not occur. Leachate derived from the industrial waste landfill may be recirculated provided the disposal unit is designed with a composite liner as required by 9VAC20-80-250 B 9 and a leachate collection system as required by 9VAC20-80-290.

16. Final contours of the finished landfill shall be specified. Design of final contours shall consider subsequent site uses, existing natural contours, surface water management requirements, and the nature of the surrounding area.

17. Finished side slopes shall be stable and be configured to adequately control erosion and runoff. Slopes of 33% will be allowed provided that adequate runoff controls are established. Steeper slopes may be considered if supported

by necessary stability calculations and appropriate erosion and runoff control features. All finished slopes and runoff management facilities shall be supported by necessary calculations and included in the design manual. The top slope shall be at least 2.0% to prevent ponding of water.

18. Each design shall include a gas management plan developed to control decomposition gases, unless the owner or operator can demonstrate that the chemical composition of wastes disposed clearly shows that no gases will be generated. The plan shall address the requirements of 9VAC20-80-280.

19. Construction quality assurance program.

a. General.

(1) A construction quality assurance (CQA) program is required for all landfill units. The program shall ensure that the constructed unit meets or exceeds all design criteria and specifications in the permit. The program shall be developed and implemented under the direction of a CQA officer who is a registered professional engineer.

(2) The CQA program shall address the following physical components, where applicable:

- (a) Foundations;
- (b) Low-hydraulic conductivity soil liners;
- (c) Synthetic membrane liners;
- (d) Leachate collection and removal systems; and
- (e) Final cover systems.

b. Written CQA plan. The owner or operator shall develop and implement a written CQA plan. The plan shall identify steps that will be used to monitor and document the quality of materials and the condition and manner of their installation. The CQA plan shall include:

- (1) Identification of applicable units, and a description of how they will be constructed.
- (2) Identification of key personnel in the development and implementation of the CQA plan, and CQA officer qualifications.
- (3) A description of inspection and sampling activities for all unit components identified in subdivision 19 a (2) of this subsection including observations and tests that will be used before, during, and after construction to ensure that the construction materials and the installed unit components meet the design specifications. The description shall cover: sampling size and locations; frequency of testing; data evaluation procedures; acceptance and rejection criteria for construction materials; plans for implementing corrective measures; and data or other information to be recorded.

c. Contents of program. The CQA program shall include observations, inspections, tests, and measurements sufficient to ensure:

- (1) Structural stability and integrity of all components of the unit identified in subdivision 19 a (2) of this subsection;
- (2) Proper construction of all components of the liners, leachate collection and removal system, gas management system if required under subdivision 18 of this subsection and final cover system, according to permit specifications and good engineering practices, and proper installation of all components (e.g., pipes) according to design specifications;
- (3) Conformity of all materials used with design and other material specifications;
- (4) The permeability of the soil liner. Soil liner construction will be demonstrated on a test pad where permeability will be confirmed using an in situ testing method.

d. Certification. Waste shall not be received in a landfill unit until the owner or operator has submitted to the department by certified mail or hand delivery a certification signed by the CQA officer that the approved CQA plan has been successfully carried out and that the unit meets the requirements of this section. Documentation supporting the CQA officer's certification shall be submitted to the department upon request. An additional certification is required under the provisions of 9VAC20-80-550 A 1

C. Operation.

- 1. Access to an off-site solid waste disposal facility shall be permitted only when an attendant is on duty and during times specified in the permit for the facility. An on-site solid waste disposal facility may operate during the normal hours of the industrial facility it directly supports.
- 2. Dust, odors, and vectors shall be effectively controlled so they do not constitute nuisances or hazards.
- 3. Safety hazards to operating personnel shall be ~~prevented~~ controlled through an active safety program consistent with the requirements of 29 CFR Part 1910.
- 4. Adequate numbers and types of properly maintained equipment shall be available to a facility for the performance of operation. Provision shall be made for substitute equipment to be available within 24 hours should the former become inoperable or unavailable.
- 5. Open burning shall be prohibited except pursuant to the appropriate conditional exemptions among those listed in 9VAC20-80-180 B 7 b. The means shall be provided on a facility to promptly extinguish any non-permitted open

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burning and to provide adequate fire protection for the solid waste disposal facility as a whole. There shall be no open burning permitted on areas where solid waste has been disposed or is being used for active disposal.

6. Solid waste shall not be deposited in, nor shall it be permitted to enter any surface waters or ground waters.

7. Records of waste received from off-site sources shall be maintained on the amount of solid waste received and processed, type of waste, and source of waste. Such information shall be made available to the department on request.

8. The ground water monitoring program shall be implemented in accordance with subsection D of this section.

9. Corrective action program. A corrective action program in accordance with 9VAC20-80-310 is required whenever the ground water protection levels are exceeded.

10. Fugitive dust and mud deposits on main site and access roads shall be controlled at all times to minimize nuisances.

11. Incinerator and air pollution control residues containing no free liquids should be incorporated into the working face and covered at such intervals as necessary to minimize them from becoming airborne.

12. Compaction and cover requirements.

a. Unless provided otherwise in the permit, solid waste shall be spread and compacted at the working face, which shall be confined to the smallest area practicable.

b. Lift heights shall be sized according to the volume of waste received daily and the nature of the industrial waste. A lift height is not required for materials such as fly ash that are not compactable.

c. Where it is appropriate for the specific waste, daily cover consisting of six inches of compacted earth or other suitable material shall be placed upon all exposed solid waste prior to the end of each operating day. For wastes such as fly ash and bottom ash from burning of fossil fuels, periodic cover to minimize exposure to precipitation and control dust or dust control measures such as surface wetting or crusting agents shall be applied.

d. Intermediate cover of at least one foot of compacted soil shall be applied whenever an additional lift of refuse is not to be applied within 30 days unless the owner or operator demonstrates to the satisfaction of the director that an alternate cover material or an alternate schedule will be protective of public health and the environment. In the case of facilities where coal combustion by-products are removed for beneficial use, intermediate cover must be applied in any area where ash has not been

placed or removed for 30 days or more. Further, all areas with intermediate cover exposed shall be inspected as needed but not less than weekly and additional cover material shall be placed on all cracked, eroded, and uneven areas as required to maintain the integrity of the intermediate cover system.

e. Final cover construction will be initiated in accordance with the requirements of subsection E of this section shall be applied when the following pertain:

(1) When an additional lift of solid waste is not to be applied within two years.

(2) When any area of a landfill attains final elevation and within 90 days after such elevation is reached. The director may approve a longer period in case of inclement weather. The director may approve alternate timeframes if they are specified in the facility's closure plan.

(3) When a landfill's permit is terminated within 90 days of such denial or termination.

13. Vegetative cover with proper support layers shall be established and maintained on all exposed final cover material within four months after placement, or as otherwise specified by the department when seasonal conditions do not otherwise permit.

14. No hazardous wastes as defined by the Virginia Hazardous Waste Management Regulations shall be accepted at the landfill.

15. The open working face of a landfill shall be kept as small as possible.

16. At least three days of acceptable cover soil or approved material at the average usage rate shall be maintained at the fill at all times at facilities where daily cover is required unless an off-site supply is readily available on a daily basis.

17. Equipment of appropriate size and numbers shall be on site at all times. Operators with training appropriate to the tasks they are expected to perform and in sufficient numbers for the complexity of the site shall be on the site whenever it is in operation. Equipment and operators provided will not be satisfactory unless they ensure that the site is managed with a high degree of safety and effectiveness.

18. Internal roads in the landfill shall be maintained to be passable in all weather by ordinary vehicles. All operation areas and units shall be accessible; gravel or other finish materials are usually required to accomplish this. Provisions shall be made to prevent tracking of mud onto public roads by vehicles leaving the site.

19. Leachate from a solid waste disposal facility shall not be permitted to drain or discharge into surface waters

except when authorized under a VPDES Permit issued pursuant to the State Water Control Board Regulation (9VAC25-31).

D. Ground water monitoring program. Ground water monitoring program shall be instituted at all industrial waste landfills in accordance with the requirements contained in 9VAC20-80-300.

E. Closure.

1. Closure criteria. All industrial waste landfills shall be closed in accordance with the procedures set forth as follows:

a. The owner or operator shall close his facility in a manner that minimizes the need for further maintenance, and controls the post-closure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the ground water, surface water, or to the atmosphere.

b. Owner or operator of all industrial landfills shall install a final cover system that is designed to achieve the performance requirements of subdivision 1 a of this subsection.

(1) The final cover system shall be designed and constructed to:

(a) Have a hydraulic conductivity less than or equal to the hydraulic conductivity of any bottom liner system or natural subsoils present, or a hydraulic conductivity no greater than 1×10^{-5} cm/sec, whichever is less; and

(b) Minimize infiltration through the closed disposal unit by the use of an infiltration layer that contains a minimum 18 inches of earthen material; and

(c) Minimize erosion of the final cover by the use of an erosion layer that contains a minimum of six inches of earthen material that is capable of sustaining native plant growth, and provide for protection of the infiltration layer from the effects of erosion, frost, and wind.

(2) Finished side slopes shall be stable and be configured to adequately control erosion and runoff. Slopes of 33% will be allowed provided that adequate runoff controls are established. Steeper slopes may be considered if supported by necessary stability calculations and appropriate erosion and runoff control features. All finished slopes and runoff management facilities shall be supported by necessary calculations and included in the design manual.

(3) The director may approve an alternate final cover design that includes:

(a) An infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in subdivisions 1 b (1) (a) and (b) of this subsection; and

(b) An erosion layer that provides equivalent protection from wind and water erosion as the erosion layer specified in subdivision 1 b (1) (c) of this subsection.

2. Closure plan and amendment of plan.

a. The owner or operator of a solid waste disposal facility shall have a written closure plan. This plan shall identify the steps necessary to completely close the facility at the time when the operation will be the most extensive and at the end of its intended life. The closure plan shall include, at least:

(1) A description of those measures and procedures to be employed to comply with this subsection;

(2) An estimate of the largest area ever requiring a final cover as required at any time during the active life;

(3) An estimate of the maximum inventory of wastes ever on-site over the active life of the landfill facility; and

(4) A schedule for final closure shall also be provided which shall include, as a minimum, the anticipated date when wastes will no longer be received, the date when completion of final closure is anticipated, and intervening milestone dates which will allow tracking of the progress of closure.

b. The owner or operator may amend his closure plan at any time during the active life of the facility. The owner or operator shall so amend his plan any time changes in operating plans or facility design affect the closure plan. The amended closure plan shall be placed in the operating record.

c. The owner or operator shall notify the department whenever an amended closure plan has been prepared and placed in the operating record.

d. Prior to beginning closure of each solid waste disposal unit, the owner or operator shall notify the department of the intent to close.

e. If the owner or operator intends to use an alternate final cover design, he shall submit a proposed design meeting the requirements of subdivision 1 b (3) of this subsection to the department at least 180 days before the date he expects to begin closure. The director will approve or disapprove the plan within 90 days of receipt.

f. Closure plans, and amended closure plans not previously approved by the director shall be submitted to the department at least 180 days before the date the owner or operator expects to begin closure. The director will approve or disapprove the plan within 90 days of receipt.

3. Time allowed for closure.

Regulations

a. The owner or operator shall begin closure activities of each unit no later than 30 days after the date on which the unit receives the known final receipt of wastes or, if the unit has remaining capacity and there is a reasonable likelihood that the unit will receive additional wastes, no later than one year after the most recent receipt of wastes. Extensions beyond the one-year deadline for beginning closure may be granted by the director if the owner or operator demonstrates that the unit has the capacity to receive additional wastes and the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the unclosed unit.

b. The owner or operator shall complete closure activities in accordance with the closure plan and within six months after receiving the final volume of wastes. The director may approve a longer closure period if the owner or operator can demonstrate that the required or planned closure activities will, of necessity, take longer than six months to complete; and that he has taken all steps to eliminate any significant threat to human health and the environment from the unclosed but inactive facility.

4. Closure implementation.

a. The owner or operator shall close each unit with a final cover as specified in subdivision 1 b of this subsection, grade the fill area to prevent ponding, and provide a suitable vegetative cover. Vegetation shall be deemed properly established when there are no large areas void of vegetation and it is sufficient to control erosion.

b. Following construction of the final cover system for each unit, the owner or operator shall submit to the department a certification, signed by a registered professional engineer verifying that closure has been completed in accordance with the closure plan requirements of this part. This certification shall include the results of the CQA/QC requirements under subdivision B 19 a (2) (e) of this section.

c. Following the closure of all units the owner or operator shall:

(1) Post one sign at the entrance of the facility notifying all persons of the closing, and providing a notice prohibiting further receipt of waste materials. Further, suitable barriers shall be installed at former accesses to prevent new waste from being deposited.

(2) Within 90 days after closure is completed, submit to the local land recording authority a survey plat indicating the location and dimensions of landfill disposal areas prepared by a professional land surveyor registered by the Commonwealth. Monitoring well locations should be included and identified by the number on the survey plat. The plat filed with the local land recording authority shall contain a note, prominently displayed, which states

the owner's or operator's future obligation to restrict disturbance of the site as specified.

(3) The owner of the property on which a solid waste disposal facility is located shall record a notation on the deed to the facility property, or on some other instrument which is normally examined during title search, notifying any potential purchaser of the property that the land has been used to manage solid waste. A copy of the deed notation as recorded shall be filed with the department.

(4) Submit to the department a certification, signed by a registered professional engineer, verifying that closure has been completed in accordance with the requirements of subdivision 4 c (1) through (3) of this subsection and the facility closure plan.

5. Inspection. The department shall inspect all solid waste management units at the time of closure to confirm that the closing is complete and adequate. It shall notify the owner of a closed facility, in writing, if the closure is satisfactory, and shall require any construction or such other steps necessary to bring unsatisfactory sites into compliance with these regulations. Notification by the department that the closure is satisfactory does not relieve the operator of responsibility for corrective action to prevent or abate problems caused by the facility.

6. Post-closure period. The post-closure care period begins on the date of the certification signed by a registered professional engineer as required in subdivision 4 c (4) of this subsection. Unless a facility completes all provisions of subdivision 4 of this subsection, the department will not consider the facility closed, and the beginning of the post-closure care period will be postponed until all provisions have been completed. If the department's inspection required by subdivision 5 of this subsection reveals that the facility has not been properly closed in accordance with this part, post-closure will begin on the date that the department acknowledges proper closure has been completed.

F. Post-closure care requirements.

1. Following closure of all disposal units, the owner or operator shall conduct post-closure care of the facility. Except as provided under subdivision 2 of this subsection, post-closure care shall be conducted for 10 years after the date of closure or for as long as leachate is generated, whichever is later, and shall consist of at least the following:

a. Maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover;

- b. Maintaining and operating the leachate collection system in accordance with the requirements in 9VAC20-80-290 and 9VAC20-80-300. The director may allow the owner or operator to stop managing leachate if the owner or operator demonstrates that leachate no longer poses a threat to human health and the environment;
- c. Monitoring the ground water in accordance with the requirements of subsection D of this section and maintaining the ground water monitoring system; and
- d. If applicable, maintaining and operating the gas monitoring system in accordance with the requirements of 9VAC20-80-280.
2. The length of the post-closure care period may be:
- a. Decreased by the director if the owner or operator demonstrates that the reduced period is sufficient to protect human health and the environment and this demonstration is approved by the director; or
- b. Increased by the director if the director determines that the lengthened period is necessary to complete the corrective measures or to protect human health and the environment. If the post-closure period is increased, the owner or operator shall submit a revised post-closure plan for review and approval, and continue post-closure monitoring and maintenance in accordance with the approved plan.
3. The owner or operator shall prepare a written post-closure plan that includes, at a minimum, the following information:
- a. A description of the monitoring and maintenance activities required in subdivision 1 of this subsection for each disposal unit, and the frequency at which these activities will be performed;
- b. Name, address, and telephone number of the person or office to contact about the facility during the post-closure period; and
- c. A description of the planned uses of the property during the post-closure period. Post-closure use of the property shall not disturb the integrity of the final cover, liners, or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements of this chapter. The director may approve any other disturbance if the owner or operator demonstrates that disturbance of the final cover, liner or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment.
4. The owner or operator shall submit a post-closure care plan for review and approval by the director whenever a post-closure care plan has been prepared or amended.

Those post-closure care plans that have been placed in a facility's operating record must be reviewed and approved by the director prior to implementation.

5. Following completion of the post-closure care period for each disposal unit, the owner or operator shall submit to the department a certificate, signed by a registered professional engineer, verifying that post-closure care has been completed in accordance with the post-closure plan. The certificate shall be accompanied by an evaluation, prepared by a professional engineer licensed in the Commonwealth and signed by the owner or operator, assessing and evaluating the landfill's potential for harm to human health and the environment in the event that post-closure monitoring and maintenance are discontinued.

9VAC20-80-280. Control of decomposition gases.

Owners or operators of solid waste disposal facilities shall develop a gas management plan in accordance with this section. Venting and control of decomposition gases shall be implemented for all sanitary landfills under 9VAC20-80-250 B and other landfills where required under ~~9VAC20-80-250 B-8~~, 9VAC20-80-260 B 9, or 9VAC20-80-270 B 18 to protect the facility cap, and to prevent migration into structures or beyond the facility boundary. The contents of the plan shall also reflect the requirements contained in 40 CFR 60.33c and 40 CFR 60.750 (Standards of performance for new and guidelines for control of existing municipal solid waste landfills) and 9VAC5-40-5800, as appropriate.

A. General requirements.

1. To provide for the protection of public health and safety, and the environment, the operator shall ensure that decomposition gases generated at a facility are controlled during the periods of operation, closure and post-closure care, in accordance with the following requirements:
- a. The concentration of methane gas generated by the facility shall not exceed 25% of the lower explosive limit (LEL) for methane in facility structures (excluding gas control or recovery system components); and
- b. The concentration of methane gas migrating from the landfill shall not exceed the lower explosive limit for methane at the facility boundary.
2. The program implemented pursuant to subsections B through E of this section shall continue throughout the active life of the facility and the closure and post-closure care periods or until the operator receives written authorization ~~to discontinue~~ by the department to discontinue. Authorization to cease gas monitoring and control shall be based on a demonstration by the operator that there is no potential for gas migration beyond the facility boundary or into facility structures.

Regulations

3. Gas monitoring and control systems shall be modified, during the closure and post-closure maintenance period, to reflect changing on-site and adjacent land uses. Post closure land use at the site shall not interfere with the function of gas monitoring and control systems.

4. The operator may request a reduction of monitoring or control activities based upon the results of collected monitoring data ~~collected~~. The request for reduction of monitoring or control activities shall be submitted in writing to the department.

~~B. Monitoring. To ensure that the conditions of this section are met,~~ Gas monitoring. Subject to the preconditions in 9VAC20-80-250 B, 9VAC20-80-260 B 9, and 9VAC20-80-270 B 18, the operator shall implement a gas monitoring program at the facility in accordance with the following requirements:

1. The gas monitoring network shall be designed to ensure detection of the presence of decomposition gas migrating beyond the landfill facility boundary and into facility structures.

2. The monitoring network shall be designed to account for the following specific site characteristics, and potential migration pathways or barriers, including, but not limited to:

- a. Local soil and rock conditions;
- b. Hydrogeological and hydraulic conditions surrounding the facility;
- c. Locations of buildings and structures relative to the waste deposit area;
- d. Adjacent land use, and inhabitable structures within 1000 feet of the landfill facility boundary;
- e. Man-made pathways, such as underground construction; and
- f. The nature and age of waste and its potential to generate decomposition gas.

3. Owners or operators of certain large sanitary landfills and landfills located in non-attainment areas may be required to perform additional monitoring as provided in 40 CFR 60.33c, 40 CFR 60.750, and 9VAC5-40-5800.

~~C. Monitoring frequency.~~

~~1. As a minimum, quarterly monitoring is required.~~

~~2. More frequent monitoring may be required by the department at those locations where results of monitoring indicate that decomposition gas migration is occurring or is accumulating in structures to detect migrating gas and ensure compliance with subsection A of this section.~~

4. At a minimum, the gas monitoring frequency shall be quarterly. The department may require more frequent

monitoring at locations where monitoring results indicate gas migration or gas accumulation in devices or structures designed to detect migrating gas.

C. Gas remediation.

1. When the gas monitoring results indicate concentrations of methane in excess of the action levels, 25% of the lower explosive limit (LEL) for methane in facility structures (excluding gas control or recovery system components) or 80% of the LEL for methane at the facility boundary, the operator shall:

a. Take all immediate steps necessary to protect public health and safety including those required by the contingency plan.

b. Notify the department in [~~writing~~ a written statement] within five working days of learning that action levels have been exceeded, and indicate what has been done or is planned to be done to resolve the problem.

2. When the gas monitoring results indicate concentrations of methane in excess of the compliance levels, 25% of the LEL for methane in facility structures (excluding gas control or recovery system components) or the LEL for methane at the facility boundary, the operator shall, within 60 days of detection, implement a remediation plan for the methane gas releases and submit it to the department for amendment of the facility permit. The plan shall describe the nature and extent of the problem and the proposed remedy. The plan shall include an implementation schedule specifying timeframes for implementing corrective actions, an evaluation of the effectiveness of such corrective actions, and milestones for proceeding in implementation of additional corrective actions, if necessary to reestablish compliance.

3. A gas remediation system shall:

a. Prevent methane accumulation in onsite structures.

b. Reduce methane concentrations at monitored property boundaries to below compliance levels in the timeframes specified in the gas remediation plan.

c. Provide for the collection and treatment and/or disposal of decomposition gas condensate produced at the surface. Condensate generated from gas control systems may be recirculated into the landfill provided the facility complies with the liner and leachate control systems requirements of this part. Condensate collected in condensate traps and drained by gravity into the waste mass will not be considered recirculation.

4. Extensive systems to control emissions of nonmethane organic compounds may be required under the Clean Air Act (40 CFR 60.33c and 40 CFR 60.750) and 9VAC5-40-5800. Facilities that are required to construct and operate systems designed to comply with those regulations will be

considered to be in compliance with the requirements of subdivisions 3 a and b of this subsection, unless monitoring data continues to indicate an exceedance of compliance levels. Gas control systems also may be subject to the Virginia Operating [~~Permit~~ Permits for Stationary Sources] Program [~~(9VAC5-80-40)~~ (9VAC5-80)] or other state air pollution control regulations.

5. The facility shall notify the department of an initial exceedance of the compliance level or unusual condition that may endanger human health and the environment, in accordance with 9VAC20-80-570 C 3, such as when an active gas remediation system is no longer operating in such a manner as to maintain compliance with this section.

D. Odor management.

1. When an odor nuisance or hazard is created under normal operating conditions and upon notification from the department, the permittee shall within 90 days develop and implement an odor management plan to address odors that may impact citizens beyond the [~~internal property facility~~] boundaries. The permittee shall place the plan in the operating record and a copy shall be submitted to the department for its records. Odor management plans developed in accordance with Virginia Air Regulations (9VAC5-40-140), 9VAC5-50-140 or other state air pollution control regulations will suffice for the provisions of this subsection.

2. The plan shall identify a contact at the facility that citizens can notify about odor concerns.

3. Facilities shall perform and document an annual review and update the odor management plan, as necessary, to address ongoing odor management issues.

~~D.~~ **E. Recordkeeping.** The owner or operator shall keep the records of the results of gas monitoring and any gas remediation issues throughout the active life of the facility and the post-closure care period. The ~~monitoring~~ records shall include:

1. The concentrations of the methane as measured at each probe and within each on-site structure;
2. The documentation of date, time, barometric pressure, atmospheric temperatures, general weather conditions, and probe pressures;
3. The names of sampling personnel, apparatus utilized, and a brief description of the methods used;
4. A numbering system to correlate monitoring results to a corresponding probe location;

5. Monitoring and design records for any gas remediation or control system.

E. Control.

~~1. When the results of gas monitoring indicate concentrations of methane in excess of the compliance levels required by subdivision A 1 of this subsection, the operator shall:~~

~~a. Take all immediate steps necessary to protect public health and safety including those required by the contingency plan.~~

~~b. Notify the department in writing within five working days of learning that compliance levels have been exceeded, and indicate what has been done or is planned to be done to resolve the problem.~~

~~e. Within 60 days of detection, implement a remediation plan for the methane gas releases and submit it to the department for approval and amendment of the facility permit. The plan shall describe the nature and extent of the problem and the proposed remedy.~~

~~2. A gas control system shall be designed to:~~

~~a. Prevent methane accumulation in on-site structures.~~

~~b. Reduce methane concentrations at monitored property boundaries to below compliance levels in the timeframes specified in the gas remediation plan.~~

~~e. Provide for the collection and treatment and/or disposal of decomposition gas condensate produced at the surface. Condensate generated from gas control systems may be recirculated into the landfill provided the facility complies with the liner and leachate control systems requirements of this part. Condensate collected in condensate traps and drained by gravity into the waste mass will not be considered recirculation.~~

~~3. Extensive systems to control emissions of non-methane organic compounds may be required under the Clean Air Act (40 CFR 60.33e and 40 CFR 60.750) and 9VAC5-40-5800. Facilities that are required to construct and operate systems designed to comply with those regulations will be considered to be in compliance with the requirements of subdivisions 2 a and b of this subsection. Gas control systems also may be subject to the Virginia Operating Permit Program 9VAC5-80-40 or other state air pollution control regulations.~~

9VAC20-80-485. Permits-by-rule and other special permits.

A. Permits by rule. Unless the owner or operator of the following facilities chooses to apply for and receive a full permit, he shall be deemed to have a solid waste management facility permit notwithstanding any other provisions of Part VII (9VAC20-80-480 et seq.) of this chapter, except 9VAC20-80-500 B 2 and B 3, if the conditions listed are met:

1. Transfer stations. The owner or operator of a transfer station, if he:

Regulations

a. Notifies the director of his intent to operate such a facility and provides to the department documentation required under 9VAC20-80-500 B;

b. Provides the director with a certification that the facility meets the siting standards of 9VAC20-80-340 B;

c. Furnishes to the director a certificate signed by a registered professional engineer that the facility has been designed and constructed in accordance with the standards of 9VAC20-80-340 C;

d. Submits to the director an operational plan describing how the standards of 9VAC20-80-340 D will be met;

e. Submits to the director a closure plan describing how the standards of 9VAC20-80-340 E will be met; and

f. Submits to the director the proof of financial responsibility if required by the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities (9VAC20-70); and

g. Submits to the director the results of the public participation effort conducted in accordance with the requirements contained in subdivision 6 of this subsection.

2. Materials recovery facilities. The owner or operator of a materials recovery facility, if the owner or operator:

a. Notifies the director of his intent to operate such a facility and provides the department with documentation required under 9VAC20-80-500 B;

b. Provides the director with a certification that the facility meets the siting standards of 9VAC20-80-360 B, as applicable;

c. Furnishes to the director a certificate signed by a registered professional engineer that the facility has been designed and constructed in accordance with the standards of 9VAC20-80-360 C, as applicable;

d. Submits to the director an operational plan describing how the standards of 9VAC20-80-360 D, as applicable, will be met;

e. Submits to the director a closure plan describing how the standards of 9VAC20-80-360 E, as applicable, will be met;

f. Submits to the director the proof of financial responsibility if required by the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities (9VAC20-70);

g. Submits to the director the results of the public participation effort conducted in accordance with the requirements contained in subdivision 6 of this subsection; and

h. In addition to the above, in the case of facilities engaged in reclamation of petroleum-contaminated materials, submits to the director:

(1) A copy of the facility permit issued in accordance with the regulations promulgated by the of Air Pollution Control Board when applicable; and

(2) A description how the requirements of 9VAC20-80-700 will be met.

Existing soil reclamation facilities which became operational prior to March 15, 1993, on the basis of written approval from the director, are considered to be operating under a permit-by-rule.

3. Energy recovery, thermal treatment, or incineration facility. The owner or operator of an energy recovery, thermal treatment, or incineration facility, if he:

a. Notifies the director of his intent to operate such a facility and provides to the department documentation required under 9VAC20-80-500 B;

b. Provides the director with a certification that the facility meets the siting standards of 9VAC20-80-370 B, as applicable;

c. Furnishes to the director a certificate signed by a registered professional engineer that the facility has been designed and constructed in accordance with the standards of 9VAC20-80-370 C, as applicable;

d. Submits to the director an operational plan describing how the standards of 9VAC20-80-370 D, as applicable, will be met;

e. Submits to the director a closure plan describing how the standards of 9VAC20-80-370 E, as applicable, will be met;

f. Submits to the director the proof of financial responsibility if required by the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities (9VAC20-70); and

g. Furnishes to the director a copy of the facility permit issued in accordance with the regulations promulgated by the Air Pollution Control Board.

In addition to the above, in the case of thermal treatment facilities engaged in reclamation of petroleum-contaminated materials, submits to the director a description of how the requirements of 9VAC20-80-700 will be met.

4. Composting facilities. The owner or operator of all Type A or Type B facilities that receive no more than 700 tons per quarter of compostable materials, if he:

- a. Notifies the director of his intent to operate such a facility and provides to the department documentation required under 9VAC20-80-500 B;
 - b. Provides the director with the description of the type of facility and the classification of materials that will be composted as classified under 9VAC20-80-330 A 4;
 - c. Provides the director with a certification that the facility meets the siting standards of 9VAC20-80-330 B;
 - d. Furnishes to the director a certificate signed by a registered professional engineer that the facility has been designed and constructed in accordance with the standards of 9VAC20-80-330 C;
 - e. Submits to the director an operational plan describing how the standards of 9VAC20-80-330 D will be met;
 - f. Submits to the director a closure plan describing how the standards of 9VAC20-80-330 E will be met;
 - g. Submits to the director the proof of financial responsibility if required by the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities (9VAC20-70); and
 - h. Submits to the director the results of the public participation effort conducted in accordance with the requirements contained in subdivision 6 of this subsection.
5. Waste piles. The owner or operator of a waste pile, if the owner or operator:
- a. Notifies the director of his intent to operate such a facility and provides the department with documentation required under 9VAC20-80-500 B;
 - b. Provides the director with a certification that the facility meets the siting standards of 9VAC20-80-400 B, as applicable;
 - c. Furnishes to the director a certificate signed by a registered professional engineer that the facility has been designed and constructed in accordance with the standards of 9VAC20-80-400 C, as applicable;
 - d. Submits to the director an operational plan, including a contingency plan, describing how the standards of 9VAC20-80-400 D, as applicable, will be met;
 - e. Submits to the director a closure plan describing how the standards of 9VAC20-80-400 E, as applicable, will be met;
 - f. Submits to the director the proof of financial responsibility if required by the Financial Assurance Regulations for Solid Waste Facilities (9VAC20-70);
 - g. Submits to the director the results of the public participation effort conducted in accordance with the requirements contained in subdivision 6 of this subsection; and
 - h. Submits to the director a copy of the facility's VPDES permit if applicable.
6. Public participation.
- a. Before the initiation of any construction at the facility under subdivision 1, 2, 3, or 4 of this subsection, the owner or operator shall publish a notice once a week for two consecutive weeks in a major local newspaper of general circulation informing the public that he intends to construct and operate a facility eligible for a permit-by-rule. The notice shall include:
 - (1) A brief description of the proposed facility and its location;
 - (2) A statement that the purpose of the public participation is to acquaint the public with the technical aspects of the facility and how the standards and the requirements of this chapter will be met, to identify issues of concern, to facilitate communication and to establish a dialogue between the permittee and persons who may be affected by the facility;
 - (3) Announcement of a 30-day comment period, in accordance with subdivision 6 d of this subsection, and the name, telephone number, and address of the owner's or operator's representative who can be contacted by the interested persons to answer questions or where comments shall be sent;
 - (4) Announcement of the date, time, and place for a public meeting held in accordance with subdivision 6 c of this subsection; and
 - (5) Location where copies of the documentation to be submitted to the department in support of the permit-by-rule notification and any supporting documents can be viewed and copied.
 - b. The owner or operator shall place a copy of the documentation and support documents in a location accessible to the public in the vicinity of the proposed facility.
 - c. The owner or operator shall hold a public meeting not earlier than 15 days after the publication of the notice required in subdivision 6 a of this subsection and no later than seven days before the close of the 30-day comment period. The meeting shall be held to the extent practicable in the vicinity of the proposed facility.
 - d. The public shall be provided 30 days to comment on the technical and the regulatory aspects of the proposal. The comment period will begin on the date the owner or operator publishes the notice in the local newspaper.

Regulations

e. The requirements of this section do not apply to the owners or operators of a material or energy recovery facility, an incinerator or a thermal treatment unit that has received a permit from the department based on the regulations promulgated by the State Air Pollution Control Board or State Water Control Board that required facility-specific public participation procedures.

7. Upon receiving the certifications and other required documents, including the results of the public meeting and the applicant's response to the comments received, the ~~[director will acknowledge their receipt]~~ department shall respond within ~~40 working~~ 30 calendar days. If the applicant's submission is administratively incomplete, the letter will state that the facility will not be considered to have a permit-by-rule until the missing certifications or other required documentation is submitted. At the time of the initial receipt or at a later date, the director may require changes in the documents designed to assure compliance with the standards of Part VI (9VAC20-80-320 et seq.) and Part VIII (9VAC20-80-630 et seq.), if applicable. Should such changes not be accomplished by the facility owner or operator, the director may require the operator to submit the full permit application and to obtain a regular solid waste management facility permit.

8. Change of ownership. A permit by rule may not be transferred by the permittee to a new owner or operator. However, when the property transfer takes place without proper closure, the new owner shall notify the department of the sale and fulfill all the requirements contained in subdivisions 1 through 4 of this subsection with the exception of those dealing with the financial assurance. Upon presentation of the financial assurance proof required by 9VAC20-70 by the new owner, the department will release the old owner from his closure and financial responsibilities and acknowledge existence of the new permit by rule in the name of the new owner.

9. Facility modifications. The owner or operator of a facility operating under a permit by rule may modify its design and operation by furnishing the department a new certificate prepared by the professional engineer and new documentation required under subdivision 1, 2, 3, 4, or 5 as applicable, and 6 of this subsection. Whenever modifications in the design or operation of the facility affect the provisions of the approved closure plan, the owner or operator shall also submit an amended closure plan. Should there be an increase in the closure costs, the owner or operator shall submit a new proof of financial responsibility as required by the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities (9VAC20-70).

10. Loss of permit by rule status. In the event that a facility operating under a permit by rule violates any applicable siting, design and construction, or closure provisions of

Part VI of this chapter, the owner or operator of the facility will be considered to be operating an unpermitted facility as provided for in 9VAC20-80-80 and shall be required to either obtain a new permit as required by Part VII or close under Part V or VI of this chapter, as applicable.

11. Termination. The director shall terminate permit by rule and shall require closure of the facility whenever he finds that:

a. As a result of changes in key personnel, the requirements necessary for a permit by rule are no longer satisfied;

b. The applicant has knowingly or willfully misrepresented or failed to disclose a material fact in his disclosure statement, or any other report or certification required under this chapter, or has knowingly or willfully failed to notify the director of any material change to the information in the disclosure statement;

c. Any key personnel have been convicted of any of the crimes listed in §10.1-1409 of the Code of Virginia, punishable as felonies under the laws of the Commonwealth, or the equivalent of them under the laws of any other jurisdiction; or has been adjudged by an administrative agency or a court of competent jurisdiction to have violated the environmental protection laws of the United States, the Commonwealth or any other state and the director determines that such conviction or adjudication is sufficiently probative of the permittee's inability or unwillingness to operate the facility in a lawful manner; or

d. The operation of the facility is inconsistent with the facility's operations manual and the operational requirements of the regulations.

B. Emergency permits. Notwithstanding any other provision of Part VII of this chapter, in the event the director finds an imminent and substantial endangerment to human health or the environment, the director may issue a temporary emergency permit to a facility to allow treatment, storage, or disposal of solid waste for a nonpermitted facility or solid waste not covered by the permit for a facility with an effective permit. Such permits:

1. May be oral or written. If oral, it shall be followed within five days by a written emergency permit;

2. Shall not exceed 90 days in duration;

3. Shall clearly specify the solid wastes to be received, and the manner and location of their treatment, storage, or disposal;

4. Shall be accompanied by a public notice including:

a. Name and address of the office granting the emergency authorization;

- b. Name and location of the facility so permitted;
- c. A brief description of the wastes involved;
- d. A brief description of the action authorized and reasons for authorizing it;
- e. Duration of the emergency permit; and

5. Shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this chapter.

C. Experimental facility permits.

1. The director may issue an experimental facility permit for any solid waste treatment facility which proposes to utilize an innovative and experimental solid waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under Part VI of this chapter. Any such permit shall include such terms and conditions as will assure protection of human health and the environment. Such permits:

- a. Shall provide for the construction of such facilities based on the standards shown in 9VAC20-80-470, as necessary;
- b. Shall provide for operation of the facility for no longer than one calendar year unless renewed as provided in subdivision 3 of this subsection;
- c. Shall provide for the receipt and treatment by the facility of only those types and quantities of solid waste which the director deems necessary for purposes of determining the efficiency and performance capabilities of the technology or process and the effects of such technology or process on human health and the environment; and
- d. Shall include such requirements as the director deems necessary to protect human health and the environment (including, but not limited to, requirements regarding monitoring, operation, closure and remedial action), and such requirements as the director deems necessary regarding testing and providing of information to the director with respect to the operation of the facility.

2. For the purpose of expediting review and issuance of permits under this subsection, the director may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements in Part VII of this chapter except that there may be no modification or waiver of regulations regarding local certification, disclosure statement requirements, financial responsibility (including insurance) or of procedures regarding public participation.

3. Any permit issued under this subsection may be renewed not more than three times. Each such renewal shall be for a period of not more than one calendar year.

D. Research, development and demonstration plans. Research, development and demonstration (RDD) plans may be submitted for new sanitary landfills, existing sanitary landfills, or expansions of existing sanitary landfills.

1. Requirements.

a. No landfill owner or operator may commence a RDD plan without prior approval by the department through either a new permit or major permit amendment. Major amendments for a RDD plan that do not involve an increase in the landfill final grades or a lateral expansion of the footprint will not be subject to the landfill expansion criteria in 9VAC20-80-250 and 9VAC20-80-500.

b. Operating permitted sanitary landfills that have exceeded groundwater protection standards at statistically significant levels in accordance with 9VAC20-80-300 B, from any waste unit on site shall have implemented a remedy in accordance with 9VAC20-80-310 C prior to the RDD plan submittal. Operating permitted sanitary landfills that have an exceedance in gas migration in accordance with 9VAC20-80-280 shall have a gas control system in place per 9VAC20-80-280 [~~E~~ B] prior to the RDD plan submittal.

c. RDD plans may be submitted for items such as the addition of liquids in addition to leachate and gas condensate from the same landfill for accelerated decomposition of the waste mass; allowing run-on water to flow into the landfill waste mass; and allowing testing of the construction and infiltration performance of alternative final cover systems. An RDD plan may be proposed for other measures to be taken to enhance stabilization of the waste mass.

d. All sanitary landfill units with an approved RDD plan shall have a leachate collection system designed and constructed to maintain less than a 30-cm depth of leachate on the liner.

e. An owner or operator of a sanitary landfill that disposes of 20 tons of municipal solid waste per day or less, based on annual average, may not apply for an RDD plan.

f. No landfill owner or operator may continue to implement an RDD plan beyond any time limit placed in the initial plan approval or any renewal without issuance of written prior approval by the department. Justification for renewals shall be based upon information in annual and final reports as well as research and findings in technical literature.

g. RDD plans shall be restricted to permitted sanitary landfills. Landfills for disposal of wastes, as listed in 9VAC20-80-250 C 16 and other wastes as approved,

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shall be designed with a composite liner, as required by 9VAC20-80-250 B 9 or 10. The effectiveness of the liner system and leachate collection system shall be demonstrated in the plan. The effectiveness of the liner and leachate collection system shall be assessed at the end of the testing period, with comparison to the effectiveness of the systems at the start of the testing period.

h. RDD plans may not include changes to the approved design and construction of subgrade preparation, liner system, leachate collection and removal systems, final cover system, gas and leachate systems outside the limits of waste, run-off controls, run-on controls, or environmental monitoring systems exterior to the waste mass.

i. Implementation of an approved research development and demonstration plan shall comply with the specific conditions of the RDD plan as approved in the permit or permit amendment for the initial testing period and any renewal.

j. Structures and features exterior to the waste mass or waste final grades shall be removed at the end of the testing period, unless otherwise approved by the department in writing.

k. The RDD plan may propose an alternate final cover installation schedule.

2. An RDD plan shall include the following details and specifications. Processes other than adding liquids to the waste mass and leachate recirculation may be practiced in conjunction with the research, development and demonstration plan.

a. Initial applications for RDD plans shall be submitted for review and approval prior to the initiation of the process to be tested. These plans shall specify the process that will be tested, describe preparation and operation of the process, describe waste types and characteristics that the process will affect, describe desired changes and end points that the process is intended to achieve, define testing methods and observations of the process or waste mass that are necessary to assess effectiveness of the process, and include technical literature references and research that support use of the process. The plans shall specify the time period for which the process will be tested. The plans shall specify the additional information, operating experience, data generation or technical developments that the process to be tested is expected to generate.

b. The test period for the initial application shall be limited to a maximum of three years.

c. Renewals of testing periods shall be limited to a maximum of three years each. The maximum number of renewals shall be limited to three.

d. Renewals shall require department review and approval of reports of performance and progress on achievement of goals specified in the RDD plan.

e. RDD plans for addition of liquids, in addition to leachate and gas condensate from the same landfill, for accelerated decomposition of the waste mass and/or for allowing run-on water to flow into the landfill waste mass shall demonstrate that there is no increased risk to human health and the environment. The following minimum performance criteria shall be demonstrated:

(1) Risk of contamination to groundwater and/or surface water will not be greater than the risk without an approved RDD plan.

(2) Stability analysis demonstrating the physical stability of the landfill.

(3) Landfill gas collection and control in accordance with applicable Clean Air Act requirements (i.e., Title V, NSPS or EG rule, etc.).

(4) For RDD plans that include the addition of off-site nonhazardous waste liquids to the landfill, the following information shall be submitted with the RDD plan:

(a) Demonstration of adequate facility liquid storage volume to receive the off-site liquid.

(b) A list of proposed characteristics for screening the accepted liquids is developed, and

(c) The quantity and quality of the liquids are compatible with the RDD plan.

If off-site nonhazardous liquids are certified by the off-site generator as storm water uncontaminated by solid waste, screening is not required for this liquid.

f. RDD plans for testing of the construction and infiltration performance of alternative final cover systems shall demonstrate that there is no increased risk to human health and the environment. The proposed final cover system shall be as protective as the final cover system required by 9VAC20-80-250 E. The following minimum performance criteria shall be demonstrated:

(1) No build-up of excess liquid in the waste and on the landfill liner.

(2) Stability analysis demonstrating the physical stability of the landfill.

(3) No moisture will escape from the landfill to the surface water and/or groundwater, and

(4) Sufficient reduction in infiltration so that there will be no leakage of leachate from the landfill.

g. RDD plans that evaluate introduction of liquids in addition to leachate or gas condensate from the same landfill shall propose measures to be integrated with any approved leachate recirculation plan and compliance with requirements for leachate recirculation.

h. RDD plans shall include a description of warning symptoms and failure thresholds that will be used to initiate investigation, stand-by, termination, and changes to the process and any other landfill systems that might be affected by the process, such as gas extraction and leachate recirculation. Warning symptoms shall result in a reduction or suspension of liquids addition, leachate recirculation, investigation and changes to be implemented before resuming the process being tested. Failure thresholds shall result in termination of the process being tested, investigation and changes that will be submitted to the department for review and approval in writing prior to resumption of the process being tested.

i. RDD plans shall include an assessment of the manner in which the process to be tested might alter the impact that the landfill may have on human health or environmental quality. The assessment shall include both beneficial and deleterious effects that could result from the process.

j. RDD plans shall include a geotechnical stability analysis of the waste mass and an assessment of the changes that the implementation of the plan [~~are~~ is] expected to achieve. The geotechnical stability analysis and assessment shall be repeated at the end of testing period, with alteration as needed to include parameters and parameter values derived from field measurements. The plan shall define relevant parameters and techniques for field measurement.

k. RDD plans shall propose monitoring parameters, frequencies, test methods, instrumentation, record-keeping and reporting to the department for purposes of tracking and verifying goals of the process selected for testing.

l. RDD plans shall propose monitoring techniques and instrumentation for potential movements of waste mass and settlement of waste mass, including proposed time intervals and instrumentation, pertinent to the process selected for testing.

m. RDD plans shall propose construction documentation, construction quality control and construction quality assurance measures, and recordkeeping for construction and equipment installation that is part of the process selected for testing.

n. RDD plans shall propose operating practices and controls, staffing, monitoring parameters and equipment

needed to support operations of the process selected for testing.

o. RDD plans that include aeration of the waste mass shall include a temperature monitoring plan, a fire drill and safety program, instructions for use of liquids for control of temperature and fires in the waste mass, and instructions for investigation and repair of damage to the liner and leachate collection system.

p. RDD plans may include an alternate interim cover system and final cover installation schedule. The interim cover system shall be designed to account for weather conditions, slope stability, and leachate and gas generation. The interim cover shall also control, at a minimum, disease vectors, fires, odors, blowing litter, and scavenging.

3. Reporting. An annual report shall be prepared for each year of the testing period, including any renewal periods, and a final report shall be prepared for the end of the testing period. These reports shall assess the attainment of goals proposed for the process selected for testing, recommend changes, recommend further work, and summarize problems and their resolution. Reports shall include a summary of all monitoring data, testing data and observations of process or effects and shall include recommendations for continuance or termination of the process selected for testing. Annual reports shall be submitted to the department within three months after the anniversary date of the approved permit or permit amendment. Final reports shall be submitted [~~60~~ at least 90] days prior to the end of the testing period [~~in order~~] for evaluation by the department. [The department shall review this report within 90 days.] If the department's evaluation indicates that the goals of the project have been met, are reliable and predictable, the department will provide a minor permit amendment to incorporate the continued operation of the project with the appropriate monitoring.

4. Termination. The department may require modifications to or immediate termination of the process being tested if any of the following conditions occur:

- a. Significant and persistent odors;
- b. Significant leachate seeps or surface exposure of leachate;
- c. Significant leachate head on the liner;
- d. Excessively acidic leachate chemistry or gas production rates or other monitoring data indicate poor waste decomposition conditions;
- e. Instability in the waste mass;
- f. Other persistent and deleterious effects.

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5. The RDD program is an optional participation program, the applicant must certify that they acknowledge that the program is optional; and that they are aware the department may provide suspension or termination of the program for any reasonable cause, without a public hearing. Notice of suspension or termination will be by letter for a cause related to a technical problem, nuisance problem, or for protection of human health or the environment as determined by the department.

9VAC20-80-500. Permit application procedures.

A. Any person who proposes to establish a new solid waste management facility ("SWMF"), or modify an existing SWMF, shall submit a permit application to the department, using the procedures set forth in this section and other pertinent sections of this part.

B. Notice of intent.

1. To initiate the permit application process, any person who proposes to establish a new solid waste management facility ("SWMF"), or modify an existing SWMF, or to amend an existing permit shall file a notice of intent with the director stating the desired permit or permit amendment, the precise location of the proposed facility, and the intended use of the facility. The notice shall be in letter form and be accompanied by area and site location maps.

2. No application for a new solid waste management facility permit or application for an amendment for a non-captive industrial landfill to expand or increase capacity shall be deemed complete unless it is accompanied by DEQ Form DISC-01 and 02 (Disclosure Statement) for all key personnel.

3. No application for a new solid waste management facility permit or application for an amendment for a non-captive industrial landfill to expand or increase capacity shall be considered complete unless the notice of intent is accompanied by a current certification from the governing body of the county, city, or town in which the facility is to be located stating that the location and operation of the facility are consistent with all applicable ordinances. No certification shall be required for the application for an amendment or modification of an existing permit other than for a non-captive industrial landfill as outlined above. DEQ Form SW-11-1 (Request for Local Government Certification) is provided for the use of the regulated community. Permit and permit-by-rule applicants shall comply with the statutory requirements for consistency with solid waste management plans as recorded in [~~§§10.1-1408.1 B-9, D-1, and R~~ §10.1-1408.1] of the Code of Virginia.

4. If the location and operation of the facility is stated by the local governing body to be consistent with all its ordinances, without qualifications, conditions, or

reservations, the applicant will be notified that he may submit his application for a permit. This application shall be submitted in two parts, identified as Part A and Part B.

5. If the applicant proposes to operate a new sanitary landfill or transfer station, the notice of intent shall include a statement describing the steps taken by the applicant to seek the comments of the residents of the area where the sanitary landfill or transfer station is proposed to be located regarding the siting and operation of the proposed sanitary landfill or transfer station. The public comment steps shall be taken prior to filing with the department the notice of intent.

a. The public comment steps shall include publication of a public notice once a week for two consecutive weeks in a newspaper of general circulation serving the locality where the sanitary landfill or transfer station is proposed to be located and holding at least one public meeting within the locality to identify issues of concern, to facilitate communication and to establish a dialogue between the applicant and persons who may be affected by the issuance of a permit for the sanitary landfill or transfer station.

b. At a minimum, the public notice shall include:

(1) A statement of the applicant's intent to apply for a permit to operate the proposed sanitary landfill or transfer station;

(2) The proposed sanitary landfill or transfer station site location;

(3) The date, time and location of the public meeting the applicant will hold; and

(4) The name, address and telephone number of a person employed by an applicant who can be contacted by interested persons to answer questions or receive comments on siting and operation of the proposed sanitary landfill or transfer station.

c. The first publication of the public notice shall be at least 14 days prior to the public meeting date.

6. Disposal capacity guarantee. If the applicant proposes to construct a new sanitary landfill or expand an existing sanitary landfill, a signed statement must be submitted by the applicant guaranteeing that sufficient disposal capacity will be available in the facility to enable localities within the Commonwealth to comply with their solid waste management plans developed pursuant to 9VAC20-130 and certifying that such localities will be allowed to contract for and reserve disposal capacity in the facility. This provision does not apply to permit applications from one or more political subdivisions for new or expanded landfills that will only accept municipal solid waste generated within those jurisdictions or from other jurisdictions under an interjurisdictional agreement.

7. Host agreement. If the applicant proposes to construct a new sanitary landfill or expand an existing sanitary landfill, a certification from the local governing body must be provided indicating that a host agreement has been reached between the applicant and the host government or authority.

a. The host agreement shall include the following provisions at a minimum:

- (1) The amount of financial compensation the applicant will provide the host locality;
- (2) The daily travel routes and traffic volumes;
- (3) The daily disposal limit; and
- (4) The anticipated service area of the facility.

b. The host agreement shall contain a provision that the applicant will pay the full cost of a least one full-time employee of the host locality. The employee's responsibilities will include monitoring and inspecting waste disposal practices in the locality.

c. The host agreement shall provide that the applicant shall, when requested by the host locality, split air and water samples so that the host locality may independently test the samples, with all associated costs paid for by the applicant. All such sampling results shall be provided to the department.

d. No certification or host agreement is required if the owner and operator of the landfill is a locality or a service authority of which the local governing body is a member.

8. If the application is for a locality owned and operated sanitary landfill, or the expansion of such a landfill, the applicant shall provide information on:

- a. The daily travel routes and traffic volumes;
- b. The daily disposal limit; and
- c. The service area of the facility.

9. If the application is for a new solid waste management facility or an amendment allowing a facility expansion or an increase in capacity, the director shall evaluate whether there is a need for the additional capacity in accordance with §10.1-1408.1 D 1 of the Code of Virginia. The information in either subdivision 9 a or 9 b must be provided with the notice of intent to assist the director with the required investigation and analysis. Based on the information submitted, the owner or operator will demonstrate how the additional capacity will be utilized over the life of the facility.

a. For any solid waste management facility including a sanitary landfill, information demonstrating that there is a

need for the additional capacity. Such information may include:

- (1) The anticipated area to be served by the facility;
- (2) Similar or related solid waste management facilities that are in the same service area and could impact the proposed facility, and the capacity and service life of those facilities;
- (3) The present quantity of waste generated within the proposed service area;
- (4) The waste disposal needs specified in the local solid waste plan;
- (5) The projected future waste generation rates for the anticipated area to be served during the proposed life of the facility;
- (6) The recycling, composting or other waste management activities within the proposed service area;
- (7) The additional solid waste disposal capacity that the facility would provide to the proposed area of service; and
- (8) Information demonstrating that the capacity is needed to enable localities to comply with solid waste plans developed pursuant to §10.1-1411 of the Code of Virginia.
- (9) Any additional factors that provide justification for the additional capacity provided by the facility.

b. As an alternative, for sanitary landfills, based on current or projected disposal rates, information demonstrating there is less than 10 years of capacity remaining in the facility and information demonstrating either of the following:

- (1) The available permitted disposal capacity for the state is less than 20 years based on the most current reports submitted pursuant to the Waste Information and Assessment Program in 9VAC20-130-165; or
- (2) The available permitted disposal capacity is less than 20 years in either:
 - (a) The planning region, or regions, immediately contiguous to the planning region of the host community.
 - (b) The facilities within a 75 mile radius of the proposed facility.

C. Part A application. Part A application provides the information essential for assessment of the site suitability for the proposed facility. It contains information on the proposed facility to be able to determine site suitability for intended uses. It provides information on all siting criteria applicable to the proposed facility.

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1. The applicant shall complete, sign and submit three copies of the Part A application containing required information and attachments as specified in 9VAC20-80-510 to the director.

2. The Part A application will be reviewed for completeness. The applicant will be notified within ~~fifteen~~ 30 days whether the application is administratively complete or incomplete. If complete information is not provided within ~~thirty~~ 60 days after the applicant is notified, or an alternate timeframe approved by the department, the application will be returned to the applicant without further review. Subsequent resubmittals of the application, submitted after 18 months from the date of the department's response letter, shall be considered as a new application.

3. Upon receipt of a complete Part A application, the department shall conduct a technical review of the submittal. Additional information may be required or the site may be visited before the review is completed. The director shall notify the applicant in writing of approval or disapproval of the Part A application or provide conditions to be made a part of the approval.

4. For sanitary landfills, the director's notification must indicate that the site on which the landfill will be located is suitable for the construction and operation of a landfill. In making this determination, the director will consider the information presented in the site hydrogeologic and geotechnical report (9VAC20-80-510 F), the landfill impact statement (9VAC20-80-510 H 1) and the adequacy of transportation facilities (9VAC20-80-510 G). The director may also consider other factors at his discretion.

5. In case of the approval or conditional approval, the applicant may submit the Part B application provided the required conditions are addressed in the submission.

D. Part B application. The Part B application involves the submission of the detailed engineering design and operating plans for the proposed facility.

1. The applicant, after receiving Part A approval, may submit to the department a Part B application to include the required documentation for the specific solid waste management facility as provided for in 9VAC20-80-520, 9VAC20-80-530, or 9VAC20-80-540. The Part B application and supporting documentation shall be submitted in three copies and must include the financial assurance documentation as required by 9VAC20-70. Until the closure plans are approved and a draft permit is being prepared, the applicant must provide evidence of commitment to provide the required financial assurance from a financial institution or insurance company. If financial assurance is not provided within 30 days of notice by the director, the permit shall be denied.

2. The Part B application shall be reviewed for administrative completeness before technical evaluation is initiated. The applicant shall be advised in writing within thirty days whether the application is complete or what additional documentation is required. The Part B application will not be evaluated until an administratively complete application is received.

3. The administratively complete application will be coordinated with other state agencies according to the nature of the facility. The comments received shall be considered in the permit review by the department. The application will be evaluated for technical adequacy and regulatory compliance. In the course of this evaluation, the department may require the applicant to provide additional information. At the end of the evaluation, the department will notify the applicant that the application is technically and regulatorily adequate or that the department intends to deny the application.

4. The procedures addressing the denial are contained in 9VAC20-80-580.

E. Permit issuance.

1. If the application is found to be technically adequate and in full compliance with this chapter, a draft permit shall be developed by the department.

2. Copies of the draft permit will be available for viewing at the applicant's place of business or at the regional office of the department, or both, upon request. A notice of the availability of the proposed draft permit shall be made in a newspaper with general circulation in the area where of the facility is to be located. A copy of the notice of availability will be provided to the chief administrative officer of all cities and counties that are contiguous to the host community. A public hearing will be scheduled and the notice shall be published at least 30 days in advance of the public hearing on the draft permit. Copies of the proposed draft permit will be available for viewing at the applicant's place of business or at the regional office of the department, or both, upon request in advance of the public hearing.

3. If the application is for a new landfill or an increase in landfill capacity, then the department shall hold a public hearing and the notice above will include such information.

4. For any application (other than for subdivision 3 of this subsection), the notice will include the opportunity to request a public hearing. The department shall hold a public hearing on the draft permit whenever the department finds, on the basis of requests, that:

a. There is a significant public interest in the issuance, denial, modification or revocation of the permit in question;

b. There are substantial, disputed issues relevant to the issuance, denial, modification or revocation of the permit in question; and

c. The action requested is not, on its face, inconsistent with, or in violation of, these regulations, the Waste Management Act, or federal law or regulations.

5. The department also may hold a public hearing when it is believed that such a hearing might clarify one or more issues involved in a permit decision.

~~3. The 6. If a public hearing is to be held the department shall hold the announced public hearing convene it 30 days or more after the notice is published in the local newspaper. The public hearing shall be conducted by the department within the local government jurisdiction where of the facility is to be located. A comment period shall extend for a 15-day period after the conclusion of the public hearing.~~

~~4. 7. A [final] decision to permit, to deny a permit or to amend the draft permit shall be rendered by the director within 30 days of the close of the hearing comment period.~~

~~5. 8. The permit applicant and the persons who commented during the public participation period shall be notified in writing of the decision on the draft permit. That decision may include denial of the permit (see also 9VAC20-80-580), issuance of the permit as drafted, or amendment of the draft permit and issuance.~~

~~6. 9. No permit for a new solid waste management facility or an amendment allowing a facility expansion or an increase in capacity shall be approved by the director unless the facility meets the provisions of §10.1-1408.1 D of the Code of Virginia. Before issuing a permit the director shall make a determination in writing in accordance with the provisions of §10.1-1408.1 D of the Code of Virginia. The director may request updated information during the review of the permit application if the information on which the director's determination is based is no longer current. If, based on the analysis of the materials presented in the permit application, the determination required in §10.2-1408.1 D cannot be made, the application will be denied in accordance with 9VAC20-80 580 A 6.~~

~~7. 10. Any permit for a new sanitary landfill and any permit amendment authorizing expansion of an existing sanitary landfill shall incorporate the conditions required for a disposal capacity guarantee in §10.1-1408.1 P of the Code of Virginia. This provision does not apply to permit applications from one or more political subdivisions that will only accept waste from within those political subdivisions' jurisdiction or municipal solid waste generated within other political subdivisions pursuant to an interjurisdictional agreement.~~

9VAC20-80-510. Part A permit application.

The following information shall be included in the Part A of the permit application for all solid waste management facilities unless otherwise specified in this section.

A. The Part A permit application consists of a letter stating the type of the facility for which the permit application is made and the certification required in subsection I of this section. All pertinent information and attachments required by this section are provided on DEQ Form SW 7-3 (Part A Permit Application).

B. A key map of the Part A permit application, delineating the general location of the proposed facility, shall be prepared and attached as part of the application. The key map shall be plotted on a seven and one-half minute United States Geological Survey topographical quadrangle. The quadrangle shall be the most recent revision available, shall include the name of the quadrangle and shall delineate a minimum of one mile from the perimeter of the proposed facility boundaries. One or more maps may be utilized where necessary to insure clarity of the information submitted.

C. A near-vicinity map shall be prepared and attached as part of the application. The vicinity map shall have a minimum scale of one inch equals 200 feet (1" = 200'). The vicinity map shall delineate an area of 500 feet from the perimeter of the property line of the proposed facility. The vicinity maps may be an enlargement of a United States Geological Survey topographical quadrangle or a recent aerial photograph. The vicinity map shall depict the following:

1. All homes, buildings or structures including the layout of the buildings which will comprise the proposed facility;
2. The facility boundary;
3. The limits of the actual disposal operations within the boundaries of the proposed facility, if applicable;
4. Lots and blocks taken from the tax map for the site of the proposed facility and all contiguous properties;
5. The base floodplain, where it passes through the map area; or, otherwise, a note indicating the expected flood occurrence period for the area;
6. Existing land uses and zoning classification;
7. All water supply wells, springs or intakes, both public and private;
8. All utility lines, pipelines or land based facilities (including mines and wells); and
9. All parks, recreation areas, surface water bodies, dams, historic areas, wetlands areas, monument areas, cemeteries, wildlife refuges, unique natural areas or similar features.

D. Except in the case of a local governing body or a public service authority possessing a power of eminent domain,

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copy of lease or deed (showing page and book location) or certification of ownership of the site, the department will not consider an application for a permit from any person who does not demonstrate legal control over the site for a period of the permit life. A documentation of an option to purchase will be considered as a temporary substitute for a deed; however, the true deed must be provided to the department before construction at the site begins.

E. For solid waste disposal facilities regulated under Part V (9VAC20-80-240 et seq.) of this chapter, site hydrogeologic and geotechnical report by geologist or engineer registered for practice in the Commonwealth.

1. The site investigation for a proposed landfill facility shall provide sufficient information regarding the geotechnical and hydrogeologic conditions at the site to allow a reasonable determination of the usefulness of the site for development as a landfill. The geotechnical exploration efforts shall be designed to provide information regarding the availability and suitability of onsite soils for use in the various construction phases of the landfill including liner, cover, drainage material, and cap. The hydrogeologic information shall be sufficient to determine the characteristics of the uppermost aquifer underlying the facility. Subsurface investigation programs conducted shall meet the minimum specifications here.

a. Borings shall be located to identify the uppermost aquifer within the proposed facility boundary, determine the ability to perform ground water monitoring at the site, and provide data for the evaluation of the physical properties of soils and soil availability. Borings completed for the proposed facility shall be sufficient in number and depth to identify the thickness of the uppermost aquifer and the presence of any significant underlying impermeable zone. Impermeable zone shall not be fully penetrated within the anticipated fill areas, whenever possible. The number of borings shall be at a minimum in accordance with Table 7.1 as follows:

Acreage	Total Number of Borings
Less than 10	4
10 - 49	8
50 - 99	14
100 - 200	20
More than 200	24 + 1 boring for each additional 10 acres

b. The department reserves the right to require additional borings in areas in which the number of borings required by Table 7.1 is not sufficient to describe the geologic

formations and ground water flow patterns below the proposed solid waste disposal facility.

c. In highly uniform geological formations, the number of borings may be reduced, as approved by the department.

d. The borings should employ a grid pattern, wherever possible, such that there is, at a minimum, one boring in each major geomorphic feature. The borings pattern shall enable the development of detailed cross sections through the proposed landfill site.

e. Subsurface data obtained by borings shall be collected by standard soil sampling techniques. Diamond bit coring, air rotary drilling or other appropriate methods, or a combination of methods shall be used as appropriate to characterize competent bedrock. The borings shall be logged from the surface to the lowest elevation (base grade) or to bedrock, whichever is shallower, according to standard practices and procedures. In addition, the borings required by Table 7.1 shall be performed on a continuous basis for the first 20 feet below the lowest elevation of the solid waste disposal facility or to the bed rock. Additional samples as determined by the registered geologist or engineer shall be collected at five-foot intervals thereafter.

f. Excavations, test pits and geophysical methods may be employed to supplement the soil boring investigation.

g. At a minimum, four of the borings shall be converted to water level observations wells, well nests, piezometers or piezometer nests to allow determination of the rate and direction of ground water flow across the site. All ground water monitoring points or water level measurement points shall be designed to allow proper abandonment by backfilling with an impermeable material. The total number of wells or well nests shall be based on the complexity of the geology of the site.

h. Field analyses shall be performed in representative borings to determine the in situ hydraulic conductivity of the uppermost aquifer.

i. All borings not to be utilized as permanent monitoring wells, and wells within the active disposal area, shall be sealed and excavations and test pits shall be backfilled and properly compacted to prevent possible paths of leachate migration. Boring sealing procedures shall be documented in the hydrogeologic report.

2. The geotechnical and hydrogeologic reports shall at least include the following principal sections:

a. Field procedures. Boring records and analyses from properly spaced borings in the facility portion of the site. Final boring logs shall be submitted for each boring, recording soils or rock conditions encountered. Each log shall include the type of drilling and sampling

equipment, date the boring was started, date the boring was finished, a soil or rock description in accordance with the United Soil Classification System or the Rock Quality Designation, the method of sampling, the depth of sample collection, the water levels encountered, and the Standard Penetration Test blow counts, if applicable. Boring locations and elevations shall be surveyed with a precision of 0.01 foot. At least one surveyed point shall be indelibly marked by the surveyor on each well. All depths of soil and rock as described within the boring log shall be corrected to National Geodetic Vertical Datum, if available.

b. Geotechnical interpretations and report including complete engineering description of the soil units underlying the site.

(1) Soil unit descriptions shall include estimates of soil unit thickness, continuity across the site, and genesis. Laboratory determination of the soil unit's physical properties shall be discussed.

(2) Soil units that are proposed for use as a drainage layer, impermeable cap or impermeable liner material shall be supported by laboratory determinations of the remolded permeability. Remolded hydraulic conductivity tests require a Proctor compaction test (ASTM D698) soil classification liquid limit, plastic limit, particle size distribution, specific gravity, percent compaction of the test sample, remolded density and remolded moisture content, and the percent saturation of the test sample. Proctor compaction test data and hydraulic conductivity test sample data should be plotted on standard moisture-density test graphs.

(3) The geotechnical report shall provide an estimate of the available volume of materials suitable for use as liner, cap, and drainage layer. It should also discuss the anticipated uses of the on-site materials, if known.

c. Hydrogeologic report.

(1) The report shall include water table elevations, direction and calculated rate of ground water flow and similar information on the hydrogeology of the site. All raw data shall be submitted with calculations.

(2) The report shall contain a discussion of field test procedures and results, laboratory determinations made on undisturbed samples, recharge areas, discharge areas, adjacent or areal usage, and typical radii of influence of pumping wells.

(3) The report shall also contain a discussion of the regional geologic setting, the site geology and a cataloging and description of the uppermost aquifer from the site investigation and from referenced literature. The geologic description shall include a discussion of the prevalence and orientation of fractures, faults, and other

structural discontinuities, and presence of any other significant geologic features. The aquifer description should address homogeneity, horizontal and vertical extent, isotropy, the potential for ground water remediation, if required, and the factors influencing the proper placement of a ground water monitoring network.

(4) The report shall include a geologic map of the site prepared from one of the following sources as available, in order of preference:

(a) Site specific mapping prepared from data collected during the site investigation;

(b) Published geologic mapping at a scale of 1:24,000 or larger;

(c) Published regional geologic mapping at a scale of 1:250,000 or larger; or

(d) Other published mapping.

(5) At least two generally orthogonal, detailed site specific cross sections, which shall sufficiently describe the geologic formations identified by the geologic maps prepared in accordance with subdivision 2 c (4) of this subsection at a scale which clearly illustrates the geologic formations, shall be included in the hydrogeologic report. Cross sections shall show the geologic units, approximate construction of existing landfill cells base grades, water table, and surficial features along the line of the cross section. Cross section locations shall be shown on an overall facility map.

(6) Potentiometric surface maps for the uppermost aquifer which sufficiently define the ground water conditions encountered below the proposed solid waste disposal facility area based upon stabilized ground water elevations. Potentiometric surface maps shall be prepared for each set of ground water elevation data available. The applicant shall include a discussion of the effects of site modifications, seasonal variations in precipitation, and existing and future land uses of the site on the potentiometric surface.

(7) If a geological map or report from either the Department of Mines, Minerals, and Energy or the U.S. Geological Survey is published, it shall be included.

F. For solid waste management facilities regulated under Part VI (9VAC20-80-320 et seq.) of this chapter:

1. A cataloging and description of aquifers, geological features or any similar characteristic of the site that might affect the operation of the facility or be affected by that operation.

2. If a geological map or report from either the Department of Mines, Minerals, and Energy or the U.S. Geological Survey is published, it shall be included.

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G. For sanitary landfills, a VDOT adequacy report prepared by the Virginia Department of Transportation. As required under §10.1-1408.4 A 1 of the Code of Virginia, the report will address the adequacy of transportation facilities that will be available to serve the landfill, including the impact of the landfill on the local traffic volume, road congestion, and highway safety.

H. For sanitary landfills, a Landfill Impact Statement (LIS).

1. A report must be provided to the department that addresses the potential impact of the landfill on parks, recreational areas, wildlife management areas, critical habitat areas of endangered species as designated by applicable local, state, or federal agencies, public water supplies, marine resources, wetlands, historic sites, fish and wildlife, water quality, and tourism. This report shall comply with the statutory requirements for siting landfills in the vicinity of public water supplies or wetlands as recorded in §§10.1-1408.4 and 10.1-1408.5 of the Code of Virginia.

2. The report will include a discussion of the landfill configuration and how the facility design addresses any impacts identified in the report required under subdivision 1 of this subsection.

3. The report will identify all of the areas identified under subdivision 1 of this subsection that are within five miles of the facility.

I. A signed statement by the applicant that he has sent written notice to all adjacent property owners or occupants that he intends to develop a SWMF on the site, a copy of the notice and the names and addresses of those to whom the notices were sent.

J. Information demonstrating that the facility is consistent with the local solid waste management plan including:

1. A discussion of the role of the facility in solid waste management within the solid waste planning region;
2. A description of the additional solid waste disposal capacity that the facility would provide to the proposed area of service;
3. Specific references to local solid waste management plan where discussions of the facility are provided.

K. One or more of the following indicating that the public interest would be served by a new facility or a facility expansion, which includes:

1. Cost effective waste management for the public within the service area comparing the costs of a new facility or facility expansion to waste transfer, or other disposal options;
2. The facility provides protection of human health and safety and the environment;

3. The facility provides alternatives to disposal including reuse or reclamation;

4. The facility allows for the increased recycling opportunities for solid waste;

5. The facility provides for energy recovery or the subsequent use of solid waste, or both, thereby reducing the quantity of solid waste disposed;

6. The facility will support the waste management needs expressed by the host community; or

7. Any additional factors that indicate that the public interest would be served by the facility.

VA.R. Doc. No. R06-32; Filed September 10, 2008, 10:58 a.m.

Final Regulation

Title of Regulation: **9VAC25-640. Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements (amending 9VAC25-640-10, 9VAC25-640-20, 9VAC25-640-30, 9VAC25-640-50, 9VAC25-640-70 through 9VAC25-640-130, 9VAC25-640-150 through 9VAC25-640-250, Appendices I through IX; repealing 9VAC25-640-130).**

Statutory Authority: §§62.1-44.15 and 62.1-44.34:16 of the Code of Virginia.

Effective Date: November 1, 2008.

Agency Contact: Leslie D. Beckwith, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4123, or email ldbeckwith@deq.virginia.gov.

Summary:

The regulation requires operators of regulated petroleum aboveground storage tanks (ASTs) and pipeline facilities to demonstrate they have the financial resources available to pay for the costs of containment and cleanup in the event of a release from their tanks. The amendments eliminate the standby trust requirement for third-party mechanisms such as letters of credit and surety bonds, which would have the effect of reducing operators' cost of compliance without affecting the stringency of the current financial responsibility requirements. Also, several administrative changes are made to the regulation that do not affect the regulatory requirements.

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

9VAC25-640-10. Definitions.

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

"Aboveground storage tank" or "AST" means any one or combination of tanks, including pipes, used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than 90% above the surface of the ground. This term does not include line pipe and breakout tanks of an interstate pipeline regulated under the federal Accountable Pipeline Safety and Partnership Act of 1996 (49 USC §60101 et seq.).

"Accidental discharge" means any sudden or nonsudden discharge of oil from a facility that results in a need for containment and clean up which was neither expected nor intended by the operator.

"Annual aggregate" means the maximum financial responsibility requirement that an ~~owner or~~ operator is required to demonstrate annually.

"Board" means the State Water Control Board.

"Change in service" means change in operation, conditions of the stored product, specific gravity, corrosivity, temperature or pressure that has occurred from the original that may affect the tank's suitability for service.

"Containment and clean up" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.

"Controlling interest" means direct ownership of at least 50% of the voting stock of another entity.

"Department" or "DEQ" means the Department of Environmental Quality.

"Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

"Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil, and includes a pipeline.

"Financial reporting year" means the latest consecutive 12-month period for which any of the following reports used to support a financial test is prepared: (i) a 10-K report submitted to the U.S. Securities & Exchange Commission (SEC); (ii) an annual report of tangible net worth submitted to Dun and Bradstreet; (iii) annual reports submitted to the Energy Information Administration or the Rural Electrification Administration Utilities Service; or (iv) a year-end financial statement authorized under 9VAC25-640-70 B or C. "Financial reporting year" may thus comprise a fiscal or calendar year period.

"Group self-insurance pool" or "pool" means a pool organized by two or more operators of [aboveground storage tanks, including pipelines, facilities] for the purpose of forming a group self-insurance pool in order to demonstrate

financial responsibility as required by §62.1-44.34:16 of the Code of Virginia.

"Legal defense cost" means any expense that an operator or provider of financial assurance incurs in defending against claims or actions brought (i) by the federal government or the board to require containment or clean up or to recover the costs of containment and clean up, or to collect civil penalties under federal or state law or to assert any claim on behalf of the Virginia Petroleum Storage Tank Fund; or (ii) by any person to enforce the terms of a financial assurance mechanism.

"Local government entity" means a municipality, county, town, commission, separately chartered and operated special district, school board, political subdivision of a state or other special purpose government which provides essential services.

"Member" means an operator of an aboveground storage tank or pipeline who has entered into a member agreement and thereby becomes a member of a group self-insurance pool.

"Member agreement" means the written agreement executed between each member and the pool, which sets forth the conditions of membership in the pool, the obligations, if any, of each member to the other members, and the terms, coverages, limits, and deductibles of the pool plan.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, that results in a discharge from an AST. Note: This definition is intended to assist in the understanding of this chapter and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."

"Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum byproducts, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oil and all other liquid hydrocarbons regardless of specific gravity.

"Operator" means any person who owns, operates, charts by demise, rents or otherwise exercises control over or responsibility for a facility or a vehicle or a vessel. [For purposes of this chapter, the definition of operator is restricted to operators of facilities.]

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

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"Pipeline" means all new and existing pipe, rights of way, and any equipment, facility, or building used in the transportation of oil, including, but not limited to, line pipe, valves and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks.

"Pool plan" means the plan of self-insurance offered by the pool to its members as specifically designated in the member agreement.

"Provider of financial assurance" means a person that provides financial assurance to an operator of an aboveground storage tank through one of the mechanisms listed in 9VAC25-640-70 through 9VAC25-640-120, including a guarantor, insurer, group self-insurance pool, surety, or issuer of a letter of credit.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank or facility into groundwater, surface water, or upon lands, subsurface soils or storm drain systems.

"Storage capacity" means the total capacity of an AST or a container, whether filled in whole or in part with oil, a mixture of oil, or mixtures of oil with nonhazardous substances, or empty. An AST that has been permanently closed in accordance with the requirements of ~~9VAC25-91-10 et seq.~~ 9VAC25-91 has no storage capacity.

"Substantial business relationship" means the extent of a business relationship necessary under Virginia law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the operator.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

"Tank" means a device designed to contain an accumulation of oil and constructed of nonearthen materials, such as concrete, steel, or plastic, that provides structural support. ~~[This term does not include flow-through process tanks as defined in 40 CFR Part 280.]~~ For purposes of 9VAC25-640-220, a tank means a device, having a liquid capacity of more than 60 gallons, designed to contain an accumulation of oil and constructed of nonearthen materials, such as concrete, steel, or plastic, that provides structural support. [This term does not include flow-through process tanks as defined in 40 CFR Part 280.]

"Termination" under Appendix III and Appendix IV means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

"Underground storage tank" means any one or combination of tanks, including connecting pipes, used to contain an accumulation of regulated substances, and the volume of which, including the volume of underground connecting pipes, is 10% or more beneath the surface of the ground. This term does not include any:

1. Farm or residential tanks having a capacity of 1,100 gallons or less and used for storing motor fuel for noncommercial purposes;
2. Tanks used for storing heating oil for consumption on the premises where stored;
3. Septic tanks;
4. Pipeline facilities (including gathering lines) regulated under:
 - a. The Natural Gas Pipeline Safety Act of 1968 (49 USC App. 1671 et seq.);
 - b. The Hazardous Liquid Pipeline Safety Act of 1979 (49 USC App. 2001 et seq.); or
 - c. Any intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in subdivision 4 a or 4 b of this definition;
5. Surface impoundments, pits, ponds, or lagoons;
6. Storm water or wastewater collection systems;
7. Flow-through process tanks;
8. Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; or
9. Storage tanks situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor.

The term "underground storage tank" does not include any pipes connected to any tank which is described in subdivisions 1 through 9 of this definition.

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

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

9VAC25-640-20. Applicability.

A. Unless otherwise exempted in this section or excluded in 9VAC25-640-30, operators of aboveground storage tank facilities having a maximum storage capacity of 25,000 gallons or greater of oil must demonstrate financial responsibility in accordance with the requirements of this chapter as a condition of operation.

B. Unless otherwise exempted in this section or excluded in 9VAC25-640-30, operators of pipelines must demonstrate financial responsibility in accordance with the requirements of this chapter as a condition of operation.

C. State and federal government entities whose debts and liabilities are the debts and liabilities of the Commonwealth of Virginia or the United States have the requisite financial strength and stability to fulfill their financial assurance requirements and are relieved of the requirements to further demonstrate an ability to provide financial responsibility under this chapter.

D. Local government entities are not required to comply with the requirements of this chapter.

E. If there is more than one operator for a facility, only one operator is required to demonstrate financial responsibility; however, all operators are jointly responsible for ensuring compliance with financial responsibility requirements.

F. The provisions in 9VAC25-640-220 apply to [all] operators of [all] aboveground storage tank facilities, regardless of storage capacity, unless otherwise exempted or excluded in 9VAC25-640-30.

9VAC25-640-30. Exclusions.

The requirements of this chapter do not apply to:

1. Vessels;
2. Licensed motor vehicles, unless used solely for the storage of oil;
3. An AST with a storage capacity of 660 gallons or less of oil, except [for with regard to purposes of] the requirements of 9VAC25-640-220;
4. An AST containing petroleum, including crude oil or any fraction thereof, which is liquid at standard temperature and pressure (60°F at 14.7 pounds per square inch absolute) subject to and specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of §101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USC §9601 et seq.);
5. A wastewater treatment tank system that is part of a wastewater treatment facility regulated under §402 or §307(b) of the federal Clean Water Act (33 USC §1251 et seq.);

6. An AST that is regulated by the Department of Mines, Minerals and Energy under Chapter 22.1 (§45.1-361.1 et seq.) of the Code of Virginia;

7. An AST used for the storage of products that are regulated pursuant to the federal Food, Drug and Cosmetic Act (21 USC §301 et seq.), except [for with regard to purposes of] the requirements of 9VAC25-640-220;

8. An AST that is used to store hazardous wastes listed or identified under Subtitle C of the Resource Conservation and Recovery Act (RCRA) (Solid Waste Disposal Act) (42 USC §6901 et seq.);

9. An AST that is used to store propane gas, butane gas or other liquid petroleum gases;

10. An AST used to store nonpetroleum hydrocarbon-based animal and vegetable oils;

11. A liquid trap or associated gathering lines directly related to oil or gas production, or gathering operations;

12. A surface impoundment, pit, pond, or lagoon;

13. A storm water or wastewater collection system;

14. Equipment or machinery that contains oil for operational purposes, including but not limited to lubricating systems, hydraulic systems, and heat transfer systems;

15. An AST used to contain oil for less than 120 days when: (i) used in connection with activities related to the containment and clean up of oil; (ii) used by a federal, state or local entity in responding to an emergency; or (iii) used temporarily on site to replace permanent storage capacity, except [for with regard to purposes of] the requirements of 9VAC25-640-220;

16. Oil-filled electrical equipment, including, but not limited to, transformers, circuit breakers or capacitors;

17. A flow-through process tank;

18. Oily water separators;

19. An AST containing dredge spoils;

20. An AST located on a farm or residence used for storing motor fuel for noncommercial purposes with an aggregated storage capacity of 1,100 gallons or less, except [for with regard to purposes of] the requirements of 9VAC25-640-220;

21. Pipes or piping beyond the first valve from the AST that connects an AST with production process tanks or production process equipment;

22. An AST storing asphalt and asphalt compounds which are not liquid at standard conditions of temperature and pressure (60°F at 14.7 pounds per square inch absolute);

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23. Underground storage tanks regulated under a state program;

24. An AST with a capacity of 5,000 gallons or less used for storing heating oil for consumptive use on the premises where stored, except [for with regard to purposes of] the requirements of 9VAC25-640-220.

9VAC25-640-50. Amount and scope of required financial responsibility.

A. Operators shall demonstrate per occurrence and annual aggregate financial responsibility for containment and clean up of discharges of oil in an amount equal to (i) five cents per gallon of the aggregate aboveground storage capacity for ASTs in all Virginia facilities up to a maximum of \$1 million and (ii) \$5 million for pipelines.

B. If the operator uses separate mechanisms or combinations of mechanisms to demonstrate financial responsibility for the containment and clean up of oil, (i) the amount of assurance provided by the combination of mechanisms shall be in the full amount specified in subsection A of this section, and (ii) the operator shall demonstrate financial responsibility in the appropriate amount of annual aggregate assurance specified in subsection A of this section by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

C. The amounts of assurance required under this section exclude legal defense costs.

D. The required demonstration of financial responsibility does not in any way limit the liability of the operator under §62.1-44.34:18 of the Code of Virginia.

E. Operators which demonstrate financial responsibility shall maintain copies of those records on which the determination is based. The following documents may be used by operators to support a financial responsibility requirement determination:

1. Copies of the registration form required under ~~9VAC25-91-10 et seq~~ 9VAC25-91.

2. Any other form of documentation that the board may deem to be acceptable evidence to support the financial responsibility requirement determination.

[F. For purposes of the financial test of self-insurance, an operator and/or guarantor shall have a tangible net worth at least equal to the applicable amount required by subsection A of this section plus any aggregate amount required to be demonstrated under 9VAC25-590-40 for which a financial test is used to demonstrate financial responsibility.]

9VAC25-640-70. Financial test of self-insurance.

A. An operator and/or guarantor may satisfy the requirements of 9VAC25-640-50 by passing a financial test as specified in this section. To pass the financial test of self-

insurance, the operator and/or guarantor shall meet the requirements of subsection B or C and subsection D of this section based on year-end financial statements for the latest completed financial reporting year.

B. 1. The operator and/or guarantor shall have a tangible net worth at least equal to the total of the applicable amount required by 9VAC25-640-50 for which a financial test is used to demonstrate financial responsibility [~~and any aggregate amount required to be demonstrated under 9VAC25-590-40 for which a financial test is used to demonstrate financial responsibility~~] .

2. The operator and/or guarantor shall comply with either subdivision a or b below:

a. (1) The financial reporting year-end financial statements of the operator and/or guarantor shall be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination; and

(2) The financial reporting year-end financial statements of the operator and/or guarantor cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

b. (1) (a) File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural ~~Electricity~~ Administration Utilities Service; or

(b) Report annually the tangible net worth of the operator and/or guarantor to Dun and Bradstreet, and Dun and Bradstreet must have assigned a financial strength rating which at least equals the amount of financial responsibility required by the operator in 9VAC25-640-50.

(2) The financial reporting year-end financial statements of the operator and/or guarantor, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

3. The operator and/or guarantor shall have a letter signed by the chief financial officer worded identically as specified in Appendix I/Alternative I.

C. 1. The operator and/or guarantor shall have a tangible net worth at least equal to the total of the applicable amount required by 9VAC25-640-50 for which a financial test is used to demonstrate financial responsibility.

2. The financial reporting year-end financial statements of the operator and/or guarantor shall be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.

3. The financial reporting year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

4. If the financial statements of the operator and/or guarantor are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration or the Rural ~~Electrification Administration~~ Utilities Service, the operator and/or guarantor shall obtain a special report by an independent certified public accountant stating that:

- a. The accountant has compared the data that the letter from the chief financial officer specified as having been derived from the latest financial reporting year-end financial statements of the operator and/or guarantor with the amounts in such financial statements; and
- b. In connection with that comparison, no matters came to the accountant's attention that caused him to believe that the specified data should be adjusted.

5. The operator and/or guarantor shall have a letter signed by the chief financial officer, worded identically as specified in Appendix I/Alternative II.

D. To meet the financial demonstration test under subsections B or C of this section, the chief financial officer of the operator and/or guarantor shall sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded identically as specified in Appendix I with the appropriate alternative, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.

E. If an operator using the test to provide financial assurance finds that he no longer meets the requirements of the financial test based on the financial reporting year-end financial statements, the operator shall obtain alternative coverage and submit to the board the appropriate original forms listed in 9VAC25-640-170 B within 150 days of the end of the year for which financial statements have been prepared.

F. The board may require reports of financial condition at any time from the operator and/or guarantor. If the board finds, on the basis of such reports or other information, that the operator and/or guarantor no longer meets the financial test requirements of subsection B or C and D of this section, the operator shall obtain alternate coverage and submit to the board the appropriate original forms listed in 9VAC25-640-170 B within 30 days after notification of such finding.

G. If the operator fails to obtain alternate assurance within 150 days of finding that he no longer meets the requirements of the financial test based on the financial reporting year-end financial statements, or within 30 days of notification by the board that he no longer meets the requirements of the financial test, the operator shall notify the board of such failure within 10 days.

9VAC25-640-80. Guarantee.

A. An operator may satisfy the requirements of 9VAC25-640-50 by obtaining a guarantee that conforms to the requirements of this section. The guarantor shall be:

- 1. A firm that:
 - a. Possesses a controlling interest in the operator;
 - b. Possesses a controlling interest in a firm described under subdivision A 1 a of this section; or
 - c. Is controlled through stock ownership by a common parent firm that possesses a controlling interest in the operator; or
- 2. A firm engaged in a substantial business relationship with the operator and issuing the guarantee as an act incident to that business relationship.

B. Within 120 days of the close of each financial reporting year, the guarantor shall demonstrate that it meets the financial test criteria of 9VAC25-640-70 B or C and D based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in Appendix I and shall deliver the letter to the operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the operator [and the board]. If the board notifies the guarantor that he no longer meets the requirements of the financial test of 9VAC25-640-70 B or C and D, the guarantor shall notify the operator within 10 days of receiving such notification from the board. In both cases, the guarantee will terminate no less than 120 days after the date the operator receives the notification, as evidenced by the return receipt. The operator shall obtain alternate coverage as specified in 9VAC25-640-200.

C. The guarantee shall be worded identically as specified in Appendix II, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

~~[D.] An operator who uses a guarantee to satisfy the requirements of 9VAC25-640-50 shall establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the board under 9VAC25-640-180. This standby trust fund shall meet the requirements specified in 9VAC25-640-130. [Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be paid directly to the board in accordance with instructions from the board under 9VAC25-640-180.]~~

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9VAC25-640-90. Insurance and group self-insurance pool coverage.

A. 1. An operator may satisfy the requirements of 9VAC25-640-50 by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or entering into a member agreement with a group self-insurance pool.

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

3. Group self-insurance pools shall comply with §62.1-44.34:16 of the Code of Virginia and ~~applicable the rules promulgated by the State Corporation Commission Bureau of Insurance regulations designated as Chapter 385 of Title 14 of the Virginia Administrative Code and entitled "Rules Governing Aboveground Storage Tank and Pipeline Operators Group Self-Insurance Pools" (14VAC5-385).~~

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

C. Each liability insurance policy shall be issued by an insurer ~~or a group self-insurance pool~~ that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or approved surplus lines insurer in the Commonwealth of Virginia.

D. Each group self-insurance pool must be licensed in accordance with 14VAC5-385, and any coverage provided by such a pool shall be evidenced by a certificate of group self-insurance worded identically as specified in Appendix VIII, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

E. Each liability insurance policy or group self-insurance plan shall provide first dollar coverage. The insurer or group self-insurance pool shall be liable for the payment of all amounts within any deductible applicable to the policy to the provider of containment and clean up as provided in this chapter, with a right of reimbursement by the insured for any such payment made by the insurer or group self-insurance pool. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 9VAC25-640-70 through 9VAC25-640-120.

9VAC25-640-100. Surety bond.

A. An operator may satisfy the requirements of 9VAC25-640-50 by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond shall be licensed to operate as a surety in the

Commonwealth of Virginia and be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

B. The surety bond shall be worded identically as specified in Appendix V, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

C. Under the terms of the bond, the surety will become liable on the bond obligation when the operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.

~~[D.] The operator who uses a surety bond to satisfy the requirements of 9VAC25-640-50 shall establish a standby trust fund when the surety bond is acquired. [Under the terms of the bond, all amounts paid by the surety under the bond will be] deposited directly into the standby trust fund [paid directly to the board in accordance with instructions from the board under 9VAC25-640-180.] This standby trust fund shall meet the requirements specified in 9VAC25-640-130.~~

9VAC25-640-110. Letter of credit.

A. An operator may satisfy the requirements of 9VAC25-640-50 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution shall be an entity that has the authority to issue letters of credit in the Commonwealth of Virginia and whose letter-of-credit operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The letter of credit shall be worded identically as specified in Appendix VI, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

~~[C.] An operator who uses a letter of credit to satisfy the requirements of 9VAC25-640-50 also shall establish a standby trust fund when the letter of credit is acquired. [Under the terms of the letter of credit, all amounts paid pursuant to a draft by the board will be] deposited by the issuing institution directly into the standby trust fund [paid by the issuing institution directly to the board in accordance with instructions from the board under 9VAC25-640-180.] This standby trust fund shall meet the requirements specified in 9VAC25-640-130.~~

D. The letter of credit shall be irrevocable with a term specified by the issuing institution. The letter of credit shall provide that credit will be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the operator and the board by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the 120 days will begin on the date when the operator

and the board receives the notice, as evidenced by the return receipt receipts.

9VAC25-640-120. Trust fund.

A. An operator may satisfy the requirements of 9VAC25-640-50 by establishing an irrevocable trust fund that conforms to the requirements of this section. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The trust fund shall be irrevocable and shall continue until terminated at the written direction of the grantor and the trustee, or by the trustee and the State Water Control Board, if the grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, shall be delivered to the operator. The wording of the trust agreement shall be identical to the wording specified in Appendix VII and shall be accompanied by a formal certification of acknowledgment as specified in Appendix VIII.

C. The irrevocable trust fund, when established, shall be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanisms that provide the remaining required coverage.

D. If the value of the trust fund is greater than the required amount of coverage, the operator may submit a written request to the board for release of the excess.

E. If other financial assurance as specified in this chapter is substituted for all or part of the trust fund, the operator may submit a written request to the board for release of the excess.

F. Within 60 days after receiving a request from the operator for release of funds as specified in subsection D or E of this section, the board will instruct the trustee to release to the operator such funds as the board specifies in writing.

9VAC25-640-130. Standby trust fund. (Repealed.)

~~A. An operator using any one of the mechanisms authorized by 9VAC25-640-80, 9VAC25-640-100, and 9VAC25-640-110 shall establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or the State Corporation Commission.~~

~~B. The standby trust agreement or trust agreement shall be worded identically as specified in Appendix VII, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted, and accompanied by a formal certification of acknowledgment as specified in Appendix VIII.~~

~~C. The board will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the board determines that no additional containment and clean up costs will occur as a result of a discharge covered by the financial assurance mechanism for which the standby trust fund was established.~~

~~D. An operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule.~~

9VAC25-640-150. Cancellation or nonrenewal by a provider of financial assurance.

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

Termination of a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the operator and the board receives the notice of termination, as evidenced by the return receipt receipts.

Termination of insurance or group self-insurance pool coverage, except for nonpayment or misrepresentation by the insured, may not occur until 60 days after the date on which the operator and the board receives the notice of termination, as evidenced by the return receipt receipts. Termination for nonpayment of premium or misrepresentation by the insured may not occur until a minimum of 15 days after the date on which the operator and the board receives the notice of termination, as evidenced by the return receipt receipts.

B. If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in 9VAC25-640-200, the operator shall obtain alternate coverage as specified in this section and shall submit to the board the appropriate original forms listed in 9VAC25-640-170 B documenting the alternate coverage within 60 days after receipt of the notice of termination. If the operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the operator shall immediately notify the board of such failure and submit:

1. The name and address of the provider of financial assurance;
2. The effective date of termination; and
3. A copy of the financial assurance mechanism subject to the termination maintained in accordance with 9VAC25-640-170.

9VAC25-640-160. Reporting by operator.

A. Except as specified in 9VAC25-640-170 B 7, an operator of a facility existing as of March 2, 2001, shall comply with the requirements of this chapter by June 30, 2001. An operator shall submit the appropriate original forms listed in

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~~9VAC25-640-170 B documenting current evidence of financial responsibility to the board within 30 days after the operator identifies or confirms a discharge from an aboveground storage tank or pipeline required to be reported under [9VAC25-90-210 9VAC25-91]. For all subsequent discharges within the same period of time for which the documents submitted according to this subsection are still effective, the operator shall submit a letter that identifies the operator's name and address and the aboveground storage tank's or pipeline's location by site name, street address, board incident designation number and a statement that the financial responsibility documentation previously provided to the board is currently in force.~~

~~B. Except as specified in 9VAC25-640-170 B 7, an operator of a facility which does not exist as of March 2, 2001, shall comply with the requirements of this chapter at least 30 days before the facility commences operation or by May 1, 2001, whichever is later.~~

~~⊖ B.~~ An operator shall notify the board if the operator fails to obtain alternate coverage as required by this chapter within 30 days after the operator receives notice of:

1. Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor.
2. Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism.
3. Failure of a guarantor to meet the requirements of the financial test.
4. Other incapacity of a provider of financial assurance.

~~⊕ C.~~ An operator shall submit the appropriate original forms listed in 9VAC25-640-170 B documenting current evidence of financial responsibility to the board as required by 9VAC25-640-70 E and F and 9VAC25-640-150 B.

~~E. D.~~ An operator shall submit to the board the appropriate original forms listed in 9VAC25-640-170 B documenting current evidence of financial responsibility upon substitution of its financial assurance mechanisms as provided by 9VAC25-640-140.

~~F. E.~~ The board may require an operator to submit evidence of financial assurance as described in 9VAC25-640-170 B or other information relevant to compliance with this chapter at any time. The board may require submission of originals or copies at its sole discretion.

9VAC25-640-170. Recordkeeping.

A. Operators shall maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this chapter for an aboveground storage tank or pipeline, or both, until released from the requirements of this regulation under 9VAC25-640-190. An operator shall

maintain such evidence at the aboveground storage tank site or the operator's place of work in this Commonwealth. Records maintained off-site shall be made available upon request of the board.

B. Operators shall maintain the following types of evidence of financial responsibility:

1. An operator using an assurance mechanism specified in 9VAC25-640-70 through 9VAC25-640-120 shall maintain the original instrument worded as specified.

2. An operator using a financial test or guarantee shall maintain (i) the chief financial officer's letter, and (ii) year-end financial statements for the most recent completed financial reporting year or the Dun and Bradstreet rating on which the chief financial officer's letter was based. Such evidence shall be on file no later than 120 days after the close of the financial reporting year.

~~3. An operator using a guarantee, surety bond, or letter of credit shall maintain the signed standby trust fund agreement and any amendments to the agreement.~~

~~4. 3.~~ An operator using an insurance policy or group self-insurance pool coverage shall maintain a copy of the signed insurance policy or group self-insurance pool coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

~~5. 4.~~ a. An operator using an assurance mechanism specified in 9VAC25-640-70 through 9VAC25-640-120 shall maintain an original certification of financial responsibility worded identically as specified in Appendix IX, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

b. The operator shall maintain a new original certification at or before the time specified in 9VAC25-640-160 or whenever the financial assurance mechanisms used to demonstrate financial responsibility changes.

~~6. An operator using a trust agreement or who is required to prepare a standby trust agreement pursuant to 9VAC25-640-130 shall maintain a certification of acknowledgment worded identically as specified in Appendix VIII, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.~~

~~7. 5.~~ For [~~subsequent annual~~] updates submissions required under 9VAC25-640-160:

a. The operator [~~may maintain~~ must provide] an [insurance] endorsement [~~, a rider or certificate,~~] or a notice of extension from the provider of financial assurance evidencing continuation of coverage in lieu of a new original surety bond or letter of credit [~~or insurance policy~~], provided the form of the [insurance] endorsement [~~, rider or certificate,~~] or notice of extension is approved by the board;

b. The operator need not [~~obtain~~ provide] a new original guarantee or trust fund, provided the same mechanism is to continue to act as the operator's demonstration mechanism for the subsequent year or years;

~~e. The operator need not obtain a new standby trust agreement, provided the financial assurance mechanism remains the same;~~

~~d. c.~~ The operator must [~~maintain~~ provide] a new original mechanism as specified in subdivision 2 of this subsection;

~~e. d.~~ The operator need not [~~obtain~~ provide] a new original certification of acknowledgment, provided the associated trust agreement has not changed;

~~f. e.~~ The operator must [~~maintain~~ provide] a new original certification of financial responsibility.

9VAC25-640-180. Drawing on financial assurance mechanisms.

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

1. a. The operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit; and

b. The board determines or suspects that a discharge from an aboveground storage tank or pipeline covered by the mechanism has occurred and so notifies the operator, or the operator has notified the board pursuant to ~~9VAC25-91-10 et seq. 9VAC25-91~~ of a discharge from an aboveground storage tank or pipeline covered by the mechanism; or

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

B. The board shall deposit the financial assurance funds forfeited pursuant to subsection A of this section into the Virginia Petroleum Storage Tank Fund. The board may draw on a standby trust fund when the board use the financial responsibility funds obtained pursuant to subsection A of this section to conduct containment and cleanup when it makes a final determination that a discharge has occurred and immediate or long-term containment and/or clean up for the discharge is needed, and the operator, after appropriate notice and opportunity to comply, has not conducted containment and clean up as required under 9VAC25-91-10 et seq 9VAC25-91.

9VAC25-640-190. Release from the requirements.

An operator is no longer required to maintain financial responsibility under this chapter for an aboveground storage tank or pipeline after the tank or pipeline has been permanently closed pursuant to the requirements of ~~9VAC25-91-10 et seq. 9VAC25-91~~, except when the board determines clean up of a discharge from the aboveground storage tank or pipeline is required.

[9VAC25-640-200. Bankruptcy or other incapacity of operator provider of financial assurance.

A. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an operator as debtor, the operator shall notify the board by certified mail of such commencement.

B. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor shall notify the operator and the board by certified mail of such commencement as required under the terms of the guarantee specified in 9VAC25-640-80.

C. An operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, group self-insurance pool coverage policy, surety bond, or letter of credit. The operator shall obtain alternate financial assurance as specified in this chapter and submit to the board the appropriate original forms specified in 9VAC25-640-170 B within 30 days after receiving notice of such an event. If the operator does not obtain alternate coverage within 30 days after such notification, he shall immediately notify the board in writing.]

9VAC25-640-210. Replenishment of guarantees, letters of credit or surety bonds.

A. If at any time after a standby trust is funded upon the instruction of the board with funds drawn from a guarantee, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required is drawn upon by instruction of the board and the board has expended all or part of the funds for containment and cleanup, the operator shall by the anniversary date of the financial mechanism from which the funds were drawn shall:

1. Replenish the value of financial assurance to equal the full amount of coverage required; or
2. Acquire another financial assurance mechanism for the amount by which ~~funds in the standby trust have the face~~

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value of the letter of credit, surety bond, or guarantee has been reduced.

B. For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by 9VAC25-640-50. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

9VAC25-640-220. Virginia Petroleum Storage Tank Fund.

~~The fund may be used for all uses authorized by §62.1-44.34:11 of the Code of Virginia in accordance with the requirements specified in 9VAC25-590-210.~~

A. The Virginia Petroleum Storage Tank Fund will be used for reasonable and necessary costs, in excess of the financial responsibility amounts specified below, incurred by an operator for containment and cleanup of a petroleum release from a facility of a product subject to §62.1-44.34:13 of the Code of Virginia as follows:

1. Reasonable and necessary per occurrence containment and cleanup costs incurred by an operator whose net annual profits from all facilities in Virginia do not exceed \$10 million:

a. For a release from a facility with a storage capacity less than 25,000 gallons, per occurrence costs in excess of \$2,500 up to \$1 million;

b. For a release from a facility with a storage capacity from 25,000 gallons to 100,000 gallons, per occurrence costs in excess of \$5,000 up to \$1 million;

c. For a release from a facility with a storage capacity from 100,000 gallons to four million gallons, per occurrence costs in excess of \$.05 per gallon of aboveground storage capacity up to \$1 million; and

d. For a release from a facility with a storage capacity greater than four million gallons, per occurrence costs in excess of \$200,000 up to \$1 million.

e. For purposes of this subdivision, the per occurrence financial responsibility requirements for an operator shall be based on the total storage capacity for the facility from which the discharge occurs.

2. Reasonable and necessary per occurrence containment and cleanup costs incurred by an operator whose net annual profits from all facilities in Virginia exceed \$10 million:

a. For a release from a facility with a storage capacity less than four million gallons, per occurrence costs in excess of \$200,000 up to \$1 million;

b. For a release from a facility with a storage capacity from four million gallons to 20 million gallons, per

occurrence costs in excess of \$.05 per gallon of aboveground storage capacity of up to \$1 million; and

c. For a release from a facility with a storage capacity greater than 20 million gallons no access to the fund will be permitted.

d. For purposes of this subdivision, the financial responsibility requirements for an operator are based on the total aboveground storage capacity for all facilities operated in Virginia.

B. The Virginia Petroleum Storage Tank Fund will be used for reasonable and necessary per occurrence costs of containment and cleanup incurred for releases reported after December 22, 1989, by the operator of a facility in excess of \$500 up to \$1 million for any release of petroleum into the environment from an aboveground storage tank with a capacity of 5,000 gallons or less used for storing heating oil for consumption on the premises where stored.

C. The Virginia Petroleum Storage Tank Fund may be used for all other uses authorized in §62.1-44.34:11 of the Code of Virginia.

D. An operator of a facility responding to a release and conducting board-approved corrective action may proceed to pay for all costs incurred for such activities. Documentation submitted to the board of all costs incurred will be reviewed and those documented costs in excess of the financial responsibility requirements up to \$1 million that are reasonable and necessary and have been approved by the board will be reimbursed from the fund.

E. Operators shall pay the financial responsibility requirement specified in this section for each occurrence.

F. Section 62.1-44.34:11 A of the Code of Virginia provides that no person shall receive reimbursement from the fund:

1. For costs incurred for corrective action taken prior to December 22, 1989 by an owner or operator of an underground storage tank exempted in subdivisions 1 and 2 of the definition of an underground storage tank in §62.1-44.34:10 of the Code of Virginia, or an owner of an aboveground storage tank with a capacity of 5,000 gallons or less used for storing heating oil for consumption on the premises where stored.

2. For costs incurred prior to January 1, 1992, by an operator of a facility for containment and cleanup of a release from a facility of a product subject to §62.1-44.34:13 of the Code of Virginia.

3. For containment and cleanup costs that are reimbursed or are reimbursable from other applicable state or federal programs.

4. If the operator of a facility has not complied with applicable statutes or regulations governing reporting, prevention, containment and cleanup of a discharge of oil.

5. If the owner or operator of an underground storage tank or the operator of an aboveground storage tank facility fails to report a release of petroleum or a discharge of oil to the board as required by applicable statutes, laws or regulations.

6. Unless a reimbursement claim has been filed with the board within two years from the date the board issues a site remediation closure letter for that release or July 1, 2000, whichever is later.

G. In addition to the statutory prohibitions quoted in subsection F of this section, no person shall receive reimbursement from the fund for containment and cleanup:

1. Where the release is caused, in whole or in part, by the willful misconduct or negligence of the operator, his employee, contractor, or agent, or anyone within his privity or knowledge;

2. Where the claim cost has been reimbursed or is reimbursable by an insurance policy;

3. Where the operator does not demonstrate the reasonableness and necessity of the claim costs;

4. Where the person, his employee, contractor or agent, or anyone within the privity or knowledge of that person has (i) failed to carry out the instructions of the board, (ii) committed willful misconduct or been negligent in carrying out the instructions of the board, or (iii) has violated applicable federal or state safety, construction or operating laws or regulations in carrying out the instructions of the board; and

5. Where the costs or damages were incurred pursuant to §10.1-1232 of the Code of Virginia and the regulations promulgated thereunder.

H. No disbursements shall be made from the fund for operators who are federal government entities or whose debts and liabilities are the debts and liabilities of the United States.

I. No funds shall be paid in excess of the minimum disbursement necessary to contain and cleanup each occurrence to the acceptable level of risk, as determined by the board.

J. The board may perform a detailed review of all documentation associated with a reimbursement claim up to seven years following payment of the claim. Based upon the results of the review, the board may take actions to address any deficiencies found in the claim documentation. Such actions may include, but are not limited to, publishing a list of audit concerns associated with the claim, withholding payment of future claims, and/or recovering costs paid on prior claims.

K. The board shall seek recovery of all costs and expenses incurred by the Commonwealth for investigation,

containment and cleanup of a discharge of oil or threat of discharge against any person liable for a discharge of oil as specified in Article 11 (§62.1-44.34:14 et seq.) of the State Water Control Law; however, the board shall seek recovery from an operator of expenditures from the fund only in the amount by which such expenditures exceed the amount authorized to be disbursed to the operator under subdivisions A 1 and A 2 of this section. This limitation on recovery shall not apply if the release was caused, in whole or in part, by the willful misconduct or negligence of the owner or operator, his employee, contractor, or agent, or anyone within his privity or knowledge.

9VAC25-640-230. Notices to the State Water Control Board.

All requirements of this chapter for notification to the State Water Control Board shall be addressed as follows:

Director Department of Environmental Quality 629 E. Main Street P.O. Box ~~40009~~ 1105 Richmond, Virginia ~~23240-0009~~ 23218.

9VAC25-640-250. Evaluation of chapter.

A. ~~No later than March 2, 2004, [Within four years after the effective date of this chapter~~ By October 31, 2012], 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 that 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 current state and federal statutory and regulatory requirements, including identification and justification of requirements of this chapter which are more stringent than federal requirements; and (v) the results of a review as to whether this chapter is clearly written and easily understandable by affected entities.

B. Upon review of the department's analysis, the board shall confirm the need to (i) continue this chapter without amendments, (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.

APPENDIX I. LETTER FROM CHIEF FINANCIAL OFFICER.

(Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.)

I am the chief financial officer of [insert: name and address of the operator or guarantor]. This letter is in support of the use of [insert: "the financial test of self-insurance," and/or "Guarantee"] to demonstrate financial responsibility for the containment and clean up of discharges of oil in the amount

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of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating [insert: "(an) aboveground storage tank(s)" and/or "(a) pipeline(s)"].

Aboveground storage tanks at the following facilities and/or pipelines are assured by this financial test by this [insert: "operator" and/or "guarantor"]:

[List for each facility: the name and address of the facility where tanks assured by this financial test are located, either the registration identification number assigned by the Department or the Oil Discharge Contingency Plan facility identification number, and whether tanks are assured by this financial test. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test.

List for each pipeline: the home office address and the names of the cities and counties in the Commonwealth where the pipeline is located.]

This [insert: "operator " or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on the financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of 9VAC25-640-70 B are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of 9VAC25-640-70 C are being used to demonstrate compliance with the financial test requirements.]

ALTERNATIVE I

1. Amount of AST annual aggregate coverage being assured by a financial test, and/or guarantee \$ _____

2. Amount of pipeline annual aggregate coverage covered by a financial test, and/or guarantee \$ _____

3. Amount of annual underground storage tank (UST) aggregate coverage being assured by a financial test and/or guarantee pursuant to 9 VAC 25-590 \$ _____

4. Total AST/Pipeline/UST financial responsibility obligations assured by a financial test and/or guarantee (Sum of lines 1, ~~and 2~~ and 3) \$ _____

4. 5. Total tangible assets \$ _____

~~5.~~ 6. Total liabilities [if any of the amount reported on line ~~3~~ 4 is included in total liabilities, you may deduct that amount from this line or add that amount to line ~~6~~ 7] \$ _____

~~6.~~ 7. Tangible net worth [subtract line ~~5~~ 6 from line ~~4~~ 5] \$ _____

~~7.~~ 8. Is line ~~6~~ 7 at least equal to line ~~3~~ 4 above? Yes No

~~8.~~ 9. Have financial statements for the latest financial reporting year been filed with the Securities and Exchange Commission? _____

~~9.~~ 10. Have financial statements for the latest financial reporting year been filed with the Energy Information Administration? _____

~~10.~~ 11. Have financial statements for the latest financial reporting year been filed with the Rural ~~Electrification Administration~~ Utilities Service? _____

~~11.~~ 12. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of at least equal to the amount of annual AST/pipeline aggregate coverage being assured? [Answer Yes only if both criteria have been met.] _____

~~12.~~ 13. If you did not answer Yes to one of lines ~~8~~ 9 through ~~11~~ 12, please attach a report from an independent certified public accountant certifying that there are no material differences between the data reported in lines ~~4-5~~ 4-5 through ~~7~~ 8 above and the financial statements for the latest financial reporting year.

ALTERNATIVE II

1. Amount of AST annual aggregate coverage being assured by a financial test, and/or guarantee \$ _____

2. Amount of pipeline annual aggregate coverage covered by a financial test, and/or guarantee \$ _____

3. Amount of annual underground storage tank (UST) aggregate coverage being assured by a financial test and/or guarantee pursuant to 9VAC25-590 \$ _____

4. Total AST/Pipeline?UST financial responsibility obligations assured by a financial test and/or guarantee (Sum of lines 1, ~~and 2~~ and 3) \$ _____

4. 5. Total tangible assets \$ _____

5. 6. Total liabilities [if any of the amount reported on line 3-4 is included in total liabilities, you may deduct that amount from this line or add that amount to line] \$ _____

6. 7. Tangible net worth [subtract line 5-6 from line 4-5] \$ _____

7. 8. Total assets in the U.S. [required only if less than 90 percent of assets are located in the U.S.] \$ _____

8. 9. Is line 6-7 at least equal to line 3-4 above? Yes No
 _____ _____

9. 10. Are at least 90 percent of assets located in the U.S.? [If No, complete line 10-11.] _____ _____

10. 11. Is line 7-8 at least equal to line 3-4? _____ _____

[Fill in either lines 11-12-15 or lines 15-17-16-18.]

11. 12. Current assets \$ _____

12. 13. Current liabilities \$ _____

13. 14. Net working capital [subtract line 12-13 from line 11-12] \$ _____

14. 15. Is line 13-14 at least equal to line 3-4? Yes No
 _____ _____

15. 16. Current bond rating of most recent bond issue _____

16. 17. Name of rating service _____

17. 18. Date of maturity of bond _____

18. 19. Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or the Rural Electrification Administration Utilities Service? Yes No
 _____ _____

[If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-17 5-18 above and the financial statements for the latest financial reporting year.]

[For Alternatives I and II, complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in Appendix I of ~~9VAC25-640-10 et seq.~~ 9VAC25-640 as such regulations were constituted on the date shown immediately below.

[Signature]
 [Name]
 [Title]
 [Date]

APPENDIX II. GUARANTEE.

(Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.)

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state of [insert name of state], herein referred to as guarantor, to the State Water Control Board of the Commonwealth of Virginia and obligees, on behalf of [operator] of [business address].

Recitals.

(1) Guarantor meets or exceeds the financial test criteria of 9VAC25-640-70 B or C and D and agrees to comply with the requirements for guarantors as specified in 9VAC25-640-80.

(2) Operator operates the following aboveground storage tank(s) and/or pipelines covered by this guarantee:

[List for each facility: the name and address of facility where tanks assured by this financial test are located, either the registration identification number assigned by the Department or the Oil Discharge Contingency Plan facility identification number, and whether tanks are assured by this guarantee. If more than one instrument is used to assure different tanks at any one facility, list each tank assured by this mechanism.

List for each pipeline: the home office address and the names of the cities and counties in the Commonwealth where the pipeline is located.]

This guarantee satisfies the requirements of ~~9VAC25-640-10 et seq.~~ 9VAC25-640 for assuring funding for taking containment and clean up measures necessitated by a discharge of oil; [if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified aboveground storage tank(s) and/or pipelines in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the operator); "On behalf of our affiliate" (if guarantor is a related firm of the operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial

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business relationship with operator)] [operator], guarantor guarantees to the State Water Control Board that:

In the event that operator fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this guarantee and the State Water Control Board has determined or suspects that a discharge has occurred at an aboveground storage tank and/or pipeline covered by this guarantee, the guarantor, upon instructions from the State Water Control Board, shall ~~fund a standby trust fund~~ pay the funds to the State Water Control Board in accordance with the provisions of 9VAC25-640-180, in an amount not to exceed the coverage limits specified above.

In the event that the State Water Control Board determines that operator has failed to perform containment and clean up for discharges arising out of the operation of the above-identified tank(s) and/or pipelines in accordance with ~~9VAC25-91-10 et seq. 9VAC25-91~~, the guarantor upon written instructions from the State Water Control Board shall ~~fund a standby trust~~ pay the funds to the State Water Control Board in accordance with the provisions of 9VAC25-640-180, in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees that if, at the end of any financial reporting year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of 9VAC25-640-70 B or C and D, guarantor shall send within 120 days of such failure, by certified mail, notice to operator and the State Water Control Board. The guarantee will terminate 120 days from the date of receipt of the notice by operator and the State Water Control Board, as evidenced by the return receipt.

(5) Guarantor agrees to notify operator and the State Water Control Board by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of operator pursuant to ~~9VAC25-91-10 et seq. 9VAC25-91~~ or ~~9VAC25-640-10 et seq. 9VAC25-640~~.

(7) Guarantor agrees to remain bound under this guarantee for so long as operator shall comply with the applicable financial responsibility requirements of ~~9VAC25-640-10 et seq. 9VAC25-640~~ for the above-identified tank(s) and/or pipelines, except that guarantor may cancel this guarantee by sending notice by certified mail to operator and the State Water Control Board, such cancellation to become effective no earlier than 120 days after receipt of such notice by operator and the State Water Control Board, as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of operator under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of operator arising from, and in the course of, employment by operator;

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by operator that is not the direct result of a discharge from an aboveground storage tank and/or pipeline;

(e) Bodily damage or property damage for which operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of ~~9VAC25-640-10 et seq. 9VAC25-640~~.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the State Water Control Board or by operator.

I hereby certify that the wording of this guarantee is identical to the wording specified in Appendix II of ~~9VAC25-640-10 et seq. 9VAC25-640~~ as such regulations were constituted on the effective date shown immediately below.

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

APPENDIX III. ENDORSEMENT.

(Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.)

Name: _____ [name of each covered location] _____

Address: _____ [address of each covered location] _____

Policy Number: _____

Period of Coverage: _____ [current policy period] _____

Name of [~~Insurer or Group Self Insurance Pool~~] Insurer:

Address of [~~Insurer or Group Self Insurance Pool~~] Insurer:

Name of Insured: _____

Address of Insured:

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following aboveground storage tanks and/or pipelines in connection with the insured's obligation to demonstrate financial responsibility under ~~9VAC25-640-10 et seq.~~ 9VAC25-640:

[List for each facility: the name and address of the facility where tanks assured by this mechanism are located, either the registration identification number assigned by the department or the Oil Discharge Contingency Plan facility identification number, and whether tanks are assured by this mechanism. If more than one instrument is used to assure different tanks at any one facility, list each tank assured by this mechanism.

List for each pipeline: the home office address and the names of the cities and counties in the Commonwealth where the pipeline is located.]

for containment and clean up of a discharge of oil in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; [if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the aboveground storage tank(s) and/or pipelines identified above.

The limits of liability are [insert the dollar amount of the containment and clean up "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different aboveground storage tanks, pipelines or locations, indicate the amount of coverage for each type of coverage and/or for each aboveground storage tank, pipeline or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

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

a. Bankruptcy or insolvency of the insured shall not relieve the ~~["Insurer" or "Pool"]~~ of its obligations under the policy to which this endorsement is attached.

b. The ~~["Insurer" or "Pool"]~~ is liable for the payment of amounts within any deductible applicable to the policy to the provider of containment and clean up, with a right of reimbursement by the insured for any such payment made by the ~~["Insurer" or "Pool"]~~.

This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 9VAC25-640-70 through ~~120~~ 9VAC25-640-120.

c. Whenever requested by the State Water Control Board, the ~~["Insurer" or "Pool"]~~ agrees to furnish to State Water Control Board a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ~~["Insurer" or "Pool"]~~, except for on-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured and the State Water Control Board. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 15 days after a copy of such written notice is received by the insured and the State Water Control Board.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the ~~["Insurer" or "Pool"]~~ within six months of the effective date of cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this endorsement is in no respect less favorable than the coverage specified in Appendix III of ~~9VAC25-640-10 et seq.~~ 9VAC25-640 and has been so certified by the State Corporation Commission of the Commonwealth of Virginia. I further certify that the ~~["Insurer" or "Pool"]~~ is ~~["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in the Commonwealth of Virginia"]~~.

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[Signature of authorized representative of Insurer ~~or Group Self Insurance Pool~~]

[Name of person signing]

[Title of person signing], Authorized Representative of
[name of Insurer ~~or Group Self Insurance Pool~~]

[Address of Representative]

APPENDIX IV. CERTIFICATE OF INSURANCE.

(Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.)

Name: _____ [name of each covered location] _____

Address: _____ [address of each covered location] _____

Policy Number: _____

Endorsement (if applicable): _____

Period of Coverage: _____ [current policy period] _____

Name of [Insurer ~~or Group Self Insurance Pool~~]:

Address of [Insurer ~~or Group Self Insurance Pool~~]:

Name of Insured: _____

Address of Insured: _____

Certification:

1. [Name of Insurer ~~or Group Self Insurance Pool~~], [the "Insurer" ~~or "Pool"~~], as identified above, hereby certifies that it has issued liability insurance covering the following aboveground storage tank(s) and/or pipelines in connection with the insured's obligation to demonstrate financial responsibility under ~~9VAC25-640-10 et seq.~~ 9VAC25-640:

[List for each facility: the name and address of the facility where tanks assured by this mechanism are located, either the registration identification number assigned by the Department or the Oil Discharge Contingency Plan facility identification number, and whether tanks are assured by this mechanism. If more than one instrument is used to assure different tanks at any one facility, list each tank assured by this mechanism.

List for each pipeline: the home office address and the names of the cities and counties in the Commonwealth where the pipeline is located.]

for containment and clean up of discharges of oil; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; [if coverage is different for different tanks, pipelines or locations, indicate the type of coverage applicable to each tank, pipeline or location] arising from operating the aboveground storage tank(s) and/or pipelines identified above.

The limits of liability are [insert the dollar amount of the containment and clean up "each occurrence" and "annual aggregate" limits of the Insurer's ~~or Group's~~ liability; if the amount of coverage is different for different types of coverage or for different aboveground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each aboveground storage tank, pipeline or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["Insurer" ~~or "Pool"~~] further certifies the following with respect to the insurance described in Paragraph 1:

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" ~~or "Pool"~~] of its obligations under the policy to which this certificate applies.

b. The ["Insurer" ~~or "Pool"~~] is liable for the payment of amounts within any deductible applicable to the policy to the provider of containment and clean up with a right of reimbursement by the insured for any such payment made by the ["Insurer" ~~or "Pool"~~].

This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 9VAC25-640-70 through 9VAC25-640-120.

c. Whenever requested by the State Water Control Board, the ["Insurer" ~~or "Pool"~~] agrees to furnish to the State Water Control Board a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" ~~or "Pool"~~], except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured and the State Water Control Board. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 15 days after a copy of such written notice is received by the insured and the State Water Control Board.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Pool"] within six months of the effective date of cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in Appendix IV of ~~9VAC25-640-10 et seq. 9VAC25-640~~ and that the ["Insurer" or "Pool"] is ["licensed to transact the business of insurance, or eligible to provide insurance as an excess or approved surplus lines insurer, in the Commonwealth of Virginia"].

[Signature of authorized representative of Insurer]

[Type name] [Title], Authorized Representative of [name of Insurer ~~or Group Self Insurance Pool~~]

[Address of Representative]

APPENDIX V. PERFORMANCE BOND.

(Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.)

Date bond executed: _____

~~Period of coverage~~ Effective date: _____

Principal: [legal name and address of operator] _____

Type of organization: [insert "individual" "joint venture," "partnership," "corporation," or appropriate identification of type of organization] _____

State of incorporation (if applicable): _____

Surety(ies): [name(s) and business address(es)] _____

Scope of Coverage:

[List for each facility: the name and address of the facility where tanks assured by this mechanism are located, either the registration identification number assigned by the Department or the Oil Discharge Contingency Plan facility identification number, and whether tanks are assured by this mechanism. If more than one instrument is used to assure different tanks at any one facility, list each tank assured by this mechanism. For pipelines, list the home office address and the names of the cities and counties in the Commonwealth where the pipeline is located.

List the coverage guaranteed by the bond: containment and clean up of oil from a discharge arising from operating the aboveground storage tank and/or pipeline.]

Penal sums of bond:

Containment and Clean up (per discharge) \$ _____

Annual Aggregate \$ _____

Surety's bond number: _____

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the State Water Control Board of the Commonwealth of Virginia, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under §62.1-44.34:16 of the Code of Virginia and under ~~9VAC25-640-10 et seq. 9VAC25-640~~ to provide financial assurance for containment and clean up necessitated by discharges of oil; [if coverage is different for different tanks or locations or pipelines, indicate the type of coverage applicable to each tank or location or pipeline] arising from operating the aboveground storage tanks and/or pipelines identified above; ~~and~~

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

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully contain and clean up, in accordance with the State Water Control Board's instructions for containment and clean up of discharges of oil arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in ~~9VAC25-640-10 et seq. 9VAC25-640~~, within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

- (a) Any obligation of operator under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of operator arising from, and in the course of, employment by operator;

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(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by operator that is not the direct result of a discharge from an aboveground storage tank and/or pipeline;

(e) Bodily injury or property damage for which operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of ~~9VAC25-640-10 et seq~~ 9VAC25-640.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the State Water Control Board that the Principal has failed to contain and clean up in accordance with ~~9VAC25-91-10 et seq.~~ 9VAC25-91 and the State Water Control Board's instructions, the Surety(ies) shall either perform containment and clean up in accordance with ~~9VAC25-91-10 et seq.~~ 9VAC25-91 and the board's instructions, or place pay funds in an amount up to the annual aggregate penal sum into to the standby trust fund State Water Control Board as directed by the State Water Control Board under 9VAC25-640-180. The State Water Control Board in its sole discretion may elect to require the surety to pay the funds or to perform containment and cleanup up to the annual aggregate penal sum.

Upon notification by the State Water Control Board that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the State Water Control Board has determined or suspects that a discharge has occurred, the Surety(ies) shall ~~place pay funds in an amount not exceeding the annual aggregate penal sum into to the standby trust fund~~ State Water Control Board as directed by the State Water Control Board under 9VAC25-640-180.

The Surety(ies) submit to the jurisdiction of the Circuit Court of the City of Richmond to adjudicate any claim against it (them) by the State Water Control Board and waive any objection to venue in that court. Interest shall accrue at the judgment rate of interest on the amount due beginning seven days after the date of notification by the State Water Control Board. In the event the State Water Control Board shall institute legal action to compel performance by the Surety under this agreement, the Surety shall be liable for all costs and legal fees incurred by the board to enforce this agreement.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their)

obligation on this bond. The Surety(ies) hereby agrees that it(they) has been notified of all material facts regarding this contract of suretyship and waiver(s) any defense founded in concealment of material facts. The Surety(ies) represents that the person executing this agreement has full authority to execute the agreement. Surety(ies) hereby waive(s) any right to notice of breach or default of the Principal. The State Water Control Board may enforce this agreement against the Surety(ies) without bringing suit against the Principal. The State Water Control Board shall not be required to exhaust the assets of the Principal before demanding performance by the Surety. No lawful act of the State Water Control Board, including without limitation any extension of time to the Principal, shall serve to release any surety, whether or not that act may be construed to alter or vary this agreement. Release of one cosurety shall not act as the release of another. This agreement shall be construed to affect its purpose to provide remedial action for discharges of petroleum.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail or overnight courier to the Principal and the State Water Control Board, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal and the State Water Control Board, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in Appendix V of ~~9VAC25-640-10 et seq.~~ 9VAC25-640 as such regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

CORPORATE SURETY(IES)

[Name and address]

State of Incorporation:

Liability limit: \$ _____

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$ _____

APPENDIX VI. IRREVOCABLE STANDBY LETTER OF CREDIT.

(Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.)

[Name and address of issuing institution]

[Name and address of the Director]

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor, at the request and for the account of [operator name] of [address] up to the aggregate amount of [in words] U.S. dollars (\$[insert dollar amount]), available upon presentation of

(1) Your sight draft, bearing reference to this letter of credit, No. _____; and

(2) Your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of §62.1- 44.34:16 of the Code of Virginia."

This letter of credit may be drawn on to cover containment and clean up necessitated by discharges of oil arising from operating the aboveground storage tank(s) and pipelines identified below in the amount of [in words] \$ [insert dollar amount] per occurrence and [in words] \$ [insert dollar amount] annual aggregate:

[List for each facility: the name and address of the facility where tanks assured by this mechanism are located, either the registration identification number assigned by the Department or the Oil Discharge Contingency Plan facility identification number, and whether tanks are assured by this mechanism. If more than one instrument is used to assure different tanks at any one facility, list each tank covered by this instrument.

For pipelines, list: the home office address and the names of the cities and counties in the Commonwealth where the pipeline is located.]

The letter of credit may not be drawn on to cover any of the following:

(a) Any obligation of operator under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of operator arising from, and in the course of, employment by operator;

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by an operator that is not the direct result of a discharge of oil from an aboveground storage tank and/or pipeline;

(e) Bodily injury or property damage for which an operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 9VAC25-640-50.

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify operator and the State Water Control Board by certified mail or overnight courier that we have decided not to extend this letter of credit beyond the current expiration date. In the event that operator is and the State Water Control Board are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by ~~operator~~ the State Water Control Board, as shown on the signed return receipt, or until the current expiration date, whichever is later.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall ~~deposit the amount of the draft directly into the standby trust fund of operator~~ pay to you the amount of the draft promptly and directly in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in Appendix VI of ~~9VAC25-640-10 et seq.~~ 9VAC25-640 as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce" or "the Uniform Commercial Code"].

APPENDIX VII. TRUST AGREEMENT.

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(Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.)

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the operator], a [name of state] [insert "corporation," "partnership," "association," "proprietorship," or appropriate identification of type of entity], the "Grantor," and [name of corporate trustee], [insert "Incorporated in the state of _____" or "a national bank"], the "Trustee."

Whereas, the State Water Control Board of the Commonwealth of Virginia has established certain regulations applicable to the Grantor, requiring that an operator of an aboveground storage tank and/or pipeline shall provide assurance that funds will be available when needed for containment and clean up of a discharge of oil arising from the operation of the aboveground storage tank and/or pipeline. The attached Schedule A contains for each facility the name and address of the facility where tanks covered by this ~~{trust agreement or standby trust agreement}~~ are located, either the registration identification number assigned by the Department or the Oil Discharge Contingency Plan facility identification number and for pipelines the home office address and names of the cities and counties in the Commonwealth where the pipeline is located;

~~Whereas, the Grantor has elected to establish [insert either "a guarantee," "surety bond," or "letter of credit"] to provide all or part of such financial assurance for the aboveground storage tanks and/or pipelines identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.);~~

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) "9 VAC 25-640" is the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements Regulation promulgated by the State Water Control Board for the Commonwealth of Virginia.

~~Section 2. Identification of the Financial Assurance Mechanism.~~

~~This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or~~

~~letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)]~~

Section ~~3.~~ 2. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the State Water Control Board of the Commonwealth of Virginia. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. ~~[The Fund is established initially as a standby to receive payments and shall not consist of any property.]~~ Payments made by the provider of financial assurance pursuant to the State Water Control Board's instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the State Water Control Board.

Section ~~4.~~ 3. Payment for Containment and Clean up.

The Trustee shall make payments from the Fund as the State Water Control Board shall direct, in writing, to provide for the payment of the costs of containment and clean up of a discharge of oil arising from operating the tanks and/or pipelines covered by the ~~financial assurance mechanism identified in~~ this Agreement.

The Fund may not be drawn upon to cover any of the following:

(a) Any obligation of operator under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of operator arising from, and in the course of, employment by operator;

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by operator that is not the direct result of a discharge from an oil aboveground storage tank or pipeline;

(e) Bodily injury or property damage for which operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 9VAC25-640-50.

The Trustee shall reimburse the Grantor, or other persons as specified by the State Water Control Board, from the Fund

for containment and clean up in such amounts as the State Water Control Board shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the State Water Control Board specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section ~~5~~. 4. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section ~~6~~. 5. Trustee Management.

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (a) Securities or other obligations of the Grantor, or any other operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. §80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;
- (b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and
- (c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section ~~7~~. 6. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. §80a-1 et seq., including one which may be created, managed, underwritten, or to which investment

advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section ~~8~~. 7. Express Powers of Trustee.

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;
- (d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and
- (e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section ~~9~~. 8. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other

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proper charges and disbursements of the Trustee shall be paid from the Fund.

Section ~~10-~~ 9. Advice of Counsel.

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section ~~11-~~ 10. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section ~~12-~~ 11. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section ~~9~~ 8.

Section ~~13-~~ 12. Instructions to the Trustee.

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests and instructions by the State Water Control Board to the Trustee shall be in writing, signed by the Executive Director of the Department of Environmental Quality, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the State Water Control Board hereunder has occurred. The Trustee shall have no duty to act in the absence of such

orders, requests, and instructions from the Grantor and/or the State Water Control Board, except as provided for herein.

Section ~~14-~~ 13. Amendment of Agreement.

This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the State Water Control Board if the Grantor ceases to exist.

Section ~~15-~~ 14. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement as provided in Section ~~14~~ 13, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the State Water Control Board, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section ~~16-~~ 15. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the State Water Control Board issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section ~~17-~~ 16. Choice of Law.

This Agreement shall be administered, construed, and enforced according to the laws of the Commonwealth of Virginia, or the Comptroller of the Currency in the case of National Association banks.

Section ~~18-~~ 17. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in Appendix VII of ~~9VAC25-640-10 et seq. 9VAC25-640~~ as such regulations were constituted on the date written above.

[Signature of Grantor]

[Name of the Grantor]

[Title]
Attest:
[Signature of Trustee]
[Name of the Trustee]
[Title]
[Seal]
[Signature of Witness]
[Name of Witness]
[Title]
[Seal]
[Signature of notary]
[Name of notary] [Date] My Commission expires:
State of
County of

Of this [date], before me personally came [operator's representative] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of notary public]

[Name of notary public]

My Commission expires:

APPENDIX VIII. CERTIFICATE OF ACKNOWLEDGMENT GROUP SELF-INSURANCE [POOL MEMBERSHIP].

(Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.)

State of

County of

On this [date], before me personally came [operator's representative] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

[Name of Notary Public]
My Commission expires:

(NOTE: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.)

Name: [name of each covered location]

Address: [address of each covered location]

Policy number:

Endorsement (if applicable):

Period of coverage: [current policy period]

Name of Group self-insurance pool:

Address of Group self-insurance pool:

Name of Member:

Address of Member:

Certification:

1. [Name of Group Self-Insurance Pool], the group self-insurance pool, "Pool," as identified above, hereby certifies that it has entered into a Membership Agreement (Agreement) with the member to provide liability coverage for the following aboveground storage tank(s) and/or pipelines in connection with the insured's obligation to demonstrate financial responsibility under the Virginia Petroleum Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements Regulation (9VAC25-590-640) for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage containment and cleanup of discharges of oil"] caused by either sudden accidental releases or nonsudden accidental releases; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the Pool Plan (Plan) and Agreement; [if coverage is different for different tanks, pipelines, or locations, indicate the type of coverage applicable to each tank, pipeline, or location] arising from operating the aboveground storage tank(s) and/or pipelines identified above.

The limits of liability of the Pool are [insert the dollar amount] of the containment and cleanup "each occurrence" and "annual aggregate" limits of the Group's liability; if the amount of coverage is different for different types of coverage or for different aboveground storage tanks, pipelines, or locations, indicate the amount of coverage for each type of coverage and/or for each aboveground storage tank, pipeline or location insert the dollar amount corrective action per occurrence and [insert dollar amount] third party liability per occurrence and [insert dollar amount] annual aggregate [If the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the

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amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the Plan or Agreement. This coverage is provided under the Plan dated [insert date] and the Agreement entered into between [name of member] and [name of Pool]. The effective date of said Agreement is [date].

2. The Pool further certifies the following with respect to the coverage described in paragraph 1:

a. Bankruptcy or insolvency of the member shall not relieve the Pool of its obligations under the policy to which this certificate applies.

b. The Pool is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, containment and cleanup with a right of reimbursement by the member for any such payment made by the Pool. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 9VAC25-640-70 through 9VAC25-640-120.

c. Whenever requested by the State Water Control Board, the Pool agrees to furnish to the State Water Control Board a signed duplicate original of the Agreement and Plan and all endorsements.

d. Cancellation or any other termination of the coverage by the Pool, except for nonpayment of premium or misrepresentation by the member, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the member and the State Water Control Board. Cancellation for nonpayment of premium or misrepresentation by the member will be effective only upon written notice and only after expiration of a minimum of 15 days after a copy of such written notice is received by the member and the State Water Control Board.

e. The Pool covers claims otherwise covered by the Agreement and Plan that are reported to the Pool within six months of the effective date of cancellation or nonrenewal of the Agreement except where the new or renewed Agreement has the same retroactive date or a retroactive date earlier than that of the prior Agreement and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such Agreement renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the Agreement and Plan.

I hereby certify that the wording of this instrument is identical to the wording in APPENDIX XII of 9VAC25-640 and that the Pool is licensed by the Commonwealth of

Virginia's State Corporation Commission pursuant to 14VAC5-3805.

[Signature of Authorized Representative of Pool]

[Type name], [Authorized Representative] of [name of Pool]

[Address of representative]

APPENDIX IX. CERTIFICATION OF FINANCIAL RESPONSIBILITY.

(Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.)

Operator hereby certifies that it is in compliance with the requirements of ~~9VAC25-640-10 et seq~~ 9VAC25-640.

The financial assurance mechanism[s] used to demonstrate financial responsibility under ~~9VAC25-640-10 et seq~~ 9VAC25-640 is [are] as follows:

Indicate type of Mechanism:

Letter from Chief Financial Officer

Guarantee

Insurance Endorsement or Certificate

Letter of Credit

Surety Bond

Trust Fund

Name of Issuer: _____

Mechanism Number (if applicable): _____

Total number of gallons of aboveground storage capacity for which demonstration is provided: _____

Amount of coverage for mechanism:

\$ _____ containment and clean up per occurrence and annual aggregate

Effective period of coverage: _____ to _____

Do(es) mechanism(s) cover(s): containment and clean up caused by either sudden accidental discharges or nonsudden accidental discharges? Yes No

If "No," specify in the following space the items the mechanism covers:

[Signature of operator]

[Name of operator]

[Title] [Date]

[Signature of notary]

[Name of notary] [Date] My Commission expires:

VA.R. Doc. No. R07-293; Filed September 10, 2008, 10:58 a.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

REGISTRAR'S NOTICE: The following regulatory actions are 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 Board of Health will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 12VAC5-481. Virginia Radiation Protection Regulations (amending 12VAC5-481-10, 12VAC5-481-390, 12VAC5-481-400, 12VAC5-481-450, 12VAC5-481-480, 12VAC5-481-2870, 12VAC5-481-3160, 12VAC5-481-3710).

Statutory Authority: §32.1-229 of the Code of Virginia; 42 USC §2021.

Effective Date: November 1, 2008.

Agency Contact: Mike Welling, Director, Division of Radiological Materials Program, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-8168, or email mike.welling@vdh.virginia.gov.

Summary:

The purpose of the amendments is to ensure the compatibility of this regulation with Title 10 (Energy) of the Code of Federal Regulations thus allowing the Commonwealth of Virginia to enter into an agreement with the Nuclear Regulatory Commission for the regulation of certain radioactive material in the Commonwealth.

Part I

General Provisions

12VAC5-481-10. Definitions.

As used in these regulations, these terms have the definitions set forth below.

"A₁" means the maximum activity of special form radioactive material permitted in a Type A package. This value is listed in Table 1 of 12VAC5-481-3770.

"A₂" means the maximum activity of radioactive material, other than special form radioactive material, LSA, and SCO material, permitted in a Type A package. This value is listed in Table 1 of 12VAC5-481-3770.

"Absorbed dose" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the gray (Gy) and the rad.

"Absorbed dose rate" means absorbed dose per unit time, for machines with timers, or dose monitor unit per unit time for linear accelerators.

"Accelerator" means any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of one MeV. For purposes of this definition, "particle accelerator" is an equivalent term.

"Accelerator-produced material" means any material made radioactive by a particle accelerator.

"Accessible surface" means the external surface of the enclosure or housing of the radiation producing machine as provided by the manufacturer. It also means surface of equipment or of an equipment part that can be easily or accidentally touched by persons without the use of a tool.

"Act" means §§32.1-227 through 32.1-238 of the Code of Virginia.

"Active maintenance" means any significant activity needed during the period of institutional control to maintain a reasonable assurance that the performance objectives in 12VAC5-481-2490 and 12VAC5-481-2500 are met. Such active maintenance includes ongoing activities such as the pumping and treatment of water from a disposal unit or one-time measures such as replacement of a disposal unit cover. Active maintenance does not include custodial activities such as repair of fencing, repair or replacement of monitoring equipment, revegetation, minor additions to soil cover, minor repair of disposal unit covers, and general disposal site upkeep such as mowing grass.

"Activity" means the rate of disintegration or transformation or decay of radioactive material. The units of activity are the becquerel (Bq) and the curie (Ci).

"Acute" means a single radiation dose or chemical exposure event or multiple radiation dose or chemical exposure events occurring within a short time (24 hours or less).

"Added filtration" means any filtration that is in addition to the inherent filtration.

"Address of use" means the building or buildings that are identified on the license and where radioactive material may be produced, prepared, received, used, or stored.

"Adult" means an individual 18 or more years of age.

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"Agency" means the Radiological Health Program of the Virginia Department of Health.

"Agreement state" means any state with which the NRC or the Atomic Energy Commission has entered into an effective agreement under subsection 274b of the Atomic Energy Act of 1954, as amended (73 Stat. 689).

"Airborne radioactive material" means any radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

"Airborne radioactivity area" means a room, enclosure, or area in which airborne radioactive materials composed wholly or partly of licensed material exist in concentrations:

1. In excess of the derived air concentrations (DACs) specified in 12VAC5-481-3690; or
2. To such a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6% of the annual limit on intake (ALI) or 12 DAC-hours.

"Air kerma (K)" means the kinetic energy released in air by ionizing radiation. Kerma is determined as the quotient of D_e by D_m , where D_e is the sum of the initial kinetic energies of all the charged ionizing particles liberated by uncharged ionizing particles in air of mass D_m . The SI unit of air kerma is joule per kilogram and the special name for the unit of kerma is the gray (Gy).

"Air-purifying respirator" means a respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

"Alert" means events may occur, are in progress, or have occurred that could lead to a release of radioactive material but that the release is not expected to require a response by offsite response organizations to protect persons offsite.

"Aluminum equivalent" means the thickness of type 1100 aluminum alloy affording the same attenuation, under specified conditions, as the material in question. The nominal chemical composition of type 100 aluminum is 99.00% minimum aluminum, 0.12% copper.

"Analytical X-ray equipment" means equipment used for X-ray diffraction or fluorescence analysis.

"Analytical X-ray system" means a group of components utilizing x- or gamma-rays to determine the elemental composition or to examine the microstructure of materials.

"Annual limit on intake" (ALI) means the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the reference man that would result in a committed effective

dose equivalent of 0.05 Sv (5 rem) or a committed dose equivalent of 0.5 Sv (50 rem) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Tables 1 and 2 in 12VAC5-481-3690.

"Annual refresher safety training" means a review conducted or provided by the licensee or registrant for its employees on radiation safety aspects of industrial radiography. The review shall include, as a minimum, any results of internal inspections, new procedures or equipment, new or revised regulations, and accidents or errors that have been observed. The review shall also provide opportunities for employees to ask safety questions.

"Annually" means at intervals not to exceed one year.

"ANSI" means the American National Standards Institute.

"Area of use" means a portion of a physical structure that has been set aside for the purpose of producing, preparing, receiving, using, or storing radioactive material.

"Assigned protection factor (APF)" means the expected workplace level of respiratory protection that would be provided by a properly functioning respirator or a class of respirators to properly fitted and trained users. Operationally, the inhaled concentration can be estimated by dividing the ambient airborne concentration by the APF.

"As low as is reasonably achievable" (ALARA) means making every reasonable effort to maintain exposures to radiation as far below the dose limits in these regulations as is practical, consistent with the purpose for which the licensed or registered activity is undertaken, taking into account the state of technology, the economics of improvements in relation to state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of nuclear energy and licensed or registered sources of radiation in the public interest.

"Assembler" means any person engaged in the business of assembling, replacing, or installing one or more components into an X-ray system or subsystem. The term includes the owner of an X-ray system or his or her employee or agent who assembles components into an X-ray system that is subsequently used to provide professional or commercial services.

"Associated equipment" means equipment that is used in conjunction with a radiographic exposure device to make radiographic exposures that drive, guide, or come in contact with the source.

"Atmosphere-supplying respirator" means a respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere, and includes supplied-air respirators (SARs) and self-contained breathing apparatus (SCBA) units.

"Attenuation block" means a block or stack, having dimensions 20 centimeters by 20 centimeters by 3.8 centimeters, of type 1100 aluminum alloy or other materials having equivalent attenuation. The nominal chemical composition of type 100 aluminum is 99.00% minimum aluminum, 0.12% copper.

"Authorized medical physicist" means an individual who:

1. Meets the requirements in 12VAC5-481-1760 and 12VAC5-481-1790; or
2. Is identified as an authorized medical physicist or teletherapy physicist on:
 - a. A specific medical use license issued by the NRC or another agreement state;
 - b. A medical use permit issued by an NRC master material licensee;
 - c. A permit issued by an NRC or another agreement state broad scope medical use licensee; or
 - d. A permit issued by an NRC master material license broad scope medical use permittee.

"Authorized nuclear pharmacist" means a pharmacist who:

1. Meets the requirements in 12VAC5-481-1770 and 12VAC5-481-1790;
2. Is identified as an authorized nuclear pharmacist on:
 - a. A specific license issued by the NRC or another agreement state that authorizes medical use or the practice of nuclear pharmacy;
 - b. A permit issued by an NRC master material licensee that authorizes medical use or the practice of nuclear pharmacy;
 - c. A permit issued by an NRC or another agreement state broad scope medical use licensee that authorizes medical use or the practice of nuclear pharmacy; or
 - d. A permit issued by an NRC master material license broad scope medical use permittee that authorizes medical use or the practice of nuclear pharmacy;
3. Is identified as an authorized nuclear pharmacist by a commercial nuclear pharmacy that has been authorized to identify authorized nuclear pharmacists; or
4. Is designated as an authorized nuclear pharmacist in accordance with 12VAC5-481-440 I 2.

"Authorized user" means a practitioner of the healing arts who:

1. Meets the requirements in 12VAC5-481-1790 and any of the following:
 - a. 12VAC5-481-1910;

- b. 12VAC5-481-1940;
- c. 12VAC5-481-1980;
- d. 12VAC5-481-1990;
- e. 12VAC5-481-2000;
- f. 12VAC5-481-2010;
- g. 12VAC5-481-2030;
- h. 12VAC5-481-2040; or

2. Is identified as an authorized user on:

- a. A specific license issued by the NRC or another agreement state that authorizes medical use;
- b. A permit issued by an NRC master material licensee that authorizes medical use;
- c. A permit issued by an NRC or another agreement state broad scope medical use licensee that authorizes medical use; or
- d. A permit issued by an NRC master material license broad scope medical use permittee that authorizes medical use.

"Automatic exposure control (AEC)" means a device that automatically controls one or more technique factors in order to obtain, at a preselected location(s), a required quantity of radiation (includes devices such as phototimers and ion chambers).

"Background radiation" means radiation from cosmic sources, naturally occurring radioactive materials, that have not been technologically enhanced, including radon, except as a decay product of source or special nuclear material, and including global fallout as it exists in the environment from the testing of nuclear explosive devices, or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee or registrant. "Background radiation" does not include sources of radiation from radioactive materials regulated by the agency.

"Barrier" (See "Protective barrier").

"Beam axis" means a line from the source through the centers of the X-ray fields.

"Beam-limiting device" means a device that provides a means to restrict the dimensions of the X-ray field.

"Beam monitoring system" means a system designed and installed in the radiation head to detect and measure the radiation present in the useful beam.

"Beam scattering foil" means a thin piece of material (usually metallic) placed in the beam to scatter a beam of

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electrons in order to provide a more uniform electron distribution in the useful beam.

"Becquerel" (Bq) means the SI unit of activity. One becquerel is equal to one disintegration or transformation per second (dps or tps).

"Beneficial attribute" means, as used in Part XVI (12VAC5-481-3460 et seq.) of this chapter, the radioactivity of the product necessary to the use of the product.

"Beneficial to the product" see "Beneficial attribute."

"Bent beam linear accelerator" means a linear accelerator geometry in which the accelerated electron beam must change direction by passing through a bending magnet.

"Bioassay" means the determination of kinds, quantities or concentrations, and, in some cases, the locations of radioactive material in the human body, whether by direct measurement, in-vivo counting, or by analysis and evaluation of materials excreted or removed from the human body. For purposes of these regulations, "radiobioassay" is an equivalent term.

"Board" means the State Board of Health.

"Brachytherapy" means a method of radiation therapy in which sealed sources are utilized to deliver a radiation dose at a distance of up to a few centimeters, by surface, intracavitary, or interstitial application.

"Buffer zone" means a portion of the disposal site that is controlled by the licensee and that lies under the disposal units and between the disposal units and the boundary of the site.

"Byproduct material" means:

1. Any radioactive material (except special nuclear material) yielded in, or made radioactive by, exposure to the radiation incident to the process of producing or using special nuclear material;
2. The tailings or wastes produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute "byproduct material" within this definition;
3. a. Any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or
b. Any material that:
 - (1) Has been made radioactive by use of a particle accelerator; and

- (2) Is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; and

4. Any discrete source of naturally occurring radioactive material, other than source material, that:

- a. The NRC, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and

- b. Before, on, or after August 8, 2005, is extracted or converted after extraction for use in a commercial, medical, or research activity.

"C-arm X-ray system" means an X-ray system in which the image receptor and X-ray tube housing assembly are connected by a common mechanical support system in order to maintain a desired spatial relationship. This system is designed to allow a change in the projection of the beam through the patient without a change in the position of the patient.

"Cabinet radiography" means industrial radiography conducted in an enclosure or cabinet so shielded that every location on the exterior meets the dose limits for individual members of the public as specified in 12VAC5-481-720.

"Cabinet X-ray system" means an X-ray system with the X-ray tube installed in an enclosure independent of existing architectural structures except the floor on which it may be placed. The cabinet X-ray system is intended to contain at least that portion of a material being irradiated, provide radiation attenuation, and exclude personnel from its interior during generation of radiation. Included are all X-ray systems designed primarily for the inspection of carry-on baggage at airline, railroad, and bus terminals, and in similar facilities. An X-ray tube used within a shielded part of a building, or X-ray equipment that may temporarily or occasionally incorporate portable shielding, is not considered a cabinet X-ray system.

"Calendar quarter" means not less than 12 consecutive weeks nor more than 14 consecutive weeks. The first calendar quarter of each year shall begin in January and subsequent calendar quarters shall be so arranged such that no day is included in more than one calendar quarter and no day in any one year is omitted from inclusion within a calendar quarter. The method observed by the licensee or registrant for determining calendar quarters shall only be changed at the beginning of a year.

"Calibration" means the determination of (i) the response or reading of an instrument relative to a series of known

radiation values over the range of the instrument or (ii) the strength of a source of radiation relative to a standard.

"Camera" (See "Radiographic exposure device").

"Carrier" means a person engaged in the transportation of passengers or property by land or water as a common, contract, or private carrier, or by civil aircraft.

"Cephalometric device" means a device intended for the radiographic visualization and measurement of the dimensions of the human head.

"Certifiable cabinet X-ray system" means an existing uncertified X-ray system that has been modified to meet the certification requirements specified in 21 CFR 1020.40.

"Certificate holder" means a person who has been issued a certificate of compliance or other package approval by the NRC.

"Certificate of compliance (CoC)" means the certificate issued by the NRC that approves the design of a package for the transportation of radioactive material.

"Certified cabinet X-ray system" means an X-ray system that has been certified in accordance with 21 CFR 1010.2 as being manufactured and assembled pursuant to the provisions of 21 CFR 1020.40.

"Certified components" means components of X-ray systems that are subject to regulations promulgated under Pub.L. 90-602, the Radiation Control for Health and Safety Act of 1968 of the Food and Drug Administration.

"Certified system" means any X-ray system which has one or more certified component(s).

"Certifying entity" means an independent certifying organization meeting the agency's requirements for documenting applicant's training in topics set forth in 12VAC5-481-1320 or equivalent state or NRC regulations.

"CFR" means Code of Federal Regulations.

"Changeable filters" means any filter, exclusive of inherent filtration, that can be removed from the useful beam through any electronic, mechanical, or physical process.

"Chelating agent" means amine polycarboxylic acids, hydroxycarboxylic acids, gluconic acid, and polycarboxylic acids.

"Chemical description" means a description of the principal chemical characteristics of a low-level radioactive waste.

"Class" means a classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times: for Class D, Days, of less than 10 days; for Class W, Weeks, from 10 to 100 days; and for Class Y, Years, of greater than 100 days. For

purposes of these regulations, "lung class" and "inhalation class" are equivalent terms.

"Closed transport vehicle" means a transport vehicle equipped with a securely attached exterior enclosure that during normal transportation restricts the access of unauthorized persons to the cargo space containing the radioactive material. The enclosure may be either temporary or permanent but shall limit access from top, sides, and ends. In the case of packaged materials, it may be of the "see-through" type.

"Coefficient of variation (C)" means the ratio of the standard deviation to the mean value of a set of observations. It is estimated using the following equation:

$$C = \frac{s}{\bar{x}} = \frac{1}{\bar{x}} \left[\frac{\sum_{i=1}^n (x_i - \bar{x})^2}{n-1} \right]^{1/2}$$

where:

s = Standard deviation of the observed values;

\bar{x} = Mean value of observations in sample;

x_i = i_{th} observation in sample;

n = Number of observations in sample.

"Collective dose" means the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

"Collimator" means a device used to limit the size, shape, and direction of the primary radiation beam. For industrial radiography it means a radiation shield that is placed on the end of the guide tube or directly onto a radiographic exposure device to restrict the size of the radiation beam when the sealed source is cranked into position to make a radiographic exposure.

"Commencement of construction" means any clearing of land, excavation, or other substantial action that would adversely affect the environment of a land disposal facility. The term does not mean disposal site exploration, necessary roads for disposal site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the disposal site or the protection of environmental values.

"Committed dose equivalent" ($H_{T,50}$) means the dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

"Committed effective dose equivalent" ($H_{E,50}$) is the sum of the products of the weighting factors (w_T) applicable to each of the body organs or tissues that are irradiated and the

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committed dose equivalent to each of these organs or tissues ($H_{E,50} = \sum (w_T H_{T,50})$).

"Computed tomography" means the production of a tomogram by the acquisition and computer processing of X-ray transmission data.

"Computed tomography dose index" means the integral from $-7T$ to $+7T$ of the dose profile along a line perpendicular to the tomographic plane divided by the product of the nominal tomographic section thickness and the number of tomograms produced in a single scan, that is:

$$CTDI = \frac{1}{nT} \int_{-7T}^{+7T} D(z) dz$$

where:

z = Position along a line perpendicular to the tomographic plane;

$D(z)$ = Dose at position z ;

T = Nominal tomographic section thickness;

n = Number of tomograms produced in a single scan.

This definition assumes that the dose profile is centered around $z = 0$ and that, for a multiple tomogram system, the scan increment between adjacent scans is nT .

"Computer-readable medium" means that the regulatory agency's computer can transfer the information from the medium into its memory.

"Consignee" means the designated receiver of the shipment of low-level radioactive waste.

"Consignment" means each shipment of a package or groups of packages or load of radioactive material offered by a shipper for transport.

"Consortium" means an association of medical use licensees and a PET radionuclide production facility in the same geographical area that jointly own or share in the operation and maintenance cost of the PET radionuclide production facility that produces PET radionuclides for use in producing radioactive drugs within the consortium for noncommercial distributions among its associated members for medical use. The PET radionuclide production facility within the consortium must be located at an educational institution or a federal facility or a medical facility.

"Constraint" means each shipment of a package or groups of packages or load of radioactive material offered by a shipper for transport.

"Constraint (dose constraint)" means a value above which specified licensee actions are required.

"Contact therapy system" means a therapeutic radiation machine with a short target to skin distance (TSD), usually less than five centimeters.

"Contrast scale" means the change in the linear attenuation coefficient per CTN relative to water, that is:

$$CS = \frac{\mu_x - \mu_w}{CTN_x - CTN_w}$$

where:

μ_x = Linear attenuation coefficient of the material of interest;

μ_w = Linear attenuation coefficient of water;

CTN_x = of the material of interest;

CTN_w = of water.

"Control (drive) cable" means the cable that is connected to the source assembly and used to drive the source to and from the exposure location.

"Control drive mechanism" means a device that enables the source assembly to be moved into and out of the exposure device.

"Control panel" means that part of the X-ray control upon which are mounted the switches, knobs, pushbuttons, and other hardware necessary for manually setting the technique factors.

"Control tube" means a protective sheath for guiding the control cable. The control tube connects the control drive mechanism to the radiographic exposure device.

"Controlled area" means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee for any reason.

"Conveyance" means:

1. For transport by public highway or rail any transport vehicle or large freight container;
2. For transport by water any vessel, or any hold, compartment, or defined deck area of a vessel including any transport vehicle on board the vessel; and
3. For transport by any aircraft.

"Cooling curve" means the graphical relationship between heat units stored and cooling time.

"Critical group" means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

"Criticality safety index (CSI)" means the dimensionless number (rounded up to the next tenth) assigned to and placed on the label of a fissile material package, to designate the degree of control of accumulation of packages containing fissile material during transportation. Determination of the

criticality safety index is described in Part XIII (12VAC5-481-2950 et seq.).

"CS" (See "Contrast scale").

"CT" (See "Computed tomography").

"CT conditions of operation" means all selectable parameters governing the operation of a CT X-ray system including, but not limited to, nominal tomographic section thickness, filtration, and the technique factors as defined in these regulations.

"CTDI" (See "Computed tomography dose index").

"CT gantry" means the tube housing assemblies, beam-limiting devices, detectors, and the supporting structures and frames which hold these components.

"CTN" (See "CT number").

"CT Number" means the number used to represent the X-ray attenuation associated with each elemental area of the CT image.

$$CTN = \frac{k(\mu - \mu_w)}{\mu_w}$$

where:

k = A constant, a normal value of 1,000 when the Hounsfield scale of CTN is used;

μ = Linear attenuation coefficient of the material of interest;

μ_w = Linear attenuation coefficient of water.

"Curie" means a unit of quantity of activity. One curie (Ci) is that quantity of radioactive material that decays at the rate of 3.7×10^{10} disintegrations or transformations per second (dps or tps).

"Custodial agency" means an agency of the government designated to act on behalf of the government owner of the disposal site.

"Dead-man switch" means a switch so constructed that a circuit closing contact can be maintained only by continuous pressure on the switch by the operator.

"Declared pregnant woman" means a woman who has voluntarily informed the licensee, in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant.

"Decommission" means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and

termination of the license or release of the property under restricted conditions and termination of the license.

"Decontamination facility" means a facility operating under a Commission or Agreement State license whose principal purpose is decontamination of equipment or materials to accomplish recycle, reuse, or other waste management objectives, and, for purposes of this part, is not considered to be a consignee for LLW shipments.

"Dedicated check source" means a radioactive source that is used to assure the constant operation of a radiation detection or measurement device over several months or years. This source may also be used for other purposes.

"Deep dose equivalent" (H_d), which applies to external whole body exposure, means the dose equivalent at a tissue depth of one centimeter (1000 mg/cm^2).

"Demand respirator" means an atmosphere-supplying respirator that admits breathing air to the facepiece only when a negative pressure is created inside the facepiece by inhalation.

"Department of Energy" means the Department of Energy established by Pub. L. 95-91, August 4, 1977, 91 Stat. 565, 42 USC §7101 et seq., to the extent that the Department exercises functions formerly vested in the Atomic Energy Commission, its Chairman, members, officers and components and transferred to the Energy Research and Development Administration and to the Administrator thereof pursuant to sections 104(b), (c) and (d) of the Energy Reorganization Act of 1974 (Pub. L. 93-438, October 11, 1974, 88 Stat. 1233 at 1237, 42 USC §5814, effective January 19, 1975) and retransferred to the Secretary of Energy pursuant to section 301(a) of the Department of Energy Organization Act (Pub. L. 95-91, August 4, 1977, 91 Stat. 565 at 577-578, 42 USC §7151, effective October 1, 1977.)

"Depleted uranium" means the source material uranium in which the isotope uranium-235 is less than 0.711 weight percentage of the total uranium present. Depleted uranium does not include special nuclear material.

"Derived air concentration" (DAC) means the concentration of a given radionuclide in air which, if breathed by the reference man for a working year of 2,000 hours under conditions of light work, results in an intake of one ALI. For purposes of these regulations, the condition of light work is an inhalation rate of 1.2 cubic meters of air per hour for 2,000 hours in a year. DAC values are given in 12VAC5-481-3690.

"Derived air concentration-hour" (DAC-hour) means the product of the concentration of radioactive material in air, expressed as a fraction or multiple of the derived air concentration for each radionuclide, and the time of exposure to that radionuclide, in hours. A licensee or registrant may take 2,000 DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of 0.05 Sv (5 rem).

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"Detector" (See "Radiation detector").

"Deuterium" means, for the purposes of Part XIII (12VAC5-481-2950 et seq.) deuterium and any deuterium compounds, including heavy water, in which the ratio of deuterium atoms to hydrogen atoms exceeds 1:5000.

"Diagnostic clinical procedures manual" means a collection of written procedures that describes each method (and other instructions and precautions) by which the licensee performs diagnostic clinical procedures, where each diagnostic clinical procedure has been approved by the authorized user and includes the radiopharmaceutical, dosage, and route of administration.

"Diagnostic source assembly" means the tube housing assembly with a beam-limiting device attached.

"Diagnostic X-ray system" means an X-ray system designed for irradiation of any part of the human or animal body for the purpose of diagnosis or visualization.

"Diagnostic X-ray imaging system" means an assemblage of components for the generation, emission and reception of X-rays and the transformation, storage and visual display of the resultant X-ray image.

"Direct scattered radiation" means that scattered radiation that has been deviated in direction only by materials irradiated by the useful beam (See "Scattered radiation").

"Discrete source" means a radionuclide that has been processed so that its concentration within a material has been purposely increased for use for commercial, medical, or research activities.

"Disposable respirator" means a respirator for which maintenance is not intended and that is designed to be discarded after excessive breathing resistance, sorbent exhaustion, physical damage, or end-of-service-life renders it unsuitable for use. Examples of this type of respirator are a disposable half-mask respirator or a disposable escape-only self-contained breathing apparatus (SCBA).

"Disposal" means the isolation of wastes from the biosphere inhabited by man and his food chains by emplacement in a land disposal facility.

"Disposal container" means a container principally used to confine low-level radioactive waste during disposal operations at a land disposal facility (also see "high integrity container"). Note that for some shipments, the disposal container may be the transport package.

"Disposal site" means that portion of a land disposal facility that is used for disposal of waste. It consists of disposal units and a buffer zone.

"Disposal unit" means a discrete portion of the disposal site into which waste is placed for disposal. For near-surface disposal, the unit is usually a trench.

"Distinguishable from background" means that the detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurement technology, survey, and statistical techniques.

"Dose" is a generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, total organ dose equivalent, or total effective dose equivalent. For purposes of these regulations, "radiation dose" is an equivalent term.

"Dose commitment" means the total radiation dose to a part of the body that will result from retention in the body of radioactive material. For purposes of estimating the dose commitment, it is assumed that from the time of intake the period of exposure to retained material will not exceed 50 years.

"Dose equivalent (H_T)" means the product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the sievert (Sv) and rem.

"Dose limits" means the permissible upper bounds of radiation doses established in accordance with these regulations. For purposes of these regulations, "limits" is an equivalent term.

"Dose monitor unit (DMU)" means a unit response from the beam monitoring system from which the absorbed dose can be calculated.

"Dose profile" means the dose as a function of position along a line.

"Dosimetry processor" means an individual or an organization that processes and evaluates individual monitoring devices in order to determine the radiation dose delivered to the monitoring devices.

"Doubly encapsulated sealed source" means a sealed source in which the radioactive material is sealed within an inner capsule and that capsule is sealed within an outer capsule.

"Drive cable" (See "Control cable").

"Effective dose equivalent (H_E)" means the sum of the products of the dose equivalent (H_T) to each organ or tissue and the weighting factor (w_T) applicable to each of the body organs or tissues that are irradiated ($H_E = \sum w_T H_T$).

"Elemental area" means the smallest area within a tomogram for which the X-ray attenuation properties of a body are depicted. (See also "Picture element").

"Embryo/fetus" means the developing human organism from conception until the time of birth.

"Energy compensation source (ECS)" means a small sealed source, with an activity not exceeding 3.7 MBq (100 μ Ci), used within a logging tool, or other tool components, to provide a reference standard to maintain the tool's calibration when in use.

"Engineered barrier" means a manmade structure or device that is intended to improve the land disposal facility's ability to meet the performance objectives in these regulations.

"Enriched uranium" (See "Uranium – natural, depleted, enriched").

"Entrance exposure rate" means the exposure free in air per unit time at the point where the center of the useful beam enters the patient.

"Entrance or access point" means any opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed or registered radioactive materials. This includes entry or exit portals of sufficient size to permit human entry, irrespective of their intended use.

"EPA identification number" means the number received by a transporter following application to the Administrator of EPA as required by 40 CFR Part 263.

"Equipment" (See "X-ray equipment").

"Exclusive use" means the sole use by a single consignor of a conveyance for which all initial, intermediate, and final loading and unloading are carried out in accordance with the direction of the consignor or consignee. The consignor and the carrier must ensure that any loading or unloading is performed by personnel having radiological training and resources appropriate for safe handling of the consignment. The consignor must issue specific instructions, in writing, for maintenance of exclusive use shipment controls, and include them with the shipping paper information provided to the carrier by the consignor.

"Explosive material" means any chemical compound, mixture, or device that produces a substantial instantaneous release of gas and heat spontaneously or by contact with sparks or flame.

"Exposure" means being exposed to ionizing radiation or to radioactive material.

"Exposure head" means a device that locates the gamma radiography sealed source in the selected working position.

"Exposure rate" means the exposure per unit of time, such as roentgen per minute and milliroentgen per hour.

"External beam radiation therapy" means therapeutic irradiation in which the source of radiation is at a distance from the body.

"External dose" means that portion of the dose equivalent received from any source of radiation outside the body.

"Extremity" means hand, elbow, arm below the elbow, foot, knee, and leg below the knee.

"Facility" means the location, building, vehicle, or complex under one administrative control, at which one or more radiation machines are installed, located and/or used.

"Fail-safe characteristics" mean a design feature that causes beam port shutters to close, or otherwise prevents emergence of the primary beam, upon the failure of a safety or warning device.

"Field emission equipment" means equipment that uses an X-ray tube in which electron emission from the cathode is due solely to the action of an electric field.

"Field-flattening filter" means a filter used to homogenize the absorbed dose rate over the radiation field.

"Field station" means a facility where radioactive sources may be stored or used and from which equipment is dispatched to temporary jobsites.

"Filter" means material placed in the useful beam to preferentially absorb selected radiations. It also means material placed in the useful beam to change beam quality in therapeutic radiation machines subject to Part XV (12VAC5-481-3380 et seq.) of this chapter.

"Filtering facepiece (dusk mask)" means a negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium, not equipped with elastomeric sealing surfaces and adjustable straps.

"Fissile material" means the radionuclides uranium-233, uranium-235, plutonium-239, and plutonium-241, or any combination of these radionuclides. "Fissile material" means the fissile nuclides themselves, not material containing fissile nuclides. Unirradiated natural uranium and depleted uranium and natural uranium or depleted uranium, that has been irradiated in thermal reactors only, are not included in this definition. Certain exclusions from fissile material controls are provided in 10 CFR 71.15.

1. Fissile Class I: A package that may be transported in unlimited numbers and in any arrangement, and that requires no nuclear criticality safety controls during transportation. A transport index is not assigned for purposes of nuclear criticality safety but may be required because of external radiation levels.

2. Fissile Class II: A package that may be transported together with other packages in any arrangement but, for criticality control, in numbers that do not exceed an aggregate transport index of 50. These shipments require no other nuclear criticality safety control during

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transportation. Individual packages may have a transport index not less than 0.1 and not more than 10.

"Fissile material package" means a fissile material packaging together with its fissile material contents.

"Fit factor" means a quantitative estimate of the fit of a particular respirator to a specific individual, and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.

"Fit test" means the use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

"Fluoroscopic imaging assembly" means a subsystem in which X-ray photons produce a visible image. It includes the image receptor(s) such as the image intensifier and spot-film device, electrical interlocks, if any, and structural material providing linkage between the image receptor and diagnostic source assembly.

"Focal spot (actual)" means the area projected on the anode of the X-ray tube bombarded by the electrons accelerated from the cathode and from which the useful beam originates.

"Former Atomic Energy Commission or NRC licensed facilities" means nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment plants, or critical mass experimental facilities where Atomic Energy Commission or NRC licenses have been terminated.

"Gantry" means that part of a radiation therapy system supporting and allowing movements of the radiation head about a center of rotation.

"Generally applicable environmental radiation standards" means standards issued by the Environmental Protection Agency under the authority of the Atomic Energy Act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

"General environment" means, as used in Part XVI (12VAC5-481-3460 et seq.) of this chapter, the total terrestrial, atmospheric, and aquatic environments outside the site boundary within which any activity, operation, or process authorized by a general or specific license issued under Part XVI, is performed.

"General purpose radiographic X-ray system" means any radiographic X-ray system which, by design, is not limited to radiographic examination of specific anatomical regions.

"Generator" means a licensee who (i) is a waste generator as defined in this chapter, or (ii) is the licensee to whom waste can be attributed within the context of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (e.g.,

waste generated as a result of decontamination or recycle activities).

"Gonad shield" means a protective barrier for the testes or ovaries.

"Gray (Gy)" means the SI unit of absorbed dose. One gray is equal to an absorbed dose of one joule per kilogram (100 rad).

"Guide tube (protection sheath)" means a flexible or rigid tube, or "J" tube, for guiding the source assembly and the attached control cable from the exposure device to the exposure head. The guide tube may also include the connections necessary for attachment to the exposure device and to the exposure head.

"Half-value layer (HVL)" means the thickness of a specified material that attenuates X-radiation or gamma radiation to an extent such that the air kerma rate, exposure rate or absorbed dose rate is reduced to one-half of the value measured without the material at the same point.

"Hands-on experience" means experience in all of those areas considered to be directly involved in the radiography process, and includes taking radiographs, calibration of survey instruments, operational and performance testing of survey instruments and devices, film development, posting of radiation areas, transportation of radiography equipment, posting of records and radiation area surveillance, etc., as applicable. Excessive time spent in only one or two of these areas, such as film development or radiation area surveillance, should not be counted toward the 2,000 hours of hands-on experience required for a radiation safety officer in 12VAC5-481-1310 A 2 or the hands-on experience for a radiographer as required by 12VAC5-481-1320 A.

"Hazardous waste" means those wastes designated as hazardous by the Environmental Protection Agency regulations in 40 CFR Part 261.

"Healing arts" means the art or science or group of arts or sciences dealing with the prevention and cure or alleviation of ailments, diseases or infirmities, and has the same meaning as "medicine" when the latter term is used in its comprehensive sense.

"Healing arts screening" means the testing of human beings using X-ray machines for the detection or evaluation of health indications when such tests are not specifically and individually ordered by a licensed practitioner of the healing arts legally authorized to prescribe such X-ray tests for the purpose of diagnosis or treatment.

"Heat unit" means a unit of energy equal to the product of the peak kilovoltage, milliamperes, and seconds, such as (kVp) times (mA) times (seconds).

"Helmet" means a rigid respiratory inlet covering that also provides head protection against impact and penetration.

"High integrity container (HIC)" means a container commonly designed to meet the structural stability requirements of 12VAC5-481-2572 and to meet Department of Transportation requirements for a Type A package.

"High radiation area" means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving a dose equivalent in excess of one mSv (0.1 rem) in one hour at 30 centimeters from any source of radiation or 30 centimeters from any surface that the radiation penetrates.

"Hood" means a respiratory inlet covering that completely covers the head and neck and may also cover portions of the shoulders and torso.

"Human use" means the internal or external administration of radiation or radioactive material to human beings.

"HVL" (See "Half-value layer").

"Hydrogeologic unit" means any soil or rock unit or zone which by virtue of its porosity or permeability, or lack thereof, has a distinct influence on the storage or movement of groundwater.

"Image intensifier" means a device, installed in its housing, that instantaneously converts an X-ray pattern into a corresponding light image of higher intensity.

"Image receptor" means any device, such as a fluorescent screen or radiographic film, that transforms incident X-ray photons either into a visible image or into another form that can be made into a visible image by further transformations.

"Image receptor support" means, for mammographic systems, that part of the system designed to support the image receptor during mammography.

"Inadvertent intruder" means a person who might occupy the disposal site after closure and engage in normal activities, such as agriculture, dwelling construction, or other pursuits in which an individual might be unknowingly exposed to radiation from the waste.

"Independent certifying organization" means an independent organization that meets the agency's criteria for documenting applicant's training in topics set forth in 12VAC5-481-1320 or equivalent agreement state or NRC regulations.

"Individual" means any human being.

"Individual monitoring" means the assessment of:

1. Dose equivalent (i) by the use of individual monitoring devices or (ii) by the use of survey data; or
2. Committed effective dose equivalent (i) by bioassay or (ii) by determination of the time-weighted air concentrations to which an individual has been exposed, that is, DAC-hours. (See the definition of DAC)

"Individual monitoring devices" means devices designed to be worn by a single individual for the assessment of dose equivalent. For purposes of these regulations, "personnel dosimeter" and "dosimeter" are equivalent terms. Examples of individual monitoring devices are film badges, thermoluminescent dosimeters (TLDs), pocket ionization chambers, optically stimulated luminescence (OSL) dosimeters and personal air sampling devices.

"Industrial radiography" means an examination of the structure of materials by the nondestructive method of utilizing ionizing radiation to make radiographic images.

"Inhalation class" (See "Class").

"Inherent filtration" means the filtration of the useful beam provided by the permanently installed components of the tube housing assembly.

"Injection tool" means a device used for controlled subsurface injection of radioactive tracer material.

"Inspection" means an official examination or observation including, but not limited to, tests, surveys, and monitoring to determine compliance with rules, regulations, orders, requirements, and conditions of the agency.

"Institutional controls" means: (i) permanent markers placed at a disposal site, (ii) public records and archives, (iii) government ownership and regulations regarding land or resource use, and (iv) other methods of preserving knowledge about the location, design, and contents of a disposal system.

"Instrument traceability" (for ionizing radiation measurements) means the ability to show that an instrument has been calibrated at specified time intervals using a national standard or a transfer standard. If a transfer standard is used, the calibration must be at a laboratory accredited by a program that requires continuing participation in measurement quality assurance with the National Institute of Standards and Technology or other equivalent national or international program.

"Interlock" means a device arranged or connected such that the occurrence of an event or condition is required before a second event or condition can occur or continue to occur.

"Internal dose" means that portion of the dose equivalent received from radioactive material taken into the body.

"Interruption of irradiation" means the stopping of irradiation with the possibility of continuing irradiation without resetting of operating conditions at the control panel.

"Intruder barrier" means a sufficient depth of cover over the waste that inhibits contact with waste and helps to ensure that radiation exposures to an inadvertent intruder will meet the performance objectives set forth in these regulations, or engineered structures that provide equivalent protection to the inadvertent intruder.

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"Irradiation" means the exposure of matter to ionizing radiation.

"Irradiator" means a facility that uses radioactive sealed sources for the irradiation of objects or materials and in which radiation dose rates exceeding five grays (500 rads) per hour exist at one meter from the sealed radioactive sources in air or water, as applicable for the irradiator type, but does not include irradiators in which both the sealed source and the area subject to irradiation are contained within a device and are not accessible to personnel.

"Irradiator operator" means an individual who has successfully completed the training and testing described in 12VAC5-481-2830 and is authorized by the terms of the license to operate the irradiator without a supervisor present.

"Irradiator operator supervisor" means an individual who meets the requirements for an irradiator operator and who physically oversees operation of the irradiator by an individual who is currently receiving training and testing described in 12VAC5-481-2830.

"Isocenter" means the center of the sphere through which the useful beam axis passes while the gantry moves through its full range of motions.

"kBq" means kilobecquerels.

"Kilovolt (kV) (kilo electron volt (keV))" means the energy equal to that acquired by a particle with one electron charge in passing through a potential difference of 1,000 volts in a vacuum. Current convention is to use kV for photons and keV for electrons.

"Kilovolts peak" (See "Peak tube potential").

"kV" means kilovolts.

"kVp" (See "Peak tube potential").

"kWs" means kilowatt second.

"Land disposal facility" means the land, buildings, structures and equipment that is intended to be used for the disposal of wastes into the subsurface of the land. For purposes of this chapter, a "geologic repository" as defined in 10 CFR Part 60 or 10 CFR Part 63 is not considered a land disposal facility.

"Lay-barge radiography" means industrial radiography performed on any water vessel used for laying pipe.

"Lead equivalent" means the thickness of the material in question affording the same attenuation, under specified conditions, as lead.

"Leakage radiation" means radiation emanating from the diagnostic source assembly except for:

1. The useful beam; and
2. Radiation produced when the exposure switch or timer is not activated.

"Leakage technique factors" means the technique factors associated with the diagnostic source assembly that are used in measuring leakage radiation. They are defined as follows:

1. For diagnostic source assemblies intended for capacitor energy storage equipment, the maximum-rated peak tube potential and the maximum-rated number of exposures in an hour for operation at the maximum-rated peak tube potential with the quantity of charge per exposure being 10 millicoulombs, i.e., 10 milliampere seconds, or the minimum obtainable from the unit, whichever is larger;
2. For diagnostic source assemblies intended for field emission equipment rated for pulsed operation, the maximum-rated peak tube potential and the maximum-rated number of X-ray pulses in an hour for operation at the maximum-rated peak tube potential;
3. For all other diagnostic source assemblies, the maximum-rated peak tube potential and the maximum-rated continuous tube current for the maximum-rated peak tube potential.

"Lens dose equivalent (LDE)" applies to the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 cm (300 mg/cm²).

"License" means a license issued by the agency in accordance with the regulations adopted by the board.

"Licensed material" means radioactive material received, possessed, used, transferred or disposed of under a general or specific license issued by the agency.

"Licensee" means any person who is licensed by the agency in accordance with these regulations and the Act.

"Light field" means that area of the intersection of the light beam from the beam-limiting device and one of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the illumination is one-fourth of the maximum in the intersection.

"Limits" (See "Dose limits").

"Line-voltage regulation" means the difference between the no-load and the load line potentials expressed as a percentage of the load line potential. It is calculated using the following equation:

$$\text{Percent line-voltage regulation} = 100 (V_n - V_l) / V_l$$

where:

V_n = No-load line potential; and

V_l = Load line potential.

"Lixiscope" means a portable light-intensified imaging device using a sealed source.

"Local components" mean part of an analytical X-ray system and include areas that are struck by X-rays such as

radiation source housings, port and shutter assemblies, collimators, sample holders, cameras, goniometers, detectors, and shielding, but do not include power supplies, transformers, amplifiers, readout devices, and control panels.

"Logging assistant" means any individual who, under the personal supervision of a logging supervisor, handles sealed sources or tracers that are not in logging tools or shipping containers or who performs surveys required by Part XIV (12VAC5-481-3140 et seq.) of this chapter.

"Logging supervisor" means the individual who uses ~~sources of radiation~~ licensed material or provides personal supervision ~~of the utilization of sources of radiation at the well site~~ in the use of licensed material at a temporary jobsite and who is responsible to the licensee for assuring compliance with the requirements of this chapter and the conditions of the license.

"Logging tool" means a device used subsurface to perform well-logging.

"Loose-fitting facepiece" means a respiratory inlet covering that is designed to form a partial seal with the face.

"Lost or missing licensed material" means licensed (or registered) source of radiation whose location is unknown. This definition includes, but is not limited to, radioactive material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

"Lot tolerance percent defective" means, expressed in percent defective, the poorest quality in an individual inspection lot that should be accepted.

"Low specific activity (LSA) material" means radioactive material with limited specific activity that is nonfissile or is excepted under 12VAC5-481-2970 C, and that satisfies the descriptions and limits set forth below. Shielding materials surrounding the LSA material may not be considered in determining the estimated average specific activity of the package contents. LSA material must be in one of three groups:

1. LSA-I

- a. Uranium and thorium ores, concentrates of uranium and thorium ores, and other ores containing naturally occurring radioactive radionuclide that are not intended to be processed for the use of these radionuclides;
- b. Solid unirradiated natural uranium or depleted uranium or natural thorium or their solid or liquid compounds or mixtures;
- c. Radioactive material, for which the A_2 value is unlimited; or
- d. Other radioactive material in which the activity is distributed throughout and the estimated average specific

activity does not exceed 30 times the value for exempt material activity concentration determined in accordance with 12VAC5-481-3720.

2. LSA-II

- a. Water with tritium concentration up to 0.8 terabecquerel per liter (20.0 Ci/L); or
- b. Other material in which the activity is distributed throughout, and the average specific activity does not exceed $1.0 \text{ E-}04 \text{ A}_2/\text{g}$ for solids and gases, and $1.0 \text{ E-}05 \text{ A}_2/\text{g}$ for liquids.

3. LSA-III

Solids (e.g., consolidated wastes, activated materials), excluding powders, that satisfy the requirements of 10 CFR 71.77) in which:

- a. The radioactive material is distributed throughout a solid or a collection of solid objects, or is essentially uniformly distributed in a solid compact binding agent (for example: concrete, bitumen, or ceramic);
- b. The radioactive material is relatively insoluble, or it is intrinsically contained in a relatively insoluble material, so that, even under loss of packaging, the loss of radioactive material per package by leaching, when placed in water for seven days, would not exceed 0.1 A_2 ; and
- c. The estimated average specific activity of the solid does not exceed $2.0 \text{ E-}03 \text{ A}_2/\text{g}$.

"Low toxicity alpha emitters" means natural uranium, depleted uranium, natural thorium; uranium-235, uranium-238, thorium-232, thorium-228 or thorium-230 when contained in ores or physical or chemical concentrates or tailings; or alpha emitters with a half-life of less than 10 days.

"Lung class" (See "Class").

"mA" means milliamperere.

"mAs" means milliamperere second.

"Major processor" means a user processing, handling, or manufacturing radioactive material exceeding Type A quantities as unsealed sources or material, or exceeding four times Type B quantities as sealed sources, but does not include nuclear medicine programs, universities, industrial radiographers, or small industrial programs. Type A and B quantities are defined in this section.

"Maximum line current" means the root-mean-square current in the supply line of an X-ray machine operating at its maximum rating.

"Management" means the chief executive officer or that individual's designee.

"MBq" means megabecquerels.

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"Medical event" means an event that meets the criteria in 12VAC5-481-2080.

"Medical institution" means an organization in which several medical disciplines are practiced.

"Medical use" means the intentional internal or external administration of radioactive material or the radiation from radioactive material to patients or human research subjects under the supervision of an authorized user.

"Megavolt (MV) (mega electron volt (MeV))" means the energy equal to that acquired by a particle with one electron charge in passing through a potential difference of one million volts in a vacuum. (Note: current convention is to use MV for photons and MeV for electrons.)

"Member of the public" means an individual except when that individual is receiving an occupational dose.

"Mineral logging" means any logging performed for the purpose of mineral exploration other than oil or gas.

"Minor" means an individual less than 18 years of age.

"Mobile nuclear medicine service" means the transportation and medical use of radioactive material.

"Mobile X-ray equipment" (See "X-ray equipment").

"Monitor unit (MU)" (See "Dose monitor unit").

"Monitoring" means the measurement of radiation, radioactive material concentrations, surface area activities or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of these regulations, "radiation monitoring" and "radiation protection monitoring" are equivalent terms. For Part XI (12VAC5-481-2330 et seq.) of this chapter, it means observing and making measurements to provide data to evaluate the performance and characteristics of the disposal site.

"Moving beam radiation therapy" means radiation therapy with any planned displacement of radiation field or patient relative to each other, or with any planned change of absorbed dose distribution. It includes arc, skip, conformal, intensity modulation and rotational therapy.

"Multiple tomogram system" means a computed tomography X-ray system that obtains X-ray transmission data simultaneously during a single scan to produce more than one tomogram.

"NARM" means any naturally occurring or accelerator-produced radioactive material. It does not include byproduct, source, or special nuclear material.

"Nationally tracked source" means a sealed source containing a quantity equal to or greater than Category 1 or Category 2 levels of any radioactive material listed in 12VAC5-481-3780. In this context a sealed source is defined

as radioactive material that is sealed in a capsule or closely bonded, in a solid form and that is not exempt from regulatory control. It does not mean material encapsulated solely for disposal, or nuclear material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet. Category 1 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 1 threshold. Category 2 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 2 threshold but less than the Category 1 threshold.

"Natural radioactivity" means radioactivity of naturally occurring nuclides.

"Natural thorium" means thorium with the naturally occurring distribution of thorium isotopes, which is essentially 100 weight percent thorium-232.

"Natural uranium" (See "Uranium – natural, depleted, enriched").

"Near-surface disposal facility" means a land disposal facility in which waste is disposed of within approximately the upper 30 meters of the earth's surface.

"Negative pressure respirator (tight fitting)" means a respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator.

"Noise" means the standard deviation of the fluctuations in CTN expressed as a percentage of the attenuation coefficient of water. Its estimate (S_n) is calculated using the following expression:

$$S_n = \frac{100 \sqrt{CS}}{\mu_w}$$

where:

CS = Linear attenuation coefficient of the material of interest.

μ_w = Linear attenuation coefficient of water.

S = Standard deviation of the CTN of picture elements in a specified area of the CT image.

"Nominal tomographic section thickness" means the full width at half-maximum of the sensitivity profile taken at the center of the cross-sectional volume over which X-ray transmission data are collected.

"Nonstochastic effect" means a health effect, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect. For purposes of these regulations, "deterministic effect" is an equivalent term.

"NORM" means any naturally occurring radioactive material. It does not include accelerator produced, byproduct, source, or special nuclear material.

"Normal form radioactive material" means radioactive material that has not been demonstrated to qualify as special form radioactive material.

"Normal operating procedures" mean step-by-step instructions necessary to accomplish the analysis. These procedures shall include sample insertion and manipulation, equipment alignment, routine maintenance by the registrant (or licensee), and data recording procedures, which are related to radiation safety.

"Nominal treatment distance" means:

1. For electron irradiation, the distance from the scattering foil, virtual source, or exit window of the electron beam to the entrance surface of the irradiated object along the central axis of the useful beam.
2. For X-ray irradiation, the virtual source or target to isocenter distance along the central axis of the useful beam. For nonisocentric equipment, this distance shall be that specified by the manufacturer.

"NRC Forms 540, 540A, 541, 541A, 542 and 542" means official NRC forms referenced in this chapter. Licensees need not use originals of these NRC Forms as long as any substitute forms are equivalent to the original documentation in respect to content, clarity, size, and location of information. Upon agreement between the shipper and consignee, NRC Forms 541 (and 541A) and NRC Forms 542 (and 542A) may be completed, transmitted, and stored in electronic media. The electronic media must have the capability for producing legible, accurate, and complete records in the format of the uniform manifest.

"Nuclear Regulatory Commission (NRC)" means the NRC or its duly authorized representatives.

"Nuclear waste" means a quantity of source, byproduct or special nuclear material (the definition of nuclear waste in this part is used in the same way as in 49 CFR 173.403) required to be in NRC-approved specification packaging while transported to, through or across a state boundary to a disposal site, or to a collection point for transport to a disposal site.

"Occupational dose" means the dose received by an individual in the course of employment in which the individual's assigned duties for the licensee or registrant involve exposure to sources of radiation, whether or not the sources of radiation are in the possession of the licensee, registrant, or other person. Occupational dose does not include doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and

released in accordance with 12VAC5-481-1870, from voluntary participation in medical research programs, or as a member of the public.

"Offshore platform radiography" means industrial radiography conducted from a platform over a body of water.

"Offshore waters" means that area of land and water, beyond the Commonwealth of Virginia's jurisdiction, on or above the U.S. Outer Continental Shelf.

"Open-beam configuration" means an analytical X-ray system in which an individual could accidentally place some part of his body in the primary beam path during normal operation.

"Output" means the exposure rate, dose rate, or a quantity related in a known manner to these rates from a teletherapy unit for a specified set of exposure conditions.

"Package" means the packaging together with its radioactive contents as presented for transport.

1. Fissile material package or Type AF package, Type BF package, Type B(U)F package, or Type B(M)F package means a fissile material packaging together with its fissile material contents.

2. Type A package means a Type A packaging together with its radioactive contents. A Type A package is defined and must comply with the DOT regulations in 49 CFR Part 173.

3. Type B package means a Type B packaging together with its radioactive contents. On approval, a Type B package design is designated by NRC as B(U) unless the package has a maximum normal operating pressure of more than 700 kPa (100 lbs/in²) gauge or a pressure relief device that would allow the release of radioactive material to the environment under the tests specified in 10 CFR 71.73 (hypothetical accident conditions), in which case it will receive a designation B(M). B(U) refers to the need for unilateral approval of international shipments; B(M) refers to the need for multilateral approval of international shipments. There is no distinction made in how packages with these designations may be used in domestic transportation. To determine their distinction for international transportation, see DOT regulations in 49 CFR Part 173. A Type B package approved before September 6, 1983, was designated only as Type B. Limitations on its use are specified in 10 CFR 71.19.

"Packaging" means the assembly of components necessary to ensure compliance with the packaging requirements of these regulations. It may consist of one or more receptacles, absorbent materials, spacing structures, thermal insulation, radiation shielding, and devices for cooling or absorbing mechanical shocks. The vehicle, tie-down system, and

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auxiliary equipment may be designated as part of the packaging.

"Panoramic dry-source-storage irradiator" means an irradiator in which the irradiations occur in air in areas potentially accessible to personnel and in which the sources are stored in shields made of solid materials. The term includes beam-type dry-source-storage irradiators in which only a narrow beam of radiation is produced for performing irradiations.

"Panoramic irradiator" means an irradiator in which the irradiations are done in air in areas potentially accessible to personnel. The term includes beam-type irradiators.

"Panoramic wet-source-storage irradiator" means an irradiator in which the irradiations occur in air in areas potentially accessible to personnel and in which the sources are stored under water in a storage pool.

"Particle accelerator" (See "Accelerator").

"Patient" means an individual or animal subjected to healing arts examination, diagnosis, or treatment.

"PBL" (See "Positive beam limitation").

"Peak tube potential" means the maximum value of the potential difference across the X-ray tube during an exposure.

"Periodic quality assurance check" means a procedure that is performed to ensure that a previous calibration continues to be valid.

"Permanent radiographic installation" means an enclosed shielded room, cell, or vault, not located at a temporary jobsite, in which radiography is performed.

"Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, department of the Commonwealth other than the Department of Health, political subdivision of the Commonwealth, any other state or political subdivision or department thereof, and any legal successor, representative, agent, or department of the foregoing, but not including federal government agencies.

"Personal supervision" means guidance and instruction by the supervisor who is physically present at the jobsite and watching the performance of the operation in such proximity that contact can be maintained and immediate assistance given as required. In radiography it means guidance and instruction provided to a radiographer trainee by a radiographer instructor who is present at the site, in visual contact with the trainee while the trainee is using sources of radiation, and in such proximity that immediate assistance can be given if required.

"Personnel monitoring equipment" (See "Individual monitoring devices").

"Phantom" means a volume of material behaving in a manner similar to tissue with respect to the attenuation and scattering of radiation. This requires that both the atomic number (Z) and the density of the material be similar to that of tissue.

"Physical description" means the items called for on NRC Form 541 to describe a low-level radioactive waste.

"Pool irradiator" means any irradiator at which the sources are stored or used in a pool of water including panoramic wet-source-storage irradiators and underwater irradiators.

"Pharmacist" means an individual licensed by this state to compound and dispense drugs, prescriptions, and poisons.

"Physician" means an individual licensed by this state to prescribe drugs in the practice of medicine.

"Picture element" means an elemental area of a tomogram.

"PID" (See "Position indicating device").

"Pigtail" (See "Source assembly").

"Pill" (See "Sealed source").

"Planned special exposure" means an infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

"Portable X-ray equipment" (See "X-ray equipment").

"Position indicating device" means a device on dental X-ray equipment used to indicate the beam position and to establish a definite source-surface (skin) distance. It may or may not incorporate or serve as a beam-limiting device.

"Positive beam limitation" means the automatic or semi-automatic adjustment of an X-ray beam to the size of the selected image receptor, whereby exposures cannot be made without such adjustment.

"Positive emission tomography (PET) radionuclide production facility" means a facility operating a cyclotron or accelerator for the purpose of producing PET radionuclides.

"Positive pressure respirator" means a respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.

"Powered air-purifying respirator (PAPR)" means an air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

"Practical examination" means a demonstration through application of the safety rules and principles in industrial radiography including use of all procedures and equipment to be used by radiographic personnel.

"Practical range of electrons" corresponds to classical electron range where the only remaining contribution to dose is from bremsstrahlung X-rays. A further explanation may be found in "Clinical Electron Beam Dosimetry: Report of

AAPM Radiation Therapy Committee Task Group 25" (Medical Physics 18(1): 73-109, Jan/Feb. 1991) and ICRU Report 35, "Radiation Dosimetry: Electron Beams with Energies Between 1 and 50 MeV", International Commission on Radiation Units and Measurements, September 15, 1984.

"Preceptor" means an individual who provides, directs, or verifies training and experience required for an individual to become an authorized user, an authorized medical physicist, an authorized nuclear pharmacist, or a radiation safety officer.

"Prescribed dosage" means the quantity of radiopharmaceutical activity as documented:

1. In a written directive; or
2. Either in the diagnostic clinical procedures manual or in any appropriate record in accordance with the directions of the authorized user for diagnostic procedures.

"Prescribed dose" means:

1. For gamma stereotactic radiosurgery, the total dose as documented in the written directive; or
2. For teletherapy, the total dose and dose per fraction as documented in the written directive; or
3. For brachytherapy, either the total source strength and exposure time, or the total dose, as documented in the written directive.

"Pressure demand respirator" means a positive pressure atmosphere-supplying respirator that admits breathing air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.

"Primary beam" means radiation that passes through an aperture of the source housing by a direct path from the X-ray tube or a radioactive source located in the radiation source housing.

"Primary dose monitoring system" means a system that will monitor the useful beam during irradiation and that will terminate irradiation when a preselected number of dose monitor units have been delivered.

"Primary protective barrier" (See "Protective barrier").

"Principal activities," as used in this chapter, means activities authorized by the license that are essential to achieving the purpose(s) for which the license was issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

"Private inspector" means an individual who meets the requirements set forth in 12VAC5-481-340 and who has demonstrated to the satisfaction of the agency that such individual possesses the knowledge, training and experience

to measure ionizing radiation, to evaluate safety techniques, and to advise regarding radiation protection needs.

"Product" means, as used in Part XVI (12VAC5-481-3460 et seq.) of this chapter, something produced, made, manufactured, refined, or benefited.

"Product conveyor system" means a system for moving the product to be irradiated to, from, and within the area where irradiation takes place.

"Projection sheath" (See "Guide tube").

"Projector" (See "Radiographic exposure device").

"Protective apron" means an apron made of radiation-attenuating or absorbing materials used to reduce exposure to radiation.

"Protective barrier" means a barrier of radiation absorbing material(s) used to reduce radiation exposure. The types of protective barriers are as follows:

1. "Primary protective barrier" means the material, excluding filters, placed in the useful beam;
2. "Secondary protective barrier" means the material that attenuates stray radiation.

"Protective glove" means a glove made of radiation absorbing materials used to reduce radiation exposure.

"Public dose" means the dose received by a member of the public from exposure to sources of radiation released by the licensee or registrant, or to any other source of radiation under the control of the licensee or registrant. Public dose does not include occupational dose, or doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with 12VAC5-481-1870, or from voluntary participation in medical research programs.

"Pyrophoric material" means any liquid that ignites spontaneously in dry or moist air at or below 130°F (54.4°C) or any solid material, other than one classed as an explosive, which under normal conditions is liable to cause fires through friction, retained heat from manufacturing or processing, or that can be ignited readily and, when ignited, burns so vigorously and persistently as to create a serious transportation, handling, or disposal hazard. Included are spontaneously combustible and water-reactive materials.

"Qualitative fit test (QLFT)" means a pass/fail fit test to assess the adequacy of respirator fit that relies on the individual's response to the test agent.

"Quality factor" (Q) means the modifying factor, that is referenced in 12VAC5-481-240, that is used to derive dose equivalent from absorbed dose.

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"Quantitative fit test (QNFT)" means an assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

"Quarter" means a period of time equal to one-fourth of the year observed by the licensee, approximately 13 consecutive weeks, providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

"Rad" means the special unit of absorbed dose. One rad is equal to an absorbed dose of 100 erg per gram or 0.01 joule per kilogram (0.01 gray).

"Radiation" means alpha particles, beta particles, gamma rays, X-rays, neutrons, high-speed electrons, high-speed protons, and other particles capable of producing ions. For purposes of these regulations, ionizing radiation is an equivalent term. Radiation, as used in these regulations, does not include nonionizing radiation, such as radiowaves or microwaves, visible, infrared, or ultraviolet light.

"Radiation area" means any area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.05 mSv (0.005 rem) in one hour at 30 centimeters from the source of radiation or from any surface that the radiation penetrates.

"Radiation dose" (See "Dose").

"Radiation field" (See "Useful beam").

"Radiation head" means the structure from which the useful beam emerges.

"Radiation machine" means any device capable of producing radiation except those devices with radioactive material as the only source of radiation.

"Radiation room" means a shielded room in which irradiations take place. Underwater irradiators do not have radiation rooms.

"Radiation safety officer (RSO)" means an individual who has the knowledge and responsibility to apply appropriate radiation protection regulations and has been assigned such responsibility by the licensee or registrant.

"Radiation safety officer for industrial radiography" means an individual with the responsibility for the overall radiation safety program on behalf of the licensee or registrant and who meets the requirements of 12VAC5-481-1310.

"Radiation safety officer for medical" means an individual who meets the requirements of 12VAC5-481-1750 and 12VAC5-481-1790 and ~~is~~ or is identified as an RSO on: a medical use license issued by the agency, NRC or another agreement state, or a medical use permit issued by an NRC masters material licensee.

"Radiation therapy physicist" means an individual qualified in accordance with 12VAC5-481-340.

"Radiation therapy simulation system" means a radiographic or fluoroscopic X-ray system intended for localizing the volume to be exposed during radiation therapy and confirming the position and size of the therapeutic irradiation field.

"Radioactive material" means any solid, liquid, or gas which emits radiation spontaneously.

"Radioactive marker" means radioactive material placed subsurface or on a structure intended for subsurface use for the purpose of depth determination or direction orientation.

"Radioactivity" means the transformation of unstable atomic nuclei by the emission of radiation.

"Radiobioassay" (See "Bioassay").

"Radiograph" means an image receptor on which the image is created directly or indirectly by an X-ray pattern and results in a permanent record.

"Radiographer" means any individual who performs or who, in attendance at the site where the sources of radiation are being used, personally supervises industrial radiographic operations and who is responsible to the licensee or registrant for assuring compliance with the requirements of the agency's regulations and the conditions of the license or registration.

"Radiographer certification" means written approval received from a certifying entity stating that an individual has satisfactorily met the radiation safety, testing, and experience criteria in 12VAC5-481-1320.

"Radiographer instructor" means any radiographer who has been authorized by the agency to provide on-the-job training to radiographer trainees in accordance with Part V (12VAC5-481-1170 et seq.) of this chapter.

"Radiographer trainee" means any individual who, under the personal supervision of a radiographer instructor, uses sources of radiation, related handling tools, or radiation survey instruments during the course of his instruction.

"Radiographer's assistant" means any individual who under the direct supervision of a radiographer, uses radiographic exposure devices, sources of radiation, related handling tools, or radiation survey instruments in industrial radiography.

"Radiographic exposure device" means any instrument containing a sealed source fastened or contained therein, in which the sealed source or shielding thereof may be moved, or otherwise changed, from a shielded to unshielded position for purposes of making a radiographic exposure.

"Radiographic imaging system" means any system whereby a permanent or semi-permanent image is recorded on an image receptor by the action of ionizing radiation.

"Radiographic operations" means all activities performed with a radiographic exposure device, or with a radiation machine. Activities include using, transporting except by

common or contract carriers, or storing at a temporary job site, performing surveys to confirm the adequacy of boundaries, setting up equipment, and any activity inside restricted area boundaries. Transporting a radiation machine is not considered a radiographic operation.

"Radiographic personnel" means any radiographer, radiographer instructor, or radiographer trainee.

"Radiography" (See "Industrial radiography").

"Rating" means the operating limits as specified by the component manufacturer.

"Reasonably maximally exposed individual" means, as used in Part XVI (12VAC5-481-3460 et seq.) of this chapter, a representative of a population who is exposed to TENORM at the maximum TENORM concentration measured in environmental media found at a site along with reasonable maximum case exposure assumptions. The exposure is determined by using maximum values for one or more of the most sensitive parameters affecting exposure, based on cautious but reasonable assumptions, while leaving the others at their mean value.

"Recording" means producing a permanent form of an image resulting from X-ray photons.

"Redundant beam monitoring system" means a combination of two dose monitoring systems in which each system is designed to terminate irradiation in accordance with a preselected number of dose monitor units.

"Reference man" means a hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics may be used by researchers and public health employees to standardize results of experiments and to relate biological insult to a common base. A description of the reference man is contained in the International Commission on Radiological Protection report, ICRP Publication 23, "Report of the Task Group on Reference Man."

"Reference plane" means a plane that is displaced from and parallel to the tomographic plane.

"Registrant" means any person who is registered with the agency and is legally obligated to register with the agency pursuant to these regulations and the Act.

"Registration" means registration with the agency in accordance with the regulations adopted by the agency.

"Regulations of the United States Department of Transportation" means the regulations in 49 CFR Parts 100-189.

"Rem" means the special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rems is equal to the absorbed dose in rad multiplied by the quality factor (1 rem = 0.01 Sv).

"Research and development" means (i) theoretical analysis, exploration, or experimentation; or (ii) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstrative purposes, including the experimental production and testing of models, devices, equipment, materials, and processes. Research and development does not include the internal or external administration of radiation or radioactive material to human beings.

"Residential location" means any area where structures in which people lodge or live are located, and the grounds on which such structures are located including, but not limited to, houses, apartments, condominiums, and garages.

"Residual radioactive material" means (i) waste (that the Secretary of Energy determines to be radioactive) in the form of tailings resulting from the processing of ores for the extraction of uranium and other valuable constituents of the ores and (ii) other waste (that the Secretary of Energy determines to be radioactive) at a processing site that relates to such processing, including any residual stock of unprocessed ores or low-grade materials. This term is used only with respect to materials at sites subject to remediation under Title I of the Uranium Mill Tailings Radiation Control Act of 1978, as amended.

"Residual radioactivity" means radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive materials at the site and previous burials at the site, even if those burials were made in accordance with the provisions of Part IV (12VAC5-481-600 et seq.) of this chapter.

"Residual waste" means low-level radioactive waste resulting from processing or decontamination activities that cannot be easily separated into distinct batches attributable to specific waste generators. This waste is attributable to the processor or decontamination facility, as applicable.

"Respiratory protective device" means an apparatus, such as a respirator, used to reduce an individual's intake of airborne radioactive materials.

"Restricted area" means an area, access to which is limited by the licensee or registrant for the purpose of protecting individuals against undue risks from exposure to radiation and radioactive materials. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

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"Roentgen" means the special unit of exposure. One roentgen (R) equals 2.58E-4 coulombs per kilogram of air (see "Exposure" and 12VAC5-481-240).

"S-tube" means a tube through which the radioactive source travels when inside a radiographic exposure device.

"Sanitary sewerage" means a system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee or registrant.

"Scan" means the complete process of collecting X-ray transmission data for the production of a tomogram. Data can be collected simultaneously during a single scan for the production of one or more tomograms.

"Scan increment" means the amount of relative displacement of the patient with respect to the CT X-ray system between successive scans measured along the direction of such displacement.

"Scan sequence" means a preselected set of two or more scans performed consecutively under preselected CT conditions of operation.

"Scan time" means the period of time between the beginning and end of X-ray transmission data accumulation for a single scan.

"Scattered radiation" means ionizing radiation emitted by interaction of ionizing radiation with matter, the interaction being accompanied by a change in direction of the radiation. Scattered primary radiation means that scattered radiation which has been deviated in direction only by materials irradiated by the useful beam.

"Sealed source" means any radioactive material that is encased in a capsule designed to prevent leakage or escape of any radioactive material.

"Sealed Source and Device Registry (SSD)" means the national registry that contains the registration certificates, maintained by the NRC, that summarize the radiation safety information for sealed sources and devices, and describes the licensing and use conditions approved for the product.

"Secondary dose monitoring system" means a system which will terminate irradiation in the event of failure of the primary dose monitoring system.

"Secondary protective barrier" (See "Protective barrier").

"Seismic area" means any area where the probability of a horizontal acceleration in rock of more than 0.3 times the acceleration of gravity in 250 years is greater than 10%, as designated by the United States Geological Survey.

"Self-contained breathing apparatus (SCBA)" means an atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

"Shadow tray" means a device attached to the radiation head to support auxiliary beam blocking material.

"Shallow dose equivalent (H_s)," which applies to the external exposure of the skin or an extremity, means the dose equivalent at a tissue depth of 0.007 centimeter (7 mg/cm²).

"Shielded position" means the location within the radiographic exposure device or storage container which, by manufacturer's design, is the proper location for storage of the sealed source.

"Shielded-room radiography" means industrial radiography conducted in a room shielded so that radiation levels at every location on the exterior meet the limitations specified in 12VAC5-481-640.

"Shipper" means the licensed entity (i.e., the waste generator, waste collector, or waste processor) who offers low-level radioactive waste for transportation, typically consigning this type of waste to a licensed waste collector, waste processor, or land disposal facility operator.

"Shipping paper" means NRC Form 540 and, if required, NRC Form 540A, which includes the information required by DOT in 49 CFR Part 172.

"Shutter" means a device attached to the tube housing assembly which can intercept the entire cross sectional area of the useful beam and which has a lead equivalency not less than that of the tube housing assembly.

"SI" means the abbreviation for the International System of Units.

"SID" (See "Source-image receptor distance").

"Sievert" (Sv) means the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor (1 Sv = 100 rem).

"Simulator (radiation therapy simulation system)" means any X-ray system intended for localizing the volume to be exposed during radiation therapy and reproducing the position and size of the therapeutic irradiation field.

"Single tomogram system" means a CT X-ray system that obtains X-ray transmission data during a scan to produce a single tomogram.

"Site area emergency" means events may occur, are in progress, or have occurred that could lead to a significant release of radioactive material and that could require a response by offsite response organizations to protect persons offsite.

"Site boundary" means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee.

"Site closure and stabilization" means those actions that are taken upon completion of operations that prepare the disposal site for custodial care and that assure that the disposal site will remain stable and will not need ongoing active maintenance.

"Source" means the focal spot of the X-ray tube.

"Source assembly" means an assembly that consists of the sealed source and a connector that attaches the source to the control cable. The source assembly may include a ballstop to secure the source in the shielded position.

"Source changer" means a device designed and used for replacement of sealed sources in radiographic exposure devices, including those source changers also used for transporting and storage of sealed sources.

"Source holder" means a housing or assembly into which a radioactive source is placed for the purpose of facilitating the handling and use of the source in well-logging operations.

"Source-image receptor distance" means the distance from the source to the center of the input surface of the image receptor.

"Source material" means:

1. Uranium or thorium, or any combination thereof, in any physical or chemical form; or
2. Ores that contain by weight one-twentieth of 1.0% (0.05%) or more of uranium, thorium or any combination of uranium and thorium. Source material does not include special nuclear material.

"Source of radiation" means any radioactive material or any device or equipment emitting, or capable of producing, radiation.

"Source-skin distance (SSD)" means the distance between the source and the skin entrance plane of the patient.

"Source traceability" means the ability to show that a radioactive source has been calibrated either by the national standards laboratory of the National Institute of Standards and Technology, or by a laboratory that participates in a continuing measurement quality assurance program with National Institute of Standards and Technology or other equivalent national or international program.

"Special form radioactive material" means radioactive material that satisfies the following conditions:

1. It is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;
2. The piece or capsule has at least one dimension not less than five millimeters (0.2 in.); and
3. It satisfies the test requirements specified by the NRC. A special form encapsulation designed in accordance with the

NRC requirements in effect on June 30, 1983, and constructed prior to July 1, 1985, may continue to be used. A special form encapsulation either designed or constructed after April 1, 1998, must meet requirements of this definition applicable at the time of its design or construction.

"Special nuclear material" means:

1. Plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material the NRC, pursuant to the provisions of section 51 of the Atomic Energy Act of 1954, as amended, determines to be special nuclear material, but does not include source material; or
2. Any material artificially enriched by any of the foregoing but does not include source material.

"Special nuclear material in quantities not sufficient to form a critical mass" means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; uranium-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or any combination of them in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed 1. For example, the following quantities in combination would not exceed the limitation and are within the formula:

$$\frac{175(\text{grams contained U-233})}{191} + \frac{70(\text{grams U-235})}{211} + \frac{70(\text{grams Pu})}{211} = 1$$

"Specific activity" of a radionuclide means the radioactivity of a radionuclide per unit mass of that nuclide. The specific activity of a material in which the radionuclide is essentially uniformly distributed is the radioactivity per unit mass of the material.

"Spot film" means a radiograph that is made during a fluoroscopic examination to permanently record conditions that exist during that fluoroscopic procedure.

"Spot-film device" means a device intended to transport and/or position a radiographic image receptor between the X-ray source and fluoroscopic image receptor. It includes a device intended to hold a cassette over the input end of an image intensifier for the purpose of making a radiograph.

"Stability" means structural stability.

"State inspector" means an employee of the Virginia Department of Health designated to perform those duties or functions assigned the Radiological Health Program.

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"Stationary beam radiation therapy" means radiation therapy without displacement of one or more mechanical axes relative to the patient during irradiation.

"Stationary X-ray equipment" (See "X-ray equipment").

"Stochastic effect" means a health effect that occurs randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects. For purposes of these regulations, "probabilistic effect" is an equivalent term.

"Storage" means a condition in which a device or source is not being used for an extended period of time, and has been made inoperable.

"Storage area" means any location, facility, or vehicle that is used to store and secure a radiographic exposure device, a radiation machine, or a storage container when it is not used for radiographic operations. Storage areas are locked or have a physical barrier to prevent accidental exposure, tampering, or unauthorized removal of the device, machine, or container.

"Storage container" means a device in which sealed sources or radiation machines are secured and stored.

"Stray radiation" means the sum of leakage and scattered radiation.

"Subsurface tracer study" means the release of a substance tagged with radioactive material for the purpose of tracing the movement or position of the tagged substance in the well-bore or adjacent formation.

"Supplied-air respirator (SAR) or airline respirator" means an atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.

"Surface contaminated object" (SCO) means a solid object that is not itself classed as radioactive material, but that has radioactive material distributed on any of its surfaces. An SCO must be in one of two groups with surface activity not exceeding the following limits:

1. SCO-I: A solid object on which:

a. The nonfixed contamination on the accessible surface averaged over 300 cm², or the area of the surface if less than 300 cm², does not exceed four becquerel per cm² (1 E-04 μCi/cm²) for beta and gamma and low toxicity alpha emitters, or 0.4 becquerel per cm² (1 E-05 μCi/cm²) for all other alpha emitters;

b. The fixed contamination on the accessible surface averaged over 300 cm², or the area of the surface if less than 300 cm², does not exceed 4 E+04 becquerel per cm² (1.0 μCi/cm²) for beta and gamma and low toxicity alpha emitters, or 4 E+03 becquerel per cm² (0.1 μCi/cm²) for all other alpha emitters; and

c. The nonfixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm², or the area of the surface if less than 300 cm², does not exceed 4 E+04 becquerel per cm² (1 μCi/cm²) for beta and gamma and low toxicity alpha emitters, or 4 E+03 Becquerel per cm² (0.1 μCi/cm²) for all other alpha emitters.

2. SCO-II: A solid object on which the limits for SCO-I are exceeded and on which:

a. The nonfixed contamination on the accessible surface averaged over 300 cm², or the area of the surface if less than 300 cm², does not exceed 400 becquerel per cm² (1 E-02 μCi/cm²) for beta and gamma and low toxicity alpha emitters or 40 becquerel per cm² (1 E-03 μCi/cm²) for all other alpha emitters;

b. The fixed contamination on the accessible surface averaged over 300 cm², or the area of the surface if less than 300 cm², does not exceed 8 E+05 becquerel per cm² (20 μCi/cm²) for beta and gamma and low toxicity alpha emitters, or 8 E+04 becquerel per cm² (2 μCi/cm²) for all other alpha emitters; and

c. The nonfixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm², or the area of the surface if less than 300 cm², does not exceed 8 E+05 becquerel per cm² (20 μCi/cm²) for beta and gamma and low toxicity alpha emitters, or 8 E+04 becquerel per cm² (2 μCi/cm²) for all other alpha emitters.

"Surveillance" means monitoring and observation of the disposal site for purposes of visual detection of need for maintenance, custodial care, evidence of intrusion, and compliance with other license and regulatory requirements.

"Survey" means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of radioactive material or other sources of radiation. When appropriate, such an evaluation includes a physical survey of the location of radioactive material and measurements or calculations of levels of radiation, or concentrations or quantities of radioactive material present.

"Target" means that part of an X-ray tube or accelerator onto which a beam of accelerated particles is directed to produce ionizing radiation or other particles.

"Technologically Enhanced Naturally Occurring Radioactive Material (TENORM)" means, as used in Part XVI (12VAC5-481-3460 et seq.) of this chapter, naturally occurring radionuclides whose concentrations are increased by or as a result of past or present human practices. TENORM does not include background radiation or the natural radioactivity of rocks or soils. TENORM does not

include uranium or thorium in "source material" as defined in the AEA and NRC regulations.

"Technique factors" means the following conditions of operation:

1. For capacitor energy storage equipment, peak tube potential in kV and quantity of charge in mAs;
2. For field emission equipment rated for pulsed operation, peak tube potential in kV, and number of X-ray pulses;
3. For CT X-ray systems designed for pulsed operation, peak tube potential in kV, scan time in seconds, and either tube current in Ma, X-ray pulse width in seconds, and the number of X-ray pulses per scan, or the product of tube current, X-ray pulse width, and the number of X-ray pulses in mAs;
4. For CT X-ray systems not designed for pulsed operation, peak tube potential in kV, and either tube current in Ma and scan time in seconds, or the product of tube current and exposure time in mAs and the scan time when the scan time and exposure time are equivalent; and
5. For all other equipment, peak tube potential in kV, and either tube current in Ma and exposure time in seconds, or the product of tube current and exposure time in mAs.

"Teletherapy physicist" means an individual identified as a qualified teletherapy physicist on an agency license.

"Teletherapy" means therapeutic irradiation in which the source of radiation is at a distance from the body.

"Temporary job site" means any location where industrial radiography, wireline service, well-logging, portable gauge or XRF use is performed and where licensed material may be stored other than those location(s) of use authorized on the license.

"Tenth-value layer (TVL)" means the thickness of a specified material that attenuates X-radiation or gamma radiation to an extent such that the air kerma rate, exposure rate, or absorbed dose rate is reduced to one-tenth of the value measured without the material at the same point.

"Termination of irradiation" means the stopping of irradiation in a fashion that will not permit continuance of irradiation without the resetting of operating conditions at the control panel.

"Test" means the process of verifying compliance with an applicable regulation.

"Therapeutic radiation machine" means X-ray or electron-producing equipment designed and used for external beam radiation therapy.

"These regulations" mean all parts of these regulations.

"Tight-fitting facepiece" means a respiratory inlet covering that forms a complete seal with the face.

"Tomogram" means the depiction of the X-ray attenuation properties of a section through the body.

"Tomographic plane" means that geometric plane which is identified as corresponding to the output tomogram.

"Tomographic section" means the volume of an object whose X-ray attenuation properties are imaged in a tomogram.

"Total effective dose equivalent" (TEDE) means the sum of the effective dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

"Total organ dose equivalent" (TODE) means the sum of the deep dose equivalent and the committed dose equivalent to the organ receiving the highest dose as described in 12VAC5-481-1040.

"Traceable to a National Standard" (See "Instrument traceability" or "Source traceability").

"Transfer" means, as used in Part XVI (12VAC5-481-3460 et seq.) of this chapter, the physical relocation of NORM containing materials not directly associated with commercial distribution within a business's operation or between general or specific licensees. This term does not include a change in legal title to NORM containing materials that does not involve physical movement of those materials.

"Transport container" means a package that is designed to provide radiation safety and security when sealed sources are transported and which meets all applicable requirements of the United States Department of Transportation.

"Transport index (TI)" means the dimensionless number, rounded up to the next tenth, placed on the label of a package to designate the degree of control to be exercised by the carrier during transportation. The transport index is the number determined by multiplying the maximum radiation level in millisievert (mSv) per hour at one meter (3.3 feet) from the external surface of the package by 100 (equivalent to the maximum radiation level in millirem per hour at one meter (3.3 ft)).

"Treatment site" means the correct anatomical description of the area intended to receive a radiation dose, as described in a written directive.

"Tritium neutron generator target source" means a tritium source used within a neutron generator tube to produce neutrons for use in well-logging applications.

"Tube" means an X-ray tube, unless otherwise specified.

"Tube housing assembly" means the tube housing with tube installed. It includes high-voltage and/or filament

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transformers and other appropriate elements when such are contained within the tube housing.

"Tube rating chart" means the set of curves which specify the rated limits of operation of the tube in terms of the technique factors.

"Type A quantity" means a quantity of radioactive material, the aggregate radioactivity of which does not exceed A_1 for special form radioactive material or A_2 for normal form radioactive material, where A_1 and A_2 are given in Table A-1 of 12VAC5-481-3770 or may be determined by procedures described in Table A-1 of 12VAC5-481-3770.

"Type B quantity" means a quantity of radioactive material greater than a Type A quantity.

"Underwater irradiator" means an irradiator in which the sources always remain shielded under water and humans do not have access to the sealed sources or the space subject to irradiation without entering the pool.

"Underwater radiography" means radiographic operations performed when the radiographic exposure device or radiation machine and/or related equipment are beneath the surface of the water.

"Uniform Low-Level Radioactive Waste Manifest" or "uniform manifest" means the combination of NRC Forms 540 and 541, and, if necessary, 542, and their respective continuation sheets as needed, or equivalent.

"Unirradiated uranium" means uranium containing not more than 2×10^3 Bq of plutonium per gram of uranium-235, not more than 9×10^6 Bq of fission products per gram of uranium-235, and not more than 5×10^{-3} g of uranium-236 per gram of uranium-235.

"Unrefined and unprocessed ore" means ore in its natural form prior to any processing, such as grinding, roasting, beneficiating, or refining.

"Unrestricted area" means an area, access to which is neither limited nor controlled by the licensee or registrant. For purposes of these regulations, "uncontrolled area" is an equivalent term.

"Uranium—natural, depleted, enriched"

1. "Natural uranium" means uranium with the naturally occurring distribution of uranium isotopes, which is approximately 0.711 weight percent uranium-235, and the remainder by weight essentially uranium-238.
2. "Depleted uranium" means uranium containing less uranium-235 than the naturally occurring distribution of uranium isotopes.
3. "Enriched uranium" means uranium containing more uranium-235 than the naturally occurring distribution of uranium isotopes.

"Uranium sinker bar" means a weight containing depleted uranium used to pull a logging tool down toward the bottom of a well.

"Useful beam" means the radiation emanating from the tube housing port or the radiation head and passing through the aperture of the beam limiting device when the exposure controls are in a mode to cause the system to produce radiation.

"User seal check (fit check)" means an action conducted by the respirator user to determine if the respirator is properly seated to the face. Examples include negative pressure check, positive pressure check, irritant smoke check, or isoamyl acetate check.

"Variable-aperture beam-limiting device" means a beam-limiting device which has capacity for stepless adjustment of the X-ray field size at a given SID.

"Very high radiation area" means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving an absorbed dose in excess of five Gy (500 rad) in one hour at one meter from a source of radiation or one meter from any surface that the radiation penetrates.

"Virtual source" means a point from which radiation appears to originate.

"Visible area" means that portion of the input surface of the image receptor over which incident X-ray photons are producing a visible image.

"Visiting authorized user" means an authorized user who is not identified on the license of the licensee being visited.

"Waste" means those low-level radioactive wastes containing source, special nuclear, or byproduct material that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level radioactive waste means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in subdivisions 2, 3, and 4 of the definition of byproduct material.

"Waste collector" means an entity, operating under a specific license, whose principal purpose is to collect and consolidate waste generated by others, and to transfer this waste, without processing or repackaging the collected waste, to another licensed waste collector, licensed waste processor, or licensed land disposal facility.

"Waste description" means the physical, chemical and radiological description of a low-level radioactive waste as called for on NRC Form 541.

"Waste generator" means an entity, operating under a license, who (i) possesses any material or component that contains radioactivity or is radioactively contaminated for which the licensee foresees no further use, and (ii) transfers

this material or component to a licensed land disposal facility or to a licensed waste collector or processor for handling or treatment prior to disposal. A licensee performing processing or decontamination services may be a "waste generator" if the transfer of low-level radioactive waste from its facility is defined as "residual waste."

"Waste handling licensees" mean persons licensed to receive and store radioactive wastes prior to disposal and/or persons licensed to dispose of radioactive waste.

"Waste processor" means an entity, operating under a specific license, whose principal purpose is to process, repack, or otherwise treat low-level radioactive material or waste generated by others prior to eventual transfer of waste to a licensed low-level radioactive waste land disposal facility.

"Waste type" means a waste within a disposal container having a unique physical description (i.e., a specific waste descriptor code or description; or a waste sorbed on or solidified in a specifically defined media).

"Wedge filter" means a filter that effects continuous change in transmission over all or a part of the useful beam.

"Week" means seven consecutive days starting on Sunday.

"Weighting factor (w_T)" for an organ or tissue (T) means the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of w_T are:

Organ Dose Weighting Factors	
Organ or Tissue	w_T
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	0.30 ^{a/}
Whole Body	1.00 ^{b/}

^{a/}0.30 results from 0.06 for each of five "remainder" organs, excluding the skin and the lens of the eye, that receive the highest doses.

^{b/}For the purpose of weighting the external whole body dose for adding it to the internal dose, a single weighting factor, $w_T = 1.0$, has been

specified. The use of other weighting factors for external exposure will be approved on a case-by-case basis until such time as specific guidance is issued.

"Well-bore" means a drilled hole in which wireline service operations or subsurface tracer studies are performed.

"Well-logging" means all operations involving the lowering and raising of measuring devices or tools that may contain sources of radiation into well-bores or cavities for the purpose of obtaining information about the well or adjacent formations.

"Whole body" means, for purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee.

"Wireline" means a cable containing one or more electrical conductors that is used to lower and raise logging tools in the well-bore.

"Wireline service operation" means any evaluation or mechanical service that is performed in the well-bore using devices on a wireline.

"Worker" means an individual engaged in work under a license or registration issued by the agency and controlled by a licensee or registrant but does not include the licensee or registrant.

"Working level (WL)" means any combination of short-lived radon daughters in one liter of air that will result in the ultimate emission of $1.3E+5$ MeV of potential alpha particle energy. The short-lived radon daughters of radon-222 are polonium-218, lead-214, bismuth-214, and polonium-214; and those of radon-220 are polonium-216, lead-212, bismuth-212, and polonium-212.

"Working level month" (WLM) means an exposure to one working level for 170 hours. Two thousand working hours per year divided by 12 months per year is approximately equal to 170 hours per month.

"Written directive" means an order in writing for a specific patient, dated and signed by an authorized user prior to the administration of a radiopharmaceutical or radiation, except as specified in subdivision 6 below, containing the following information:

1. For any administration of quantities greater than 1.11 megabecquerels (30 mCi) of sodium iodide I-125 or I-131: the radionuclide, and dosage; or
2. For a therapeutic administration of a radiopharmaceutical other than sodium iodide I-125 or I-131: the radiopharmaceutical, dosage, and route of administration; or
3. For gamma stereotactic radiosurgery: target coordinates, collimator size, plug pattern, and total dose; or

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4. For teletherapy: the total dose, dose per fraction, treatment site, and overall treatment period; or
5. For high-dose-rate remote afterloading brachytherapy: the radionuclide, treatment site, and total dose; or
6. For all other brachytherapy,
 - a. Prior to implantation: the radionuclide, number of sources, and source strengths; and
 - b. After implantation but prior to completion of the procedure: the radionuclide, treatment site, and total source strength and exposure time (or, equivalently, the total dose).

"X-ray exposure control" means a device, switch, button or other similar means by which an operator initiates and/or terminates the radiation exposure. The X-ray exposure control may include such associated equipment as timers and back-up timers.

"X-ray equipment" means an X-ray system, subsystem, or component thereof. Types of X-ray equipment are as follows:

1. "Mobile X-ray equipment" means X-ray equipment mounted on a permanent base with wheels and/or casters for moving while completely assembled.
2. "Portable X-ray equipment" means X-ray equipment designed to be hand-carried.
3. "Stationary X-ray equipment" means X-ray equipment that is installed in a fixed location.

"X-ray field" means that area of the intersection of the useful beam and any one of the sets of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the exposure rate is one-fourth of the maximum in the intersection.

"X-ray high-voltage generator" means a device which transforms electrical energy from the potential supplied by the X-ray control to the tube operating potential. The device may also include means for transforming alternating current to direct current, filament transformers for the X-ray tube(s), high-voltage switches, electrical protective devices, and other appropriate elements.

"X-ray system" means an assemblage of components for the controlled production of X-rays. It includes minimally an X-ray high-voltage generator, an X-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures. Additional components that function with the system are considered integral parts of the system.

"X-ray table" means a patient support device with its patient support structure (tabletop) interposed between the patient and the image receptor during radiography and/or fluoroscopy. This includes, but is not limited to, any stretcher equipped with a radiolucent panel and any table equipped

with a cassette tray (or bucky), cassette tunnel, image intensifier, or spot-film device beneath the tabletop.

"X-ray tube" means any electron tube that is designed for the conversion of electrical energy into X-ray energy.

"Year" means the period of time beginning in January used to determine compliance with the provisions of these regulations. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that the change is made at the beginning of the year. If a licensee or registrant changes in a year, the licensee or registrant shall assure that no day is omitted or duplicated in consecutive years.

Article 2

Exemptions from the Regulatory Requirements

12VAC5-481-390. Source material.

The following regulations, Carriers (10 CFR 40.12 (a)) and Unimportant quantities of source material (10 CFR 40.13) are applicable in the Commonwealth of Virginia.

12VAC5-481-400. Radioactive material other than source material.

A. Exempt concentrations. The following regulation, Exempt concentrations (10 CFR 30.14) is applicable in the Commonwealth of Virginia and include the regulation of natural occurring and accelerator produced radioactive materials (NARM).

B. Exempt quantities. The following regulation, Exempt quantities (10 CFR 30.18) is applicable in the Commonwealth of Virginia and include the regulation of NARM. The exemption stated in paragraph (b) of 10 CFR 30.18 does not apply for radium-226.

C. Exempt items. The following regulation, Certain items containing byproduct material (10 CFR 30.15) is applicable in the Commonwealth of Virginia and include the regulation of NARM. The following item is specifically included: 37 kBq (1 μ Ci) of radium-226 per timepiece in timepieces acquired prior to September 1, 1980.

D. Self-luminous products containing radioactive material. The following regulation, Self-luminous products containing tritium, krypton-85, or promethium-147 (10 CFR 30.19) is applicable in the Commonwealth of Virginia and includes the regulation of NARM. In addition, any person is exempt from these regulations to the extent that such person receives, possesses, uses, transfers, or owns articles containing less than 3.7 kBq (0.1 μ Ci) of radium-226 that were acquired prior to September 1, 1980.

E. Gas and aerosol detectors containing radioactive material.

1. The following regulation, Gas and aerosol detectors containing byproduct material (10CFR 30.20) is applicable

in the Commonwealth of Virginia and include the regulation of NARM.

2. Gas and aerosol detectors previously manufactured and distributed to general licensees in accordance with a specific license issued by an agreement state shall be considered exempt under subdivision 1 of this subsection, provided that the device is labeled in accordance with the specific license authorizing distribution of the generally licensed device, and provided further that they meet the requirements of 12VAC5-481-480 C.

3. Gas and aerosol detectors containing NARM previously manufactured and distributed in accordance with a specific license issued by a licensing state shall be considered exempt under subdivision 1 of this subsection, provided that the device is labeled in accordance with the specific license authorizing distribution, and provided further that they meet the requirements of 12VAC5-481-480 C.

~~F. Resins containing Scandium 46 and designed for sand consolidation in oil wells.~~

~~The following regulations, Resins containing Scandium 46 and designed for sand consolidation in oil wells (10 CFR 30.16) is applicable in the Commonwealth of Virginia.~~

~~G. E. Radioactive drug: Capsules containing carbon-14 urea for "in-vivo" diagnostic use for humans. The following regulation, Capsules containing carbon-14 urea for "in-vivo" diagnostic use for humans (10 CFR 30.21(a), (b) and (d)) is applicable in the Commonwealth of Virginia.~~

~~H. G. Special nuclear material. The following regulations regulation, Carriers (10 CFR 70.12) and Department of Defense (10 CFR 70.13) are is applicable in the Commonwealth of Virginia.~~

12VAC5-481-450. General requirements for the issuance of specific licenses.

A. A license application will be approved if the agency determines that:

1. The applicant is qualified by reason of training and experience to use the material in question for the purpose requested in accordance with these regulations in such a manner as to minimize danger to public health and safety or property;
2. The applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property;
3. The issuance of the license will not be inimical to the health and safety of the public;
4. The applicant has described in the application how facility design and procedures for operation will minimize, to the extent practicable, contamination of the facility and the environment, facilitate eventual decommissioning, and

minimize, to the extent practicable, the generation of radioactive waste; and

5. The applicant satisfies any applicable special requirements in 12VAC5-481-460, 12VAC5-481-470, 12VAC5-481-480, Part V (12VAC5-481-1170 et seq.), Part VII (12VAC5-481-1660 et seq.), Part XI (12VAC5-481-2330 et seq.), Part XII (12VAC5-481-2660 et seq.), Part XIV (12VAC5-481-3140 et seq.) or Part XVI (12VAC5-281-3460 et seq.) of this chapter.

B. Environmental report, commencement of construction. In the case of an application for a license to receive and possess radioactive material for commercial waste disposal by land burial, or for the conduct of any other activity that the agency determines will significantly affect the quality of the environment, the agency, before commencement of construction of the plant or facility in which the activity will be conducted, has concluded, after weighing the environmental, economic, technical and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of the proposed license, with any appropriate conditions to protect environmental values. Commencement of construction prior to such conclusion shall be grounds for denial of a license to receive and possess radioactive material in such plant or facility. As used in this subsection the term "commencement of construction" means any clearing of land, excavation, or other substantial action that would adversely affect the environment of a site. The term does not mean site exploration, necessary roads for site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the site or the protection of environmental values.

C. Financial assurance and records for decommissioning.

1. A person applying for a specific license authorizing the possession and use of unsealed radioactive material shall submit a decommissioning funding plan as described in subdivision 6 of this subsection with the license application for any of the following types of materials:

- a. Unsealed radioactive material with a half-life greater than 120 days and in quantities greater than 10⁵ times the applicable quantities listed in 12VAC5-481-3750.
- b. Unsealed radioactive material involving a combination of isotopes with R divided by 10⁵ being greater than one, where R is defined as the sum of the ratios of the quantity of each isotope to the applicable value in 12VAC5-481-3750.

2. A person applying for a specific license authorizing the possession and use of radioactive material not covered by subdivision 1 of this subsection with a half-life greater than

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120 days and in quantities specified in subdivision 5 of this subsection shall do either of the following:

a. Submit a decommissioning funding plan as described in subdivision 6 of this subsection.

b. Submit a written certification, signed by the chief financial officer or other individual designated by management to represent the licensee, that financial assurance has been provided in the amount prescribed in subdivision 5 of this subsection using one of the methods described in subdivision 6 of this subsection and a signed original of the financial instrument obtained to satisfy the requirements of subdivision 7 of this subsection. The written certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued by the agency but before receipt of radioactive material by the applicant. If the applicant defers execution of the financial instrument until after the license has been issued, the applicant shall submit to the agency a signed original of the financial instrument obtained before receipt of licensed material.

3. The following are exempt from the requirements of this subsection:

a. A state, local or other government agency, except for a government agency licensed to handle or process radioactive waste.

b. A person authorized to possess only radioactive materials with a half-life of 65 days or less.

c. Other persons exempted by the agency based on a review of the license application.

4. Implementation.

a. A person who possesses a specific license authorizing the possession and use of radioactive material issued on or after the effective date as stated in 12VAC5-481-160 that is of a type described in subdivision 1 of this subsection, shall provide financial assurance for decommissioning under this section.

b. A person who possesses a specific license issued before the effective date as stated in 12VAC5-481-160 shall do one of the following:

(1) For a license authorizing the use of radioactive material meeting the criteria of subdivision 1 of this subsection, submit a decommissioning funding plan as described in subdivision 6 of this subsection and a certification of financial assurance for at least \$1,125,000, under the criteria in subdivision 5 of this subsection, with any application for license renewal.

(2) For a license authorizing the use of radioactive material meeting the criteria of subdivision 2 of this subsection, submit a decommissioning funding plan as described in subdivision 6 of this subsection or a

certification of financial assurance for decommissioning according to the criteria of subdivision 5 of this subsection with any application for license renewal.

c. The term of the financial assurance shall be from the issuance or renewal of the license until the agency terminates the license.

d. A licensee's financial assurance arrangements may be reviewed annually by the agency to recognize any increases or decreases resulting from inflation or deflation, changes in engineering plans, activities performed or any other condition affecting costs for decommissioning to ensure that sufficient funding is available to cover liability that remains until license termination.

5. Required amounts for financial assurance.

a. A licensee shall provide the following minimum amounts of financial assurance for decommissioning, unless otherwise specified by the agency:

(1) \$1,125,000 if the quantity of material is greater than 10^4 but less than or equal to 10^5 times the applicable quantities of 12VAC5-481-3750 in unsealed form. For a combination of isotopes, R divided by 10^4 is greater than one but R divided by 10^5 is less than or equal to one.

(2) \$225,000 if the quantity of material is greater than 10^3 but less than or equal to 10^4 times the applicable quantities of 12VAC5-481-3750 in unsealed form. For a combination of isotopes, R divided by 10^3 is greater than one but R divided by 10^4 is less than or equal to one.

(3) \$113,000 if the quantity of material is greater than 10^{10} times the applicable quantities of 12VAC5-481-3750 in sealed sources or plated foils. For a combination of isotopes, R divided by 10^{10} is greater than one.

b. The agency may eliminate, reduce or raise the required amount of financial assurance under subdivision 5 a of this subsection for an individual applicant or licensee based on the cost estimate for decommissioning included in the decommissioning funding plan required under subdivision 6 a of this subsection.

6. Decommissioning funding plan.

a. A decommissioning funding plan shall include all the following information:

(1) A cost estimate for decommissioning that considers all of the following:

(a) Probable extent of contamination through the use or possession of radioactive material at the facility or site and the projected cost of removal of the contamination to a level specified by the agency. The evaluation shall encompass probable contaminating events associated with the licensee's or applicant's operation and shall be

based on factors such as quantity, half-life, radiation hazard, toxicity and chemical and physical forms.

(b) The extent of possible offsite property damage caused by operation of the facility or site.

(c) The cost of removal and disposal of radiation sources that are or would be generated, stored, processed or otherwise present at the licensed facility or site.

(d) The costs involved in reclaiming the property on which the facility or site is located and all other properties contaminated by radioactive material authorized under the license.

(2) A description of the method of assuring funds for decommissioning according to subdivision 7 of this subsection.

(3) A description of the method for adjusting cost estimates and associated funding levels periodically over the life of the facility.

b. The decommissioning funding plan shall also contain the licensee's certification that financial assurance has been provided in the amount of the cost estimate for decommissioning and a signed original of the financial instrument obtained to satisfy the requirements of subdivision 7 of this subsection.

7. A licensee may use any of the following methods to provide financial assurance for decommissioning:

a. Prepayment. Prepayment is the deposit prior to operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets in an amount sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit or deposit of government securities.

b. Surety method, insurance or other guarantee. Payment of future decommissioning costs shall be guaranteed by a surety method, insurance or other guarantee. A surety method may be in the form of a surety bond, letter of credit or line of credit. Self insurance, or any method that essentially constitutes self-insurance, may not be used as a method of providing financial assurance. Any surety method or insurance used to provide financial assurance for decommissioning must meet all of the following criteria:

(1) The surety method or insurance shall be open-ended or, if written for a specified term, renewed automatically unless 90 days or more prior to the renewal date, the issuer notifies the agency, the beneficiary and the licensee of its intention not to renew. The surety method or insurance shall also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails

to provide a replacement acceptable to the agency within 30 days after receipt of notification of cancellation.

(2) The surety method or insurance shall be payable to a trust established for decommissioning costs. The agency shall approve the trustee and the trust.

(3) The surety method or insurance shall remain in effect until the agency terminates the license.

c. External sinking fund. An external sinking fund may be used in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit or deposit of government securities. The surety or insurance provisions shall meet the requirements of subdivision 7 b of this subsection.

d. Statement of intent. A state or local government licensee exempt under subdivision 3 of this subsection shall submit a written statement of intent containing a cost estimate for decommissioning or an amount based on subdivision 5 of this subsection. The cost estimate shall indicate that funds for decommissioning will be obtained when necessary.

8. A licensee shall keep the following records of information related to decommissioning of a facility in an identified location until the site is released for unrestricted use:

a. Records of spills or other unusual occurrences involving the spread of radioactive contamination in and around the facility, equipment or site. The records may be limited to instances where contamination remains after any cleanup procedures or when there is reasonable likelihood that radioactive contaminants may have spread to inaccessible areas or into porous materials such as concrete. The records shall include any known information on identification of involved nuclides, quantities, forms and concentrations.

b. As-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used or stored, and of locations of possible inaccessible contamination such as buried pipes that may contain radioactive contaminants. If required drawings are referenced, each relevant document does not need to be indexed individually. If drawings are not available, a licensee shall substitute appropriate records of available information concerning the areas and locations of inaccessible contamination.

Note: As-built architectural and engineering drawings need to reflect the final details of the structures and equipment as they were constructed.

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c. Except for areas containing only sealed sources that have not leaked or where no contamination remains after a leak, or byproduct materials with half-lives of less than 65 days, a list containing all the following:

(1) All areas currently and formerly designated as restricted areas.

(2) All areas outside of restricted areas that require documentation under subdivision 8 (c) 1 of this subsection.

(3) All areas outside of restricted areas where current and previous wastes have been buried as documented under 12VAC5-481-1060.

(4) All areas outside of restricted areas that contain radioactive material such that, if the license expired, the licensee would be required to either decontaminate the area to meet the criteria for decommissioning in 12VAC5-481-510 or apply for approval for disposal under 12VAC5-481-920.

d. Records of the cost estimate performed for the decommissioning funding plan or the amount certified for decommissioning and records of the funding method used for assuring funds.

9. A licensee shall keep the records in subdivision 8 of this subsection until the site is decommissioned and approved by the agency for unrestricted use.

10. Prior to a licensed activity being transferred to another licensee under 12VAC5-481-500 B, the original licensee shall transfer all records under subdivision 8 of this subsection to the new licensee. The new licensee shall be responsible for maintaining the records until their license is terminated by the agency.

11. A person applying for a specific license authorizing the possession and use of more than 100 mCi of source material in a readily dispersible form shall submit a decommissioning funding plan as described in subdivision 6 of this subsection.

12. A person applying for a specific license authorizing the possession and use of quantities of source material greater than 10 mCi but less than or equal to 100 mCi in a readily dispersible form shall either:

a. Submit a decommissioning funding plan as described in subdivision 6 of this subsection; or

b. Submit a certification that financial assurance for decommissioning has been provided in the amount of \$225,000 using one of the methods described in subdivision 7 of this subsection.

12VAC5-481-480. Special requirements for a specific license to manufacture, assemble, repair, or distribute

commodities, products, or devices that contain radioactive material.

A. Reserved.

B. Licensing the distribution of radioactive material in exempt quantities. (Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing radioactive material whose subsequent possession, use, transfer, and disposal by all other persons are exempted from regulatory requirements may be obtained only from the Nuclear Regulatory Commission, Washington, D.C. 20555-0001.)

C. Licensing the manufacture or initial transfer of devices to persons generally licensed under 12VAC5-481-430 B.

1. An application for a specific license to manufacture or initially transfer devices containing radioactive material, excluding special nuclear material, to persons generally licensed under 12VAC5-481-430 B or equivalent regulations of the NRC, or another agreement state will be approved if:

a. The applicant satisfies the general requirements of 12VAC5-481-450;

b. The applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control, labels, proposed uses, installation, servicing, leak testing, operating and safety instructions, and potential hazards of the device to provide reasonable assurance that:

(1) The device can be safely operated by persons not having training in radiological protection,

(2) Under ordinary conditions of handling, storage, and use of the device, the radioactive material contained in the device will not be released or inadvertently removed from the device, and it is unlikely that any person will receive in any period of one calendar quarter a dose in excess of 10% of the limits specified in 12VAC5-481-640, and

(3) Under accident conditions such as fire and explosion associated with handling, storage, and use of the device, it is unlikely that any person would receive an external radiation dose or dose commitment in excess of the dose to the appropriate organ as specified in 12VAC5-481-3580, Column IV; and

c. Each device bears a durable, legible, clearly visible label or labels approved by the agency, which contain in a clearly identified and separate statement:

(1) Instructions and precautions necessary to assure safe installation, operation, and servicing of the device; documents such as operating and service manuals may be

identified in the label and used to provide this information;

(2) The requirement, or lack of requirement, for leak testing, or for testing any "on-off" mechanism and indicator, including the maximum time interval for such testing, and the identification of radioactive material by isotope, quantity of radioactivity, and date of determination of the quantity, and

(3) The information called for in one of the following statements, as appropriate, in the same or substantially similar form:

(a) The receipt, possession, use, and transfer of this device, Model _____, Serial No. _____, are subject to a general license or the equivalent and the regulations of the Nuclear Regulatory Commission or a state with which the Nuclear Regulatory Commission has entered into an agreement for the exercise of regulatory authority. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited.

CAUTION—RADIOACTIVE MATERIAL

_____ Name of manufacturer or initial transferor

(b) The receipt, possession, use, and transfer of this device, Model _____, Serial No. _____, are subject to a general license or the equivalent, and the regulations of a licensing state. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited. (The model, serial number, and name of the manufacturer or distributor may be omitted from this label provided the information is elsewhere specified in labeling affixed to the device.)

CAUTION—RADIOACTIVE MATERIAL

_____ Name of manufacturer or initial transferor

2. In the event the applicant desires that the device be required to be tested at intervals longer than six months, either for proper operation of the "on-off" mechanism and indicator, if any, or for leakage of radioactive material or for both, the applicant shall include in the application sufficient information to demonstrate that such longer interval is justified by performance characteristics of the device or similar devices and by design features that have a significant bearing on the probability or consequences of leakage of radioactive material from the device or failure of the "on-off" mechanism and indicator. In determining the acceptable interval for the test for leakage of radioactive material, the agency will consider information that includes, but is not limited to:

- a. Primary containment or source capsule;
- b. Protection of primary containment;

- c. Method of sealing containment;
- d. Containment construction materials;
- e. Form of contained radioactive material;
- f. Maximum temperature withstood during prototype tests;
- g. Maximum pressure withstood during prototype tests;
- h. Maximum quantity of contained radioactive material;
- i. Radiotoxicity of contained radioactive material; and
- j. Operating experience with identical devices or similarly designed and constructed devices.

3. In the event the applicant desires that the general licensee under 12VAC5-481-430 B, or under equivalent regulations of the NRC, or another agreement state, be authorized to install the device, collect the sample to be analyzed by a specific licensee for leakage of radioactive material, service the device, test the "on-off" mechanism and indicator, or remove the device from installation, the applicant shall include in the application written instructions to be followed by the general licensee, estimated calendar quarter doses associated with such activity or activities, and basis for such estimates. The submitted information shall demonstrate that performance of such activity or activities by an individual untrained in radiological protection, in addition to other handling, storage, and use of devices under the general license, is unlikely to cause that individual to receive a calendar quarter dose in excess of 10% of the limits specified in 12VAC5-481-640.

4. Each person licensed under this subsection to distribute devices to generally licensed persons shall:

- a. Furnish a copy of the general license contained in 12VAC5-481-430 B to each person to whom he directly or through an intermediate person transfers radioactive material in a device for use pursuant to the general license contained in 12VAC5-481-430 B;
- b. Furnish a copy of the general license contained in the NRC's, or another agreement state's, regulation equivalent to 12VAC5-481-430 B, or alternatively, furnish a copy of the general license contained in 12VAC5-481-430 B to each person to whom he directly or through an intermediate person transfers radioactive material in a device for use pursuant to the general license of the NRC, or another agreement state. If a copy of the general license in 12VAC5-481-430 B is furnished to such a person, it shall be accompanied by a note explaining that the use of the device is regulated by the NRC, or another agreement state, under requirements substantially the same as those in 12VAC5-481-430 B;

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c. Report to the agency all transfers of such devices to persons for use under the general license in 12VAC5-481-430 B. Such report shall identify each general licensee by name and address, an individual by name and/or position who may constitute a point of contact between the agency and the general licensee, the type and model number of device transferred, and the quantity and type of radioactive material contained in the device. If one or more intermediate persons will temporarily possess the device at the intended place of use prior to its possession by the user, the report shall include identification of each intermediate person by name, address, contact, and relationship to the intended user. If no transfers have been made to persons generally licensed under 12VAC5-481-430 B during the reporting period, the report shall so indicate. The report shall cover each calendar quarter and shall be filed within 30 days thereafter;

d. Furnish reports to other agencies.

(1) Report to the NRC all transfers of such devices to persons for use under the NRC's general license in 10 CFR 31.5.

(2) Report to the responsible state agency all transfers of devices manufactured and distributed pursuant to this subsection for use under a general license in that state's regulations equivalent to 12VAC5-481-430 B.

(3) Such reports shall identify each general licensee by name and address, an individual by name and/or position who may constitute a point of contact between the agency and the general licensee, the type and model of the device transferred, and the quantity and type of radioactive material contained in the device. If one or more intermediate persons will temporarily possess the device at the intended place of use prior to its possession by the user, the report shall include identification of each intermediate person by name, address, contact, and relationship to the intended user. The report shall be submitted within 30 days after the end of each calendar quarter in which such a device is transferred to the generally licensed person.

(4) If no transfers have been made to NRC general licensees during the reporting period, this information shall be reported to the NRC.

(5) If no transfers have been made to general licensees within a particular state during the reporting period, this information shall be reported to the responsible state agency upon request of that agency; and

e. Keep records showing the name, address, and the point of contact for each general licensee to whom he directly or through an intermediate person transfers radioactive material in devices for use pursuant to the general license provided in 12VAC5-481-430 B, or equivalent

regulations of the NRC or another agreement state. The records shall show the date of each transfer, the radionuclide and the quantity of radioactivity in each device transferred, the identity of any intermediate person, and compliance with the report requirements of subdivision 4 of this subsection.

f. If a notification of bankruptcy has been made under 12VAC5-481-500 E or the license is to be terminated, each person licensed under this section shall provide, upon request, to the agency, the NRC and to any appropriate agreement state, records of final disposition required under subdivision 4 e of this subsection.

g. The licensee shall maintain all information concerning transfers and receipts of devices that supports the reports required by this section. Records required by this section must be maintained for a period of three years following the date of the recorded event.

D. Special requirements for the manufacture, initially transfer, assembly, or repair of luminous safety devices for use in aircraft. An application for a specific license to manufacture, assemble, or repair luminous safety devices containing tritium or promethium-147 for use in aircraft, for distribution to persons generally licensed under 12VAC5-481-430 D will be approved if:

1. The applicant satisfies the general requirements specified in 12VAC5-481-450; and

2. The applicant satisfies the requirements of 10 CFR 32.53, 32.54, 32.55, 32.56, 32.101 and 32.110, or their equivalent.

E. Special requirements for license to manufacture or initially transfer calibration sources containing americium-241, plutonium or radium-226 for distribution to persons generally licensed under 12VAC5-481-430 F. An application for a specific license to manufacture calibration and reference sources containing americium-241, plutonium or radium-226 to persons generally licensed under 12VAC5-481-430 F will be approved if:

1. The applicant satisfies the general requirement of 12VAC5-481-450; and

2. The applicant satisfies the requirements of 10 CFR 32.57, 32.58, 32.59, 32.102 and 10 CFR 70.39 or their equivalent.

F. Reserved.

G. Manufacture and distribution of radioactive material for certain in vitro clinical or laboratory testing under general license. An application for a specific license to manufacture or distribute radioactive material for use under the general license of 12VAC5-481-430 G will be approved if:

1. The applicant satisfies the general requirements specified in 12VAC5-481-450.

2. The radioactive material is to be prepared for distribution in prepackaged units of:

- a. Carbon-14 in units not exceeding 370 kBq (10 µCi) each.
- b. Cobalt-57 in units not exceeding 370 kBq (10 µCi) each.
- c. Hydrogen-3 (tritium) in units not exceeding 1.85 MBq (50 µCi) each.
- d. Iodine-125 in units not exceeding 370 kBq (10 µCi) each.
- e. Mock iodine-125 in units not exceeding 1.85 kBq (0.05 µCi) of iodine-129 and 185 Bq (0.005 µCi) of americium-241 each.
- f. Iodine-131 in units not exceeding 370 kBq (10 µCi) each.
- g. Iron-59 in units not exceeding 740 kBq (20 µCi) each.
- h. Selenium-75 in units not exceeding 370 kBq (10 µCi) each.

3. Each prepackaged unit bears a durable, clearly visible label:

- a. Identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed 370 kBq (10 µCi) of iodine-125, iodine-131, carbon-14, cobalt-57, or selenium-75; 1.85 MBq (50 µCi) of hydrogen-3 (tritium); 740 kBq (20 µCi) of iron-59; or mock iodine-125 in units not exceeding 1.85 kBq (0.05 µCi) of iodine-129 and 185 Bq (0.005 µCi) of americium-241 each; and
- b. Displaying the radiation caution symbol described in 12VAC5-481-850 and the words, "CAUTION, RADIOACTIVE MATERIAL," and "Not for Internal or External Use in Humans or Animals."

4. One of the following statements, as appropriate, or a substantially similar statement that contains the information called for in one of the following statements, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure that accompanies the package:

- a. This radioactive material may be received, acquired, possessed, and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use, and transfer are subject to the regulations and a general license of the Nuclear Regulatory Commission or of a state with which the

Nuclear Regulatory Commission has entered into an agreement for the exercise of regulatory authority.

_____ Name of manufacturer

- b. This radioactive material may be received, acquired, possessed, and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use, and transfer are subject to the regulations and a general license of a licensing state.

_____ Name of manufacturer

5. The label affixed to the unit, or the leaflet or brochure which accompanies the package, contains adequate information as to the precautions to be observed in handling and storing such radioactive material. In the case of the Mock Iodine-125 reference or calibration source, the information accompanying the source must also contain directions to the licensee regarding the waste disposal requirements set out in 12VAC5-481-910.

H. Licensing the manufacture and distribution of ice detection devices. An application for a specific license to manufacture and distribute ice detection devices to persons generally licensed under 12VAC5-481-430 H will be approved if:

- 1. The applicant satisfies the general requirements of 12VAC5-481-450; and
- 2. The criteria of 10 CFR 32.61, 32.62, 32.103 and 32.110 are met.

I. Manufacture, preparation, or transfer for commercial distribution of drugs containing radioactive material for medical use under Part VII (12VAC5-481-1660 et seq.).

- 1. An application for a specific license to manufacture, prepare, or transfer for commercial distribution drugs containing radioactive material for use by persons authorized pursuant to Part VII (12VAC5-481-1660 et seq.) will be approved if:

- a. The applicant satisfies the general requirements specified in 12VAC5-481-450;
- b. The applicant submits evidence that the applicant is at least one of the following:

(1) Registered ~~or licensed~~ with the U.S. Food and Drug Administration (FDA) as ~~a drug manufacturer~~ the owner or operator of a drug establishment that engages in the manufacture, preparation, propagation, compounding, or processing of a drug under 21 CFR 207.20(a);

(2) Registered or licensed with a state agency as a drug manufacturer;

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(3) Licensed as a pharmacy by the Virginia Board of Pharmacy;

(4) Operating as a nuclear pharmacy within a federal medical institution; or

(5) A PET drug production facility registered with a state agency.

c. The applicant submits information on the radionuclide; the chemical and physical form; the maximum activity per vial, syringe, generator, or other container of the radioactive drug; and the shielding provided by the packaging to show it is appropriate for the safe handling and storage of the radioactive drugs by medical use licensees; and

d. The applicant satisfies the following labeling requirements:

(1) A label is affixed to each transport radiation shield, whether it is constructed of lead, glass, plastic, or other material, of a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL"; the name of the radioactive drug or its abbreviation; and the quantity of radioactivity at a specified date and time. For radioactive drugs with a half life greater than 100 days, the time may be omitted.

(2) A label is affixed to each syringe, vial, or other container used to hold a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL" and an identifier that ensures that the syringe, vial, or other container can be correlated with the information on the transport radiation shield label.

2. A licensee authorized to manufacture, prepare or transfer for commercial distribution radioactive drugs shall ensure that any individual preparing the drugs is one of the following:

a. An authorized nuclear pharmacist (ANP) as defined in 12VAC5-481-10;

b. An individual that meets the requirements specified in 12VAC5-481-1770 and 12VAC5-481-1790, and the licensee has received an approved license amendment identifying this individual as an ANP;

c. A pharmacist, as defined in 12VAC5-481-10, designated as an ANP if:

(1) The individual was a nuclear pharmacist preparing only radioactive drugs containing accelerator-produced radioactive material, and

(2) The individual practiced at a pharmacy at a government agency or federally recognized Indian Tribe before November 30, 2007, or at all other pharmacies before August 8, 2009, or an earlier date as noticed by the NRC; or

d. An individual under the supervision of an ANP as specified in 12VAC5-481-1710.

3. Shall provide to the agency no later than 30 days after the date that the licensee allows, under subdivision 2 a or c in this subsection, the individual to work as an ANP:

a. The individual's certification by a specialty board whose certification process has been recognized by the NRC with the written attestation signed by a preceptor as required by 12VAC5-481-1770;

b. An NRC or another agreement state license;

c. NRC master materials licensee permit;

d. The permit issued by a licensee or NRC master materials permittee of broad scope or the authorization from a commercial nuclear pharmacy authorized to list its own authorized nuclear pharmacist; or

e. Documentation that only accelerator-produced radioactive materials were used in the practice of nuclear pharmacy at a government agency or federally recognized Indian Tribe before November 30, 2007, or at all other locations of use before August 8, 2009, or an earlier date as noticed by the NRC; and

f. The Virginia Board of Pharmacy's license.

4. A licensee shall possess and use instrumentation to measure the radioactivity of radioactive drugs. The licensee shall have procedures for use of the instrumentation. The licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha, beta, or photon-emitting radioactive drugs prior to transfer for commercial distribution. In addition, the licensee shall:

a. Perform tests before initial use, periodically, and following repair, on each instrument for accuracy, linearity, and geometry dependence, as appropriate for the use of the instrument; and make adjustments when necessary; and

b. Check each instrument for constancy and proper operation at the beginning of each day of use.

5. Nothing in this subsection relieves the licensee from complying with applicable FDA, other federal, and state requirements governing radioactive drugs.

6. Each licensee preparing technetium-99m radiopharmaceuticals from molybdenum-99/technetium-99m generators or rubidium-82 from strontium-

82/ryubidium-82 generators shall test the generator eluates for molybdenum-99 breakthrough or strontium-82 and strontium-85 contamination in accordance with 12VAC5-481-1930. The licensee shall record the results of each test and retain each record for three years after the record is made.

J. Manufacture and distribution of sources or devices containing radioactive material for medical use. An application for a specific license to manufacture and distribute sources and devices containing radioactive material to persons licensed pursuant to Part VII (12VAC5-481-1660 et seq.) of this chapter for use as a calibration, transmission or reference source or for the uses listed in 12VAC5-481-2010, 12VAC5-481-2020, 12VAC5-481-2040 and 12VAC5-481-2060 will be approved if:

1. The applicant satisfies the general requirements in 12VAC5-481-450;
2. The applicant submits sufficient information regarding each type of source or device pertinent to an evaluation of its radiation safety, including:
 - a. The radioactive material contained, its chemical and physical form, and amount,
 - b. Details of design and construction of the source or device,
 - c. Procedures for, and results of, prototype tests to demonstrate that the source or device will maintain its integrity under stresses likely to be encountered in normal use and accidents,
 - d. For devices containing radioactive material, the radiation profile of a prototype device,
 - e. Details of quality control procedures to assure that production sources and devices meet the standards of the design and prototype tests,
 - f. Procedures and standards for calibrating sources and devices,
 - g. Legend and methods for labeling sources and devices as to their radioactive content, and
 - h. Instructions for handling and storing the source or device from the radiation safety standpoint; these instructions are to be included on a durable label attached to the source or device or attached to a permanent storage container for the source or device provided, that instructions that are too lengthy for such label may be summarized on the label and printed in detail on a brochure that is referenced on the label;
3. The label affixed to the source or device, or to the permanent storage container for the source or device, contains information on the radionuclide, quantity, and date of assay, and a statement that the source or device is

licensed by the agency for distribution to persons licensed pursuant to 12VAC5-481-1830, 12VAC5-481-2010, 12VAC5-481-2020 and 12VAC5-481-2040 or under equivalent licenses of the NRC, or another agreement state, provided that such labeling for sources that do not require long term storage may be on a leaflet or brochure that accompanies the source;

4. In the event the applicant desires that the source or device be required to be tested for leakage of radioactive material at intervals longer than six months, the applicant shall include sufficient information to demonstrate that such longer interval is justified by performance characteristics of the source or device or similar sources or devices and by design features that have a significant bearing on the probability or consequences of leakage of radioactive material from the source; and

5. In determining the acceptable interval for test of leakage of radioactive material, the agency will consider information that includes, but is not limited to:

- a. Primary containment or source capsule,
- b. Protection of primary containment,
- c. Method of sealing containment,
- d. Containment construction materials,
- e. Form of contained radioactive material,
- f. Maximum temperature withstood during prototype tests,
- g. Maximum pressure withstood during prototype tests,
- h. Maximum quantity of contained radioactive material,
- i. Radiotoxicity of contained radioactive material, and
- j. Operating experience with identical sources or devices or similarly designed and constructed sources or devices.

K. Requirements for license to manufacture and distribute industrial products containing depleted uranium for mass-volume applications.

1. An application for a specific license to manufacture industrial products and devices containing depleted uranium for use pursuant to 12VAC5-481-420 C or equivalent regulations of the NRC or another agreement state will be approved if:

- a. The applicant satisfies the general requirements specified in 12VAC5-481-450;
- b. The applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses, and potential hazards of the industrial product or device to provide reasonable assurance that possession, use, or transfer of the depleted uranium in the product or device

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is not likely to cause any individual to receive in any period of one calendar quarter a radiation dose in excess of 10% of the limits specified in 12VAC5-481-640; and

c. The applicant submits sufficient information regarding the industrial product or device and the presence of depleted uranium for a mass-volume application in the product or device to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.

2. In the case of an industrial product or device whose unique benefits are questionable, the agency will approve an application for a specific license under this subsection only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.

3. The agency may deny any application for a specific license under this subsection if the end use(s) of the industrial product or device cannot be reasonably foreseen.

4. Each person licensed pursuant to subdivision 1 of this subsection shall:

a. Maintain the level of quality control required by the license in the manufacture of the industrial product or device, and in the installation of the depleted uranium into the product or device;

b. Label or mark each unit to:

(1) Identify the manufacturer or initial transferor of the product or device and the number of the license under which the product or device was manufactured or initially transferred, the fact that the product or device contains depleted uranium, and the quantity of depleted uranium in each product or device; and

(2) State that the receipt, possession, use, and transfer of the product or device are subject to a general license or the equivalent and the regulations of the NRC or another agreement state;

c. Assure that the depleted uranium before being installed in each product or device has been impressed with the following legend clearly legible through any plating or other covering: "Depleted Uranium";

d. Do the following:

(1) Furnish a copy of the general license contained in 12VAC5-481-420 C and a copy of agency form "Certificate - Use of Depleted Uranium under a General License" to each person to whom depleted uranium in a product or device for use pursuant to the general license contained in 12VAC5-481-420 C is transferred, or

(2) Furnish a copy of the general license contained in the NRC's or another agreement state's regulation equivalent

to 12VAC5-481-420 B and a copy of the NRC's or another agreement state's certificate, or alternatively, furnish a copy of the general license contained in 12VAC5-481-420 C and a copy of agency form "Certificate - Use of Depleted Uranium under a General License" to each person to whom depleted uranium in a product or device for use pursuant to the general license of the NRC or another agreement state is transferred, with a note explaining that use of the product or device is regulated by the NRC or another agreement state under requirements substantially the same as those in 12VAC5-481-420 C;

e. Report to the agency all transfers of industrial products or devices to persons for use under the general license in 12VAC5-481-420 C. Such report shall identify each general licensee by name and address, an individual by name and/or position who may constitute a point of contact between the agency and the general licensee, the type and model number of device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within 30 days after the end of each calendar quarter in which such a product or device is transferred to the generally licensed person. If no transfers have been made to persons generally licensed under 12VAC5-481-420 C during the reporting period, the report shall so indicate;

f. Do the following:

(1) Report to the NRC all transfers of industrial products or devices to persons for use under the NRC general license in 10 CFR 40.25,

(2) For devices transferred to another agreement state, report to the responsible state agency all transfers of devices manufactured and distributed pursuant to this subsection for use under a general license in that state's regulations equivalent to 12VAC5-481-420 C,

(3) Such report shall identify each general licensee by name and address, an individual by name and/or position who may constitute a point of contact between the agency and the general licensee, the type and model number of the device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within 30 days after the end of each calendar quarter in which such product or device is transferred to the generally licensed person,

(4) If no transfers have been made to NRC licensees during the reporting period, this information shall be reported to the NRC, and

(5) If no transfers have been made to general licensees within another agreement state during the reporting period, this information shall be reported to the responsible state agency upon the request of that agency; and keep records showing the name, address, and point

of contact for each general licensee to whom he transfers depleted uranium in industrial products or devices for use pursuant to the general license provided in 12VAC5-481-420 C or equivalent regulations of the NRC or another agreement state. The records shall be maintained for a period of two years and shall show the date of each transfer, the quantity of depleted uranium in each product or device transferred, and compliance with the report requirements of this section.

~~L. An application for a specific license to manufacture, or initially transfer for sale or distribution, synthetic plastic resins containing scandium 46 for use pursuant to 12VAC5-481-400 F will be approved if:~~

- ~~1. The applicant satisfies the general requirements specified in 12VAC5-481-450 of this chapter;~~
- ~~2. The product is designed to be used only for sand consolidation in oil wells;~~
- ~~3. The applicant submits the following information:

 - ~~a. The general description of the product to be manufactured or initially transferred.~~
 - ~~b. A description of control procedures to be used to assure that the concentration of scandium 46 in the final product at the time of distribution will not exceed 1.4×10^{-3} $\mu\text{Ci/ml}$.~~~~
- ~~4. Each container of such product will bear a durable, legible label approved by the agency, which contains the following information:

 - ~~a. The product name;~~
 - ~~b. A statement that the product contains radioactive scandium and is designed and manufactured only for sand consolidation in oil wells;~~
 - ~~c. Instructions necessary for proper use; and~~
 - ~~d. The manufacturer's name.~~~~

~~M. L.~~ L. Serialization of nationally tracked sources. Each licensee who manufactures a nationally tracked source shall assign a unique serial number to each nationally tracked source. Serial numbers must be composed only of alphanumeric characters.

12VAC5-481-2870. Detection of leaking sources.

The following regulation, Detection of leaking sources (~~10 CFR 36.58~~) (10 CFR 36.59) is applicable in the Commonwealth of Virginia.

Article 2 Prohibition

12VAC5-481-3160. Agreement with well owner.

A. No licensee shall perform wireline service operations with a sealed source(s) unless, prior to commencement of the operation, the licensee has a written agreement with the well operator, well owner, drilling contractor, or land owner that:

1. In the event a sealed source is lodged downhole, a reasonable effort at recovery will be made;
2. No person may attempt to recover a sealed source in a manner which, in the licensee's opinion, could result in its rupture; ~~and~~
3. In the event a decision is made to abandon the sealed source downhole, the requirements of 12VAC5-481-3370 C shall be met;
4. The radiation monitoring required in 12VAC5-481-3340 will be performed; and
5. If the environment, any equipment, or personnel are contaminated with licensed material, they must be decontaminated before release from the site or release for unrestricted use.

B. The licensee shall retain a copy of the written agreement for three years after the completion of the well logging operation.

12VAC5-481-3710. Requirements for transfers of low-level radioactive waste intended for disposal at licensed land disposal facilities and manifests.

A. Manifest.

1. A waste generator, waste collector, or waste processor that transports, or offers for transportation, low-level radioactive waste intended for ultimate disposal at a licensed low-level radioactive waste land disposal facility must prepare a manifest reflecting information requested on applicable NRC Forms 540 (Uniform Low-Level Radioactive Waste Manifest (Shipping Paper)) and 541 (Uniform Low-Level Radioactive Waste Manifest (Container and Waste Description)) and, if necessary, on an applicable NRC Form 542 (Uniform Low-Level Radioactive Waste Manifest (Manifest Index and Regional Compact Tabulation)). NRC Forms 540 and 540A must be completed and must physically accompany the pertinent low-level waste shipment.
2. Upon agreement between shipper and consignee, NRC Forms 541, 541A, 542, and 542A may be completed, transmitted, and stored in electronic media with the capability for producing legible, accurate, and complete records on the respective forms.

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3. Licensees are not required by the agency, the NRC, or another agreement state to comply with the manifesting requirements of this subpart when they ship:

- a. Low-level radioactive waste for processing and expect its return, such as for storage under their license, prior to disposal at a licensed land disposal facility;
- b. Low-level radioactive waste that is being returned to the licensee that is the waste generator or generator; or
- c. Radioactively contaminated material to a waste processor that becomes the processor's residual waste.

4. For guidance in completing the forms required under subdivision 1 of this subsection, refer to the instructions that accompany the forms. Copies of manifests required by this subpart may be legible carbon copies, photocopies, or computer printouts that reproduce the data in the format of the uniform manifest.

5. NRC Forms 540, 540A, 541, 541A, 542, and 542A, and the accompanying instructions, in hard copy, may be obtained ~~from the Information and Records Management Branch, Office of Information Resources Management, by writing or calling the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (800) 368-5642, or by visiting the NRC's website at www.nrc.gov. The forms are available online at <http://www.nrc.gov/reading-rm/doe-collections/forms>.~~

6. This section includes information requirements of the DOT, as codified in 49 CFR Part 172. Information on hazardous, medical, or other waste, required to meet Environmental Protection Agency (EPA) regulations, as codified in 40 CFR Part 259, 261 or elsewhere, is not addressed in this section and must be provided on the required EPA forms. However, the required EPA forms must accompany the uniform low-level radioactive waste manifest required by this section.

B. General information. The shipper of the radioactive waste must provide the following information on the uniform manifest:

1. The name, facility address, and telephone number of the licensee shipping the waste;
2. An explicit declaration indicating whether the shipper is acting as a waste generator, waste collector, waste processor, or a combination of these identifiers for purposes of the manifested shipment; and
3. The name, address, and telephone number, or the name and EPA identification number for the carrier transporting the waste.

C. Shipment information. The shipper of the radioactive waste must provide the following information regarding the waste shipment on the uniform manifest:

1. The date of the waste shipment;
2. The total number of packages or disposal containers;
3. The total disposal volume and disposal weight in the shipment;
4. The total radionuclide activity in the shipment;
5. The activity of each of the radionuclides H-3, C-14, Tc-99, and I-129 contained in the shipment; and
6. The total masses of U-233, U-235, and plutonium in special nuclear material and the total mass of uranium and thorium in source material.

D. Disposal container and waste information. The shipper of the radioactive waste must provide the following information on the uniform manifest regarding the waste and each disposal container of waste in the shipment:

1. An alphabetic or numeric identification that uniquely identifies each disposal container in the shipment;
2. A physical description of the disposal container, including the manufacturer and model of any high integrity container;
3. The volume displaced by the disposal container;
4. The gross weight of the disposal container, including the waste;
5. For waste consigned to a disposal facility, the maximum radiation level at the surface of each disposal container;
6. A physical and chemical description of the waste;
7. The total weight percentage of chelating agent for any waste containing more than 0.1% chelating agent by weight, plus the identity of the principal chelating agent;
8. The approximate volume of waste within a container;
9. The sorbing or solidification media, if any, and the identity of the solidification media vendor and brand name;
10. The identities and activities of individual radionuclides contained in each container, the masses of U-233, U-235, and plutonium in special nuclear material, and the masses of uranium and thorium in source material. For discrete waste types, such as activated materials, contaminated equipment, mechanical filters, sealed source or devices, and wastes in solidification or stabilization media, the identities and activities of individual radionuclides associated with or contained on these waste types within a disposal container must be reported; and
11. The total radioactivity within each container.

E. Uncontainerized waste information. The shipper of the radioactive waste must provide the following information on the uniform manifest regarding a waste shipment delivered without a disposal container:

1. The approximate volume and weight of the waste;
2. A physical and chemical description of the waste;
3. The total weight percentage of chelating agent if the chelating agent exceeds 0.1% by weight, plus the identity of the principal chelating agent;
4. For waste consigned to a disposal facility, the classification of the waste according to 12VAC5-481-2571. Waste not meeting the structural stability requirements of 12VAC5-481-2572 must be identified;
5. The identities and activities of individual radionuclides contained in the waste, the masses of U-233, U-235, and plutonium in special nuclear material, and the masses of uranium and thorium in source material; and
6. For wastes consigned to a disposal facility, the maximum radiation levels at the surface of the waste.

F. Multigenerator disposal container information.

1. This subsection applies to disposal containers enclosing mixtures of waste originating from different generators. The origin of the low-level radioactive waste resulting from a waste processor's activities may be attributable to one or more generators, including waste generators. This subsection also applies to mixtures of wastes shipped in an uncontainerized form, for which portions of the mixture within the shipment originate from different generators.
2. For homogeneous mixtures of waste, such as incinerator ash, the shipper must provide the waste description applicable to the mixture and the volume of the waste attributed to each generator.
3. For heterogeneous mixtures of waste, such as the combined products from a large compactor, the shipper must identify each generator contributing waste to the disposal container and for discrete waste types, such as activated materials, contaminated equipment, mechanical filters, sealed source or devices, and wastes in solidification or stabilization media, the identities and activities of individual radionuclides contained on these waste types within the disposal container. For each generator, the shipper must provide the following:
 - a. The volume of waste within the disposal container;
 - b. A physical and chemical description of the waste, including the solidification agent, if any;
 - c. The total weight percentage of chelating agents for any disposal container containing more than 0.1 percent chelating agent by weight, plus the identity of the principal chelating agent;
 - d. The sorbing or solidification media, if any, and the identity of the solidification media vendor and brand

name if the media is claimed to meet stability requirements in 12VAC5-481-2572; and

e. Radionuclide identities and activities contained in the waste, the masses of U-233, U-235, and plutonium in special nuclear material, and the masses of uranium and thorium in source material, if contained in the waste.

G. Certification. An authorized representative of the waste generator, waste processor, or waste collector must certify by signing and dating the shipment manifest that the transported materials are properly classified, described, packaged, marked, and labeled and are in proper condition for transportation according to the applicable regulations of the DOT and the agency, NRC or another agreement state. A waste collector, in signing the certification, is certifying that nothing has been done to the collected waste that would invalidate the waste generator's certification.

H. Control and tracking; transfers. A licensee that transfers radioactive waste to a land disposal facility or a licensed waste collector must comply with subdivisions 1 through 9 of this subsection. A licensee that transfers waste to a licensed waste processor for waste treatment or repackaging must comply with subdivisions 4 through 9 of this subsection. A licensee shall:

1. Prepare all wastes so that the waste is classified according to 12VAC5-481-2571, and meets the waste characteristics requirements in 12VAC5-481-2572;
2. Label each disposal container of waste, or transport package if potential radiation hazards preclude labeling of the individual disposal container, to identify whether it is Class A waste, Class B waste, Class C waste, or greater than Class C waste, according to 12VAC5-481-2571;
3. Conduct a quality assurance program to ensure compliance with 12VAC5-481-2571 and 12VAC5-481-2572. The program must include management evaluation of audits;
4. Prepare the uniform low-level radioactive waste manifest as required by this part;
5. Forward a copy or electronically transfer the uniform low-level radioactive waste manifest to the intended consignee so that receipt of the manifest precedes the low-level radioactive waste shipment or the manifest is delivered to the consignee with the waste at the time the waste is transferred to the consignee, or both;
6. Include NRC Form 540, and Form 540A if required, with the shipment regardless of the option chosen in subdivision 5 of this subsection;
7. Receive acknowledgment of the receipt of the shipment in the form of a signed copy of NRC Form 540;

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8. Retain a copy of or electronically store the uniform low-level radioactive waste manifest and documentation of acknowledgment of receipt as the record of transfer of licensed material as required by Part I (12VAC5-481-10 et seq.), Part III (12VAC5-481-380 et seq.), Part IV (12VAC5-481-600 et seq.) and Part X (12VAC5-481-2250 et seq.); and
 9. For any shipment or any part of a shipment for which acknowledgment of receipt has not been received within the times set forth in this part, conduct an investigation according to subsection L of this section.
- I. Control and tracking; prepackaged waste. A waste collector licensee that handles only prepackaged waste must:
1. Acknowledge receipt of the waste from the shipper within one week of receipt by returning a signed copy of NRC Form 540;
 2. Prepare a new manifest to reflect consolidated shipments that meet the requirements of this section. The waste collector must ensure that, for each container of waste in the shipment, the manifest identifies the generator of that container of waste;
 3. Forward a copy or electronically transfer the uniform low-level radioactive waste manifest to the intended consignee so that receipt of the manifest precedes the low-level radioactive waste shipment or the manifest is delivered to the consignee with the waste at the time the waste is transferred to the consignee, or both;
 4. Include NRC Form 540, and 540A if required, with the shipment regardless of the option chosen in subdivision 4 of this subsection;
 5. Receive acknowledgment of the receipt of the shipment in the form of a signed copy of NRC Form 540;
 6. Retain a copy of or electronically store the uniform low-level radioactive waste manifest and documentation of acknowledgment of receipt as the record of transfer of licensed material as required under Part I (12VAC5-481-10 et seq.), Part III (12VAC5-481-380 et seq.), Part IV (12VAC5-481-600 et seq.) and Part X (12VAC5-481-2250 et seq.);
 7. For any shipment or any part of a shipment for which acknowledgment of receipt has not been received within the times set forth in this section, conduct an investigation according to subsection L of this section; and
 8. Notify the shipper and the agency when any shipment, or part of a shipment, has not arrived within 60 days after receipt of an advance manifest, unless notified by the shipper that the shipment has been canceled.
- J. Control and tracking; treatment or repackaging. A licensed waste processor that treats or repackages waste must:
1. Acknowledge receipt of the waste from the shipper within one week of receipt by returning a signed copy of NRC Form 540;
 2. Prepare a new manifest that meets the requirements of this section. Preparation of the new manifest reflects that the waste processor is responsible for meeting these requirements. For each container of waste in the shipment, the manifest must identify the waste generators, the preprocessed waste volume, and the other information as required under subsection F of this section;
 3. Prepare all wastes so that the waste is classified according to 12VAC5-481-2571, and meets the waste characteristics requirements in 12VAC5-481-2572;
 4. Label each package of waste to identify whether it is Class A waste, Class B waste, or Class C waste, in accordance with 12VAC5-481-2571 and 12VAC5-481-2572;
 5. Conduct a quality assurance program to ensure compliance with 12VAC5-481-2571 and 12VAC5-481-2572. The program must include management evaluation of audits;
 6. Forward a copy or electronically transfer the uniform low-level radioactive waste manifest to the intended consignee so that receipt of the manifest precedes the low-level radioactive waste shipment or the manifest is delivered to the consignee with the waste at the time the waste is transferred to the consignee, or both;
 7. Include NRC Form 540, and Form 540A if required, with the shipment regardless of the option chosen in subdivision 6 of this subsection;
 8. Receive acknowledgment of the receipt of the shipment in the form of a signed copy of NRC Form 540;
 9. Retain a copy of or electronically store the uniform low-level radioactive waste manifest and documentation of acknowledgment of receipt as the record of transfer of licensed material as required by Part I (12VAC5-481-10 et seq.), Part III (12VAC5-481-380 et seq.), Part IV (12VAC5-481-600 et seq.) and Part X (12VAC5-481-2250 et seq.);
 10. For any shipment or any part of a shipment for which acknowledgment of receipt has not been received within the times set forth in this part, conduct an investigation according to subsection L; and
 11. Notify the shipper and the agency when any shipment, or part of a shipment, has not arrived within 60 days after receipt of an advance manifest, unless notified by the shipper that the shipment has been canceled.
- K. Control and tracking; land disposal facility. A land disposal facility operator shall:

1. Acknowledge receipt of the waste within one week of receipt by returning, as a minimum, a signed copy of NRC Form 540 to the shipper. The shipper to be notified is the licensee that last possessed the waste and transferred the waste to the operator. If any discrepancy exists between materials listed on the uniform low-level radioactive waste manifest and materials received, copies or electronic transfer of the affected forms must be returned indicating the discrepancy;

2. Maintain copies of all completed manifests and electronically store the information required by 12VAC5-481-2630, until the agency terminates the license; and

3. Notify the shipper and the agency when any shipment, or part of a shipment, has not arrived within 60 days after receipt of an advance manifest, unless notified by the shipper that the shipment has been canceled.

L. Investigation. A shipment or part of a shipment for which acknowledgment is not received within the times set forth in this part must:

1. Be investigated by the shipper if the shipper has not received notification or receipt within 20 days after transfer; and

2. Be traced and reported. The investigation must include tracing the shipment and filing a report with the agency. A licensee that conducts a trace investigation must file a written report with the agency within two weeks of completing the investigation.

VA.R. Doc. No. R09-1577; Filed September 8, 2008, 12:29 p.m.

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

Final Regulation

REGISTRAR'S NOTICE: The following model public participation guidelines are exempt from Article 2 (§2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia pursuant to Chapter 321 of the 2008 Acts of Assembly.

Titles of Regulations: **12VAC35-11. Public Participation Guidelines (repealing 12VAC35-11-10 through 12VAC35-11-110).**

12VAC35-12. Public Participation Guidelines (adding 12VAC35-12-10 through 12VAC35-12-110).

Statutory Authority: §§2.2-4007.02 and 37.2-203 of the Code of Virginia.

Effective Date: October 29, 2008.

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

FAX (804) 371-0092, or email wendy.brown@co.dmhhrsas.virginia.gov.

Summary:

The regulations comply with the legislative mandate (Chapter 321, 2008 Acts of Assembly) that agencies adopt model public participation guidelines issued by the Department of Planning and Budget by December 1, 2008. Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations.

This regulatory action repeals the current public participation guidelines and promulgates new public participation guidelines as required by Chapter 321 of the 2008 Acts of Assembly. Highlights of the public participation guidelines include (i) providing for the establishment and maintenance of notification lists of interested persons and specifying the information to be sent to such persons; (ii) providing for public comments on regulatory action; (iii) establishing the time period during which public comments shall be accepted; (iv) providing that the plan to hold a public meeting shall be indicated in any notice of intended regulatory action; (v) providing for the appointment, when necessary, of regulatory advisory panels to provide professional specialization or technical assistance and negotiated rulemaking panels if a regulatory action is expected to be controversial; and (vi) providing for the periodic review of regulations.

CHAPTER 12

PUBLIC PARTICIPATION GUIDELINES

Part I

Purpose and Definitions

12VAC35-12-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the State Mental Health, Mental Retardation and Substance Abuse Services Board. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

12VAC35-12-20. Definitions.

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

"Administrative Process Act" means Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the State Mental Health, Mental Retardation and Substance Abuse Services Board, which is

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the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by §2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at www.townhall.virginia.gov, which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice

of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§2.2-4031 et seq.) of the Administrative Process Act.

Part II

Notification of Interested Persons

12VAC35-12-30. Notification list.

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

12VAC35-12-40. Information to be sent to persons on the notification list.

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 12VAC35-12-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).

2. A notice of the comment period on a proposed, a re-proposed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.

3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to §2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

Part III
Public Participation Procedures

12VAC35-12-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).

2. For a minimum of 60 calendar days following the publication of a proposed regulation.

3. For a minimum of 30 calendar days following the publication of a repropoed regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with §2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final

adoption of the regulation pursuant to §2.2-4012 E of the Code of Virginia.

12VAC35-12-60. Petition for rulemaking.

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;

2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and

3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to §2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

12VAC35-12-70. Appointment of regulatory advisory panel.

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

12VAC35-12-80. Appointment of negotiated rulemaking panel.

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

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B. An NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or
3. The agency determines that resolution of a controversy is unlikely.

12VAC35-12-90. Meetings.

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with §2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

12VAC35-12-100. Public hearings on regulations.

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;
2. The Governor directs the agency to hold a public hearing; or
3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

12VAC35-12-110. Periodic review of regulations.

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to §2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their

effectiveness, efficiency, necessity, clarity, and cost of compliance; and

2. The requirements in §2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

VA.R. Doc. No. R09-1452; Filed September 4, 2008, 11:17 a.m.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Proposed Regulation

<p><u>REGISTRAR'S NOTICE:</u> The State Corporation Commission is exempt from the Administrative Process Act in accordance with §2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.</p>
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Title of Regulation: **14VAC5-323. Proneed Life Insurance Minimum Standards for Determining Reserve Liabilities and Nonforfeiture Values (adding 14VAC5-323-10 through 14VAC5-323-70).**

Statutory Authority: §§12.1-13 and 38.2-223 of the Code of Virginia.

Public Hearing Information: A public hearing will be held upon request.

Public Comments: Public comments may be submitted until November 14, 2008.

Agency Contact: Raquel Pino-Moreno, Principal Insurance Analyst, State Corporation Commission, Insurance Bureau, 1300 East Main Street, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9499, FAX (804) 371-9511, or email raquel.pino-moreno@scc.virginia.gov.

Summary:

The proposed regulation increases the reserves required for proneed insurance policies by not allowing the 2001 Commissioners Standard Ordinary Mortality Table to be used (mandatory after January 1, 2012) and instead requiring that reserves be based on the older Commissioners 1980 Standard Ordinary Life Valuation Mortality Table. The proposed regulation is based on the Proneed Life Insurance Minimum Standards for Determining Reserve Liabilities and Nonforfeiture

Values Model Regulation (Model), which was adopted by the National Association of Insurance Commissioners in March 2008. The higher reserves may qualify as tax reserves (tax deductible) per the Internal Revenue Code if 26 states adopt the Model by January 1, 2009.

AT RICHMOND, SEPTEMBER 9, 2008

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2008-00194

Ex parte: In the matter of
Adopting Rules Governing
Preneed Life Insurance
Minimum Standards for
Determining Reserve Liabilities
And Nonforfeiture Values

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and §38.2-223 of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code of Virginia.

The rules and regulations issued by the Commission pursuant to §38.2-223 of the Code of Virginia are set forth in Title 14 of the Virginia Administrative Code.

The Bureau of Insurance ("Bureau") has submitted to the Commission a proposal to adopt new "Rules Governing Preneed Life Insurance Minimum Standards for Determining Reserve Liabilities and Nonforfeiture Values" which are recommended to be set out at 14 VAC 5-323-10 through 14 VAC 5-323-70.

The proposed new rules follow closely the National Association of Insurance Commissioners (NAIC) Model Regulation on the same subject. The purpose of the regulation is to establish minimum mortality standards for reserve liabilities and nonforfeiture values for preneed insurance products, and to require the use of the 1980 Commissioners Standard Ordinary (CSO) Life Valuation Mortality Table for use in determining the minimum standard of valuation of reserves and the minimum standard nonforfeiture values for preneed insurance products. Research commissioned by the Society of Actuaries determined that the 2001 CSO Mortality Table produced inadequate reserves for policies issued in support of a prearrangement agreement which provides goods and services at the time of an insured's death. The Bureau has

recommended that there be a proposed effective date of January 1, 2009.

The Commission is of the opinion that the proposed new rules submitted by the Bureau and set out at 14 VAC 5-323-10 through 14 VAC 5-323-70 should be considered for adoption with an effective date of January 1, 2009.

IT IS THEREFORE ORDERED THAT:

(1) The proposed new rules entitled "Rules Governing Preneed Life Insurance Minimum Standards for Determining Reserve Liabilities and Nonforfeiture Values" which are recommended to be set out at 14 VAC 5-323-10 through 14 VAC 5-323-70 be attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose the adoption of the proposed new rules shall file such comments or hearing request on or before November 14, 2008, in writing with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. INS-2008-00194.

(3) If no written request for a hearing on the proposed new rules is filed on or before November 14, 2008, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed new rules, may adopt the rules as submitted by the Bureau.

(4) AN ATTESTED COPY hereof, together with a copy of the proposed new rules, shall be sent by the Clerk of the Commission to the Bureau in care of Deputy Commissioner Douglas C. Stolte, who forthwith shall give further notice of the proposed adoption of the new rules by mailing a copy of this Order, together with the proposed new rules, to all licensed life insurers, burial societies, and fraternal benefit societies authorized by the Commission pursuant to Title 38.2 of the Code of Virginia, and certain interested parties designated by the Bureau.

(5) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposed new rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposed new rules on the Commission's website, <http://www.scc.virginia.gov/case>.

(7) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (4) above.

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CHAPTER 323
PRENEED LIFE INSURANCE MINIMUM STANDARDS
FOR DETERMINING RESERVE LIABILITIES AND
NONFORFEITURE VALUES

14VAC5-323-10. Authority.

This chapter is promulgated by the commission, pursuant to §38.2-223 of the Code of Virginia and in accordance with §§38.2-3130, 38.2-3206 through 38.2-3209, and 38.2-4120 of the Code of Virginia and 14VAC5-319-40, to approve, recognize, permit, and prescribe the use of the 1980 Commissioners Standard Ordinary (CSO) Life Valuation Mortality Table for use in determining the minimum standard of valuation of reserves and the minimum standard nonforfeiture values for insurers offering preneed insurance in this Commonwealth.

14VAC5-323-20. Definitions.

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

"2001 CSO Mortality Table" means that mortality table, which is included in the Proceedings of the NAIC (2nd Quarter 2002), consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002. Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables.

"Commission" means the State Corporation Commission.

"NAIC" means the National Association of Insurance Commissioners.

"Preneed insurance," "preneed insurance contract," or "preneed insurance policy" means a life insurance policy, or other life insurance contract which at issue, whether by assignment or otherwise, has for a purpose, the funding of a preneed funeral contract as defined in §54.1-2800 of the Code of Virginia.

"Ultimate 1980 CSO" means the Commissioners 1980 Standard Ordinary Life Valuation Mortality Table without any selection factors, incorporated into the 1980 NAIC amendments to the Standard Valuation Law and Standard Nonforfeiture Law for Life Insurance models, and adopted by the NAIC in December 1983. It is a mortality table consisting of separate rates of mortality for male and female lives, developed by the Society of Actuaries Committee to recommend new mortality tables for valuation of standard

individual ordinary life insurance, as set forth in Transactions, Society of Actuaries, Vol. XXXIII (1981), pp. 673 and 674.

14VAC5-323-30. Minimum valuation mortality standards.

For preneed insurance contracts, and similar policies and contracts, the minimum mortality standard for determining reserve liabilities and nonforfeiture values for both male and female insureds shall be the Ultimate 1980 CSO.

14VAC5-323-40. Minimum valuation interest rate standards.

A. The interest rates used in determining the minimum standard for valuation of preneed insurance shall be the calendar year statutory valuation interest rates as defined in §§38.2-3133 through 38.2-3136 of the Code of Virginia.

B. The interest rates used in determining the minimum standard for nonforfeiture values for preneed insurance shall be the calendar year statutory nonforfeiture interest rates as defined in §38.2-3209 of the Code of Virginia.

14VAC5-323-50. Minimum valuation method standards.

A. The method used in determining the standard for the minimum valuation of reserves of preneed insurance shall be the method defined in §§38.2-3129 and 38.2-3130 of the Code of Virginia.

B. The method used in determining the standard for the minimum nonforfeiture values for preneed insurance shall be the method defined in §38.2-3209 of the Code of Virginia.

14VAC5-323-60. Transition provisions.

A. For preneed insurance policies issued on or after January 1, 2009, and before January 1, 2012, the 2001 CSO Mortality Table may be used as the minimum standard for reserves and minimum standard for nonforfeiture benefits for both male and female insureds pursuant to the requirements of the rules entitled "Use of the 2001 CSO Mortality Table in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits (14VAC 5-321)."

B. If an insurer elects to use the 2001 CSO Mortality Table as a minimum standard for any preneed insurance policy issued on or after January 1, 2009, and before January 1, 2012, the insurer shall provide, as a part of the actuarial opinion memorandum submitted in support of the company's asset adequacy testing, an annual written notification to the domiciliary commissioner. The notification shall include:

1. A complete list of all preneed insurance policy forms that use the 2001 CSO as a minimum standard;

2. A certification signed by the appointed actuary stating that the reserve methodology employed by the company in determining reserves for the preneed insurance policies issued after January 1, 2009, and using the 2001 CSO as a minimum standard, develops adequate reserves (for the purposes of this certification, the preneed insurance

policies using the 2001 CSO as a minimum standard cannot be aggregated with any other insurance policies.); and

3. Supporting information regarding the adequacy of reserves for preneed insurance policies issued after January 1, 2009, and using the 2001 CSO as a minimum standard for reserves.

C. Preneed insurance policies issued on or after January 1, 2012, shall use the Ultimate 1980 CSO in the calculation of minimum nonforfeiture values and minimum reserves.

14VAC5-323-70. Severability.

If any provision of this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the chapter and the application of the provision to other persons or circumstances shall not be affected thereby.

VA.R. Doc. No. R09-1348; Filed September 9, 2008, 9:29 a.m.



TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES BOARD

Extension of Public Comment Period

Titles of Regulations: 16VAC25-90. Federal Identical General Industry Standards (29 CFR Part 1910) (repealing 16VAC25-90-1910.269 (p)(1)(ii)).

16VAC25-97. Reverse Signal Operation Safety Requirements for Motor Vehicles, Machinery and Equipment in General Industry and the Construction Industry (adding 16VAC25-97-10 through 16VAC25-97-70).

16VAC25-175. Federal Identical Construction Industry Standards (29 CFR Part 1926) (repealing 16VAC25-175-1926.601 (b)(4), 16VAC25-175-602 (a)(9)(ii), 16VAC25-175-1926.952 (a)(3)).

Statutory Authority: §40.1-22 of the Code of Virginia.

The Safety and Health Codes Board noticed an initial public comment period on the above-referenced proposed regulations (16VAC25-97) in the August 20, 2007, issue of the Virginia Register of Regulations (23:25 VA.R. 4347-4351 August 20, 2007). However, a number of comments were received after the close of the initial comment period and the board noticed a second public comment period on this regulation in the April 14, 2008, issue of the Virginia Register (24:16 VA.R. 2291 April 14, 2008).

Following the close of the second comment period, extensive changes were made to the text of the proposed regulation. Therefore, the board has issued a third 30-day comment

period that will begin on September 29, 2008, and end on October 29, 2008.

Agency Contact: Jay Withrow, Department of Labor and Industry, Powers Taylor Building, 13 South 13th Street, Richmond, VA 23219, or email jay.withrow@doli.virginia.gov.

VA.R. Doc. No. R06-314; Filed September 2, 2007, 5:22 p.m.

Proposed Regulation

Titles of Regulations: 16VAC25-90. Federal Identical General Industry Standards (repealing 16VAC25-90-1910.151).

16VAC25-95. Medical Services and First Aid Standards for General Industry (adding 16VAC25-95-10).

16VAC25-175. Federal Identical Construction Industry Standards (repealing 16VAC25-175-1926.50).

16VAC25-177. Medical Services and First Aid Standards for the Construction Industry (adding 16VAC25-177-10).

Statutory Authority: §40.1-22 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until 5 p.m. on November 29, 2008.

Agency Contact: Regina P. Cobb, Agency Management Analyst Senior, Department of Labor and Industry, Powers-Taylor Building, 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-0610, FAX (804) 786-8418, TTY (804) 786-2376, or email regina.cobb@doli.virginia.gov.

Basis: The Safety and Health Codes Board is authorized to regulate occupational safety and health under §40.1-22(5) of the Code of Virginia to:

"... adopt, alter, amend, or repeal rules and regulations to further, protect and promote the safety and health of employees in places of employment over which it has jurisdiction and to effect compliance with the federal OSH Act of 1970...as may be necessary to carry out its functions established under this title".

In this same statutory section, the board is further mandated:

"In making such rules and regulations to protect the occupational safety and health of employees, the Board shall adopt the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence that no employee will suffer material impairment of health or functional capacity".

"However, such standards shall be at least as stringent as the standards promulgated by the federal OSH Act of 1970 (P.L.91-596). In addition to the attainment of the highest degree of health and safety protection for the employee,

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other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experiences gained under this and other health and safety laws."

Purpose: The purpose of the proposed changes is to ensure that construction and general industry employers on worksites containing job classifications or workplace hazards that could expose employees to serious physical harm or death, designate and train a person or persons to render first aid and CPR during all workshifts. The changes are also designed to provide employers with some flexibility to make arrangements for the provision of first aid and CPR services on individual work sites. In addition, the proposed changes clarify requirements for employers of mobile crews and individual mobile employees.

Current Regulatory Framework: The Existing Regulations are Confusing and Difficult for Employers to Comply With and Difficult for the Department to Enforce

The current first aid regulations, which are identical to their federal OSHA counterparts and are the subject of this rulemaking, apply to all general industry and construction employers:

16 VAC 25-90-1910.151(b) of the General Industry Regulation for Medical and First Aid provides that "In the absence of an infirmary, clinic, or hospital in near proximity to the workplace which is used for the treatment of all injured employees, a person or persons shall be adequately trained to render first aid...." (Emphasis added).

16 VAC 25-175-1926.50(c) of the Construction Regulation for Medical Services and First Aid provides: "In the absence of an infirmary, clinic, hospital or physician, that is reasonably accessible in terms of time and distance to the worksite, which is available for the treatment of injured employees, a person who has a valid certificate in first aid training...." (Emphasis added).

Both existing regulations lack clarity and are difficult for employers to comply with and for the VOSH Program to enforce. For instance, the existing regulations do not define the terms "near proximity" and "reasonably accessible." These phrases have been interpreted by federal OSHA to mean that all general industry and construction employers must have either an employee trained in first aid, or:

their worksite must be located within a three to four minute response time of a hospital, clinic or

infirmary if the worksite contains workplace hazards that could cause life threatening injuries; or

their worksite must be located within a 15-minute response time of a hospital, clinic, or

infirmary if the worksite does not contain workplace hazards that could cause life threatening injuries.

According to statistics for 2003 from the Department of Emergency Medical Services (EMS) website, EMS providers arrived at the scene of 522,345 calls with an average response time of approximately 12 minutes. Approximately 72% of all reported calls were provided in less than 10 minutes, and approximately 87% of all reported calls were provided in less than 15 minutes.

The department requested more recent data from EMS for statewide response times for all calls as well as calls for industrial sites specifically for the years 2004 through 2006 ("Industrial premises" includes "building under construction, dockyard, dry dock, factory building or premises, garage (place of work), industrial yard, loading platform in factory or store, industrial plant, railway yard, shop (place of work), warehouse and workhouse." Source: PPCR/PPDR Program Data Element Dictionary):

Statewide Response Time Statistics by Year			
"Response time" defined as "Arrived at Scene" minus "Dispatched"			
	2004	2005	2006
All Cases: Response Time			
1-3 minutes	13.0%	12.9%	12.5%
4-15 minutes	74.6%	74.7%	75.1%
15-100 minutes	12.4%	12.5%	12.5%
Mean (Average) in minutes	8.89	8.94	8.96
Industrial Sites Only: Response Time			
1-3 minutes	19.2%	19.3%	20.9%
4-15 minutes	75.1%	73.9%	72.2%
15-100 minutes	5.7%	6.8%	6.9%
Mean (Average) in minutes	7.10	7.58	7.34

NOTE 1: Calculation of the above response times is from the time "dispatched" to the time of "arrived at scene." Although the PPCR/PPDR Program Data Element Dictionary indicates that there is a data field called "Time of Call" defined as "Time call is first received by Public Safety Answering Point (PSAP) or other designated entity," VOSH was informed by EMS that "Time of Call" data is not regularly available to the local EMS responders to enter into the reporting system. Therefore, the 2004-2006 data supplied by EMS under reports the average response times because it does not

include the time it takes for the 911 call to be received and then referred to the local EMS provider.

NOTE 2: Calculation of the above response times is limited to data where a response time of between one minute and 100 minutes was reported. EMS personnel indicated that this approach was used to eliminate some obviously inaccurate data in the system (e.g., response times in the negatives, response times that were several days, etc.).

As the more recent statistics above indicate, the average EMS response time for all cases statewide has been approximately nine minutes for the last three years (more than twice the three to four minute response time required by OSHA for life threatening injuries), while the average response time to industrial sites falls between 7 and 7.5 minutes, which is 75% above the three to four minute requirement. Furthermore, the chart demonstrates that for all cases statewide, only 12.5 to 13% of the responses occur within the three to four minute requirement for life threatening injuries, while from 19 to 21% of the responses occur to industrial sites within the three to four minute requirement.

The above statistics graphically demonstrate that the large majority of employers in Virginia fail to meet the three to four minute exemption contained in the interpretations for the current VOSH first aid regulations for construction and general industry that would allow them to avoid having a trained first aid provider on site (the OSHA 3-4 minute interpretation applies to worksites with hazards that could cause life threatening injuries).

Another difficulty with the current first aid regulations is that neither the current regulations nor federal OSHA interpretations provide clear guidance to employers of mobile work crews who are exposed to hazards that could cause death or serious physical harm. The proposed changes specifically provide compliance options for such covered employers.

Finally, to assure compliance with the current regulations, both employers and the VOSH Program are often faced with having to document whether an infirmary, clinic or hospital would be accessible within three to four minutes or 15 minutes. This may include going to such lengths as having to drive from the inspection site to the facility, or by contacting the nearest rescue squad to determine what the normal response time would be to the specific worksite. Even in such cases where response time information may be readily available, the response time for emergency responders to a particular site can vary widely from day to day depending on such factors as whether the worksite is in an urban or rural location (see discussion below on geographic differences in EMS response times around the state), whether the medical/emergency response facility is staffed 24 hours a day or not, and such vagaries as traffic congestion, road construction and weather. For these reasons under the current

regulations, the vast majority of injured employees cannot receive timely, reliable and consistent first aid response to injuries suffered on the job if there is no trained first aid responder on site.

Existing Regulations Do Not Provide Adequate First Aid and CPR Protections for Employees

The existing general industry and construction first aid regulations do not assure that adequate first aid attention for employees will be provided in certain hazardous situations. For instance, current regulations do not require CPR training for designated first aid providers, nor do they clearly state that designated first aid providers will be available at each hazardous work location and each work shift. The proposed changes correct these oversights.

In addition, the current regulations allow an employer to physically move an employee who had suffered a head/spinal injury or other serious injury by transporting them to a medical facility that is within three to four minutes driving distance, in lieu of having a trained first aid responder on site to administer first aid and CPR while emergency response personnel are in route.

Existing Regulations Do Not Provide Equal First Aid/CPR Treatment Opportunities for Similarly Exposed Employees

The current regulations do not provide the same level of first aid and CPR protection for employees in different general industry and construction settings who are exposed to similar kinds of serious and life threatening workplace hazards. For instance, a number of current industry specific regulations require general industry and construction employers to assure that one or more employees trained in first aid and CPR are present at each worksite and workshift:

General Industry

Logging Industry employers must assure that all logging employees receive first aid and CPR training - 16VAC25-90-1910.266(i)(7);

Electric Power Generation, Transmission and Distribution Industry employers must assure that trained first aid and CPR providers are present for field work and fixed work locations - 16VAC25-90-1910.269(b)(1);

Employers engaged in Welding, Cutting and Brazing must assure that first aid can be rendered to an injured employee until medical attention can be provided - 16VAC25-90-1910.252(c)(13);

Telecommunications Industry employers must assure that employees are trained in first aid and CPR - 16VAC25-90-1910.268(c)(3);

Employers with a Temporary Labor Camp must assure that a trained first aid and CPR provider is present at the camp - 16VAC25-90-1910.142(k)(2);

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Commercial Dive Operation employers must assure that all dive team members are trained in first aid and CPR - 16VAC25-90-1910.410(a)(3).

Construction Industry

Power Generation and Distribution employers must assure that employees are trained in first aid and CPR - 16VAC25-175-1926.950(e)(1)(ii);

Employers involved in Underground Construction, Caissons, Cofferdams and Compressed Air must provide a first aid station at each project (see 16VAC25-175-1926.803(b)(7));

Employees in the above industries benefit from greater first aid and CPR protections than employees who, for instance, work in construction around but not on overhead high voltage lines (contact with overhead high voltage lines is regularly

one of the top four causes of occupationally related VOSH fatalities). The proposed changes assure that all construction and general industry employees exposed to hazards that could cause death or serious physical harm are provided an equal level of first aid and CPR protection.

The Department also requested recent data from EMS for statewide response times for calls for industrial sites broken down by geographic region for the years 2004 through 2006 ("Industrial premises" includes "building under construction, dockyard, dry dock, factory building or premises, garage (place of work), industrial yard, loading platform in factory or store, industrial plant, railway yard, shop (place of work), warehouse and workhouse." Source: PPCR/PPDR Program Data Element Dictionary):

Statewide Response Time Statistics by Year for Industrial Sites Only "Response time" defined as "Arrived at Scene" minus "Dispatched"									
	2004 Response Times			2005 Response Times			2006 Response Times		
	1-3	4-15	Avg	1-3	4-15	Avg	1-3	4-15	Avg
Industrial Sites									
No Region Listed	22.3%	69.2%	7.7	26.5%	63.6%	8.2	52.4%	44.6%	4.7
BLUE RIDGE	6.0%	67.8%	12.1	8.9%	64.2%	13.0	9.5%	73.6%	10.5
CENTRAL SHENANDOAH	11.1%	82.9%	8.1	16.3%	79.2%	7.6	18.9%	73.2%	7.8
LORD FAIRFAX	7.8%	85.4%	8.6	10.1%	82.6%	8.5	8.9%	81.8%	8.7
NORTHERN VIRGINIA	18.3%	78.3%	6.4	13.2%	81.6%	7.7	12.1%	84.1%	7.2
OLD DOMINION	17.2%	77.7%	7.2	15.4%	79.0%	7.2	15.7%	79.3%	6.9
PENINSULAS	44.1%	53.1%	4.8	41.1%	56.4%	4.9	46.1%	51.5%	4.9
RAPPAHANNOCK	13.1%	77.2%	8.5	10.9%	80.2%	8.8	13.5%	74.3%	9.2
SOUTHWEST VIRGINIA	9.5%	73.1%	10.4	12.6%	67.0%	10.5	13.2%	69.1%	10.0
THOMAS JEFFERSON	9.9%	67.3%	11.3	10.7%	76.2%	10.0	7.1%	66.9%	12.0
TIDEWATER	15.1%	79.1%	7.6	12.3%	82.7%	7.8	11.4%	83.1%	7.6
WESTERN VIRGINIA	25.9%	66.9%	7.2	26.2%	69.1%	6.8	22.5%	72.7%	6.9
Total	19.1%	75.1%	7.1	19.1%	74.0%	7.6	20.7%	72.3%	7.3

NOTE 1: Calculation of the above response times is from the time "dispatched" to the time of "arrived at scene." Although the PPCR/PPDR Program Data Element Dictionary indicates that there is a data field called "Time of Call" defined as "Time call is first received by Public Safety Answering Point (PSAP) or other designated entity," VOSH was informed by EMS that "Time of Call" data is not regularly available to the local EMS responders to enter into the reporting system. Therefore, the 2004-2006 data supplied by EMS under reports the average response times because it does not include the time it takes for the 911 call to be received and then referred to the local EMS provider.

NOTE 2: Calculation of the above response times is limited to data where a response time of between one minute and 100 minutes was reported. EMS personnel indicated that this approach was used to eliminate some obviously inaccurate data in the system (e.g. response times in the negatives, response times that were several days, etc.).

As the above statistics indicate, there is a wide disparity in EMS response times across the state based on geographic region. For instance in 2006 there is a range of a low of 7.1% of EMS responses occurring within one to three minutes in the Thomas Jefferson region to a high of 46.1% within one to

three minutes in the Peninsulas region; while the average response times range from 4.9 minutes in the Peninsulas region to 12 minutes in the Thomas Jefferson region.

Again, the above statistics graphically demonstrate that the large majority of employers in Virginia cannot meet the three to four minute exemption contained in the interpretations for the exemption contained in the current VOSH first aid regulations for construction and general industry that would allow them to avoid having a trained first aid provider on site (the three to four minute interpretation applies to worksites with hazards that could cause life threatening injuries). In addition, the geographic disparities in response time demonstrate that the current regulations do not provide equal access to adequate first aid and CPR protections for employees.

The Existing General Industry First Aid Regulation is Overreaching

The current general industry regulation is overreaching in that it applies to all general industry employers, even when there are no workplace hazards present that could pose a threat of serious physical harm or death, such as in office settings (it should be noted that, with rare exceptions, construction worksites are universally acknowledged to contain both job classifications and workplace hazards that are likely to cause death or serious physical harm). The proposed regulations will exclude worksites that do not contain such serious hazards from the requirement to provide designated employees with first aid and CPR training.

Substance: The VOSH Program seeks the amendment of medical services and first aid regulations for general industry §1910.151(b), and the construction industry, §1926.50(c) to require construction and general industry employers to train and designate a person or persons to render first aid and CPR during all workshifts on worksites containing job classifications or workplace hazards that could expose employees to serious physical harm or death; and to provide employers with some flexibility to make arrangements for first aid and CPR services on individual work sites. The proposed regulations will also exclude certain low hazard industries and employers from the requirement to provide first aid and CPR training. In addition, the proposed changes also clarify requirements for employers of mobile crews and individual mobile employees.

Issues: A primary advantage of the proposed regulation is that employers covered by the proposed regulation would be required to have at each job site and for each work shift at least one employee trained in first aid and CPR, thereby increasing protection of their employees.

The proposed changes eliminate inequities contained in the existing regulations by assuring all construction and general industry employees exposed to hazards that could cause death

or serious physical harm equal access to first aid and CPR services, regardless of their specific industrial or construction setting, or the geographical location of their work. As noted in the "Purpose" section above, only employees engaged in the following industries benefit from regulations requiring the immediate presence of first aid/CPR trained providers at their worksite:

Logging

Electric Power Generation, Transmission and Distribution (General Industry)

Power Generation and Distribution (Construction Industry)

Welding, Cutting and Brazing

Telecommunications

Temporary Labor Camp (Migrant Labor)

Commercial Dive Operation

Underground Construction, Caissons, Cofferdams and Compressed Air

A disadvantage is that some employers would have to incur the additional cost of securing such training, although many employers currently already assure that some employees are trained in first aid and CPR.

Another advantage to employers would be that costs associated with compliance with the proposed regulation will be lessened by the specific language in the proposal that allows an employer to make written arrangements with other contractors/employers on the same job site to provide designated employees to serve as first aid and CPR responders.

Also, costs associated with the current regulation will be eliminated for employers on worksites where there are no hazards that could result in serious physical harm or death, by excluding such worksites from coverage.

Additionally, the proposed changes eliminate confusion and clarify requirements for employers of mobile crews and individual mobile employees.

Finally, to assure compliance with the current regulations, both employers and the VOSH Program are often faced with having to document whether an infirmary, clinic or hospital would be accessible within three to four minutes by going to such lengths as having to drive from the inspection site to the facility, or by contacting the nearest rescue squad to determine what their normal response time would be to the specific worksite (see above discussion of federal OSHA interpretations in the "Purpose" section). The proposed changes eliminate the three to four minute and 15 minute interpretation requirements.

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The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Virginia Department of Labor and Industry (Department) proposes to amend the medical services and first aid regulations for general industry and for the construction industry such that in high hazard industries and on worksites containing job classifications or workplace hazards that could potentially expose employees to serious physical harm or death, employers must designate and train at least one employee during all work shifts to render immediate first aid and cardiopulmonary resuscitation (CPR). The person or persons would have to have a valid, current certificate in first aid and CPR training from the U.S. Bureau of Mines, the American Red Cross, or equivalent training that can be verified by documentary evidence. Alternatively, an employer would be allowed to make written arrangements with and reasonably rely on another contractor or employer on the same job site to provide the first aid/CPR-trained employees. The proposed amendment would not apply to worksites containing job classifications or workplace hazards that do not expose employees to serious physical harm or death (e.g., office settings).

Result of Analysis. There is insufficient data to accurately compare the magnitude of the benefits versus the costs. Detailed analysis of the benefits and costs can be found in the next section.

Estimated Economic Impact. Under the current regulation, employers in general industry must only train a person or persons to render first aid if there is no infirmary, clinic, or hospital which is used for the treatment of all injured employees in *near proximity* to the workplace. The following industries that fall under the general industry category have more stringent rules: (1) logging, (2) electric power generation, transmission, and distribution, (3) telecommunications, (4) temporary labor camps, (5) commercial diver operations, and (6) welding, cutting, and brazing. In the first five categories, regulations require employers to train at least one person—if not all employees—in first aid and CPR. The welding, cutting, and brazing requirements state that "All injuries shall be reported as soon as possible for medical attention. First aid shall be rendered until medical attention can be provided." For the remainder of this document, it will be assumed that the current regulation implies that employers in welding, cutting, and brazing are required to ensure that a first aid-trained employee be on the worksite at all time either by training employees herself or by contracting with another employer onsite.

Under the current regulation, the requirements for first aid treatment in the construction industry differ only slightly from those in general industry. In the construction industry, employers must only train a person or persons to render first aid if there is no infirmary, clinic, hospital, or physician,

which is available for the treatment of injured employees that is reasonably accessible in terms of time and distance to the worksite. In addition to specific requirements for first aid supplies, the regulation for the construction industry also specifies that the person trained to render first aid must have a valid certificate in first-aid training from the U.S. Bureau of Mines, the American Red Cross, or equivalent training that can be verified by documentary evidence; provisions shall be made prior to commencement of the project for prompt medical attention in case of serious injury; proper equipment for prompt transportation of the injured person to a physician or hospital, or a communication system for contacting necessary ambulance service shall be provided; and in areas where 911 is not available, the telephone numbers of the physicians, hospitals, or ambulances shall be conspicuously posted. The categories in the construction industry with more stringent first aid requirements are: (1) electric power generation, transmission, and distribution, for which the Department requires the training of employees in first aid and CPR, and (2) underground construction, caissons, cofferdams, and compressed air, which must have a first aid station and ambulance at each project.

In sum, under the current regulations, most firms or organizations in general and construction industry are required to have a first-aid-trained employee on site only if medical attention in the form of infirmaries, clinics, or hospitals is not in near proximity or reasonably accessible. These regulations are identical to those required by the U.S. Department of Labor Occupational Safety and Health Administration (OSHA). OSHA interprets near proximity and reasonably accessible to mean that emergency medical services must be available within 3-4 minutes in workplaces where "serious accidents such as those involving falls, suffocation, electrocution, or amputation are possible" and up to 15 minutes in workplaces, such as offices, where the possibility of such serious work-related injuries is more remote.¹

The proposed amendments aim to make the first-aid requirements for high-hazard general and construction industry employers more stringent than those required by the federal government. Under the proposed amendments, employers will be required to designate and train at least one employee during all work shifts to render immediate first aid and cardio pulmonary resuscitation (CPR). The person or persons would have to have a valid, current certificate in first aid and CPR training from the U.S. Bureau of Mines, the American Red Cross, or equivalent training that can be verified by documentary evidence. Alternatively, an employer would be allowed to make written arrangements with and reasonably rely on another contractor or employer on the same job site to provide the first aid/CPR-trained employees. As under the current regulation, if an employer does not comply with the regulation, the Department will issue a citation and may assess a penalty and the employer must

change his practices to comply with the regulation. The penalty will depend upon the nature and circumstances of the violation.

With the exception of welding, cutting, and brazing, the categories of general and construction industry discussed above that already require first aid and CPR training of employees will not be affected by the proposed amendment, since their first aid requirements are already more stringent. (Employers whose work sites engage in welding, cutting, and brazing will be required to train an employee in CPR and first aid; under current regulations they are required only to train an employee in first aid.) In addition, the proposed amendment for general and construction industry "does not apply to worksites containing job classifications or workplace hazards that do not expose employees to serious physical harm or death (e.g., office settings)". In other words, the proposed amendments will affect in the same way all firms/organizations (construction and general industry) with job classifications or workplace hazards that could potentially expose employees to serious physical harm or death. Therefore, the remainder of this document will look at the costs and benefits of changing the requirements for the general and construction industries simultaneously.

As mentioned above, the proposed amendments do also change the requirements for low-hazard worksites. Under current regulations, these worksites are required to have medical services available within 15 minutes or have a first aid-trained person on site at all times. Under the proposed amendments, employers at these worksites will no longer have any requirements with regards to the immediate provision of first aid or CPR. Finally, the proposed amendments explicitly state the requirements for employers of mobile work crews and individual mobile employees that are not explicitly stated in the current regulation.

The proposed amendments will affect all employers in Virginia. The Department estimates that of the 215,201 employers in Virginia, this amendment will make the first aid/CPR requirements more stringent for around 150,000 employers since the Department estimates that around 17,000 establishments are already in compliance with the proposed regulations (or have more stringent current regulations), around 59,000 establishments do not have job classifications or work site hazards that could result in serious physical harm or death, and around 300 establishments do not fall within Department jurisdiction. It is important to note, however, that these numbers are estimates. Within a particular industry that is normally considered to be low hazard, there may be some specific work sites or portions of the establishments that have job classifications or workplace hazards that would fall under the more stringent requirements of the proposed regulation. For example, a large department store that has service personnel who deal directly with customers who would not be exposed to serious or life-threatening hazards may also have

warehouse personnel who operate forklifts and are therefore exposed to such hazards. As another example, a supermarket may have retail clerks who are not exposed to serious hazards, but may also have personnel using potentially dangerous equipment, such as a meat slicing machine. Therefore, although some businesses in the areas of Retail or Wholesale Trade may only have office workers, the section could not be considered exempt from the proposed regulation.

It is also unclear how the proposed amendments will change the work practices of those 150,000 employers with job classifications or work site hazards that could result in serious physical harm or death. First, the current regulation requires employers to have a first aid-trained employee on site at all times if they cannot meet the "near proximity" or "reasonable access" requirements. The only change that this amendment will impose on the employers who comply with current regulation by having a first aid-trained person on site is to require that the person be trained in CPR as well. Since it is unknown how many employers currently have a first aid-trained person on site, and how many of those employees are also trained in CPR, the statewide cost of the proposed amendment on employers is not clear. Second, the cost to employers depends upon the number of employees that they will need to train and employee turnover rates. For example, a small butcher shop with low staff turnover that uses a meat-slicing machine might need to train at most one employee every year. On the other hand, a small contractor might have to train 2-3 employees per month if she has a total of 20 employees at any given time who work at varying job sites, but also has a high turnover in employees. Of course, employers who send employees onto job sites can provide first aid and CPR through a contract with another organization at the job site, but that contract process could be costly or infeasible, depending upon circumstances.

The table below gives an example of the time and monetary cost of first aid and CPR training provided by Virginia chapters of the American Red Cross.

Course	Cost	Certification
<i>Greater Richmond Chapter</i>		
Adult CPR	5 hours, \$55	One-year Adult CPR certification
Adult CPR review	4 hours, \$45	Renewal of one-year certification in Adult CPR
Adult CPR/first aid	8 hours, \$65	One year Adult CPR certification, three year first aid certification
<i>Central Virginia Chapter</i>		
Adult CPR	4 hours, \$41	One year Adult CPR certification

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Adult CPR review	4 hours, \$31	Renewal of one-year certification in Adult CPR
First aid	4 hours, \$38	Three year first aid certification
Adult CPR/first aid	8.5 hours, \$62	One year Adult CPR certification, three year first aid certification
<i>Hampton Roads Chapter</i>		
Adult CPR	4 hours, \$35	One year Adult CPR certification
First aid	3-4 hours, \$35	Three year first aid certification
Adult CPR/first aid	7-8 hours, \$45	One year Adult CPR certification, three year first aid certification
<i>Alexandria Chapter</i>		
Adult CPR	4.5 - 5 hours, \$45	One year Adult CPR certification
First aid	4.5 hours, \$40	Three year first aid certification
Adult CPR/first aid	7.5 hours, \$60	One year Adult CPR certification, three year first aid certification
<i>Mountain Empire Chapter, Bristol</i>		
Adult CPR	4 hours, \$29	One year Adult CPR certification
Adult CPR/first aid	7-8 hours, \$37	One year Adult CPR certification, three year first aid certification

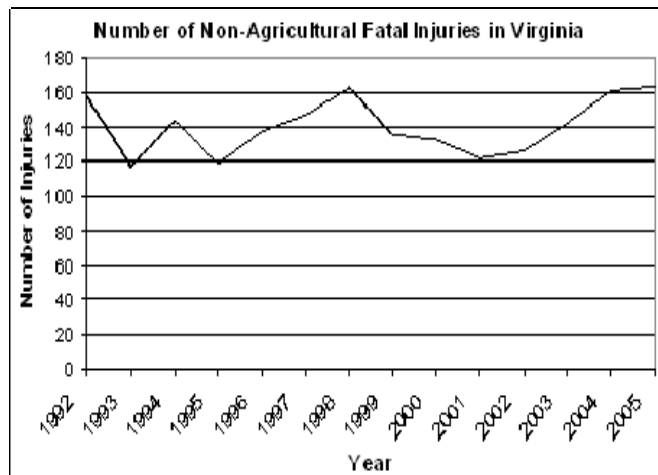
Source: American Red Cross, <http://www.redcross.org/where/chapts.asp#VA>

Say, then, that a butcher shop in central Virginia needs to have two trained employees in order to have someone on staff at all times who is first aid/CPR-trained. Assume that one trained person is the owner, who will be trained the first year, but needs only the refresher courses the following years. The owner also has to train a new employee every year. The first year of courses will cost the shop \$62+\$62=\$124 for the course and \$246.50 for the time, since 17 hours will have to be reallocated from normal activities to training and butchers make, on average, \$14.50/hour² in Virginia. This makes for a total cost of around \$370.50 for the first year. The second and third years will cost the shop around \$274.25³ since the owner will only need a renewal in the CPR training. (The cost of the fourth year, however, will be the same as the first year since

there is no renewal course in first aid training.) Therefore, the proposed amendment will cost the butcher, on average, \$306.33 annually⁴. The construction firm, on the other hand, that needs to train two employees per month, however, will spend a total of \$124 for classes and \$295.80 for the lost 17 hours of work⁵ per month, for a total of \$5037.60 annually⁶. These figures do not include, of course, the lost work time should something unplanned happen to the first aid/CPR-trained employee, making it impossible for that worker to be on site (such as illness, death in the family, etc.) and, therefore, against regulations for the other workers to continue to work until a trained replacement can be found or the employee can return to work.

Ideally, we would then take some weighted average of \$306.33 and \$5037.60 and multiply it by the total number of affected firms to get a total cost of the proposed amendment. However, some firms—particularly small construction firms that regularly move employees from site to site—might choose to satisfy the requirements by contracting with another firm to provide the first aid. Those contractual costs could be small if the firm has an existing contract with the other firm on site, or they could be large if the firm needs to hire a lawyer to draw up a contract "sharing" the first-aid/CPR-trained employee. The lack of information on how many firms are currently in compliance with the proposed regulation and how firms would choose to satisfy the proposed regulation makes it difficult to estimate a total cost of the proposed amendments to Virginia firms.

The benefits of the proposed amendments for citizens and organizations are equally difficult to quantify. In 2005, there were 163 fatal injuries (including 22 due to assaults and violent acts)⁷ and approximately 126 non-fatal injuries⁸ in non-agricultural industry in Virginia.⁹ Below is a graph of the fatal injuries in Virginia from 1992 through 2005. As the graph illustrates, although the number of fatal injuries in 2005 is high, the numbers do not necessarily indicate an increasing trend in the data. The number of non-fatal injuries does not show an increasing trend either.



Source: Department of Labor and Industry, http://www.doli.virginia.gov/whatwedo/coop_prog/research_p1.html

It is difficult to estimate the number of fatalities that would have been avoided had first aid been available on site. There have been two deaths in the past five years where Virginia Occupational Safety and Health Compliance Program (VOSH) inspectors recommended issuing a fatality-related violation for lack of first aid training. Based on this information, the Department estimates that these proposed amendments would save about 1-2 lives every five years.

The Department cites OSHA's 2006 adoption of its Hexavalent Chromium Standard to apply a value of \$6.8 million to each premature fatality avoided.¹⁰ If 1-2 lives are saved every five years, this amendment will result in an annual savings of approximately \$1.36-\$2.72 million. According to the OSHA document, this \$6.8 million figure came from EPA, which used studies on individuals' willingness-to-pay (WTP) to reduce the risk of premature death. These contingent valuation studies normally present respondents with hypothetical fatality risk situations and ask how much they would pay for a particular risk reduction. There are other ways to estimate the value of a statistical life (VSL) and over the past few decades, researchers have developed numerous methodologies for determining the VSL. For a discussion of these analyses, see Viscusi (2006) or Viscusi and Aldy (2003). For the purposes of this analysis, however, we will simply note that \$6.8 million is an average figure in the range of determined VSL values, almost all of which fall between \$1 million to \$20 million.

According to one study, most severely injured patients who die in the first few hours after injury succumb to airway compromise, respiratory failure, or uncontrolled hemorrhage, all of which can be treated using basic first aid measures.¹¹ (Injuries that could cause these problems are crushing injuries, injuries caused by falls from heights such as in construction, injuries caused by machinery in manufacturing, and electric shock.) Of course, under the current regulation, patients will be treated within minutes, but the Department is concerned with the number of minutes it takes to receive treatment. In justifying its 3-4 minute response time interpretation of reasonable accessibility of medical care, OSHA writes that:

Medical literature establishes that, for serious injuries such as those involving stopped breathing, cardiac arrest, or uncontrolled bleeding, first aid treatment must be provided within the first few minutes to avoid permanent medical impairment or death. Accordingly, in workplaces where serious accidents such as those involving falls, suffocation, electrocution, or amputation are possible, emergency medical services must be available within 3-4 minutes, if there is no employee on the site who is trained to render first aid.

In fact, it seems to be widely accepted that medical attention within a few minutes of a serious injury can significantly improve the individual's probability of avoiding death or long-term health consequences such as amputation or permanent damage.

There are also studies that indicate that having a first aid person readily available reduces the risk of serious injury or death. According to the Canadian Red Cross and SMARTRISK, a non-profit organization dedicated to preventing injuries and saving lives, getting trained in first aid can reduce your risk of injury by more than 40 percent.¹² Research conducted by St. John Ambulance found that the number of work-related injuries is reduced by between 20 and 30 percent when workers are trained in first aid.¹³ According to the International Labor Organization Encyclopedia of Occupational Health and Safety, defibrillation administered within four minutes of cardiac arrest yields survival rates of 40 to 50%, versus less than 5% if given later. For chemical eye injuries, immediate flushing with water can save eyesight. For spinal cord injuries, correct immobilization can make the difference between full recovery and paralysis. For hemorrhages, the simple application of a fingertip to a bleeding vessel can stop life-threatening blood loss.¹⁴

The Department argues that most employers are not providing medical care as quickly as they should. The Department of Emergency Medical Services (EMS) statistics indicate that many employers in Virginia are not providing care within four minutes of injury. In 2004, 2005, and 2006 the average EMS response time for all calls was 8.89 minutes, 8.94 minutes, and 8.96 minutes, respectively. The table below provides response time for industrial sites:

Statewide Industrial Site* Response time ("Arrived at Scene" minus "Dispatched")¹⁵			
	2004	2005	2006
1-3 minutes	19.2%	19.3%	20.9%
4-15 minutes	75.1%	73.9%	72.2%
15-100 minutes	5.7%	6.8%	6.9%
Average time in minutes	7.10	7.58	7.34

* "Industrial sites" includes building under construction, dockyard, dry dock, factory building or premises, garage (place of work), industrial yard, loading platform in factory or store, industrial plant, railway yard, shop (place of work), warehouse and workhouse)

It is important to note that we do not know how many of these worksites were high-hazard (although according to the Department, most industrial sites are high-hazard) and we do not know how many of these worksites had a first-aid person

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on staff. In other words, although these numbers give an indication of unacceptably high response times, we do not know for sure that these job sites are out of compliance with the current regulation.

The Department argues, however, that this is not just a compliance issue. They feel that satisfying the 3-4 minute rule from injury to medical care is a near-impossible task for employers, no matter how close the site is to the hospital. Many employers, it argues, believe that they are in compliance with the regulation but in reality, even without the concerns of road congestion or unusually high numbers of accidents in the area, it takes longer to actually get to medical care than employers estimate. Emergency rooms are often crowded and communication with hospital or clinic staff takes additional time.

If it is true that lives will be saved, or that a potentially serious injury could be prevented by passing these amendments, then the amendment does provide significant benefits. These benefits include, but are not limited to, the lives that will be saved. Employers will not only save an experienced worker by reducing the chance of death or serious injury, they will also save financially by reducing their workers' compensation premiums, reducing workers' compensation payments, and reducing short-term disability payments. In addition, it is easy to imagine a loss in productivity due to reduced morale in workers with the death or serious injury of one of their colleagues. If workers lose enough confidence in the speed of medical attention, they might even leave the job, which will require an employer to train a new person for the job. Given that those with job alternatives are often the more skilled or experienced workers, this loss could add a significant cost to an employer.

Another benefit of the proposed amendments is a reduction in enforcement time. To evaluate if a worksite is in compliance, an enforcement officer has to evaluate the time it would take response teams to get to the worksite, which could include driving to the hospital or clinic, perhaps more than once if road congestion or emergency facility staffing at a particular time of day is a concern. The Department estimates that this will save at least 200 man-hours annually, since there are on average 400 first aid violations cited per year and it takes around 30 minutes to verify that there was no rescue squad or other medical attention within 3-4 minute response time. These 200 man-hours do not, of course, include the time it took to verify when the inspector was able to determine that there was medical attention available within 3-4 minutes. Since construction inspectors make approximately \$20.00 per hour¹⁶, this offers a total benefit to taxpayers of \$4000 annually.

In addition, the ambiguity of the three-to-four minute requirement reduces employers' likelihood of compliance and gives employers the opportunity to argue with inspectors about their compliance. The proposed amendments would

make compliance easier to evaluate and easier to enforce. By reducing the time it takes an enforcement officer to evaluate compliance, the proposed amendments will allow officers to evaluate more sites. If officers can evaluate more sites, compliance will improve not only because more non-compliant employers can be caught, but also because it will increase the concern among employers of being evaluated. In addition, the Department argues that employers are more likely to comply when the regulation is unambiguous.

Finally, the proposed amendments change the requirements for worksites containing job classifications or workplace hazards that do not expose employees to serious physical harm or death, such as office settings. One benefit of this amendment is that employers in office settings can save money by not having to be within fifteen minutes of a hospital or have a first aid person on staff. Under the proposed amendment, those employers with low-hazard worksites that are not currently within fifteen minutes of a hospital or clinic will save the costs of training the requisite number of employees in first aid/CPR, which would be somewhere around the \$306.33 or \$5037.60 estimated earlier in this document. (As previously noted, the lack of data on current compliance rates makes it impossible to quantify total savings.) Another benefit is that enforcement officers no longer need to ensure compliance in non-hazardous work settings, which will save further enforcement time. The cost is that workers in those settings might not have immediate access to necessary health care; however, because fifteen minutes is not likely to mitigate the effects of a serious injury, and these workers are not exposed to workplace hazards and not likely to need medical care often, these costs are also not likely to be significant.

Businesses and Entities Affected. According to the Virginia Employment Commission (VEC) fourth quarter data, there were 215,201 employers in Virginia.¹⁷ All of these employers would be potentially affected by the proposed amendments. The Department estimates that for about 65,000 of these employers, the regulation would become less stringent under the proposed amendments, but for about 150,000 of these employers, the regulation would become more stringent.

Localities Particularly Affected. All Virginia localities may have individuals or organizations that would be affected by these amendments.

Projected Impact on Employment. These amendments could reduce employment if employers choose not to hire because of the cost of ensuring that a first-aid-trained person is on staff at all times. This is particularly relevant if an employer hires and sends out mobile work groups. In this case, the cost of training someone in first aid could be too much to merit hiring the other people who would be sent out on the job with the first-aid-trained employee.

Effects on the Use and Value of Private Property. If the cost of training the requisite number of employees in first aid and CPR is onerous to a small business owner, then these amendments could reduce the value of his/her business. In addition, if employers pass the cost onto their consumers (such as the owner of a construction company passing the cost onto homebuyers), then these amendments could moderately increase the cost of some products and services.

Small Businesses: Costs and Other Effects. According to the Virginia Employment Commission (VEC) 2006 fourth quarter data, 214,568 of the 215,201 employers in Virginia have less than 500 employees, so 99.7% of Virginia employers qualify as small businesses.¹⁸ This means that approximately 150,000 small businesses will be affected by the proposed amendments. The cost to small businesses will be the same costs as listed above: the course fee and the opportunity (time) cost of training as many employees in first aid and/or CPR as necessary to ensure that one trained employee is on site at all times, or the cost of developing a contract with a different on-site employer.

On the other hand, the costs above will only apply to small business owners who do not currently have a first aid/CPR-trained person on site and part of those costs could be offset by the money saved from not having to pay workers' compensation or short-term disability if the effects of an accident can be mitigated by faster care. In addition, costs will be reduced if an experienced worker who might have died is saved by faster care and can return to work. For those small businesses with only low-hazard job sites, such as sites devoted solely to office work, costs will be reduced by not having to be concerned with first aid or CPR care at all. (This cost decrease will affect only those sites that are more than 15 minutes away from a hospital, clinic, or infirmary.)

Small Businesses: Alternative Method that Minimizes Adverse Impact. If the only way to ensure workers' access to immediate health care in the case of emergency is to mandate that a first aid/CPR-trained person be on site, then there is no alternative method that minimizes adverse impact.

If a 3-4 minute response time is sufficient, however, and if it is possible to get care from a medical facility within 3-4 minutes, then the problem is not the current regulation, but the fact that employers are not meeting the 3-4 minute requirement of the regulation. One alternative would be to ensure that all employers of workers on high-hazard worksites know that they must be able to provide *treatment* within four minutes no matter the area of the state or the time of day, and that if they cannot meet that standard, they must have a first aid/CPR-trained person on site or suffer the consequences of non-compliance. Currently, employers have a choice. If they are not within the prescribed time/distance from medical care, then they must have a first aid-trained person on site anyway. If no one is currently within the prescribed time/distance from medical care, and work sites

are in compliance, then the only effect of the amendment is to require CPR-training in addition to first-aid training. If, however, there is even one small business that actually is within 3-4 minutes of medical care, and 3-4 minutes is what workers need to be safe, then this amendment imposes a cost to business overall with no benefit except for the additional CPR requirement. In this case, an alternative to the proposed amendment would be simply to add the CPR training requirement to the first aid training requirement if the worksite is not within 3-4 minutes of medical attention. The Department could also put language into the regulation that strongly encourages firms to have a first aid person on site, given the difficulties in providing care within four minutes discussed above.

This alternative will probably increase, not decrease, enforcement time, but it could provide a less costly option to the proposed amendments.

Real Estate Development Costs. The proposed amendments will directly increase costs for those real estate developers who are employers and who were using the near proximity or reasonable access clause in order to comply with current regulations. The cost to real estate developers will be the same costs as listed above: the course fees and the opportunity (time) cost of training as many employees in first aid and/or CPR as necessary to ensure that one trained employee is on site at all times, or the cost of developing a contract with a different on-site employer.

Those costs could be partially offset by the money saved from not having to pay workers' compensation or short-term disability if the effects of an accident can be mitigated by faster care. In addition, costs will be reduced if an experienced worker who might have died is saved by faster care and can return to work. If real estate developers have low-hazard job sites, such as sites devoted solely to office work, then their costs on those sites will be reduced by not having to be concerned with first aid or CPR care at all. (This cost decrease will affect only those sites that are more than 15 minutes away from a hospital, clinic, or infirmary.) Therefore, the cost of the proposed amendments to real estate development is ambiguous.

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Viscusi, W. Kip, "Monetizing the Benefits of Risk and Environmental Regulation," April 2006. AEI-Brookings Joint Center for Regulatory Studies Working Paper 06-09. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=979335

Viscusi, W. Kip and Joseph Aldy, "The Value of a Statistical Life: A Critical Review of Market Estimates Throughout the World," *The Journal of Risk and Uncertainty*, 2003. 27(1): 5-76.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 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. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

¹ Source: U.S. Department of Labor, Occupational Health and Safety Administration interpretations http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=25627

² Source: Bureau of Labor Statistics, http://www.bls.gov/oes/current/oes_va.htm

³ \$62+\$31+\$14.50*12.5

⁴ (\$274.25+\$274.25+\$370.50)/3

⁵ 17*\$17.40/hour earned by construction employees. Source: Bureau of Labor statistics, http://www.bls.gov/oes/current/oes_va.htm#b47-0000

⁶ 12*(124+295.80)

⁷ Source: Department of Labor and Industry, http://www.doli.virginia.gov/whatwedo/coop_prog/pdf/tables/cfoi2005/Table4.pdf

⁸ Source: Bureau of Labor Statistics, <http://www.bls.gov/iif/oshwc/osh/os/pr057va.pdf>

⁹ Because agriculture is not included in either general or construction industry, agricultural employers and employees are not affected by the proposed amendment.

¹⁰ Source: U.S. Department of Labor, Occupational Safety and Health Administration, Occupational Exposure to Hexavalent Chromium, Federal Register 71:10099-10385, February 2006.

¹¹ Source: World Health Organization, <http://www.who.int/bulletin/volumes/84/7/editorial20706html/en/>

¹² Source: SMARTRISK, <http://www.smartrisk.ca/ContentDirector.aspx?tp=1547>

¹³ Source: Northern News Service, http://www.nnsl.com/frames/newspapers/1998-05/may18_98safe5.html

¹⁴ Source: International Labor Organization <http://www.ilo.org/encyclopaedia/?d&nd=857400218&prevDoc=857400218&spack=0001istid%3D010000000400%26listpos%3D0%26lsz%3D1%26nd%3D857000071%26nh%3D2%26>

¹⁵ Source: Department of Labor and Industry, Agency Background Document

¹⁶ This is an average of the Bureau of Labor Statistics wage for Construction and Building Inspectors (http://www.bls.gov/oes/current/oes_va.htm) and the wage advertised on the Department of Labor and Industry site for the Safety/Health Compliance Officer

(http://www.doli.virginia.gov/whoware/employment/doli_jobs.html)

¹⁷ Source: Virginia Community Profile, Virginia Employment Commission (VEC), 2007.

<http://velma.virtuallmi.com/admin/gsipub/htmlarea/uploads/pdf/communityprofiles/5101000000.pdf>

¹⁸ Source: Virginia Community Profile, Virginia Employment Commission (VEC), 2007.

<http://velma.virtuallmi.com/admin/gsipub/htmlarea/uploads/pdf/communityprofiles/5101000000.pdf>

Agency Response to the Economic Impact Analysis: The Department of Labor and Industry has no additional comment in response to the economic impact analysis.

Summary:

The proposed amendments change the medical services and first aid regulations for general industry and for the construction industry such that in high hazard industries and on worksites containing job classifications or workplace hazards that could potentially expose employees to serious physical harm or death, employers must designate and train at least one employee during all work shifts to render immediate first aid and cardiopulmonary resuscitation (CPR). The person or persons would have to have a valid, current certificate in first aid and CPR training from the U.S. Bureau of Mines, the American Red Cross, or equivalent training that can be verified by documentary evidence. Alternatively, an employer would be allowed to make written arrangements with and reasonably rely on another contractor or employer on the same job site to provide the first aid/CPR-trained employees. The proposed amendment would not apply to worksites containing job classifications or workplace hazards that do not expose employees to serious physical harm or death (e.g., office settings).

16VAC25-90-1910.151. Medical services and first aid. (Repealed.)

~~(a) The employer shall ensure the ready availability of medical personnel for advice and consultation on matters of plant health.~~

~~(b) In the absence of an infirmary, clinic, or hospital in near proximity to the workplace which is used for the treatment of all injured employees, a person or persons shall be adequately trained to render first aid. Adequate first aid supplies shall be readily available.~~

~~(c) Where the eyes or body of any person may be exposed to injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body shall be provided within the work area for immediate emergency use.~~

~~Appendix A to §1910.151—First aid kits (Non-Mandatory)~~

~~First aid supplies are required to be readily available under paragraph §1910.151(b). An example of the minimal contents of a generic first aid kit is described in American National Standard (ANSI) Z308.1-1998 “Minimum Requirements for Workplace First Aid Kits.” The contents of the kit listed in the ANSI standard should be adequate for small worksites. When larger operations or multiple operations are being conducted at the same location, employers should determine the need for additional first aid kits at the worksite, additional types of first aid equipment and supplies and additional quantities and types of supplies and equipment in the first aid kits.~~

~~In a similar fashion, employers who have unique or changing first aid needs in their workplace may need to enhance their first aid kits. The employer can use the OSHA 200 log, OSHA 101’s or other reports to identify these unique problems. Consultation from the local fire/rescue department, appropriate medical professional, or local emergency room may be helpful to employers in these circumstances. By assessing the specific needs of their workplace, employers can ensure that reasonably anticipated supplies are available. Employers should assess the specific needs of their worksite periodically and augment the first aid kit appropriately.~~

~~If it is reasonably anticipated that employees will be exposed to blood or other potentially infectious materials while using first aid supplies, employers are required to provide appropriate personal protective equipment (PPE) in compliance with the provisions of the Occupational Exposure to Blood-borne Pathogens standard, §1910.1030(d)(3) (56 FR 64175). This standard lists appropriate PPE for this type of exposure, such as gloves, gowns, face shields, masks, and eye protection.~~

~~CHAPTER 95
MEDICAL SERVICES AND FIRST AID STANDARDS
FOR GENERAL INDUSTRY~~

~~**16VAC25-95-10. Medical services and first aid standards for general industry.**~~

~~A. The employer shall ensure the ready availability of medical personnel for advice and consultation on matters of plant health.~~

B. A person or persons shall be designated by the employer and adequately trained to render immediate first aid and cardio pulmonary resuscitation (CPR) during all workshifts on worksites containing job classifications or workplace hazards that could potentially expose employees to serious physical harm or death. The designated person or persons shall have a valid, current certificate in first aid and CPR training from the U.S. Bureau of Mines, the American Red Cross, or the National Safety Council, or equivalent training that can be verified by documentary evidence, and shall be available at the worksite to render first aid and CPR to injured or ill employees.

C. Covered employers are permitted to make written arrangements with and reasonably rely on another contractor or employer on the same job site or establishment to provide designated employees to serve as first aid and CPR responders for employees of the covered employer.

D. Employers of mobile work crews (i.e., crews that travel to more than one worksite per day) of two or more employees that assign employees to travel to worksites or engage in work activities that could potentially expose those employees to serious physical harm or death shall either:

1. Assure that at least one employee on the mobile crew is designated and adequately trained to render immediate first aid and CPR during all workshifts; or
2. Comply with subsection C of this section.

E. Employers of individual mobile employees (i.e., an employee who travels alone to more than one worksite per day) that assign employees to travel to worksites or engage in work activities that could potentially expose those employees to serious physical harm or death shall either:

1. Assure that the mobile employee is adequately trained to self-administer first aid;
2. Comply with subsection C of this section; or
3. Assure that their employee has access to a communication system that will allow them to immediately request medical assistance through a 911 emergency call or comparable communication system.

F. Subsections A through E of this section do not apply to worksites that do not contain job classifications or workplace hazards that expose employees to serious physical harm or death.

G. Adequate first aid supplies shall be readily available.

H. Where the eyes or body of any person may be exposed to injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body shall be provided within the work area for immediate emergency use.

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16VAC25-175-1926.50. Medical services and first aid. (Repealed.)

(a) ~~The employer shall insure the availability of medical personnel for advice and consultation on matters of occupational health.~~

(b) ~~Provisions shall be made prior to commencement of the project for prompt medical attention in case of serious injury.~~

(c) ~~In the absence of an infirmary, clinic, hospital, or physician, that is reasonably accessible in terms of time and distance to the worksite, which is available for the treatment of injured employees, a person who has a valid certificate in first aid training from the U.S. Bureau of Mines, the American Red Cross, or equivalent training that can be verified by documentary evidence, shall be available at the worksite to render first aid.~~

(d)(1) ~~First aid supplies shall be easily accessible when required.~~

(2) ~~The contents of the first aid kit shall be placed in a weatherproof container with individual sealed packages for each type of item, and shall be checked by the employer before being sent out on each job and at least weekly on each job to ensure that the expended items are replaced.~~

(e) ~~Proper equipment for prompt transportation of the injured person to a physician or hospital, or a communication system for contacting necessary ambulance service, shall be provided.~~

(f) ~~In areas where 911 is not available, the telephone numbers of the physicians, hospitals, or ambulances shall be conspicuously posted.~~

(g) ~~Where the eyes or body of any person may be exposed to injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body shall be provided within the work area for immediate emergency use.~~

Appendix A to §1926.50 — First aid Kits (Non-Mandatory)

~~First aid supplies are required to be easily accessible under paragraph §1926.50(d)(1). An example of the minimal contents of a generic first aid kit is described in American National Standard (ANSI) Z308.1 1978 “Minimum Requirements for Industrial Unit Type First aid Kits”. The contents of the kit listed in the ANSI standard should be adequate for small work sites. When larger operations or multiple operations are being conducted at the same location, employers should determine the need for additional first aid kits at the worksite, additional types of first aid equipment and supplies and additional quantities and types of supplies and equipment in the first aid kits.~~

~~In a similar fashion, employers who have unique or changing first aid needs in their workplace, may need to enhance their first aid kits. The employer can use the OSHA 200 log, OSHA 101's or other reports to identify these unique~~

~~problems. Consultation from the local Fire/Rescue Department, appropriate medical professional, or local emergency room may be helpful to employers in these circumstances. By assessing the specific needs of their workplace, employers can ensure that reasonably anticipated supplies are available. Employers should assess the specific needs of their worksite periodically and augment the first aid kit appropriately.~~

~~If it is reasonably anticipated employees will be exposed to blood or other potentially infectious materials while using first aid supplies, employers should provide personal protective equipment (PPE). Appropriate PPE includes gloves, gowns, face shields, masks and eye protection (see “Occupational Exposure to Blood borne Pathogens”, 29 CFR 1910.1030(d)(3)) (56 FR 64175).~~

CHAPTER 177

MEDICAL SERVICES AND FIRST AID STANDARDS FOR THE CONSTRUCTION INDUSTRY

16VAC25-177-10. Medical services and first aid standards for the construction industry.

A. The employer shall ensure the availability of medical personnel for advice and consultation on matters of occupational health.

B. Provisions shall be made prior to commencement of the project for prompt medical attention in case of serious injury.

C. A person or persons shall be designated by the employer and adequately trained to render immediate first aid and cardio pulmonary resuscitation (CPR) during all workshifts on worksites containing job classifications or workplace hazards that could potentially expose employees to serious physical harm or death. The designated person or persons shall have a valid, current certificate in first aid and CPR training from the U.S. Bureau of Mines, the American Red Cross, or the National Safety Council, or equivalent training that can be verified by documentary evidence, and shall be available at the worksite to render first aid and CPR to injured or ill employees.

D. Covered employers are permitted to make written arrangements with and reasonably rely on another contractor or employer on the same job site or establishment to provide designated employees to serve as first aid and CPR responders for employees of the covered employer.

E. Employers of mobile work crews (i.e., crews that travel to more than one worksite per day) of two or more employees that assign employees to travel to worksites or engage in work activities that could potentially expose those employees to serious physical harm or death shall either:

1. Assure that at least one employee on the mobile crew is designated and adequately trained to render immediate first aid and CPR during all workshifts; or

2. Comply with subsection D of this section.

F. Employers of individual mobile employees (i.e., an employee who travels alone to more than one worksite per day) that assign employees to travel to worksites or engage in work activities that could potentially expose those employees to serious physical harm or death shall either:

1. Assure that the mobile employee is adequately trained to self-administer first aid;

2. Comply with subsection D of this section; or

3. Assure that their employee has access to a communication system that will allow them to immediately request medical assistance through a 911 emergency call or comparable communication system.

G. Subsections A through F of this section do not apply to worksites that do not contain job classifications or workplace hazards that expose employees to serious physical harm or death.

H. Adequate first aid supplies shall be readily available.

I. The contents of the first aid kit shall be placed in a weatherproof container with individual sealed packages for each type of item and shall be checked by the employer before being sent out on each job and at least weekly on each job to ensure that the expended items are replaced.

J. A communication system for contacting necessary ambulance service shall be provided.

K. In areas where 911 is not available, the telephone numbers of the physicians, hospitals, or ambulances shall be conspicuously posted.

L. Where the eyes or body of any person may be exposed to injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body shall be provided within the work area for immediate emergency use.

VA.R. Doc. No. R07-05; Filed September 9, 2008, 2:09 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Final Regulation

REGISTRAR'S NOTICE: The following model public participation guidelines are exempt from Article 2 (§2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia pursuant to Chapter 321 of the 2008 Acts of Assembly.

Titles of Regulations: 18VAC65-10. Public Participation Guidelines (repealing 18VAC65-10-10 through 18VAC65-10-120).

18VAC65-11. Public Participation Guidelines (adding 18VAC65-11-10 through 18VAC65-11-110).

Statutory Authority: §§2.2-4007.02 and 54.1-2400 of the Code of Virginia.

Effective Date: October 29, 2008.

Agency Contact: Lisa Russell Hahn, Executive Director, Board of Funeral Directors and Embalmers, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4424, FAX (804) 527-4471, or email lisa.hahn@dhp.virginia.gov.

Summary:

The regulations comply with the legislative mandate (Chapter 321, 2008 Acts of Assembly) that agencies adopt model public participation guidelines issued by the Department of Planning and Budget by December 1, 2008. Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations.

This regulatory action repeals the current public participation guidelines and promulgates new public participation guidelines as required by Chapter 321 of the 2008 Acts of Assembly. Highlights of the public participation guidelines include (i) providing for the establishment and maintenance of notification lists of interested persons and specifying the information to be sent to such persons; (ii) providing for public comments on regulatory action; (iii) establishing the time period during which public comments shall be accepted; (iv) providing that the plan to hold a public meeting shall be indicated in any notice of intended regulatory action; (v) providing for the appointment, when necessary, of regulatory advisory panels to provide professional specialization or technical assistance and negotiated rulemaking panels if a regulatory action is expected to be controversial; and (vi) providing for the periodic review of regulations.

**CHAPTER 11
PUBLIC PARTICIPATION GUIDELINES**

**Part I
Purpose and Definitions**

18VAC65-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Board of Funeral Directors and Embalmers. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of

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the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

18VAC65-11-20. Definitions.

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

"Administrative Process Act" means Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the Board of Funeral Directors and Embalmers, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by §2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at www.townhall.virginia.gov, which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§2.2-4031 et seq.) of the Administrative Process Act.

Part II

Notification of Interested Persons

18VAC65-11-30. Notification list.

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

18VAC65-11-40. Information to be sent to persons on the notification list.

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 18VAC65-11-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).

2. A notice of the comment period on a proposed, a repropoed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.

3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to §2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

Part III

Public Participation Procedures

18VAC65-11-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).

2. For a minimum of 60 calendar days following the publication of a proposed regulation.

3. For a minimum of 30 calendar days following the publication of a repropoed regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with §2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to §2.2-4012 E of the Code of Virginia.

18VAC65-11-60. Petition for rulemaking.

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;

2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and

3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to §2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

18VAC65-11-70. Appointment of regulatory advisory panel.

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or

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2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

18VAC65-11-80. Appointment of negotiated rulemaking panel.

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. An NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or

3. The agency determines that resolution of a controversy is unlikely.

18VAC65-11-90. Meetings.

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with §2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

18VAC65-11-100. Public hearings on regulations.

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;

2. The Governor directs the agency to hold a public hearing; or

3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also

notify those persons who requested a hearing under subdivision C 3 of this section.

18VAC65-11-110. Periodic review of regulations.

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to §2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and

2. The requirements in §2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

VA.R. Doc. No. R09-1475; Filed September 9, 2008, 4:22 p.m.

BOARD OF HEALTH PROFESSIONS

Final Regulation

REGISTRAR'S NOTICE: The following model public participation guidelines are exempt from Article 2 (§2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia pursuant to Chapter 321 of the 2008 Acts of Assembly.

Titles of Regulations: **18VAC75-10. Public Participation Guidelines (repealing 18VAC75-10-10 through 18VAC75-10-120).**

18VAC75-11. Public Participation Guidelines (adding 18VAC75-11-10 through 18VAC75-11-110).

Statutory Authority: §§2.2-4007.02 and 54.1-2400 of the Code of Virginia.

Effective Date: October 29, 2008.

Agency Contact: Elizabeth A. Carter, Ph.D., Executive Director, Board of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4426, FAX (804) 527-4466, or email elizabeth.carter@dhp.virginia.gov.

Summary:

The regulations comply with the legislative mandate (Chapter 321, 2008 Acts of Assembly) that agencies adopt model public participation guidelines issued by the Department of Planning and Budget by December 1, 2008. Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations.

This regulatory action repeals the current public participation guidelines and promulgates new public participation guidelines as required by Chapter 321 of the 2008 Acts of Assembly. Highlights of the public participation guidelines include (i) providing for the establishment and maintenance of notification lists of interested persons and specifying the information to be sent to such persons; (ii) providing for public comments on regulatory action; (iii) establishing the time period during which public comments shall be accepted; (iv) providing that the plan to hold a public meeting shall be indicated in any notice of intended regulatory action; (v) providing for the appointment, when necessary, of regulatory advisory panels to provide professional specialization or technical assistance and negotiated rulemaking panels if a regulatory action is expected to be controversial; and (vi) providing for the periodic review of regulations.

CHAPTER 11 PUBLIC PARTICIPATION GUIDELINES

Part I Purpose and Definitions

18VAC75-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Board of Health Professions. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

18VAC75-11-20. Definitions.

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

"Administrative Process Act" means Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the Board of Health Professions, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by §2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of

a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at www.townhall.virginia.gov, which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§2.2-4031 et seq.) of the Administrative Process Act.

Part II Notification of Interested Persons

18VAC75-11-30. Notification list.

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making

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a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

18VAC75-11-40. Information to be sent to persons on the notification list.

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 18VAC75-11-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).
2. A notice of the comment period on a proposed, a repropoed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.
3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to §2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

Part III Public Participation Procedures

18VAC75-11-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).
2. For a minimum of 60 calendar days following the publication of a proposed regulation.
3. For a minimum of 30 calendar days following the publication of a repropoed regulation.
4. For a minimum of 30 calendar days following the publication of a final adopted regulation.
5. For a minimum of 30 calendar days following the publication of a fast-track regulation.
6. For a minimum of 21 calendar days following the publication of a notice of periodic review.
7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with §2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to §2.2-4012 E of the Code of Virginia.

18VAC75-11-60. Petition for rulemaking.

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;
2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and
3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to §2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

18VAC75-11-70. Appointment of regulatory advisory panel.

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

18VAC75-11-80. Appointment of negotiated rulemaking panel.

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. An NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or
3. The agency determines that resolution of a controversy is unlikely.

18VAC75-11-90. Meetings.

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with §2.2-3707 D of the Code of Virginia allowing for

contemporaneous notice to be provided to participants and the public.

18VAC75-11-100. Public hearings on regulations.

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;
2. The Governor directs the agency to hold a public hearing; or
3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

18VAC75-11-110. Periodic review of regulations.

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to §2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and
2. The requirements in §2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

VA.R. Doc. No. R09-1477; Filed September 9, 2008, 4:23 p.m.

Regulations

BOARD OF PHARMACY

Final Regulation

REGISTRAR'S NOTICE: The following model public participation guidelines are exempt from Article 2 (§2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia pursuant to Chapter 321 of the 2008 Acts of Assembly.

Titles of Regulations: **18VAC110-10. Public Participation Guidelines (repealing 18VAC110-10-10 through 18VAC110-10-120).**

18VAC110-11. Public Participation Guidelines (adding 18VAC110-11-10 through 18VAC110-11-110).

Statutory Authority: §§2.2-4007.02 and 54.1-2400 of the Code of Virginia.

Effective Date: October 29, 2008.

Agency Contact: Elizabeth Scott Russell, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4456, FAX (804) 527-4472, or email scotti.russell@dhp.virginia.gov.

Summary:

The regulations comply with the legislative mandate (Chapter 321, 2008 Acts of Assembly) that agencies adopt model public participation guidelines issued by the Department of Planning and Budget by December 1, 2008. Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations.

This regulatory action repeals the current public participation guidelines and promulgates new public participation guidelines as required by Chapter 321 of the 2008 Acts of Assembly. Highlights of the public participation guidelines include (i) providing for the establishment and maintenance of notification lists of interested persons and specifying the information to be sent to such persons; (ii) providing for public comments on regulatory action; (iii) establishing the time period during which public comments shall be accepted; (iv) providing that the plan to hold a public meeting shall be indicated in any notice of intended regulatory action; (v) providing for the appointment, when necessary, of regulatory advisory panels to provide professional specialization or technical assistance and negotiated rulemaking panels if a regulatory action is expected to be controversial; and (vi) providing for the periodic review of regulations.

CHAPTER 11 PUBLIC PARTICIPATION GUIDELINES

Part I Purpose and Definitions

18VAC110-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Board of Pharmacy. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

18VAC110-11-20. Definitions.

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

"Administrative Process Act" means Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the Board of Pharmacy, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by §2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at www.townhall.virginia.gov, which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§2.2-4031 et seq.) of the Administrative Process Act.

Part II Notification of Interested Persons

18VAC110-11-30. Notification list.

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be

notified electronically, receive documents through a postal carrier, or be deleted from the list.

18VAC110-11-40. Information to be sent to persons on the notification list.

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 18VAC110-11-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).
2. A notice of the comment period on a proposed, a repropoed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.
3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to §2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

Part III Public Participation Procedures

18VAC110-11-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).

2. For a minimum of 60 calendar days following the publication of a proposed regulation.

3. For a minimum of 30 calendar days following the publication of a repropoed regulation.

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4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with §2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to §2.2-4012 E of the Code of Virginia.

18VAC110-11-60. Petition for rulemaking.

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;
2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and
3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to §2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

18VAC110-11-70. Appointment of regulatory advisory panel.

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or

when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

18VAC110-11-80. Appointment of negotiated rulemaking panel.

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. An NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or

3. The agency determines that resolution of a controversy is unlikely.

18VAC110-11-90. Meetings.

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with §2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

18VAC110-11-100. Public hearings on regulations.

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;

2. The Governor directs the agency to hold a public hearing; or

3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

18VAC110-11-110. Periodic review of regulations.

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to §2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and

2. The requirements in §2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

VA.R. Doc. No. R09-1485; Filed September 9, 2008, 4:20 p.m.

GOVERNOR

EXECUTIVE ORDER NUMBER 75 (2008)

DECLARATION OF A STATE OF EMERGENCY IN SUPPORT OF THE EMERGENCY MANAGEMENT ASSISTANCE COMPACT TO RESPOND TO THE IMPACT OF HURRICANE GUSTAV IN THE GULF COAST STATES

On August 29, 2008, I verbally declared a state of emergency to exist for the Commonwealth in support of the Emergency Management Assistance Compact (EMAC), of which the Commonwealth of Virginia is a member, to assist the Gulf Coast States respond to and recover from the impact of Hurricane Gustav. In accordance with §44-146.28:1, the Commonwealth will provide assistance to the fullest extent possible to the impacted states that suffer significant damages from Hurricane Gustav. Moreover, Hurricane Gustav could have far ranging effects throughout the nation, including the Commonwealth.

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 29, 2008, wherein I proclaimed that a state of emergency exists and directed that appropriate assistance be rendered by agencies of the state government to respond to needs in the impacted states to alleviate adverse conditions created by the hurricane. Pursuant to §44-75.1 A 3 and A 4 of the Code of Virginia, I directed that the Virginia National Guard be called forth to state duty to assist in providing such aid. This shall include such functions as 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 measures:

A. The limited implementation by agencies of the state and local governments of the Commonwealth of Virginia Emergency Operations Plan (COVEOP), as amended along with other appropriate state agency plans.

B. Limited activation of the Virginia Emergency Operations Center (VEOC) and Virginia Emergency Response Team (VERT) to coordinate the provision of assistance to the impacted Gulf states. I am directing that the VEOC and

VERT coordinate state operations in support of the EMAC agreement, other mission assignments to agencies designated in the Commonwealth of Virginia Emergency Operations Plan (COVEOP) and other measures that may be identified by the State Coordinator of Emergency Management, in consultation with the Secretary of Public Safety, which are needed to provide assistance for the preservation of life, protection of property, and implementation of recovery activities.

C. The activation, implementation and coordination of appropriate mutual aid agreements and compacts, including the Emergency Management Assistance Compact (EMAC), 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 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.

D. The authorization of the Departments of State Police, Transportation and Motor Vehicles to grant temporary overweight, over width, registration, or license exemptions to all carriers transporting essential commodities in and through any area of the Commonwealth in order to support the emergency conditions, regardless of their point of origin or destination.

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-Semi trailer (4 Axles)	64,500 Pounds
Tractor-Semi trailer (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 over width loads, up to a maximum of 12 feet, must follow Virginia Department of Motor Vehicles (VDMV) hauling permit and safety guidelines.

In addition to described overweight/over width 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/over width transportation privileges as well as the regulatory exemption provided by §52-8.4 A of the Code of Virginia, and implemented in 19VAC 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.

E. 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.

F. 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.

G. 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.

H. I hereby authorize the Superintendent of Public Instruction to issue such guidance to local school divisions as may be necessary to facilitate enrollment of students displaced by Hurricane Gustav.

I. The temporary waiver, for a period of 90 days, of the enforcement by the Board of Pharmacy of statutory and regulatory provisions which, in the judgment of the Director of the Department of Health Professions, impede the ability of Virginia pharmacies to provide assistance to patients who have been displaced by the effects of Hurricane Gustav.

J. The following conditions apply to the deployment of the Virginia National Guard:

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 such equipment as may be necessary or desirable to assist in alleviating the human suffering and damage to property.

2. Pursuant to §52-6 of the Code of Virginia, I authorize the Superintendent of State Police to appoint Virginia Army and Air National Guard personnel called to state active duty as additional police officers as necessary. 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 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 in performing these missions shall be paid from state funds.

K. The activation of the statutory provisions in §59.1-525 et. Seq. of the Code of Virginia related to price gouging. Price gouging at any time is unacceptable. Price gouging is even more reprehensible after a natural disaster. I have directed all applicable executive branch agencies to take immediate action to address any verified reports of price gouging of necessary goods or services. I make the same request of the Office of Attorney General and appropriate local officials.

L. I hereby authorize the heads of executive branch agencies, acting when appropriate on behalf of their regulatory boards, to waive any state requirement or regulation for which the federal government has issued a waiver of the corresponding federal or state regulation based on the impact of Hurricane Gustav.

M. I hereby authorize the presidents of colleges and universities in the Commonwealth to waive the requirements of any state law or regulation for good cause to facilitate enrollment of students displaced by Hurricane Gustav.

N. A state of emergency exists for the Commonwealth in support of the proper management, care and support of persons who may be displaced by Hurricane Gustav, evacuated from states impacted by Hurricane Gustav, and relocated to the Commonwealth (Evacuees). These evacuees will require a variety of services including, but not limited to health and medical care, social services, transportation and security services. I hereby order the following measures:

1. Designation of physicians, nurses, and other licensed and non-licensed health care providers and other individuals as well as hospitals, nursing facilities and other licensed and non-licensed health care organizations and other private entities by agencies of the Commonwealth, including but not limited to the Department of Health, Department of Mental Health, Mental Retardation and Substance Abuse

Services, Department of Emergency Management, Department of Transportation, Department of State Police, Department of Motor Vehicles, and Department of Social Services, as representatives of the Commonwealth engaged in emergency services activities, at sites designated by the Commonwealth, within the meaning of the immunity provisions of §44-146.23 (a) of the Code of Virginia, in the performance of their disaster-related mission assignments.

2. During the next 120 days, The Director of the Department of Health Professions shall issue temporary licenses, registrations, and certifications to practice in the Commonwealth, for a period not to exceed one year, to qualified health care practitioners who are displaced residents of Hurricane Gustav affected states, who hold like unrestricted licenses, registrations, or certifications in their resident states, and who may be unable to furnish or have furnished on their behalf complete documentation of their credentials and license status as otherwise required by Virginia law or regulation. The Director shall also have authority to defer the payment of licensing fees. Any license, registration or certification so issued may be revoked by for cause without a hearing by the Director.

O. 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 §44-146.24 of the Code of Virginia, other than costs defined in Item 5 of the paragraphs above pertaining to the Virginia National Guard, in performing these missions shall be paid out of the sum sufficient appropriation or other funding as approved by DPB for Disaster Planning and Operations contained in the Appropriation Act. In addition, up to \$25,000 shall be made available to VDEM for Response and Recovery Operations with the Department of Planning and Budget overseeing the release of these funds.

This Executive Order shall be effective August 29, 2008, and shall remain in full force and effect until June 30, 2009, 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 4th day of September, 2008.

/s/ Timothy M. Kaine
Governor

EXECUTIVE ORDER NUMBER 76 (2008)**DECLARATION OF A STATE OF EMERGENCY FOR THE COMMONWEALTH OF VIRGINIA DUE TO THE THREAT OF SIGNIFICANT FLOODING AND WIND DAMAGE CAUSED BY HURRICANE HANNA**

On September 4, 2008, I verbally declared a state of emergency to exist for the Commonwealth of Virginia based on current forecasts that indicate that Hurricane Hanna could cause damaging high winds, flash flooding, and possible tornadoes throughout the eastern and southeastern portion of the state. The National Weather Service forecasts that Hanna will follow a north-northwest track and affect much of Virginia during the next 48 hours resulting in the potential for significant rainfall causing river flooding and high wind damage in Virginia.

The health and general welfare of the citizens of the Commonwealth require that state action be taken to help alleviate the conditions caused by this situation. The potential effects of Hanna constitute 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 September 4, 2008, wherein I proclaim that a state of emergency exists and direct 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 the Commonwealth of Virginia Emergency Operations Plan (COVEOP), as amended along with other appropriate state agency plans.

B. Full activation of the Virginia Emergency Operations Center (VEOC) and Virginia Emergency Response Team (VERT). Furthermore, I am directing that the VEOC and VERT coordinate state operations in support of potential affected localities and the Commonwealth, to include issuing mission assignments to agencies designated in the Commonwealth of Virginia Emergency Operations Plan (COVEOP) and others that may be identified by the State Coordinator of Emergency Management, in consultation with the Secretary of Public Safety, which are needed to provide for the preservation of life, protection of property, and implementation of recovery activities.

C. The authorization to assume control over the Commonwealth's state-operated telecommunications systems, as required by the State Coordinator of Emergency Management, in coordination with the Virginia Information Technology Agency, and with the consultation of the Secretary of Public Safety, making all systems assets available for use in providing adequate communications, intelligence and warning capabilities for the event, pursuant to §44-146.18 of the Code of Virginia.

D. The evacuation of areas threatened or stricken by flooding or other effects 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 (EMAC), and the authorization of the State Coordinator of Emergency Management to enter into any other supplemental

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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, over width, registration, or license exemptions to all carriers transporting essential emergency relief supplies or providing restoration of utilities (electricity, gas, phone, water, wastewater, and cable) in and through any area of the Commonwealth in order to support the disaster response and recovery, regardless of their point of origin or destination.

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 over width loads, up to a maximum of 12 feet, must follow Virginia Department of Motor Vehicles (DMV) hauling permit and safety guidelines.

In addition to described overweight/over width 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/over width transportation privileges as well as the regulatory exemption provided by §52-8.4 A of the Code of Virginia, and implemented in

19VAC 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 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.

H. 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. Upon my approval, the costs incurred by state agencies and other agencies in performing mission assignments through the VEOC of the Commonwealth as defined herein and in §44-146.24 of the Code of Virginia, in performing these missions shall be paid out of the sum sufficient appropriation for Disaster Planning and Operations contained in Item 54, Chapter 879, 2008 Acts of Assembly.

L. 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.

M. The temporary waiver, for a period of 90 days, of the enforcement by the Board of Pharmacy of statutory and regulatory provisions which, in the judgment of the Director of the Department of Health Professions, impede the ability of Virginia pharmacies to provide assistance to patients who have been displaced by the effects of Hurricane Hanna.

N. The activation of the statutory provisions in §59.1-525 et. Seq. of the Code of Virginia related to price gouging. Price gouging at any time is unacceptable. Price gouging is even more reprehensible after a natural disaster. I have directed all applicable executive branch agencies to take immediate action to address any verified reports of price gouging of necessary goods or services. I make the same request of the Office of Attorney General and appropriate local officials.

O. I hereby authorize the heads of executive branch agencies, acting when appropriate on behalf of their regulatory boards, to waive any state requirement or regulation for which the federal government has issued a waiver of the corresponding federal or state regulation based on the impact of Hurricane Hanna.

P. 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 the Superintendent of State Police to appoint Virginia Army and Air National Guard personnel called to state active duty as additional police officers as deemed necessary. 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.

Q. 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

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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 and /or Federal funds. In addition, up to \$100,000 shall be made available for state response and recovery operations and incident documentation with the Department of Planning and Budget overseeing the release of these funds.

This Executive Order shall be effective September 4, 2008 and shall remain in full force and effect until June 30, 2010 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 4th Day of September, 2008.

/s/ Timothy M. Kaine
Governor

GENERAL NOTICES/ERRATA

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

2007 Annual Report, Agricultural Stewardship Act

The Commissioner of Agriculture and Consumer Services announces the availability of the annual report of the Agricultural Stewardship Act entitled "Virginia Agricultural Stewardship Act Annual Report, April 1, 2007 – March 31, 2008: A Positive Approach." Copies of this report can be obtained by contacting Joyce Knight at (804) 786-3538 or email joyce.knight@vdacs.virginia.gov. A written request may be sent to the address below. Copies of the annual report are available without charge.

Contact Information: Joyce Knight, Virginia Department of Agriculture and Consumer Services, Office of Policy, Planning, and Research, 102 Governor Street, Suite 219, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3538 or email joyce.knight@vdacs.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Consent Order - VSE Corporation

An enforcement action has been proposed for VSE Corporation for alleged violations in Caroline County at the VSE Ladysmith Blast and Paint Facility. The consent order describes a settlement to resolve hazardous waste violations. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Stephanie Bellotti will accept comments at sabellotti@deq.virginia.gov, FAX (703) 583-3821, or by postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from September 30, 2008, through October 30, 2008.

Restore Water Quality in Levisa Fork

Public meeting location: Appalachian School of Law, Grundy, Virginia, on October 9, 2008, from 6 p.m. to 8 p.m.

Purpose of notice: The Virginia Department of Environmental Quality and the Department of Conservation and Recreation are announcing a study to restore water quality, a public comment opportunity, and a public meeting.

Meeting description: First public meeting on a study to restore water quality.

Description of study: DEQ is working to identify sources of pollutants affecting the aquatic organisms and sources of bacteria and PCB contamination in the waters of the Levisa Fork including Slate Creek. The "impaired" stream segments are estimated to be approximately 41 miles of the Levisa Fork and Slate Creek. The stream is impaired for failing to meet the aquatic life use (benthic impairment) based on violations

of the general standard for aquatic organisms and failure to meet the recreational use because of fecal coliform bacteria violations. Levisa Fork was also found to have elevated levels of polychlorinated biphenyl (PCBs) in fish tissue. The bacteria impairment extends from the mainstem of the Levisa Fork headwaters downstream to the Slate Creek confluence and from the Bull Creek confluence downstream to the Kentucky state line. The bacteria impairment also includes Slate Creek from the Upper Rockhouse Branch confluence downstream to the confluence with Levisa Fork. The benthic impairment extends from the mainstem of the Levisa Fork at the confluence with Garden Creek downstream to the confluence of Bull Creek and from the Rocklick Branch confluence downstream to the Kentucky state line. The benthic impairment also includes Slate Creek the mainstem from the Upper Rockhouse Branch confluence downstream to the confluence with Levisa Fork. The PCB impairment begins at the headwaters and continues downstream to the Kentucky state line and includes Garden Creek from the confluence of Right Fork downstream to the confluence with Levisa Fork.

During the study, the pollutants impairing the aquatic community will be identified and total maximum daily loads, or TMDLs, developed for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. DEQ will also determine the sources of bacteria contamination and develop a TMDL for bacteria. To restore water quality, contamination levels must be reduced to the TMDL amount.

How a decision is made: The development of a TMDL includes public meetings and a public comment period once the study report is drafted. After public comments have been considered and addressed, DEQ will submit the TMDL report to the U.S. Environmental Protection Agency for approval.

How to comment: DEQ accepts written comments by email, fax or postal mail. Written comments should include the name, address and telephone number of the person commenting and be received by DEQ during the comment period, October 9, 2008, to November 10, 2008. DEQ also accepts written and oral comments at the public meeting announced in this notice.

To review fact sheets: Fact sheets are available on the impaired waters from the contacts below or on the DEQ website at www.deq.virginia.gov/tmdl.

Contact for additional information: Shelley D. Williams, Regional TMDL Coordinator, Virginia Department of Environmental Quality, Southwest Regional Office, 355 Deadmore Street, P.O. Box 1688, Abingdon, VA 24212-1688, telephone (276) 676-4845, FAX (276) 676-4899, or email sdwilliams@deq.virginia.gov.

General Notices/Errata

Total Maximum Daily Loads - Cub Creek, Turnip Creek, Buffalo Creek, Little Cub Creek, Big Cub Creek

The Department of Conservation and Recreation and the Department of Environmental Quality (DEQ) seek written and oral comments from interested persons on the development of an implementation plan (IP) for bacteria total maximum daily loads (TMDLs) on the following impaired stream segments - 14.21 miles of Cub Creek, 2.7 miles of Turnip Creek, 2.34 miles of Buffalo Creek, 2.88 miles of Buffalo Creek (UT) and 8.53 miles of Little Cub Creek, Big Cub Creek, and Cub Creek segment from Big Cub to Roanoke River. The impaired stream segments are all tributaries to the Staunton River, and are located in the Lower Roanoke River Basin in Appomattox and Charlotte Counties in Virginia.

TMDLs of these impaired segments were approved by EPA on June 22, 2006, a copy of which can be found on DEQ's website at:

www.deq.virginia.gov/tmdl/apptmdls/roankrvr/staunton.pdf.

Section 62.1-44.19:7 C of the Code of Virginia requires the development of an IP for approved TMDLs. The IP should provide measurable goals and the date of expected achievement of water quality objectives. The IP should also include the corrective actions needed and their associated costs, benefits and environmental impacts.

The first public meeting on the development of the IP for the above impaired segments will be held on Wednesday, October 15, 2008, at 7 p.m. in the Charlotte County Administration Office Building located at 250 LeGrande Ave., Suite A, Charlotte Courthouse, VA 23923. After a one-hour public meeting, stakeholders will break into working group sessions to discuss agricultural and residential sources of bacteria and begin the public participation input process for the implementation plan.

The public comment period will end on November 14, 2008. A fact sheet on the development of an IP for the above impaired segments is available upon request. Written comments and inquiries should include the name, address, and telephone number of the person submitting the comments and should be sent to Dr. Ram Gupta, Department of Conservation and Recreation, 101 North 14th Street, 11th Floor, James Monroe Building, Richmond, VA 23219, email ram.gupta@dcr.virginia.gov, telephone (804) 371-0991.

Total Maximum Daily Load - Lower Piankatank River

Notice is hereby given that the Department of Environmental Quality (DEQ) seeks public comment from interested persons on the proposed minor modifications of this total maximum daily load (TMDL) developed for the Lower Piankatank River.

A total maximum daily load was developed to address the bacterial impairments in the waterways and counties mentioned above. This TMDL was approved by the Environmental Protection Agency on November 15, 2005. The report is available at:

<https://www.deq.virginia.gov/TMDLDataSearch/ReportSearch.jsp>

The Virginia Department of Environmental Quality (DEQ) seeks written comments from interested persons on the modification of this TMDL. DEQ staff transposed the BST source percentages for three sources in Condemnation Area 170, Cobbs Creek, which resulted in an incorrect BST Allocation Percentage for the "Total Load," "Current Load," "Load Allocation," and "Reduction Needed" percent for Cobbs Creek Condemnation Area 170. Additional rounding errors occurred in "Current Loads" and "Load Allocations," resulting in "Reduction Needed" percent changes for Condemnation Areas 126, Wilton Creek, and 129, Healy Creek. DEQ proposes to make these corrections to "BST Allocation Percentage of Total Load," "Current Load," "Allocation Load," and "Reduction Needed" for Condemnation Areas 126, 129, and 170 in Growing Area 34 in the Executive Summary Table entitled, "Reduction based upon 90TH PERCENTILE Standard Growing Area 34: Piankatank River, Lower Watershed" (page vi), Table 4.2 (page 19), and Table 5.3 (page 23) of the report."

The public comment period for these modifications will end on October 29, 2008. Please include the name, address, and telephone number of the person submitting comments. Send to Margaret Smigo, Department of Environmental Quality, Piedmont Regional Office, 4969-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, or email mjismigo@deq.virginia.gov.

DEPARTMENT OF LABOR AND INDUSTRY AND SAFETY AND HEALTH CODES BOARD

The Virginia Department of Labor and Industry (DOLI) and the Safety and Health Codes Board will hold an additional comment period for the revised proposed regulation entitled, Reverse Signal Operation Safety Requirements for Motor Vehicles, Machinery and Equipment in General Industry and the Construction Industry, 16VAC25-97. Information concerning this proposed regulation was published in the Virginia Register on August 20, 2007. A 60-day public comment period began on that publication date and extended to October 10, 2007. A public hearing was held October 18, 2007. However, a number of written comments were received after the close of the comment period. For this reason, a second comment period was held to extend for 30 days, from April 14, 2008, to May 14, 2008. Following the close of the second comment period, extensive changes were made in the text of the proposed regulation. Therefore, an additional 30-day comment period will be held for this revised proposed regulation in accordance with §2.2-4007.03 B of the Code of

Virginia, which provides that "If an agency wishes to change a proposed regulation before adopting it as a final regulation, it may choose to publish a revised proposed regulation, provided the latter is subject to a public comment period of at least 30 additional days and the agency complies in all other respects with this section." This comment period will begin on September 29, 2008, and end on October 29, 2008.

The Department of Labor and Industry and the Safety and Health Codes Board seek public comment on the review of issues related to this revised proposed regulation. Comments on the revision are welcome and will be accepted until October 29, 2008. Comments, questions, or requests for a copy of the revised regulation may be addressed to Jay Withrow, Virginia Department of Labor and Industry, Powers-Taylor Building, 13 South 13th Street, Richmond, VA 23219 or email jay.withrow@doli.virginia.gov. Please include full name and mailing address with any submitted comments.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on September 8, 2008. The orders may be viewed at the State Lottery Department, 900 E. Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, Virginia.

Final Rules for Game Operation:

Director's Order Number Forty (08)

Virginia's Instant Game Lottery 1071; "Colossal Cash" (effective 9/2/08)

Director's Order Number Forty-One (08)

Virginia's Instant Game Lottery 1073; "Triple 777" (effective 9/2/08)

Director's Order Number Forty-Two (08)

Virginia's Instant Game Lottery 1074; "Roll Em" (effective 9/2/08)

Director's Order Number Forty-Three (08)

Virginia's Instant Game Lottery 1075; "Blackjack" (effective 8/28/08)

Director's Order Number Forty-Five (08)

Virginia's Instant Game Lottery 1058; "10X The Money" (effective 9/2/08)

Director's Order Number Forty-Six (08)

Virginia's Instant Game Lottery 1069; "Monster Money" (effective 9/2/08)

Director's Order Number Forty-Seven (08)

Virginia's Sixteenth On-Line Lottery Game; "Pick Your Favorite TV Commercial" (effective 8/28/08)

Director's Order Number Forty-Eight (08)

Virginia's Fifteenth On-Line Lottery Game; "20th Birthday Raffle" (effective 8/28/08)

The following Director's Order of the State Lottery Department was filed with the Virginia Registrar of Regulations on September 10, 2008.

Director's Order Number Forty-Nine (08)

Certain Virginia Instant Game Lotteries; End of Games.

In accordance with the authority granted by §§2.2-4002 B 15 and 58.1-4006 A of the Code of Virginia, I hereby give notice that the following Virginia Lottery instant games will officially end at midnight on September 12, 2008:

Game 298	Monthly Money
Game 335	Gold Bar Bingo
Game 630	Win For Life
Game 731	\$1,000,000 Cash Spectacular
Game 734	Beginners Luck
Game 770	Green Thumb
Game 777	Super Ruby Red 7's
Game 786	One Word Cashword
Game 795	Blackjack
Game 796	Ruby Red 7's
Game 798	Blackjack Doubler
Game 799	Super Blackjack
Game 1006	Cool 7's
Game 1010	\$100,000 Double Action 2
Game 1014	Diamond White 7's
Game 1020	Silver 7's
Game 1041	Monopoly
Game 1045	Sapphire Blue 7's
Game 1047	Junior Ruby Red 7's
Game 1048	Pink Panther

The last day for lottery retailers to return for credit unsold tickets from any of these games will be October 17, 2008. The last day to redeem winning tickets for any of these games will be March 11, 2009, 180 days from the declared official end of the game. Claims for winning tickets from any of these games will not be accepted after that date. Claims that are mailed and received in an envelope bearing a postmark of the United States Postal Service or another sovereign nation of March 11, 2009, or earlier, will be deemed to have been received on time. This notice amplifies and conforms to the

General Notices/Errata

duly adopted State Lottery Board regulations for the conduct of lottery games.

This order is available for inspection and copying during normal business hours at the Virginia Lottery headquarters, 900 East Main Street, Richmond, Virginia; and at any Virginia Lottery regional office. A copy may be requested by mail by writing to Director's Office, Virginia Lottery, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Paula I. Otto
Executive Director
September 5, 2008

VIRGINIA CODE COMMISSION

Notice to State Agencies

Mailing Address: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219.

Filing Material for Publication in the Virginia Register of Regulations

Agencies are required to use the Regulation Information System (RIS) when filing regulations for publication in the Virginia Register of Regulations. The Office of the Virginia Register of Regulations implemented a web-based application called RIS for filing regulations and related items for publication in the Virginia Register. The Registrar's office has worked closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

The Office of the Virginia Register is working toward the eventual elimination of the requirement that agencies file print copies of regulatory packages. Until that time, agencies may file petitions for rulemaking, notices of intended regulatory actions and general notices in electronic form only; however, until further notice, agencies must continue to file print copies of proposed, final, fast-track and emergency regulatory packages.

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Title of Regulation: **18VAC135-40. Time-Share Regulations.**

Publication: 18:23 VA.R. 3072 July 29, 2002

Correction to Proposed Regulation:

Page 3072, 18VAC135-40-420, subsection A, line 1, strike "Prior to or upon"

VA.R. Doc. No. R01-118